

MONTHLY NEWSLETTER

GST TRACKER

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HAPPY

Diwali



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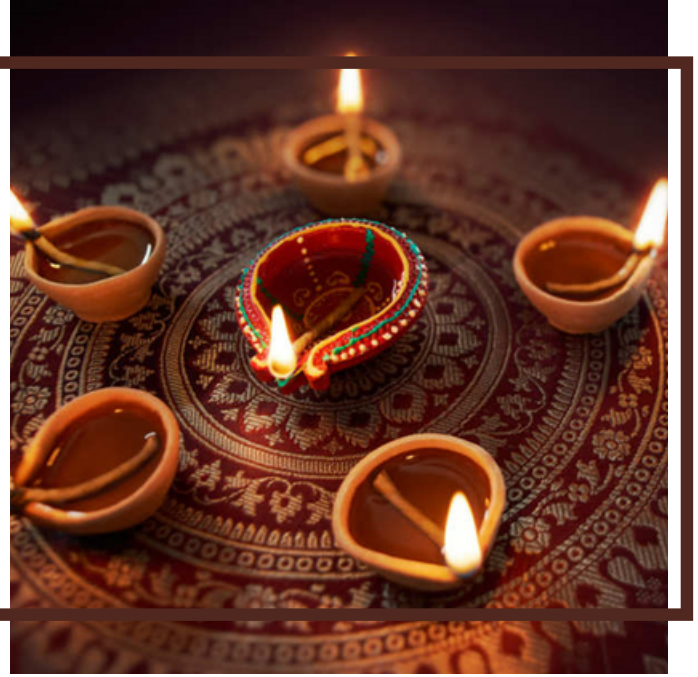
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EDITOR'S NOTE



Happy Diwali

Deepavali, the Festival of Lights has all the charm, grandeur, and splendor that can illuminate our minds and hearts. Diwali's essence lies in the sloka, 'Tamaso ma jyotirgamaya' which means "lead me from darkness to light" i.e. discovering the knowledge of our infinite potential and dispelling ignorance.

Team Pakkabil, wishes all its readers a very Happy Diwali.

Pankaj Kataria

(Founder Pakkabil)

CBIC issued Guidelines for disallowing Debit of Electronic Credit Ledger

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Gurlal Singh

The Rule 86A of CGST Rules 2017 empowers the Commissioner or its authorized officer to disallow debit of electronic credit ledger and block the credit on the basis of reasonable belief that credit of input tax credit ITC available in credit ledger has been fraudulently availed or is ineligible.

Now, CBIC has issued detailed guidelines for the officers to exercise the power of Rule 86A. The Board has clarified grounds for disallowing debit of credit ledger, Proper Authority for the Purpose of Rule 86A.

- A Rule 86A Conditions of use of amount available in electronic credit ledger (Relevant extract reproduced)
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 (ITC) available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as
 - a. ITC has been availed on the strength of tax invoice or debit notes or any other documents 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;
 - (ii) without receipt of goods or services or both
 - b. ITC 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
 - c. the registered person availing ITC has been found non-existent or not to be conducting any business from any place for which registration has been obtained

- d. b.the registered person availing any ITC 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.

- B With reference to the para 3.1.2 & 3.1.3 of guidelines, it makes clear that the Commissioner, or an officer authorized by him, not below the rank of Assistant Commissioner, 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 joint reading of both para portray the stress on "reasons to believe must be accompanied by only after proper application of mind considering all the facts of the case, including the nature of prima facie fraudulently availed or ineligible ITC and whether the same is covered under the grounds mentioned in sub-rule (I) of rule 86A. The Proper authority as per guidelines must have "reason to believe" rather than it shall be or could be. It contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration of suspicion. 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. 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.

- C C.The reason 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.

D Proper Authority for the purpose of Rule 86A

The Commissioner including Principal Commissioner is the proper officer for the purpose of exercising power under rule 86A. However, Commissioner/ Principal Commissioner can also authorize any officer subordinate to him, not below the rank of Assistant Commissioner to be the proper officer for exercising such power under rule 86A. Commissioner / Principal Commissioner may authorize exercise of powers under rule 86A based on the following monetary limits as mentioned below:

Total Amount of ineligible or fraudulently availed input tax credit	Officer to disallow debit of amount from electronic credit ledger under rule 86A
Not exceeding ₹ 1 Crore	Deputy Commissioner/Assistant Commissioner
Above ₹ 1 Crore but not exceeding ₹ 5 Crore	Additional Commissioner/Joint Commissioner
Above ₹ 5 Crore	Principal Commissioner / Commissioner

The restriction imposed as per 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.

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 rule 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.

GSTN updates October 2021

Date of Issue	Subject
04/10/2021	Resumption of Blocking of E-Way Bill (EWB) generation facility
17/10/2021	Availability of Input Tax Credit (ITC) for FY 2020-21
18/10/2021	Advisory for taxpayers on Form GSTR-2B

Source: www.gst.gov.in

Notifications/Circulars/Orders issued in the month of October 2021

Ø Central Tax Notifications October 2021

No Central Tax notification was issued in the month of October 2021

Ø Central Tax (Rate) Notifications October 2021

Notification Nos.	Date of Issue	Subject
13/2021	27/10/2021	Seeks to amend Notification No 1/2017-Central Tax (Rate) dated 28.06.2017

Ø Integrated Tax Notifications October 2021

No Integrated Tax notification was issued in the month of October 2021

Ø Integrated Tax (Rate) Notifications September 2021

Notification Nos.	Date of Issue	Subject
13/2021	27/10/2021	Seeks to amend Notification No 1/2017-Integrated Tax (Rate) dated 28.06.2017

Notifications/Circulars/Orders issued in the month of October 2021

Ø Circulars issued in the month of October 2021

Circular Nos.	Date of Issue	Subject
163/2021	06/10/2021	Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 45th meeting held on 17th September, 2021 at Lucknow-reg.
164/2021	06/10/2021	Clarifications regarding applicable GST rates & exemptions on certain services.

Ø Orders

No Orders issued in the month of October 2021

Ø Removal of Difficulty Orders October 2021

No order was issued in the month of October 2021

Source: www.cbic.gov.in

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