

ISSUES RELATING TO DETENTION AND CONFISCATION OF GOODS (WITH PRACTICAL CASE STUDIES AND CASE LAWS)

BY:

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SEC 122- PENALTY FOR CERTAIN OFFENCES	RULE 138- INFORMATION TO BE FURNISHED PRIOR TO COMMENCEMENT OF MOVEMENT OF GOODS AND GENERATION OF E-WAY BILL
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Chapter XIX

OFFENCES & PENALTIES
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Basic Terms

Offence

Not defined in the act

- **“Offence”** shall mean any act or omission made punishable by any law for the time being in force; **[Section 3(28) of the General Clauses Act, 1897]**
- “An offence would always mean **an act of omission or commission** which would be punishable by any law for the time being in force.” **[SEBI vs Ajay Agarwal (2010) 3 SCC 765 (SC)].**
- **“Mere intention to commit an offence, not followed by any act, cannot constitute an offence.** The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice.” **[Ramkripal vs State of M.P. [(2007) 4 SCR 125 (SC)]**

Penalty

Not defined in the act

- “Penalty is a liability composed as a punishment on the party committing the breach. The very use of the term ‘penal’ is suggestive of punishment and may also include any extraordinary liability to which the law subjects a wrong-doer in favour of the person wronged, not limited to the damages suffered.” – **Karnataka Rare Earth (2004) 2 SCC 783**
- **“The creation of an offence by statute proceeds on the assumption that society suffers injury by the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence.” - M/s Gujarat Travancore Agency, Cochin vs. C.I.T. , (1989) 3 SCC 52 (SC)**
- A penalty is a sum of money which the law exacts payment of by way of punishment for doing some act which is prohibited or for not doing some act which is required to be done. [Hidden Hollow Ranch v. Collins, 146 Mont. 321, 406 P.2d 365 368].

Basic Terms

Mens-rea

- Mens Rea is Latin Word meaning a “guilty mind”; guilty knowledge or intention to commit a prohibited act.” (*Parasnath Granite India Ltd vs State Of Rajasthan 2004 144 STC 271*).

Requirement of Mens-rea for levy of penalty for civil, criminal and quasi criminal offence

Mens-rea is not an essential ingredient for levy of penalty for civil offence/wrong –

- *Commissioner of Income Tax vs. Atul Mohan Binda (2009) 317 ITR 1 (SC)*;
- *Guljag Industries Vs. Commercial Taxes Officer, (2007) 7 SCC 269*
- *SEBI v. Shriram Mutual Fund [(2006) 5 SCC 361]*,
- *Bharjatiya Steel Industries vs Commissioner, Sales Tax, U.P on 5 March, 2008 SC*
- *R. S. Joshi vs. Ajit Mills Ltd. – AIR 1977 SC 2279*

Mens-rea is an essential ingredient for levy of penalty for criminal offence / wrong –

- *Nathulal Vs. State of Madhya Pradesh, AIR 1966 SC 43*
- *SEBI v. Cabot International Capital Corpn*

OFFENCE V. DEFAULT

- **Penalties** are imposed when a person commits an offence. In case of **defaults** minor or otherwise, automatic penalties or late fees are provided in the enactment.
- Any **Infringement of law committed by a person is a default**; however, the same **may not be an offence**. It is the **state of mind of a person which can convert a default into an offence**.
- In the case of ***Parashwanath Granite India Ltd.*** , the Rajasthan High Court **held that there is a distinction between honest and dishonest infringement of law, therefore , the penalties should not be levied automatic.** The revenue must look into the main ingredient of offence of guilty mind i.e. called *mens rea*. Although in the case of economic offences the expressions giving rise to the words '*mens-rea*' have been long ago omitted, nevertheless, the expressions like 'falsely represents' used in the sections still indicate that the element of *mens rea* is still necessary before proving an offence.

That whether mens rea is an essential ingredient under civil offence can be identified from the statute where the statute creates an offence and an ingredient of the offence is attempt to evade tax by fraud, misrepresentation or knowingly or willful misrepresentation, deliberate attempt to evade tax etc. Quantum of Penalty can vary.

PENALTY ON THE BASIS OF AUDIT REPORT NOT VALID

In the case of Industrial Corporation (P) Ltd, the Apex Court held that the statutory authorities could not have sought to levy penalty relying on or on the basis of the audit report only. They were required to apply their own independent mind for the purpose of finding out as to whether the manufacturer in law has committed any breach of terms & conditions of license.

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BASIC PRINCIPLES RELATING TO PENALTY

Section 126 :-General disciplines related to penalty.

(1) No officer under this Act shall impose any penalty for **minor breaches** of

- ✓ tax regulations or **procedural requirements** and in particular, any omission or mistake in documentation which is easily rectifiable and
- ✓ made without fraudulent intent or gross negligence.

Explanation.—For the purpose of this sub-section,—

- a) a breach shall be considered a **'minor breach'** if the amount of **tax involved is less than** **five thousand rupees;**
- b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an **error apparent on the face of record.**

(2) The penalty imposed under this Act shall depend on the facts and circumstances of **each case and shall be commensurate with the degree and severity of the breach.**

(3) No penalty shall be imposed **on any person without giving him an opportunity of being heard.**

Section 126 :-General disciplines related to penalty.

(4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement,

✓ specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this Act

✓ the circumstances of a breach of the tax law, regulation or procedural requirement

✓ prior to the discovery of the breach by the officer under this Act,

✓ the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage. Therefore, this will be applicable to only discretionary

Sec 75(4)- Opportunity of being heard

An opportunity of being heard shall be granted

- where a **request is received in writing** from the person chargeable with tax **or penalty**, or
- where any **adverse decision is contemplated against such person**

Sec 75(5)- Adjournment

The proper officer shall , if sufficient cause is shown by the person chargeable with tax , grant time to the said person and adjourn the hearing for reasons to be in writing:

Provided that **no** such adjournment shall be granted for more than three times to a person during the proceedings.

Speaking Order

Sec 75(6)- The proper officer, in this order, **shall set out the relevant facts and the basis of his decisions.**

Sec 75(7)- Notice and order should be on same lines

The amount of **tax , interest and penalty demanded in the order shall not be in excess of the amount specified in the notice** and **no demand shall be confirmed on the grounds other than grounds specified in the notice.**

Sec 75(13)- One penalty for one default

Where any **penalty** is imposed under section 73 or section 74 or section 74A, **no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.**

Penalty imposed should commensurate with the degree and severity of Breach of provisions of law and rules alleged

Penalty depends on totality of facts and circumstances of case

Penalty not imposable if the demand of duty/tax is not sustainable

No Penalty is imposable in case of Retrospective amendment In one of its historic judgments rendered in the case of J.K. Spinning and Weaving Mills Ltd. vs. UOI – 1987 (32) ELT 234 (SC), the Supreme Court held that it would be against all principles of legal jurisprudence to impose a penalty on a person or to confiscate his goods for an act or omission which was lawful at the time when such act was performed or omission made, but subsequently made unlawful by virtue of any provision of law.

Nature of breach & provisions of law under which penalty is imposed is to be specified

Penalty is not imposable when issue relates to the statutory interpretation In the case of Uniflex Cables Ltd. vs. CCE – 2011 (271) ELT 161 (SC), the Supreme Court dealt with the issue with regard to the imposition of penalty where the issue involved was of interpretational nature. Taking note of the fact that the Commissioner himself had found that it was only a case of interpretational nature, the Supreme Court quashed the order of the Commissioner imposing the penalty as also the order of the Tribunal so far as it confirmed the imposition of penalty on the Appellant.

Section 68 - Inspection of goods in movement

- (1)** The Government may require the **person in charge** of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to **carry with him such documents and such devices as may be prescribed (Under Rule 138 and 138A)**
- (2)** The **details of documents** required to be carried under sub-section (1) shall be **validated** in such manner as may be prescribed **(under Rule 138B)**
- (3)** Where **any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place**, he may require the person in charge of the said conveyance to produce the **documents prescribed** under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

Inspector authorised

RULE 55A

Tax Invoice or bill of supply to accompany transport of goods.

The person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rule 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.

Rules 55A, 138A, 138B, 138C and 138D of the CGST Rules, 2017 and Form Nos. GST EWB 01 to 04, GST INV-1 and GST MOV 1 to GST MOV 11 of CGST Rules, 2017.

