

RULE 87A: BLOCKING OF ITC.



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Objective of Rule 86A

- Safeguard revenue interest in the interim period of proceedings by Revenue
- Crackdown on fraudulent practice in the industry
- Revenue augmentation

Whether beyond the provisions of the Act

- Rule introduced in the chapter IX - Payment of Taxes

*Section 49 (4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and **subject to such conditions** and within such time **as may be prescribed**.*

Provisional attachment to protect revenue

Sec 83 (1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

Rule on ITC Blocking

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,

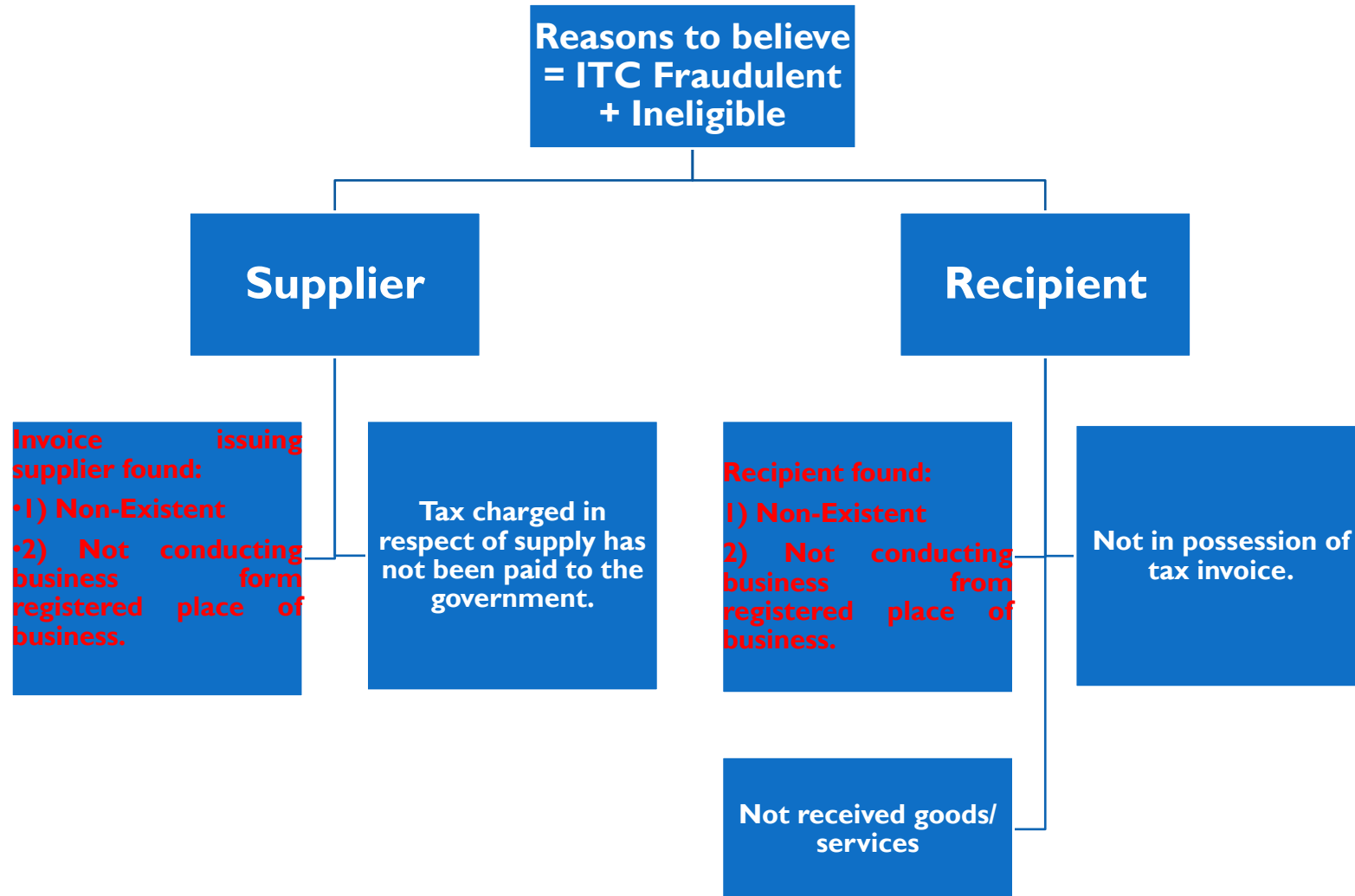
Rule for ITC blocking

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.

Rule for ITC blocking



Reason to believe

1. Belief may be subjective but reason is objective.
2. The expression 'reason to believe' does not mean a purely subjective satisfaction, the reasons for the belief must have a rational connection or relevant bearing to the formation of the belief
3. The existence of tangible material is necessary
4. Reason to believe is stronger than "is satisfied"
5. Reason to believe does not mean "reason to suspect"
6. **The existence of the belief** upon which the Assessing officer has produced to reassess **can be challenged** by the assessee. The assessee **cannot challenge the sufficiency of the belief**
7. Reason to believe that a person has committed the specified offence which is rendering the person liable must be based on credible material which will stand judicial scrutiny.

Whether following are reason to believe?

1. Admission of supplier in proceedings
2. Non submission of return by supplier
3. Availing credit in defiance of Rule 36 (4)
4. Significant variation in the ratio of ITC
5. Industry having risk of duty evasion
6. Refund rejection on account of credit not appearing in 2A
7. Frequent changes in the place of business

Non payment of tax by supplier – whether buyer to be penalised

- Tarapore & Company Vs State of Jharkhand (Jharkhand High Court): ITC not deniable to purchasing dealer if the selling dealer is bonafide but could not deposit the tax due to technicalities
- On Quest Merchandising India Pvt. Ltd. Versus Govt. of NCT of Delhi: Demanding tax from purchasing dealer and expecting him to do impossible act of identifying the supplier paying tax would be violation of Article 14 of the Constitution. Govt to collect tax from the supplier, not from purchaser.
- M/s. Mahalaxmi Cotton Ginning Pressing & Oil Industries v. State of Maharashtra - against
- Arise India – Delhi (2A/2B matching but tax not deposited – buyer not liable)
- Kay Kay Industries - SC – Buyer not to identify whether supplier paid ED
- Bharti Telemedia Limited – Delhi HC – Notice issued to Govt under GST. Final hearing on 22.7.2020.

Points for deliberation

1. Meaning of “*reason to believe*”
2. Credit availed which is sought to be blocked – whether such credit should exist on the date of blocking the credit or any other credit could also be blocked?
3. Whether reasons are required to be communicated?
4. Whether entire credit blocked or only doubtful credit?
5. Right of appeal?
6. Any pre or post intimation by department?
7. Credit blocked by dept – reasons not known to recipient. How shall he proceed for corrective actions?
8. Unblocking after one year – what if case not concluded? Whether can be re-blocked?

Points for deliberation

- 9. Whether direct recovery by department possible?
- 10. Sec 76 – Tax collected and to be paid to government.

Consequences of blockage

- Refund not permitted
- May not be able to file the return
- Cash flow problem
- Not able to generate E-way Bill leading to temporary /permanent closure of business
- May have impact on the entire business chain if some of the party declared as fraudster

Precaution for recipients

- Background verification of supplier
- Periodical cross check as to vendor continuing the business
- Continuous reconciliation of GSTR-2A
- Indemnity bond with the suppliers
- Vendor splitting transactions below 50k to avoid E-way bill generation

THANK YOU

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For any clarification

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