

A.F.R.

Court No. - 3

1. **Case :-** WRIT TAX No. - 212 of 2022

Petitioner :- M/S M.M. Traders

Respondent :- State Of U P And 3 Others

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C., Amit Mahajan, B.P. Singh
Kachawaha, C.S.C.

WITH

2. **Case :-** WRIT TAX No. - 950 of 2021

Petitioner :- M/S JBM Steels

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Praveen Kumar

Counsel for Respondent :- A.S.G.I., C.S.C., Gaurav Mahajan, Krishna
Agarawal

3. **Case :-** WRIT TAX No. - 297 of 2022

Petitioner :- M/S Makrana Marbles

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Pranjal Shukla

Counsel for Respondent :- A.S.G.I., Ashok Singh, C.S.C., Gopal Verma

4. **Case :-** WRIT TAX No. - 298 of 2022

Petitioner :- M/S Ramcharan Mani Shankar

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Pranjal Shukla

Counsel for Respondent :- A.S.G.I., C.S.C., Gopal Verma, Krishna
Agarawal

5. **Case :-** WRIT TAX No. - 299 of 2022

Petitioner :- M/S Rajesh Traders

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Pranjal Shukla

Counsel for Respondent :- A.S.G.I., Amit Mahajan, C.S.C., Gopal Verma

6. **Case :-** WRIT TAX No. - 307 of 2022

Petitioner :- M/S Amit Enterprises

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Pranjal Shukla

Counsel for Respondent :- A.S.G.I., C.S.C., Gopal Verma, Parv Agarwal

7. **Case :-** WRIT TAX No. - 310 of 2022

Petitioner :- Ram Babu Gupta Building Material Supplier

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Pranjal Shukla

Counsel for Respondent :- A.S.G.I.,C.S.C.,Dhananjay Awasthi, Gopal Verma

8. **Case :-** WRIT TAX No. - 287 of 2022

Petitioner :- M/S Nanhey Mal Munna Lal

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.,A.S.G.I.

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Jayant Banerji,J.

1. Heard Sri Praveen Kumar, Sri Aditya Pandey, Sri Pranjal Shukla, learned counsels for the petitioners; Sri B.P. Singh Kachhawah, learned standing counsel & Sri Nimai Das, learned Additional Chief Standing Counsel for the respondents.

2. All the aforequoted writ petitions have been filed aggrieved with blocking of input tax credit by the concerned authority under Rule 86 A of the C.G.S.T. /U.P. G.S.T. Rules, 2017. Rule 86 A(2) of the C.G. & S.T. Rules, 2017, which provides as under :-

“86 A(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. The guidelines for disallowing debit of electronic credit ledger under Rule 86 A(2) of the C.G. & S.T. /U.P. G. & S.T. Rules, 2017, has been issued by the Commissioner of Commercial Tax U.P. as under :-

***“Office of the Commissioner,
Commercial Tax, Uttar Pradesh
(GST Section)***

***Letter No.GST/2021-22/ 30 / Commercial Tax
Lucknow: Dated: 23 November, 2021***

To

**All Zonal Additional Commissioner, Grade-1,
Additional Commissioner, Grade-2 (S.I.B.)
Joint Commissioner, (Executive/ Corporate Circle/ S.I.B.)
Commercial Tax, Uttar Pradesh**

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

Rule 86A of the Uttar Pradesh Goods and Services Tax Rules, 2017 (hereinafter referred to as "the Rules") provides that in certain circumstances, Commissioner 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 guidelines for the purpose of invoking rule 86A. In view of the above, the following guidelines 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 reason 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 Commissioner, or an officer authorised 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 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 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 in respect of 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 disallowing such debit of electronic 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 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. 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 Commissioner is the proper officer for the purpose of exercising powers for disallowing the debit of amount from electronic credit ledger of a registered person under rule 86A. However, 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. In exercise of powers conferred by Rule 86A; the officers authorised by the Commissioner on the basis of monetary limits are 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 Rupees 1 crore	Deputy Commissioner/ Assistant

	<i>Commissioner as per their jurisdiction;</i>
<i>Above Rupees 1 crore but not exceeding Rs 5 crore</i>	<i>Joint Commissioner (Executive)/ Joint Commissioner (Corporate circle) as per their jurisdiction;</i>
<i>Above Rs 5 crore</i>	<i>Additional Commissioner Grade-1</i>

3.2.2 *Where during the course of Audit under section 65 or 66 of UPGST Act, 2017 it is noticed that any input tax credit has been fraudulently availed or is ineligible as per the grounds mentioned in sub-rule (1) of rule 86A, which may require disallowing debit of electronic credit ledger under rule 86A, the concerned Joint Commissioner of UPGST Audit may refer the same to the jurisdictional UPSGST Officer for examination of the matter for exercise of power under rule 86A.*

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

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 Commissioner 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 commissioner 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:

The Commissioner 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 (1) of rule 86A, 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 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.

3.4.1 The restriction imposed as per sub-rule (1) of rule 86A shall cease to have effect after the expiration of a period of one year from the date of imposing such restriction. In other words, upon expiration 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.

3.4.2 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 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.

4. Difficulty, if any, in implementation of the above guidelines may please be brought to the notice of the Undersigned.”

4. From perusal of Rule 86 A(2) of the C.G. & S.T./U.P. G. & S.T. Rules, 2017, and paragraph 3.4 of the aforequoted guidelines of the Commercial Tax we are of the view that the petitioners should first approach the authorised Officer raising objections against the blocking of the input tax credit and the said authority would be under an obligation to decide the objection within a time bound period.

5. In view of the aforesaid, we *disposed off* all these writ petitions giving liberty to the petitioners to submit objections before the Commissioner or the authorised Officer, as the case may be, under Rule 86 A(2) of the C.G.S.T. /U.P.G.S.T. Rules, 2017, within two weeks from today alongwith certified copy of this order and in the event objections are submitted by the petitioners within the stipulated period, the same shall be decided by the concerned Authority Officer in accordance with law, by a speaking and reasoned order, within next three weeks, after affording reasonable opportunity of hearing to the petitioners.

6. It is made clear that we have not expressed any opinion on merits of the case.

Order Date :- 7.4.2022/vkg