RULE 138

Information to be furnished prior to commencement of movement of goods and generation of e-way bill.

138(1) Every registered person who causes movement of goods of consignment value exceeding 50000

• In Relation To A Supply; Or

• for reasons other than supply; or

• Due To Inward Supply From An Unregistered Person,

Shall, Before Commencement Of Such Movement,

Furnish Information Relating To The Said Goods As Specified In Part A Of FORM GST EWB-01, Electronically, On The Common Portal Along With Such Other Information As May Be Required On The Common Portal And A Unique Number Will Be Generated On The Said Portal

Provided that the transporter, on an authorization received from the registered person, may furnish information in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided further that where the goods to be transported are **supplied through an e-commerce operator or a courier agency**, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal:

Provided also that **where goods are sent by a principal located in one State or Union Territory to a job worker located in any other State or Union Territory**, the e-way bill shall be generated either by the principal or the job worker, if registered, **irrespective of the value of the consignment:**

Provided also that **where handicraft goods** are transported from one State or Union Territory to another State or Union Territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said **person irrespective of the value of the consignment.**

(2) Where the goods are transported by the **registered person as a consignor or the recipient of supply as the consignee**, whether in his own conveyance or a hired one or a public conveyance, by road, **the said person shall generate the e-way bill in FORM GST EWB-01** electronically on the common portal after **furnishing information in Part B of FORM GST EWB-01**.

(2A) Where the goods are transported **by railways or by air or vessel**, **the e-way bill shall be generated by the registered person, being the supplier or the recipient**, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in **Part B of FORM GST EWB-01**:

Provided that where the goods are transported by railways, the railways shall not deliver the goods unless the e-way bill required under **these rules is produced at the time of delivery**.

(3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST EWB-01:

Provided that the registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST EWB-01 on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of up to fifty kilometers within the State or Union Territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

Inserted vide [Notification No. 12/2024 – Central Tax dated 10-07-2024](#) **w.e.f. 11-02-2025.**

Handicraft Goods

Provided also that an unregistered person required to generate e-way bill in FORM GST EWB-01 in terms of the fourth proviso to sub-rule (1) or an unregistered person opting to generate e-way bill in Form GST EWB-01, on the common portal, shall submit the details electronically on the common portal **in FORM GST ENR- 03** either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details so furnished, a unique enrolment number shall be generated and communicated to the said person.

Explanation 1. .– For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2.- The e-way bill shall **not be valid** for movement of goods by road unless the information in **Part-B of FORM GST EWB-01** has been furnished **except** in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

(4) **Upon generation of the e-way bill on the common portal**, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

(5) Where the goods are **transferred from one conveyance to another**, the consignor or the recipient, who has provided information in Part A of the FORM GST EWB-01, or the transporter shall, **before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in Part B of FORM GST EWB-01:**

Provided that where the goods are transported for a **distance of upto fifty kilometers within the State or Union Territory from the place of business of the transporter finally to the place of business of the consignee**, **the details of the conveyance may not be updated in the e-way bill.**

(5A) The consignor or the recipient, who has furnished the information in Part A of FORM GST EWB-01, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in Part B of FORM GST EWB-01 for further movement of the consignment

Provided that after the details of the conveyance have been updated by the transporter in Part B of FORM GST EWB-01, the consignor or recipient, as the case may be, who has furnished the information in Part A of FORM GST EWB-01 shall not be allowed to assign the e-way bill number to another transporter.

(6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where **multiple consignments are intended to be transported in one conveyance**, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM **GST EWB-02 may be generated by him on the said common portal prior to the movement of goods.**

(7) Where the consignor or the consignee has not generated the e-way bill in FORM GST EWB-01 and **the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees**, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, **generate the e-way bill in FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods:**

Provided that where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

(8) The information furnished in **Part A of FORM GST EWB-01** shall be made available to the registered supplier on the **common portal who may utilize the same for furnishing the details in FORM GSTR-1:**

Provided that when the information has been furnished by an unregistered supplier or an **unregistered recipient in FORM GST EWB-01, he shall be informed electronically, if the mobile number or the e-mail is available.**

(9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may **be cancelled electronically on the common portal within twenty four hours of generation of the e-way bill:**

Provided that an e-way bill **cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B:**

Provided further that the **unique number generated under sub-rule (1) shall be valid for a period of fifteen days for updation of Part B of FORM GST EWB-01.**

(10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:—

S.NO.	DISTANCE	VALIDITY PERIOD
(1)	(2)	(3)
1.	Upto [200 km.]	One day in cases other than Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]
2.	or every [200 km.] or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo ²³ [or multimodal shipment in which at least one leg involves transport by ship]
3.	Upto 20 km.	One day in case of Over Dimensional Cargo ²³ [or multimodal shipment in which at least one leg involves transport by ship]
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo ²³ [or multimodal shipment in which at least one leg involves transport by ship]:

Provided that the Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an **exceptional nature**, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, **the transporter may extend the validity period after updating the details in Part B of FORM GST EWB-01, if required:**

²³**Provided also** that the validity of the e-way bill may be **extended within eight hours from the time of its expiry.**

(11) The details of the e-way bill generated under this rule shall be made available to the—

(A) supplier, if registered, where the information in **Part A of FORM GST EWB-01** has been **furnished by the recipient or the transporter**; or

(B) recipient, if registered, where the **information in Part A of FORM GST EWB-01** has been **furnished by the supplier or the transporter**,

On the common portal, and the supplier or the recipient, as the case may be, shall **communicate his acceptance or rejection of the consignment covered by the e-way bill.**

(12) Where the person to whom the information specified in sub-rule (11) has been made **available does not communicate his acceptance or rejection within seventy two hours of** the details being made available to him on the common portal, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details

(13) **The e-way bill generated under this rule or under rule 138** of the Goods and Services Tax Rules of any State or Union Territory shall be valid in every State and Union Territory

(14) Notwithstanding anything contained in this rule, **no e-way bill is required to be generated—**

(a) where the goods being transported are **specified in Annexure**

(b) where the goods are being transported by **a non-motorised conveyance;**

(c) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs

(d) in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the State or Union Territory Goods and Services Tax Rules in that particular State or Union Territory;

(e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to notification No. 2/2017-Central Tax (Rate) dated the 28 June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 674(E) dated the 28th June, 2017 as amended from time to time

(f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;

(g) where the supply of goods being transported is treated as no supply under Schedule III of the Act

(h) where the goods are being transported

(i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal;

(l) where the goods being transported are transit cargo from or to Nepal or Bhutan;

(j) where the goods being transported are exempt from tax under notification No. 7/2017- Central Tax (Rate), dated 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 679(E), dated the 28th June, 2017 as amended from time to time and notification No. 26/2017-Central Tax (Rate), dated the 21st September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1181(E) dated the 21st September, 2017 as amended from time to time;;

(k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee

(l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;;

(m) where empty cargo containers are being transported;

(n) where the goods are being transported upto a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55; and

(o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply

Amended vide
Section 129 of
 Finance Act, 2025
 yet to be notified

Addressed in 55th GST Council
 Meeting

Provision	Pre deposit-Earlier	Pre deposit-as per new provision	
Order u/s 129(3) specifying the penalty payable regarding detention or seizure of goods or conveyance unless;	25%	10%	Decreased
Other Penalty Orders e.g 122 Fake Invoicing	0	10%	Increased
Section 112(8) -in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order, unless;	0	10%	Increased

Annexure

Rule 138(14)

S. No.	Description of Goods
(1)	(2)
1.	Liquefied petroleum gas for supply to household and non-domestic exempted category (NDEC) customers
2.	Kerosene oil sold under PDS
3.	Postal baggage transported by Department of Posts
4.	Natural or cultured pearls and precious or semi-precious stones precious metal and metals clad with precious metals (Chapter 71)
5.	Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) ^{24a} [<i>excepting Imitation Jewellery (7117)</i>]
6.	Currency
7.	Used personal and household effects
8.	Coral, unworked (0508) and worked coral (9601)]

Rule
138F

RULE 138A

Documents and devices to be carried by a person-in-charge of a conveyance

(1) The person in charge of a conveyance shall carry—

(a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) a copy of the e-way bill in physical form or electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.

