

# Kerala issues first guidelines on blocking/unblocking of Input Tax Credit

*Circular bases on 'Rule 86A' of GST Rules; experts say CBIC should ensure its uniformity across the nation*

Kerala has come out with detailed circular and Standard Operating Procedures (SoP) to streamline the process of blocking/unblocking of Input Tax Credit (ITC). Kerala is the first state to issue such a circular and

experts expect that other States too will come out with similar mechanism, so that companies with multi-State operations will not have any problem.

It may be noted that Haryana did come out with a guideline on the same theme, but that was before the insertion of rule 86A in GST Rules related with blocking of ITC and controlling the menace of fake invoices. The said rule, introduced through a notification dated December 25, 2019 prescribes conditions of use of

amount available in electronic credit ledger.

CA Aditya Singhanian, Partner with Singhanian's GST Consultancy said that rule 86A envisages the "scenarios" wherein credits can be blocked and nothing beyond that. "Later, a press release by the GST Council Secretariat on March 6, 2020, proposed for further examination of its SoP," he said.

The circular instructs cases, where credit has been availed on basis of tax invoices or debit-notes but tax has not been paid to government, are to be identified from the red flag reports. It outlines mechanism for blocking in various cases i.e. cases initiated by Jurisdictional officers/proper officers, requests received from Central Board of Indirect Taxes and Customs (CBIC), and requests from State Officers regarding CBIC administered taxpayers.

It talks about procedure to be followed by authorised officer for determination of fraudulent credit to be blocked and redressal of representations received from taxpayer against blocking of credit. If there is NIL or insufficient balance in tax head to which credit is to be blocked, credit available in other heads, equivalent to the amount fraudulently availed can be blocked, subject to limitations imposed on cross-utilisation of ITC. It explains that nothing prevents the proper officer from

taking suitable actions under the GST law including determination of tax, demand and recovery, provisional attachment of property, etc.

“ITC blocking is a temporary step and should not be seen as equivalent to recovery of tax,” the circular said.

The matter of blocking ITC based on rule 86A has seen a number of court cases. In one such case (*Aryan Tradelink vs Union of India*), Karnataka High

Court ruled that Revenue's action of blocking electronic credit ledger for a continuous period of more than 1 year is 'impermissible in light of Rule 86-A(3)' and set aside Revenue's order. Another matter (Surat Mercantile Association Vs Union of India) is pending in Gujarat High

Commenting on new circular, Harpreet Singh, Partner at KPMG feels it is a good step as it streamlines the procedure to be followed by officers across the

State and in a way reduces the subjectivity involved in the entire process .“On the flip side, if other States also follow suit, and issue similar guidelines, it would be interesting to see if the guidelines and process prescribed is similar, so that companies operating across States, need not worry about different practices being followed by officers in each of the States,” he said.

“A similar clarification from CBIC would ensure uniformity across



the nation,” Singhanian added