

Circular No. 8 / 2020
PP2/ 2305/2020

Office of the Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

Dated: 21.09.2020

CIRCULAR

Sub: Blocking of credits under Rule 86A –
procedure to be followed –
supplementary instructions – issued.

Ref: Commissioner of Commercial Taxes Circular
No.3/2020 (PP2/2305/2020) dated 23.03.2020

Clarifications have been sought by the Joint Commissioners of Territorial Divisions based on the inputs of the Authorised Officer under Rule 86A while undertaking blocking of credit under the said rule. Broadly, the issues faced by them are classified as below:

1. NIL or Zero balance in all heads of tax in credit ledger.
2. Insufficient balance in the relevant heads of credit ledger to cover the entire amount to be blocked
3. Nil or insufficient balance in the head to be blocked but sufficient balance in other head
4. When certain invoices are not reflected in GSTR-2A, but available in E-way bill system, etc., whether ITC has to be blocked for these cases, as it would appear that the dealer may not have taken the credit
5. Whether S.73 / 74 action is to be initiated in case of Nil balance / insufficient balance in credit ledger

The following instructions are therefore issued as a supplementary to the circular no. 3/2020.

The relevant portions of Rule 86A reads as:

"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 ineligiblemay, for reasons to be recorded in writing, **not allow debit of an amount equivalent to such credit in**

electronic credit ledger for discharge of liability under Section 49 or for claim of any refund of any unutilised amount." (emphasis supplied).

From the wordings above, it is seen that the blocking of credit is related to an amount equivalent to such fraudulent or ineligible credit and NOT such credit itself.

1. Therefore, in respect of zero balance in all heads of tax in credit ledger because of which no blocking could be done, if the taxpayer is functional, the blocking of amount equivalent to such credit can be resorted to as and when credit accumulates in his electronic credit ledger and this can be done only if the TP is monitored continuously. If the taxpayer is not functional and with no credit balance, it is impossible to block future accumulated credits too. But other actions as narrated in Para No.5 below may be taken.
2. In the case of insufficient balance in the relevant heads of credit ledger to cover the entire amount to be blocked, the first step would be to block the amount available as on the date of blocking and the balance amount has to be blocked as and when the credits start to accumulate in the credit ledger of the taxpayer. Further, other actions as narrated in Para No.5 below may be taken.
3. In the case where there is nil balance or insufficient balance in the heads of tax to be blocked but credits are available in other heads, on the same analogy as above, blocking of amount equivalent to such credit lying in one tax head in lieu of another (to which such credit actually pertains to) may be resorted to. However, it is to be noted that blocking in heads in the credit ledger other than the heads for which such blocking is to be done, is subject to limitations imposed by the cross-utilisation of ITC. In other words, for a request to block CGST credit, the available credit in SGST head cannot be blocked and vice versa. Further, when SGST and CGST credits are to be blocked and amounts are not available in those heads in the electronic credit ledger of the taxpayer, if credit is available only in IGST head, then the IGST credit could be blocked equal to such CGST and SGST amounts to be blocked. Similarly, when IGST credit is to be blocked but no amount is available and credits are available only in CGST / SGST heads, then blocking to such extent can be done in the CGST / SGST heads.
4. As per Para 7 of the circular no.3/2020 read with the

provisions of Rule 86A, it can be seen that the officer authorized to block credit is sufficiently empowered to form his belief based on reasons as to whether the credits get covered under the categories mentioned under the rule provisions or not. Therefore, if in the opinion of the authorized officer, any credit is not malafide, etc., he is free to decide not to block the credit; however, it is his sole responsibility to do so based on the material evidences to believe the contra and not on any surmise that absence of invoice details in GSTR-2A could mean that the dealer has not availed credit, etc.

5. Further, with regard to taking any other action, viz., under Section 74, etc., it is clarified that blocking of credit under Rule 86A is an emergency measure to prevent the taxpayer from using fraudulent or wrong credits taken under the circumstances enlisted under the provision. However, this does not preclude or impede any other action that may be taken under other provisions of GST laws including provisional attachment of property, demand and recovery, etc. It is once again emphasised that any issues arising during the task of blocking do not have any connection with any other action under the GST Law.

The receipt of the circular may be acknowledged by return post.

Sd/- M.A.Siddique
Principal Secretary/
Commissioner of Commercial Taxes

To
All the Joint Commissioners
(CT) Territorial, Intelligence
& LTU

Copy to:

1. All Additional Commissioners (CT), O/o the ACS/CCT Chennai.
2. ADC (Intelligence-I, Chennai)
3. The Director, Commercial Tax Staff Training Institute, Chennai-6
4. The Joint Commissioner (CT), (Computer System), Chennai-6 for uploading in the intranet website.
5. All the Deputy Commissioners in the State (Territorial, intelligence and LTU)
6. All the heads of assessment circles in the State
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//forwarded/by order//


Assistant Commissioner 22/9/2020