(2) In case, invoice is issued in manner prescribed under Rule 48(4), the QR code having an embedded (IRN) Invoice Reference number in it, may be produced electronically.

Therefore, no need to carry the physical copy of invoice
In case of E-invoice and QR code vide circular no.
160/16/2021-GST

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel

Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods **and shall indicate the number and date of the bill of entry in Part A of FORM GST EWB-01.**

RULE 138B

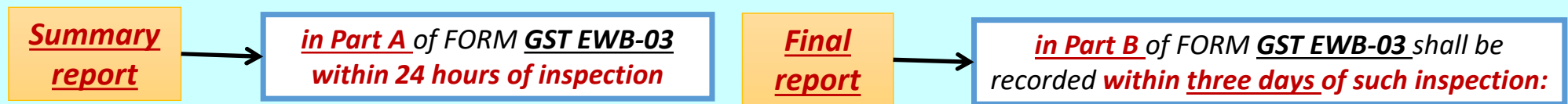
Verification of documents and conveyances

- (1) The **Commissioner or an officer empowered by him** in this behalf may authorize the proper officer **to intercept any conveyance to verify the e-way bill** in physical or electronic form **for all inter-State and intra-State movement of goods.**
- (2) The Commissioner shall **get Radio Frequency Identification Device readers installed at places where the verification of movement of goods** is required to be carried out and **verification of movement of vehicles shall be done through such device readers** where the e-way bill has been mapped with the said device.
- (3) The **physical verification of conveyances shall be carried out by the proper officer** as authorised by the Commissioner or an officer empowered by him in this behalf:
Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

RULE 138C

Inspection and verification of goods

(1) Inspection of goods in transit shall be recorded online by the proper officer



[Provided that where the circumstances so warrant, the Commissioner, or any other officer authorised by him, may, on sufficient cause being shown, extend the time for recording of the final report in Part B of FORM EWB-03, for a further period not exceeding three days.

Explanation.—The period of twenty four hours or, as the case may be, three days shall be counted from the midnight of the date on which the vehicle was intercepted.]

(2) Where the physical verification of goods being transported on any conveyance

has been done during transit at one place within the State or Union Territory or in any other State or Union Territory, no further physical verification of the said conveyance shall be carried out again in the State or Union Territory, unless a specific information relating to evasion of tax is made available subsequently.]

Rule 138F

Information To Be Furnished

**In Case Of Intra-state Movement Of Gold,
Precious Stones, And Generation Of E-way Bills**



1.

Where-

- (a) a Commissioner of State tax or Union territory tax mandates furnishing of information regarding **intra-State movement of goods specified against serial numbers 4 and 5 in the Annexure appended to rule 138(14)**, in accordance with rule 138F(1) of the State or Union territory Goods and Services Tax Rules, and
- (b) The **consignment value of such goods exceeds such amount, not below 2,00,000**, as may be notified by the Commissioner of State tax or Union territory tax, in consultation with the jurisdictional Principal Chief Commissioner or Chief Commissioner of Central Tax, or any Commissioner of Central Tax authorised by him,

Notwithstanding anything contained in Rule 138, every registered person who causes intra-State

•In Relation To A Supply; Or

•for reasons other than supply; or

•Due To Inward Supply From An Unregistered Person,

Shall, before the commencement of such movement within that State or Union territory, furnish information relating to such goods electronically, as specified in Part A of FORM GST EWB-01, against which a unique number shall be generated:

Provided that where the goods to be transported are **supplied through an e-commerce operator or a courier agency**, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

2.

The information as specified in PART B of FORM GST EWB-01 **shall not be required** to be furnished in respect of movement of goods referred to in the sub-rule (1) and after furnishing information in Part-A of FORM GST EWB-01 as specified in sub-rule (1), the e-way bill shall be generated in FORM GST EWB-01, electronically on the common portal

3.

The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1

4.

Cancellation of E-Way

Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-waybill, the e-way bill may be cancelled, electronically on the common portal, **within 24 hours of generation of the e-way bill:**

Provided that an e-way bill **cannot be cancelled if it has been verified in transit** in accordance with the provisions of rule 138B.

5.

NO E-WAY BILL IS REQUIRED TO BE GENERATED

(a) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;

(b) where the goods are being transported-

(i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal.

Validity Period of e-way bill

Details of e-way bill available to Persons:

6.

The provisions of sub-rule (10), sub-rule (11) and sub-rule (12) of rule 138, rule 138A, rule 138B, rule 138C, rule 138D and rule 138E shall, mutatis mutandis, apply to an e-way bill generated under this rule.

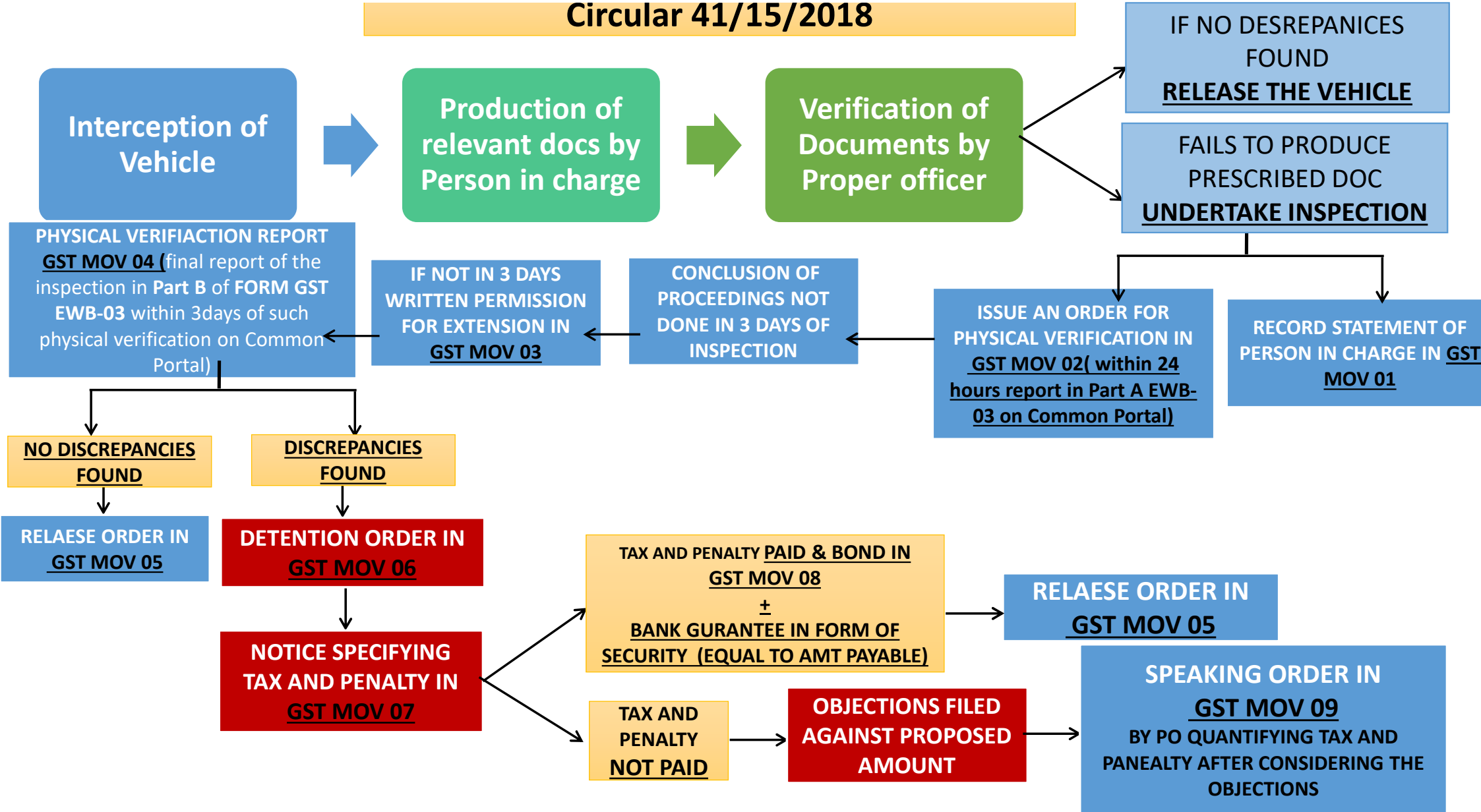
Time Limit For Acceptance or rejection of E-way By Person Specify in sub- rule (11)

Documents and devices to be carried by a person-in-charge of a conveyance.

