

GOODS & SERVICES TAX / IDT UPDATE-139

The CBIC has issued Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017. The salient points of the Guidelines are elaborated below:

1. Grounds for disallowing debit of amount from electronic credit ledger

- (i) The Commissioner or an officer authorised by him, not below the rank of Assistant Commissioner, must “**form an opinion**” for disallowing debit of an amount from electronic credit ledger 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 rule 86A(1), the amount of input tax credit involved, and whether such disallowance is necessary for restricting him from utilizing/ passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue.
- (ii) 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 rule 86A. The remedy of disallowing debit of amount from electronic credit ledger being, by its very nature, extraordinary¹ 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.

2. Proper authority for the purpose of rule 86A

- (i) The Commissioner/ Principal Commissioner may authorize exercise of powers under rule 86A based on the following monetary limits:

Total amount of ineligible fraudulently availed input tax credit	Officer authorized to disallow debit of amount from electronic credit ledger under rule 86A
Upto Rs. 1 crore	Deputy/ Assistant Commissioner
Above Rs. 1 crore but upto Rs. 5crore	Additional/ Joint Commissioner
Above Rs. 5 crore	Principal Commissioner/ Commissioner

- (ii) The Additional Director General /Principal Additional Director General of DGGI can also exercise the powers assigned to the Commissioner under rule 86A. The monetary limits for authorization for exercise of powers under rule 86A, to the officers of the rank of Assistant Director and above of DGGI by the Additional Director General

/Principal Additional Director General may be same as mentioned above for equivalent rank of officers.

- (iii) Where during the course of Audit under section 65 or 66 of CGST Act, 2017, it is noticed that any input tax credit has been fraudulently availed or is ineligible as per the grounds mentioned in rule 86A(1), the concerned Commissioner/ Principal Commissioner of CGST Audit Commissionerate may refer the same to the jurisdictional CGST Commissioner for examination of the matter for exercise of power under rule 86A.

3. Procedure for disallowance

- (i) The amount of fraudulently availed or ineligible input tax credit availed by the registered person, as per the grounds mentioned in rule 86(1) shall be prima facie ascertained based on material evidence available or gathered on record. The "reasons to believe" to disallow debit from electronic credit ledger as formed by the Commissioner or any other officer authorized by him 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.
- (ii) 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 rule 86A(1).
- (iii) The action to disallow such debit from electronic credit ledger shall be informed on the portal to the concerned registered person, along with the details of the officer who has disallowed such debit.

4. Allowing debit of disallowed/restricted credit under rule 86A(2)

- (i) The Commissioner or the authorized officer, either on his own or based on the submissions made by the taxpayer with material evidence, may examine the matter afresh and on being satisfied that the input tax credit, initially considered to be fraudulently availed or ineligible, is no more ineligible or wrongly availed, either partially or fully, may allow the use of the credit so disallowed/restricted, up to the extent of eligibility, as per powers granted under rule 86A(2).
- (ii) 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.
- (iii) Upon expiry of one year from the date of restriction, the registered person shall be able to debit input tax credit so disallowed, subject to any other action that may be taken against such person.
- (iv) As the restriction on debit of electronic credit ledger under rule 86A(1) 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 endeavored 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.

The complete text of the Guidelines can be accessed at [Guidelines for disallowing debit of electronic credit ledger under rule 86A of the CGST Rules, 2017](#)

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