

GOVERNMENT OF ASSAM
OFFICE OF THE PRINCIPAL COMMISSIONER OF STATE TAX
CUM COMMISSIONER OF TAXES, ASSAM
KAR BHAWAN, DISPUR, GUWAHATI – 781006
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INSTRUCTION No. 5/2021-GST

Dated Guwahati, the 29th November, 2021

Sub : Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the Assam GST Rules, 2017 -Reg.

No: CT/GST-40/2020/42 : Rule 86A of the Assam Goods and Services Tax Rules, 2017 (hereinafter referred to as "the Rules") provides that in certain circumstances, Principal Commissioner of State Tax or an officer authorised by him, on the basis of reasonable belief that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible, may not allow debit of an amount equivalent to such credit in electronic credit ledger.

2. Doubts have been raised by the field formations on various issues pertaining to disallowing debit of input tax credit from electronic credit ledger, under rule 86A of the Rules. Further, Hon'ble High Courts in some cases have emphasized the need for laying down instructions for the purpose of invoking rule 86A. In view of the above, the following instructions are hereby issued with respect to exercise of power under rule 86A of the Rules:

3.1 Grounds for disallowing debit of an amount from electronic credit ledger:

3.1.1 Rule 86A of the Rules is reproduced hereunder for reference:

"86A. Conditions of use of amount available in electronic credit ledger.-

- (1) *The Commissioner or an officer authorised 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-*
- 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 unutilised 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.*
- (3) *Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction."*

3.1.2 Perusal of the rule makes it clear that the Principal Commissioner of State Tax, or an officer authorised by him, not below the rank of Assistant Commissioner of State Tax, must have "reasons to believe" that credit of input tax available in the electronic credit ledger is either ineligible or has been fraudulently availed by the registered person, before disallowing the debit of amount from electronic credit ledger of the said registered person under rule 86A. The reasons for such belief must be based only on one or more of the following grounds:

- a) The credit is availed by the registered person on the invoices or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.
- b) The credit is availed by the registered person on invoices or debit notes, without actually receiving any goods or services or both.
- c) The credit is availed by the registered person on invoices or debit notes, the tax in respect of which has not been paid to the government.
- d) The registered person claiming the credit is found to be non-existent or is found not to be conducting any business from the place declared in registration'
- e) The credit is availed by the registered person without having any invoice or debit note or any other valid document for it.

3.1.3 The Principal Commissioner of State Tax or an officer authorised by him, not below the rank of Assistant Commissioner of State Tax, must form an opinion for disallowing debit of an amount from electronic credit Ledger in respect 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 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) fit for exercising power under rules 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.

3.2 Proper authority for the purpose of Rule 86A:

3.2.1 The Principal Commissioner of State Tax is the proper officer for the purpose of exercising powers for disallowing the debit of amount from electronic of registered person under rule 86A. However, Principal Commissioner of State Tax can also authorize any officer subordinate to him, not below the rank of Assistant Commissioner of State Tax, to be the proper officer for exercising such power under rule 86A. Accordingly, for exercising the powers under rule 86A the following monetary limits has been prescribed:

Total amount of ineligible or fraudulently availed input credit	Officer to disallow debit of amount from electronic credit ledger under rule 86A
Not exceeding Rupees 1 crore	Deputy Commissioner of State Tax / Assistant Commissioner of State Tax
Above Rupees 1 crore but not exceeding Rs 5 crore	Joint Commissioner of State Tax
Above Rupees 5 crore	Principal Commissioner of State Tax / Special Commissioner of State Tax / Additional Commissioner of State Tax

3.3 Procedure for disallowing debit of electronic credit ledger / blocking credit under Rule 86(A)

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3.3.1 The amount of fraudulently availed or ineligible input tax credit availed by the registered person, as per the grounds mentioned in sub-rule (1) of rule 86A, shall be prima facie ascertained based on material evidence available or gathered on record. It is advised that the powers under rule 86A to disallow debit of the amount from electronic credit ledger of the registered person may be exercised by the Principal Commissioner of State Tax or the officer authorized by him, as per the monetary limits detailed in Para 3.2.1 above. The officer should apply his mind as to whether there are reasons to believe that the input tax credit availed by the registered person has either been fraudulently availed or is ineligible, as per conditions / grounds mentioned in sub-rule (1) of rule 86A and whether disallowing such debit of electronic credit ledger of the said person is necessary for restricting him from utilizing / passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue. Such "Reasons to believe" shall be duly recorded by the concerned officer in writing on file, before he proceeds to disallow debit of amount from electronic credit ledger of the said person.

3.3.2 The amount disallowed for debit from electronic credit ledger should not be more than the amount of input tax credit which is believed to have been fraudulently availed or is ineligible, as per the conditions / grounds mentioned in sub-rule (1) of rule 86A.

3.3.3 The action by the Principal Commissioner of State Tax or the authorized officer, as the case may be, to disallow debit from electronic credit ledger of a registered person, is informed on the portal to the concerned registered person, along with the details of the officer who has disallowed such debit.

3.4 Allowing debit of disallowed / restricted credit under sub-rule (2) of Rule 86A :

3.4.1 The Principal Commissioner of State Tax or the authorized officer, as the case may be, either on his own or based on the submissions made by the taxpayer with material evidence thereof, may examine the matter afresh and on being satisfied that the input tax credit, initially considered to be fraudulently availed or ineligible as per conditions of sub-rule ineligible or wrongly availed, either (1) of rule 86A, is no more partially or fully, may allow the use of the credit so disallowed / restricted, up to the extent of eligibility, as per powers granted under sub-rule (2) of rule 86A.

Reasons for allowing the debit of electronic credit ledger, which had been earlier disallowed, shall be duly recorded on file in writing, before allowing such debit of electronic credit ledger.

- 3.4.2 The restriction imposed as per sub-rule (1) of rule 86A shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction. In other words, upon expiry of one year from the date of restriction, the registered person would be able to debit input tax credit so disallowed, subject to any other action that may be taken against the registered person.
- 3.4.3 As the restriction on debit of electronic credit ledger under sub-rule (1) of rule 86A is resorted to protect the interests of the revenue and the said action also has bearing on the working capital of the registered person, it should be endeavoured that in all such cases the investigation and adjudication are completed at the earliest, well within the period of restriction, so that the due liability arising out of the same can be recovered from the said taxable person and the purpose of disallowing debit from electronic credit ledger is achieved.
4. Difficulty if any, in implementation of the above instruction may please be brought to the notice of the Principal Commissioner of State Tax, Assam.

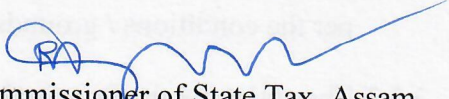
Sd/= Rakesh Agarwala IAS.,
Principal Commissioner of State Tax, Assam
Dispur, Guwahati – 6

Memo No. CT/GST-40/2020/42-A

Dated Guwahati, the 29th November, 2021

Copy to:

1. The Commissioner & Secretary, Finance (Taxation) Department, Dispur, Guwahati for favour of kind information.
2. The Special Commissioner of State Tax (All)/ Additional Commissioner of State Tax (All) for information.
3. The Joint Commissioner of State Tax (All)/ Deputy Commissioner of State Tax (All) / Assistant Commissioner of State Tax (All) / Superintendent of State Tax (All) for information and necessary action.
4. The Information Technology Officer, Office of the Commissioner of Taxes, Assam for uploading the instruction on the website of the Commissionerate for information of all concerned.


Principal Commissioner of State Tax, Assam
Dispur, Guwahati – 6