Verification of documents and conveyances.

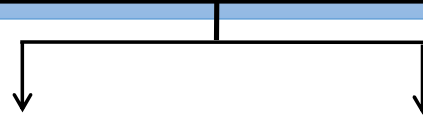
Facility for uploading information regarding detention of vehicle.

Circular 41/15/2018



Circular 41/15/2018

ORDER GST MOV 09



RELEASE ORDER IN GST MOV 05

IF THE QUANTIFIED AMOUNT PAID WITHIN 14 DAYS OF ISSUE OF GST MOV 06 I.E. DETENTION ORDER

**NOTICE IN GST MOV 10
CONFISCATION OF GOODS**



**RELEASE ORDER
IN GST MOV 05
IF TAX AND PENALTY
WITH FINE IN LIEU OF
CONFISCATION PAID**

- IF THE PROPER OFFICER IS OF THE OPINION THAT MOVEMENT OF GOODS IS BEING EFFECTED TO EVADE PAYMENT OF TAX THEN
- SECTION 130 CAN BE INVOKED DIRECTLY BY ISSUING NOTICE IN GST MOV 10 PROPOSING CONFISCATION OF GOODS

**GOODS RELEASED (IF PAYMENT MADE)
OTHERWISE GOODS DISPOSED AND SALE
PROCEEDS TRANSFERRED TO THE
GOVERNMENT**

**ORDER PASSED IN
GST MOV 11
AFTER AN OPPORTUNITY OF
BEING HEARD**

**SUITABLE TIME NOT
EXCEEDING 3 MONTHS
FOR PAYMENT OF TAX
PENALTY AND FINE**



GST MOV FORMS relating Detention

GST MOV-01

Statement of owner, driver or person in charge of the vehicle

GST MOV-02

Order for physical verification and inspection of goods, conveyance or documents

GST MOV-03

Order for extension of time beyond 3 days for inspection

GST MOV-04

Physical verification report

GST MOV-05

Release order

GST MOV-06

Order of detention

GST MOV-07

Notice specifying tax and penalty amount

GST MOV-08

Bond for provisional release of goods/ conveyance

GST MOV-09

Order of demand of tax and penalty

GST MOV-10

Notice for the confiscation of goods

GST MOV-11

Order of confiscation of goods and conveyance and demand of tax,
fine and penalty

Section – 2(91) , Central Goods And Services Tax Act, 2017

"proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

Section - 6, Central Goods And Services Tax Act, 2017

6. (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification³³, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),—

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) **where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.**

CIRCULAR NO.3/3/2017-GST

GST PROPER OFFICER RELATING TO PROVISIONS OTHER THAN REGISTRATION AND COMPOSITION UNDER THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

CIRCULAR NO.3/3/2017-GST, DATED 5-7-2017

AS AMENDED BY CIRCULAR NO.31/05/2018-GST, DATED 9-2-2018

In exercise of the powers conferred by clause (91) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with Section 20 of the Integrated Goods and Services Tax Act (13 of 2017) and subject to sub-section (2) of section 5 of the Central Goods and Services Tax Act, 2017, the Board, hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to the various sections of the Central Goods and Services Tax Act, 2017 or the rules made thereunder given in the corresponding entry in Column (3) of the said Table:—

TABLE

S. No.	Designation of the officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
1.	Principal Commissioner/ Commissioner of Central Tax	<ul style="list-style-type: none"> i. Sub-section (7) of Section 67 ii. Proviso to Section 78
2.	Additional or Joint Commissioner of Central Tax	<ul style="list-style-type: none"> i. Sub-sections (1), (2), (5) and (9) of Section 67 ii. Sub-section (1) and (2) of Section 71 iii. Proviso to section 81 iv. Proviso to sub-section (6) of Section 129 v. Sub-rules (1),(2),(3) and (4) of Rule 139 vi. Sub-rule (2) of Rule 140
3.	Deputy or Assistant Commissioner of Central Tax	<ul style="list-style-type: none"> i. Sub-sections (5), (6), (7) and (10) of Section 54 ii. Sub-sections (1), (2) and (3) of Section 60 iii. Section 63 iv. Sub-section (1) of Section 64 v. Sub-section (6) of Section 65

CIRCULAR NO.3/3/2017-GST

xxxv. Sub-rules (1), (2) and (3) of Rule 151

xxxv. Rule 152

xxxvi. Rule 153

xxxvii. Rule 155

xxxviii. Rule 156

		<p>xxxv. Sub-rules (1), (2) and (3) of Rule 151</p> <p>xxxv. Rule 152</p> <p>xxxvi. Rule 153</p> <p>xxxvii. Rule 155</p> <p>xxxviii. Rule 156</p>
4.	Superintendent of Central Tax	<p>i. Sub-section (6) of Section 35</p> <p>ii. Sub-sections (1) and (3) of Section 61</p> <p>iii. Sub-section (1) of Section 62</p> <p>iv. Sub-section (7) of Section 65</p> <p>v. Sub-section (6) of Section 66</p> <p>vi. Sub-section (11) of Section 67</p> <p>vii. Sub-section (1) of Section 70</p> <p>viii. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73</p> <p>²[(viii)(a). Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74]</p> <p>ix. Sub-rule (6) of Rule 56</p> <p>x. Sub-rules (1), (2) and (3) of Rule 99</p> <p>xi. Sub-rule (1) of Rule 132</p> <p>xii. Sub-rule (1), (2), (3) and (7) of Rule 142</p> <p>xiii. Rule 150</p>
5.	Inspector of Central Tax	<p>i. Sub-section (3) of Section 68</p> <p>ii. Sub-rule (17) of Rule 56</p> <p>iii. Sub-rule (5) of Rule 58</p>

Section 129 :- Detention, seizure and release of goods and conveyances in transit.

(1) Notwithstanding anything contained in this Act,

✓ where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance

✓ shall be liable to detention or seizure and after detention or seizure, shall be released,—

a) on payment of

✓ the applicable tax and

✓ penalty equal to one hundred per cent of the tax payable on such goods and,

✓ in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty five thousand rupees, whichever is less,

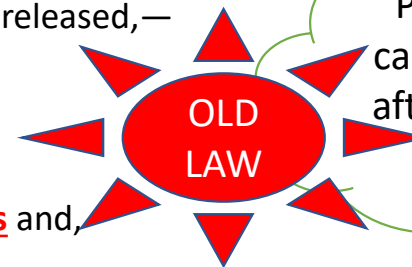
where the owner of the goods comes forward for payment of such tax and penalty;

b) on payment of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid

thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

a) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form⁷⁵ and manner as may be prescribed⁷⁶:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.



Penalty in action cannot be imposed after completion of movement

Section 129 :- Detention, seizure and release of goods and conveyances in transit.

- (2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.
- (3) The proper officer detaining or seizing goods or conveyances
- ✓ **shall issue a notice** specifying the tax and penalty payable and
 - ✓ thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).
- (4) No tax, interest or penalty shall be determined under sub-section (3) without **giving the person concerned an opportunity of being heard.**
- (5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) **shall be deemed to be concluded.**
- (6) Where the person transporting any goods or the owner of the goods **fails to pay the amount of tax and penalty as provided in sub-section (1) within 77[fourteen days] of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:**
- Provided that** where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of 77a[fourteen days] may be reduced by the proper officer.

Section 129 :- Detention, seizure and release of goods and conveyances in transit.

Rule 140

Bond & Security for release of seized goods released on provisions basis upon bond (INS-04) = Value of goods in GST INS – 04 + Bank guarantee security = Amount of tax, interest + penalty

Failure of person on appointed date & place = security encash

Rule 141:- Procedure if seized goods = perishable/ hazardous goods

+

Tax person pay = market price of goods or Amt. of tax w.i.lower

Things released forthwith GST order INS-05

Section 129 :- Detention, seizure and release of goods and conveyances in transit.

