To

Assistant Commissioner of Goods and Service Tax

Bikaner Rajasthan

1. We have received a communication from your office that our ITC is blocked in Rule 86A in tune of Rs. 100/- on Dated 01/01/2021, further our ITC ledger balance was Rs. 80/- at time of blocking, so same is not showing ITC ledger balance Rs. -20/- as on date i.e., Negative ITC Ledger.
2. Rule 86-A of the GST Rules reads thus;

*“(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-*

1. *XXXXX*
2. XXXX
3. XXXX
4. XXXXX

*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.*

1. Rule 86A of the CGST Rules empowers the Commissioner or his subordinates to freeze the debit in the electronic credit ledger provided he has reasons to believe that the credit of input tax available in the electronic credit ledger has been fraudulently availed or is

ineligible. Thus, the condition precedent is that the input tax credit should be available in the electronic credit ledger before the power under Rule 86-A is invoked by the authority. If no input tax credit was available in the ledger, the blocking of electronic credit ledger under Rule 86-A of the Rules and insertion of negative balance in the ledger would be wholly without jurisdiction and illegal.

1. It is submitted that the negative block of electronic credit ledger with Nil balance in the credit ledger as on the date of the imposition of the block is wholly without jurisdiction and beyond the scope of Rule 86-A of the GST Rules.
2. It is submitted that the *sine-qua-non* for the exercise of power under Rule 86A of the GST Rules is that there should be credit available in the electronic credit ledger which is alleged to be ineligible. In other words, if any credit balance is available, then the authority may, for reasons to be recorded in writing, not allow the debit of amount equivalent to such credit. However, there is no power of negative blocking for the credit to be availed in future
3. One of the primary conditions in order to invoke Rule 86A is that the Credit of input tax should be available in the electronic credit ledger. Further, such credit should be claimed to have been (supported by reason to believe recorded in writing) fraudulently availed.
4. Reference can be drawn from the CBIC Guidelines issued on Dated 02nd Nov, 2021 CBEC – 20/16/05/2021-GST/1552, these guidelines issued after the hon’ble Gujarat High Court instruction to CBIC in case of S.S. Industries vs. Union of India, reported in (2021) 87 GSTR 71 (Guj.) there is nowhere mentioned in the said guidelines, that ITC Ledger can be blocked in case of Negative balance or more than available balance in ledger of TP.
5. Reliance is placed on the Hon’ble Gujarat High Court decision in case of SAMAY ALLOYS INDIA PVT. LTD Vs STATE OF GUJARAT **R/SPECIAL CIVIL APPLICATION NO. 18059 of 2021 Date : 03/02/2022,** Hon’ble court on the issue of ITC Ledger Block by Revenue more than available limit i.e. negative balance held that ITC Ledger cannot be block more than available balance by revenue in any circumstances and allow the petition filled by the TP. The extract of the Order in Para 57 & 58 is reproduced below for your reference.

57. For all the foregoing reasons, this writ application succeeds and is hereby allowed. The respondents are directed to withdraw negative block of the electronic credit ledger at the earliest. We rule that the condition precedent for exercise of power under Rule 86A of the GST Rules is the availability of credit in the electronic credit ledger which is alleged to be ineligible. **If credit balance is available, then the authority may, for reasons to be recorded in writing, not allow the debit of amount equivalent to such credit. However, there is no power of negative block for credit to be availed in future**. The writ applicants are also entitled to the refund of Rs.20 Lakh deposited by them to enable them to file their return. The respondents shall refund this amount of Rs.20 Lakh to the writ applicants within a period of two weeks from the date of the receipt of the writ of this order

58. With the aforesaid, this writ application is disposed of.

1. Based on the above-mentioned submission and Hon’ble Court order, it is very clear that ITC cannot be booked in negative in credit ledger, so it is requested you to remove the blocking of ITC Ledger.

Yours’s

Ram Bajaj