

File No. CT/1860/2021-C9

Office of the Commissioner of State Tax, State Goods and Services Tax Department,  
Kerala, Tax Towers, Karamana, Thiruvananthapuram

-----  
Dated: 24/05/2021

**CIRCULAR No.04 /2021**

Sub: Blocking of Credit under Rule 86A of SGST Rules-2017 - Guidelines issued-reg:

Ref: 1. order No. CT/17859/2018-A2 GSTC dated 22/01/2020

2. SoP for blocking/ unblocking of ITC

1. As per the new Rule 86A inserted in the GST Rules;

*[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.

2. In order to streamline the process of blocking/unblocking of ITC as per the above rules, the following guidelines are issued;

3. Vide order No. CT/17859/2018-A2 GSTC dated 22/01/2020 the Joint Commissioners of state tax has been authorized to perform the functions to be performed by Commissioner of State Tax under Rule 86A within their respective jurisdiction.

4. Detailed SOP has already been issued prescribing the manner of blocking /unblocking of ITC in the portal.

5. In Rule 86A, 4 scenarios has been mentioned for blocking of ITC. Out of the 4 scenarios, more importance has to be given for situation (a) and (c). It should be ensured that no input tax credit is availed on the strength of tax invoices or debit notes or any other documents prescribed under rule 36 issued by a registered person who has been found non- existent or not conducting any business from the place for which registration has been obtained or without receipt of goods or services or both.

6. With regard to (b), major cases should be identified from the red flag reports or other reports available in the backend. while taking figures from 2A, it shall be ensured that the 2A is updated. Such blocking shall be in terms of Rule 36(4) of the KSGST AND CGST rules and Circular No. 123/42/2019– GST dated 11th November, 2019 of CBIC.

7. In respect of cases initiated by the Jurisdictional officers/proper officers, the request for blocking of credits shall be sent to the District Joint Commissioners concerned(Authorized officers), who will examine the same and will take necessary steps to block the ITC in the portal as per the SoP issued.

8. In respect of the requests for blocking ITC received from CBIC, the same has to be received and processed by Economic Intelligence Wing in the office of the Commissioner of State Taxes and they will examine the case and if found justified, it shall be forwarded to the authorized District Joint Commissioner concerned who have the jurisdiction to block ITC of the said taxpayer.

9. Any requests from State Officers to block ITC pertaining to CBIC administrated taxpayers should be sent to Economic Intelligence Wing in the office of the Commissioner and they will process the same and forward to the CGST Commissionerates concerned for necessary action.

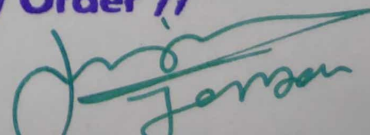


10. As stated in the rules, the credit blocked shall be the value equivalent to credit availed fraudulently or ineligible credit. The authorized officer shall determine the amount equivalent to such fraudulent credit and shall block usage of such amount in the portal.
11. The authorized officer shall inform such blocking/ restriction of credit to the officer under whom the taxpayer is registered and also to the taxpayer whose credit has been blocked. Such intimation shall be send through e-mail to the registered mail id as soon as possible and also shall serve a hard copy of order to the taxpayer with proper acknowledgment.
12. If there is Nil balance or insufficient balance in the tax head to which the credit is to be blocked, the credit available in other tax heads, equivalent to the amount fraudulently availed, can be blocked. In such scenario, it should be kept in mind that, this shall be subject to limitations imposed by law on cross- utilization of ITC. That is, as cross utilization of CGST credit to SGST liability and vice versa is not permitted by GST Laws. In case of blocking of CGST credit availed fraudulently, blocking of SGST credit shall not be done, if no credit is available in CGST tax head. As such, for blocking of IGST credit availed fraudulently, if there is no credit balance in IGST tax head, the amount equivalent to the credit fraudulently availed can be blocked from the ITC credit available in CGST head and/or SGST head and vise versa.
13. Any representation received from the taxpayer against blocking of ITC shall be disposed by the authorized officer within a reasonable time (say 15 days). The authorized officer, after considering the representation, may on being satisfied that the conditions stipulated under Rule 86A no longer exists, or found to be contrary to the belief that led to the blocking, unblock the credits as per Rule 86A (2) in the manner specified in the SOP, under intimation to concerned registered person and the jurisdictional proper officer.
14. Blocking of credit under Section 86A is an emergency measure to prevent the taxpayer from using the credit availed fraudulently or ineligible credit taken. Hence nothing prevents the proper officer from taking any other suitable actions under any other provisions of GST laws including determination of tax under section 73, 74, demand and recovery, provisional attachment of property etc.
15. ITC blocking is a temporary step and should not be seen as equivalent to recovery of tax. Action under section 73/74 is the full and final demand creation exercise as per GST Law. Both are mutually exclusive and SCN under section 73/74 should be issued immediately upon completion of investigation in all cases.

Sd/-

COMMISSIONER

**// By Order //**



**Additional Commissioner (General)**