Penalty under section 129 is an 'penalty in action', that is, penalty cannot be imposed after completion of movement in case goods are NOT intercepted during movement and found to be deficient on the prescribed documents. If subsequent evidence is collected that clearly proves that goods have been moved without issuing EWB, even then penalty under section 129 CANNOT be imposed if such investigation is conducted after movement has ended. Decision of Patna HC in the case of Ram Charitra Ram Harihar Prasad vs State Of Bihar (CWP 11221 of 2019) where the HC held that if EWB generated had expired but another EWB was generated just before vehicle was intercepted which was produced to the inspecting officer. HC held that intercepting officer cannot be question if a valid EWB was produced even though, from the facts, the vehicle can be understood to have travelled without a valid EWB but not intercepted. Offence cannot be reconstructed 'in theory'. Penalty under section 129 will arise only when offence is 'in progress'.

Section 129 :- Detention, seizure and release of goods and conveyances in transit.

Where any person transport/ store any goods---While they are in transit—In contravention of provisions of this ACT---

All Conveyance documents shall be liable for detention/ seizure

Release of detained/ seized goods/conveyance----sec.129(1)

(a) Owner comes forward to pay tax and penalty

Taxable	Exempted
Pay tax+ penalty=100% of tax	Pay =2% of value of goods or RS. 25000 w.i.less
(b) Owner dosen't comes forward to pay tax and penalty	
Pay tax+ penalty=50% of value of tax paid	Pay =5% of value of goods or RS. 25000 w.i.less

Pay amount provided u/s 129----all the proceedings deemed to be concluded



Fails to pay tax & penalty within 14 days of detention of seizure--- Further proceedings as per sec. 130

Section 129 :- Detention, seizure and release of goods and conveyances in transit.

Penalty for release of such detained goods & conveyance

Owner comes forward

Owner does not comes forward

If goods taxable

If goods exempted

OLD
LAW

If goods taxable

If goods exempted

Tax+100% of tax as
penalty/ equivalent
security

2% of value of goods
or Rs. 25000/- w.e.
Less

Tax+50% of value of
goods as penalty/
equivalent security

5% of value of goods
or Rs. 25000/- w.e.
Less

Examples

When the goods are taxable and the owner comes forward to pay the tax and penalty – then the amount payable would be equal to: Tax + Penalty equal to 100% of tax.

Example 1:- if the taxable goods valued at ` 100,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods comes forward to pay tax and penalty, the amount payable would be equal to: Tax ` 12,000/- + Penalty ` 12,000/- = ` 24,000/-. Please note that the taxes paid under this provision would not be eligible to be claimed as input taxes by the recipient – refer section 17(5).

When the goods are exempt and the owner comes forward to pay the penalty – then the amount payable would be equal to: Penalty at 2% of value of goods or ` 25,000/-, whichever is lower.

Example 2:- , if the exempt goods valued at ` 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods comes forward to pay the penalty the amount payable would be equal to: ` 2,000/- or ` 25,000/- whichever is lower, in this case it is ` 2,000/-



Examples

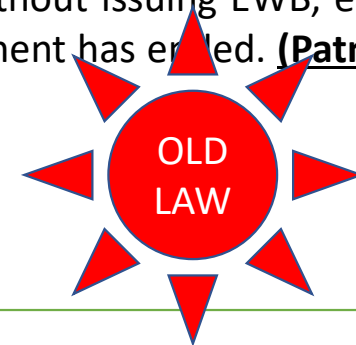
When the goods are taxable and the owner does not come forward to pay the tax and penalty– then the amount payable would be equal to: Tax + Penalty equal to 50% of the value of goods (as reduced by the tax amount paid thereon)

The taxable goods valued at ` 1,00,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay tax and penalty the amount payable would be equal to: Tax ` 12,000/- + Penalty ` 38,000/- [i.e. 50% of value of goods less tax amount (` 50,000/- – ` 12,000/-)] in all = ` 50,000/-. Please note that the taxes paid under this provision would not be eligible to be claimed as input taxes by the recipient – refer section 17(5).

When the goods are exempt and the owner does not come forward to pay the penalty – then the amount payable would be equal to: Penalty at 5% of value of goods or ` 25,000/-, whichever is lower.

Example: if the exempt goods valued at ` 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay the penalty the amount payable would be equal to: ` 5,000/- or ` 25,000/- whichever is lower, in this case it is ` 5,000/-.

NOTE: 1) Penalty under section 129 is an '**penalty in action**', that is, penalty cannot be imposed after completion of movement in case goods are NOT intercepted during movement and found to be deficient on the prescribed documents. If subsequent evidence is collected that clearly proves that goods have been moved without issuing EWB, even then penalty under section 129 CANNOT be imposed if such investigation is conducted after movement has ended. (**Patna HC in the case of Ram Charitra Ram Harihar Prasad vs State Of Bihar (CWP 11221 of 2019)**)



Budgetary Amendment 2021 of section 129 applicable from 01.01.2022

11 Detention, seizure and release of goods and conveyances in transit

Section	Old	New
129(1)	(1) Notwithstanding anything contained in this Act, where <u>any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act</u> or the rules made thereunder, <u>all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance</u> shall be liable to detention or seizure and after detention or seizure, <u>shall be released</u> ,—	Same
129(1)(a)	on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;	on payment of the applicable tax <u>penalty equal to two hundred per cent. of the tax payable on such goods and</u> , in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;
129(1)(b)	on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;	on payment of penalty equal to <u>fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher</u> , and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;” Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.
129(2)	The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.	omitted

Provisional Release on Bond or Security

Section	Old	New
129(3)	The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).	The proper officer detaining or seizing goods or conveyance shall issue a notice <u>within seven days of such detention or seizure</u> , specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).”;
129(4)	<u>No tax, interest or penalty</u> shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.	<u>No tax, interest or penalty</u> shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.
129(5)	On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.	Same
129(6)	Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within 1[fourteen days] of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130: Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period <u>of seven days may be reduced by the proper officer.</u>	Where the <u>person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3)</u> , the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3): ➤ Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) <u>or one lakh rupees, whichever is less:</u> ➤ Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, <u>the said period of fifteen days may be reduced by the proper officer.”</u>

Section 129 :- Detention, seizure and release of goods and conveyances in transit.

Budgetary Amendment 2021 of section 129 applicable from 01.01.2022

Penalty for release of such detained goods & conveyance

Owner comes forward

Owner does not comes forward

If goods taxable

If goods exempted

If goods taxable

If goods exempted

Penalty equal to 200% of tax payable on such goods

2% of value of goods or Rs. 25000/- w.e. is Less

Penalty equal to 50% of value of goods Or 200% of the tax payable on such goods, whichever is higher,

5% of value of goods or Rs. 25000/- w.e. Less

Examples

When the goods are taxable and the owner comes forward to pay penalty – then the amount payable would be equal to: Penalty equal to 200% of tax payable on such goods

Example 1:- if the taxable goods valued at ` 100,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods comes forward, the amount payable would be equal to:

Penalty ` 200% of 12,000/- = ` 24,000/-.

When the goods are exempt and the owner comes forward to pay the penalty – then the amount payable would be equal to: Penalty at 2% of value of goods or ` 25,000/-, whichever is lower.

Example 2:- , if the exempt goods valued at ` 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods comes forward to pay the penalty the amount payable would be equal to: ` 2,000/- or ` 25,000/- whichever is lower, in this case it is ` 2,000/-

Examples

When the goods are taxable and the owner does not come forward to pay the tax and penalty– then the amount payable would be equal to: Penalty equal to 50% of value of goods Or 200% of the tax payable on such goods, whichever is higher,

The taxable goods valued at ` 1,00,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay tax and penalty the amount payable would be equal to:

Penalty ` 50,000/- [i.e. 50% of value of goods}

Or

200% of Rs. 12000=24000

i.e Rs. 50000/-

When the goods are exempt and the owner does not come forward to pay the penalty – then the amount payable would be equal to: Penalty at 5% of value of goods or ` 25,000/-, whichever is lower.

Example: if the exempt goods valued at ` 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay the penalty the amount payable would be equal to: ` 5,000/- or ` 25,000/- whichever is lower, in this case it is ` 5,000/-.

NOTE: 1) Penalty under section 129 is an '**penalty in action**', that is, penalty cannot be imposed after completion of movement in case goods are NOT intercepted during movement and found to be deficient on the prescribed documents. If subsequent evidence is collected that clearly proves that goods have been moved without issuing EWB, even then penalty under section 129 CANNOT be imposed if such investigation is conducted after movement has ended. (**Patna HC in the case of Ram Charitra Ram Harihar Prasad vs State Of Bihar (CWP 11221 of 2019)**)

Analysis

- Conveyance and goods released, **only penalty** is required to be paid by the concerned person.
- Instead of 100% Tax and 100% Penalty payment, now penalty of 200% of tax payable is applicable.
- Goods cannot be released **provisionally** upon execution of bond or furnishing of security.
- Time limit prescribed (i.e. 7 days) for issue of notice Mov-07 after detention order in MOV-06.
- Further time limit for issue of order in MOV-09 restricted to 7 days from service of such notice on MOV-07.
- Prior to proposed amendment the time period for payment of tax and penalty was 14 days from the date of seizure of conveyance and goods detained were liable for confiscation. Now, the goods or conveyance detained or seized shall become liable to be sold or disposed off within 15 days from date of receipt of copy of order imposing penalty. Earlier it was confiscation and now it is sale for recovery of penalty.
- The transporter can now release the conveyance on payment of **penalty imposed by the officer or RS. 100000/- whichever is less.** **This provision will give relief to transporter against whom the detention proceedings were initiated due to default of supplier or receiver.**

Section 129 :- Detention, seizure and release of goods and conveyances in transit.

Circular No. 76/50/2018- GST, dated 31.12.2018

Issue 6

Who will be considered as the 'owner of the goods' for the purposes of section 129(1) of the CGST Act?

Clarification

It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner.

If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods.

State Legislature or the State Government has no power to make law/rules to govern interstate movement of goods and cannot even detain a consignment for not carrying documents prescribed by them for transporting goods in the course of interstate trade



FAVOUR

Hon'ble High Court of Allahabad vide its order dated 30.04.2018 in the case of Om Disposals and Ors. V State of U.P. and Ors. Reported as [2018] 93 taxmann.com 117 (Allahabad), inter alia, held as under:

State Legislature or the State Government has no power to make law/rules to govern interstate movement of goods and cannot even detain a consignment for not carrying documents prescribed by them for transporting goods in the course of interstate trade. Reference may be made to the judgment of the Hon'ble Madras High Court in M/s Ascis Trading Company v. The Assistant State Tax Officer 2017 (71) STJ 143

AGAINST

Godrej & Boyce Manufacturing Co. Ltd. v. State of U.P. reported as [2018] 97 taxmann.com 552 (All.) , it has been , inter alia, held as under:

Officers of State are also competent for search, seizure and imposition of penalty in respect of violation of Central Enactments. Moreover, provisions relating to search and seizure are not for the purpose of imposition of a new liability but to regulate fiscal statutory provisions in order to avoid evasion of tax. Nothing has been placed on record to show that similar requirement of relevant documents was not provided by Central Government also in respect of inter-state transactions. There is also a principle that mere mention of a wrong provision will not make an order bad, if otherwise, power exists in the Statute.

Officers appointed under the SGST Act are authorised to be proper officers for purposes of IGST Act, 2017. [2018] 98 taxmann.com 120 (Madhya Pradesh) HIGH COURT OF MADHYA PRADESH On due consideration of the arguments of the learned counsel for the parties so also the provisions of Section 4 of the IGST Act, we are of the view that officers appointed under the MPGST Act are authorized to be proper officers for the purpose of IGST and, therefore, the contention of the petitioner that no notification was issued and in absence of any notification under Section 4 of the IGST Act has no force, we cannot accept the contention of the petitioner that the action of the respondent No.4 is wholly without jurisdiction

Cases wherein detention of goods may not be initiated:

In a case where consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under sec 129 of the CGST Act may not be initiated in certain situations as given in *circular no. 64/38/2018-GST* dated 14.09.2018 such as:

- i. Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct.
- ii. Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN-code should not have the effect of increasing the validity period of the e-way bill.
- iii. Error in the address of the consignee to the extent that the locality and other details of consignee are correct.
- iv. Error in one or two digits of the document number mentioned in the e-way bill.
- v. Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct.
- vi. Error in one or two digits/characters of the vehicle number.

Further it was clarified that for such cases penalty to the tune of INR 1,000/- under CGST/SGST Act (INR 500/ towards CGST and INR 500/- towards SGST) and INR 1,000/- under IGST Act may be imposed. A record of all such consignments where proceedings under sec 129 of the CGST Act, have not been invoked in view of these situations shall be sent by the proper officer to his controlling officer on a weekly basis.

Example: Where conveyance carrying 50 consignments is intercepted and the person-in-charge of such conveyance produces valid e-way bills and/or other relevant documents in respect of 30 consignments but is unable to produce the same with respect to the remaining 20 consignments.

In this case, detentions or confiscation can be made only with respect to the 20 consignments in respect of which the violation of the CGST Act or the CGST Rules made thereunder has been established by the proper officer.

DETENTION PROCEEDINGS CANNOT BE TAKEN AS SURVEY PROCEEDINGS

Proceeding under section 129 cannot be extended to search of Godown Premises

Mahavir Ployplast (p.) Ltd. V. State of U.P [2022] 142taxmann.com 8

The authorities in the instant case, chose to exercise powers vested in them to search a vehicle carrying goods during transportation to proceed against goods lying in a godown.

The High Court observed that provision of Section 129(3) of the Act could not be invoked to subject a godown premises to search and seizure operation unmindful of the Act that no action was taken or contemplated under section 67 of the Act, as that would have mandated existence of "reasons to believe", to subject that premise to search and seize goods or documents found therein.

The High Court further observed that the authorities not only closed their eyes to the power and jurisdiction that never existed but they deliberately described the vehicle being checked as "UPGODOWN02" and "GODOWON". That description was given by them, deliberately. Therefore, they cannot deny that they were aware that the subject search was not directed at any vehicle but at an immovable property namely a godown premise.



CONFISCATION U/S 130

Budgetary Amendment 2021 of section 130 applicable from 01.01.2022

12 Confiscation of goods or conveyances and levy of penalty

Section	Old	New
130(1)	Notwithstanding anything contained in this Act, if any person-	where any person-
130(2) second proviso	Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:	Provided further that the aggregate of such fine and penalty equal to hundred per cent of the tax payable on such goods”
130(3)	Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.	Omitted

Analysis

- The **non-obstante clause is no more there** which means section 130 is now not having any overriding impact.
- Section **130 proceedings delinked from Section 129**. Penalty of 100% of tax payable will become applicable.
- Section 130 of the CGST Act is being amended to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.
- Relief to taxpayer, in case of **fine in lieu of confiscation of goods or conveyance** is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable shall be omitted.
- The **above amendment has follows the ruling of Hon’ble Gujrat HC in Synergy Fertichem Pvt. Ltd. Which held that these are two differently operating sections as against Kerala HC judgment in Age Industries which stated 130 cannot be restored with putting 129 in operation**

Section 130 :- Confiscation of goods or conveyances and levy of penalty.

(1) Where any person—

- i. supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder **with intent to evade payment of tax;** or
- ii. **does not account for any goods** on which he is liable to pay tax under this Act; or
- iii. supplies any goods liable to tax under this Act **without having applied for registration;** or
- iv. contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- v. **uses any conveyance** as a means of transport for carriage of **goods in contravention of the provisions of this Act** or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an **option to pay in lieu of confiscation, such fine as the said officer thinks fit:**

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the ~~amount of penalty leviable under sub-section (1) of section 129~~ **penalty equal to hundred per cent of the tax payable on such goods:**

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

Section 130 :- Confiscation of goods or conveyances and levy of penalty.

~~(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2),~~

~~✓ the owner of such goods or conveyance or the person referred to in sub-section (1), **shall**,~~

~~✓ in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.~~

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without **giving the person an opportunity of being heard.**

(5) Where any goods or conveyance are confiscated under this Act, the **title of such goods or conveyance** shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and **hold possession of the things** confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and

✓ after giving reasonable time **not exceeding three months** to pay fine in lieu of confiscation,

✓ **dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.**

Section 130 :- Confiscation of goods or conveyances and levy of penalty.

- i. Supply/receive goods in contravention with intent to evade payment of tax
- ii. Not A/c for the goods liable to pay tax
- iii. Supply goods-liable to tax without apply for registration
- iv. Contravene provision with intent to evade tax
- v. Use conveyance in contravention of provision



All goods or conveyance

Liable to confiscation+
penalty u/s 122

Redemption Fine= market price for release of goods-tax

Amount of penalty= not less than 100% of Tax Payable

No order of confiscation if opportunity of being heard not given

On Confiscation= title vest in the Govt.

PO Adjudging confiscation= take possession of goods & police assist if requested

Disposal of goods or conveyance= if redemption fine not paid within 3 months

Confiscation or penalty= not to interfere with other punishment

Illustration:

Mr. Rahul , a registered contractor in Punjab , supplies goods of value of INR 2,00,000 (Taxable @ 12%) without invoice to the recipients . The officer confiscated the goods and asked the contractor to pay penalty. The contractor agreed to pay fine in lieu of confiscation . The amount of fine would be :

Maximum amount :Value of goods less Tax chargeable thereon i.e.
(Rs. 2,00,000 - Rs. 24,000 = INR 1,76,000)

Minimum Amount : Penalty Chargeable i.e. 100% of tax amount INR 24,000/-

Hence Mr. Rahul can Pay fine in lieu of confiscation upto INR 1,76,000/- (Subject to minimum of INR 24,000/-)

Explanation to section 74(1):-

Explanation 1.- For the purposes of section 73 and this section,-

- (i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;
- (ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against **all the persons** liable to pay penalty under sections ~~122, 125, 129 and 130~~ **122 and 125** are deemed to be concluded.

Analysis

- Delinking of proceedings under section 73, 74 from the proceedings u/s 129(Detention), 130(Confiscation).(prevailing Anomaly removed)
- Section 74 of the CGST Act is being amended so as make seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.
- The proceedings against other persons u/s 129, 130 would still continue even after conclusion of proceedings u/s 73 or 74.
- This means that the conclusion of proceedings for a tax period under Section 74 would not bring conclusion to proceedings under Section 129 / 130 in respect of transactions recorded by the taxpayer for such tax period and made part of proceedings under section 74.

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45.	UNDER VALUATION OF A GOODS
46.	PENALTY U/S 129 IF SEARCH AND SEIZURE CARRIED OUT U/S 67
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48.	E-WAY BILL TO BE ISSUED BEFORE THE MOVEMENT STARTS
49.	PENALTY U/S 19(3) IS AN ALTERNATIVE & PENALTY CANNOT BE LEVIED BASED ON PRESUMPTIONS

Appellate Authority - GST, HIMACHAL PRADESH

Bhushan Power & Steel Ltd.

v.

ACST&E (Proper Officer) Circle Mall Road

[2020] 114 taxmann.com 454 (AA- GST - HP)

Where Assistant Commissioner raised additional amount of tax and imposed penalty on ground that e-way bill issued to assessee for movement of goods had expired, in view of fact that Rule 138(10) mentions that validity of e-way bill may be extended within 8 hours from time of its expiry, but, in instant case vehicle was practically apprehended in almost 08 to 09 hours of expiry of e-way bill, prima facie it appeared that assessee had not been given reasonable opportunity to update Part-A of e-way bill and, moreover, it also apparent that Part-B of e-way bill was duly filled which put to rest any doubt about intention of assessee to evade tax, impugned order passed by authority below was to be set aside .

In the view of above circumstances the instant appeals are accepted and the order passed by Asst. Commissioner State Taxes & Excise-cum-Proper Officer, the Mall Road Circle, Shimla are set aside. **Since the appellant has made minor procedural laps as required to follow under rule 138(10) therefore a penalty of Rs. One thousand only (Rs- 1000/- IGST Act) in each case is imposed on the tax payer under section 125 under the CGST/HPGST Act 2017 in accordance to CBIC Circular No. 64/38/2018-GST, dated 14th Sep 2018 and the State Circular no. dated 13th March 2019 and may be recovered accordingly. The judgment in these cases was reserved on 18-12-2019 which is released today.**

**M/S. PODARAN FOODS INDIA PRIVATE LIMITED VERSUS STATE OF KERALA
Mere suspicion of mis-classification cannot be basis of detention of goods under
Section 129 of CGST Act,2017- Kerala High Court (2021 (1) TMI 552)**

- Whether a mis- classification of the goods can be the basis for a detention under Section 129 of the GST Act? –
- HELD THAT:- A mere suspicion of mis-classification of goods cannot be the basis for a detention under Section 129 of the Act
- . It has to be borne in mind that Section 129 forms part of the machinery provisions under the Act to check evasion of tax and a detention can be justified only if there is a contravention of the provisions of the Act in relation to transportation of goods or their storage while in transit. No doubt, it may be open to an inspecting authority to detain goods if there is a patent mis-description of the goods in the transportation documents, to such an extent that it can only be seen as referring to an to an entirely different commodity. Such instances, however, must necessarily be confined to glaring mis-descriptions such as 'Apples' being described as 'Oranges' or 'Coconuts' being described as 'Betel Nuts', where the two goods can never be perceived as the same by ordinary persons endowed with reasonable skills of cognition and comprehension.
- Section 129 of the Act, if a proper officer who is entrusted with the task of detaining goods, finds that they have been transported in contravention of the rules, he does not have the discretion to condone the procedural lapse or relax its rigour in particular cases. He must interpret the Rule strictly keeping in mind the statutory scheme that aims to curb tax evasion. In as much as the adjudication that is expected of him is a summary one, he can do no more than determine whether or not on a literal reading of the statutory provisions, together with the circulars issued from time to time, there has been a breach occasioned thereof. Any person aggrieved by the order of the proper officer must necessarily approach the appellate authority before which an appeal against the adjudication order under Section 129 (3) of the Act is maintainable. In the instant case too, the remedy of the petitioner is to approach the appellate authority under the Act against the finding of the proper officer. The petitioner is relegated to his alternate remedy of preferring appeals against the said adjudication orders before the appellate authority under the Act - there are no reason to interfere with the adjudication orders in Form GST MOV-9 impugned in the writ petition - petition disposed off

M.S. Steel and Pipes

V.

Assistant State Tax Officer

[2020] 119 taxmann.com 211 (Kerala)

- Whether power of detention under section 129 is to be exercised only in cases where a transportation of goods is seen to be in contravention of provisions of Act and Rules and not simply because a document relevant for assessment does not contain details of tax payment – Held, yes.
- Petitioners consignment was **detained on ground that there was a discrepancy in e-way bill that accompanied transportation of goods** - Reason for detention was that there was that, while consignment was supported by an invoice which contained details of goods transported as also tax paid in respect of goods, **there was no mention of tax amounts separately in e-way bill that accompanied goods** – However, it was found that a person transportation – A reading of said Rule clearly indicates that e-way bill has to be in FORM GST EWB-01, and in that format, there is no field, wherein transporter is required to indicate tax amount payable in respect of goods transported

Whether therefore, there being no contravention by petitioner of any provision of Act or Rule for purposes of section 129, detention in instant case was not justified – Held, yes

Whether therefore, respondent was to be directed to release goods forthwith to petitioner – Held, yes [Para 4](In favour of assessee)

SCN & ORDER SERVED IN NAME OF DRIVER

2021] 133 taxmann.com 78 (Gujarat)

HIGH COURT OF GUJARAT

Tanay Creation

v.

State of Gujarat

Goods were detained by department on grounds that there was a mismatch in invoice and e-way bill and absence of receiver's name and full address in documents

Owner of goods contended that show cause notice and order were served on truck driver and personal hearing was not provided to owner - HELD : Owner of goods was not afforded opportunity of personal hearing and no show cause notice was issued to him or owner of conveyance –

Order was served on truck driver instead of owner of goods - Impugned order was quashed and set aside as there was a complete breach of principles of natural justice

Tanay Creation v. State of Gujarat [133 taxmann.com 78 (Gujarat)[20-10-2021]

GST : Confiscation order is not sustainable when show cause notice and order were not served on owner of goods but on driver of vehicle and hearing not provided to owner

Natural justice - Non-service of notice and order - Mismatch in E-Way Bill - Goods were detained by the department on the grounds that there was a mismatch in the invoice and E-Way Bill, absence of receiver's name and full address in the documents - Tax and penalty paid but goods not provisionally released but confiscated imposing redemption fine - Owner of goods contended that show cause notice and order were served on truck driver and personal hearing was not provided - HELD: Owner of goods was not afforded the opportunity of personal hearing and no show cause notice was issued to him or the owner of conveyance - Order was served on the truck driver instead of the owner of goods - Impugned order is quashed and set aside as there is a complete breach of principles of natural justice - Department is directed to issue fresh show cause notice and give opportunity of personal hearing to the owner of goods - Petition allowed - Sections 129 and 130 of Central Goods and Services Tax Act, 2017/Sections 129 and 130 of Gujarat Goods and Services Tax Act, 2017 [Paras 18, 21, 22] [In favour of assessee]

Y. Balakrishnan v. State Tax Officer[133 taxmann.com 1 (Kerala)[29-11-2021]

GST - Goods can be released on payment of fine in lieu of confiscation while adjudication proceedings are in progress

GST - To obtain release of goods or conveyances when adjudication is in progress, fine alone is payable and liability to pay tax, penalty and other charges will arise when fine is paid but need to be paid only after adjudication

GST - Basis for computation of quantum of redemption fine payable in lieu of confiscation for release of goods is market value of goods and not the maximum retail price

Confiscation proceedings - Release of goods - Whether GST law provides for provisional release of goods on payment of fine before passing of order on confiscation - Confiscation is a drastic power and penal in nature - Scheme and objective of GST law is not to appropriate goods - Option to pay fine in lieu of confiscation mentioned twice in Section 130 - Section 130(7) deals with post-adjudicatory situation as words "confiscated goods" are used - Section 130(2) uses "officer adjudging it" and "owner of the goods" indicating the intent is to provide option to owner to redeem the goods before he is divested of his ownership and while process of adjudication is in progress - Incorporating Section 130(2) along with Section 130(7) indicates legislative wisdom that even before owner is divested of his ownership, he must have an option to pay fine lieu of confiscation - Section 130(2) is applicable when confiscation is authorized and not when confiscation is ordered - Absence of words "provisional release" is not determinative of the intent - Goods can be released on payment of fine in lieu of confiscation while confiscation proceedings are continuing - Section [130](#) of Kerala State Goods and Services Tax Act, 2017 - Section [130](#) of Central Goods and Services Tax Act, 2017 [Paras 12, 16, 22, 24, 25, 26, 30]

JURISPRUDENCE

The following case laws are worth considering where in the Hon'ble courts have duly held that the Penalty u/s 129 cannot be levied and reliefs have been provided for instances covered by Procedural lapses and where there is no intent to evade or Clerical errors.

Sr. No.	Name & Citation	Particulars
1	Satyam Shivam Papers Pvt. Ltd. Vs Asst. Commissioner ST <u>(SUPREME COURT OF INDIA) [2022] 134 taxmann.com 241 (SC)</u>	“ <u>Inference by officer that petitioner was attempting to evade tax was baseless</u> - The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has <u>meticulously examined and correctly found that no fault or intent to evade tax</u> could have been inferred against the writ petitioner. Considering department's conduct and harassment faced by taxpayer, costs of Rs. 59,000 was imposed in addition to costs of Rs. 10,000 imposed by High Court [Section 129 of Central Goods and Services Tax Act, 2017/Telangana Goods and Services Tax Act, 2017] [Paras 8 and 9] [In favour of assessee].”
2	M/s. Modern Traders Vs. State Of U P And 2 Others (Allahabad High Court)	HC Quashes Order Detaining Goods For Non-Accompaniment Of E-Way Bill. The High Court Held that As e-way bill was produced on the same day of the interception of goods along with documents indicating payment of IGST but before seizure order is passed, no justification for passing orders of seizure of goods/vehicle and tax demand/penalty –order quashed, Respondent directed to immediately release goods/vehicle

3	<p>[2020] 113 taxmann.com 224 (Allahabad) HIGH COURT of ALLAHABAD Mudassirun Nisan v. Addl. Commissioner Grade Ii Appeal-I*</p>	<p>GST: Where Competent Authority vide order dated 10-11-2017 passed under section129(1) had detained goods of assessee under transport from Nagpur to Ambedkar Nagar on ground that e-way bill was not accompanied with goods and further imposed penalty under section129(3), both orders impugned could not be sustained</p>
4	<p>[2018] 99 taxmann.com 24 (Allahabad) HIGH COURT OF ALLAHABAD Harley Foods Products (P.) Ltd. v. State of U.P.*</p>	<p>CGST/Uttar Pradesh GST : Where Competent Authority had seized goods of assessee under transport from Ahmedabad to Meerut on ground that at time of interception E-Way Bill-01 had not been produced along with other documents, since goods were accompanied with all requisite documents including Gujarat E-Way Bill, order of seizure was illegal</p>
5	<p>2020 (10) TMI 1128 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH INTEGRATED CONSTRUCTIVE SOLUTIONS VERSUS ACST & E-CUM-PROPER OFFICER, CHAMBA CIRCLE</p>	<p>Detention of goods and vehicle - validity of EWB - the vehicle no. in the Part B of the EWB not updated - contravention of Rule 138(5) of CGST/SGST Rules, 2017 - - HELD THAT:- It appears that there is no dispute regarding quantity of goods and further all concerns documents were placed before the proper officer. The only mistake the E-way Bill part-B was that the number of the vehicle in which the material was transhipped had not been entered at the time of inspection of the vehicle. <u>As there is no doubt that the taxpayer has made procedural lapse and violated the provisions of the CGST/HPGST Act, 2017 and HPGST Rules 138(10) which says as "Provided further that where, under circumstances of an exceptional nature, including transshipment, the goods cannot be transported within validity period of E-way Bill, the transporter may extend the validity period after uploading the detail in part B of the FORM GST EWB-01, if required". Therefore appellant should have updated the part 8 of EWB before resuming his journey further. So keeping in view the above facts the appellant is liable to pay minor penalty. The tax and penalty deposited by the appellant under Section 129(3) may be refunded and a penalty of Rs. Ten Thousand only is imposed on the taxpayer under Section 122(xiv) of the Act - appeal allowed.</u></p>

6	<p>[2020] 114 taxmann.com 564 (Kerala) HIGH COURT OF KERALA Umiya Enterprise v. Assistant State Tax Officer*_ ALEXANDER THOMAS, J. W.P. (C). NO. 1141 OF 2020(P) JANUARY 31, 2020</p>	<p>Section 129 of the Central Goods and Services Tax Act, 2017/Section 129 of the Kerala State Goods and Services Tax Act, 2017 - Detention, seizure and release of goods and conveyances in transit - Competent Authority detained goods of assessee in transit from one State to another State as well as vehicle on ground that no IGST was collected in tax invoice and passed order demanding tax and penalty - Assessee filed writ petition contending that in tax invoice element of tax happened to be wrongly shown as CGST and SGST at rate of 9 per cent as against IGST of 18 per cent - <u>This was an inadvertent mistake committed by new accountant of supplier - In E-way Bill tax had been correctly declared as IGST Rs. 1.20 lakhs - Whether Competent Authority was to be directed to release goods and vehicle on assessee executing a simple bond for demanded value - Held, yes [Para 8] [In favour of assessee]</u></p>
7	<p>2022 (4) TMI 704 - MADHYA PRADESH HIGH COURT M/S. CREATE CONSULTS, REPRESENTED THROUGH ITS PROPRIETOR SHRI RALSTON ANIL RAJVAIDYA VERSUS THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY, COMMISSIONER, STATE GST, JOINT COMMISSIONER, STATE TAX CUM APPELLATE OFFICER STATE GST, STATE TAX OFFICER, OFFICE OF ASSISTANT COMMISSIONER, MADHYA PRADESH</p>	<p>Refund alongwith the interest - generation of e-way bill in the name of petitioner was a bona fide mistake or not - Section 129 of Central Goods and Service Tax Act, 2017 - HELD THAT:- Apparently, courier receipt/invoice and e-way bill, pertains to same transaction but the generation of e-way bill is in incorrect name. <u>The mistake appears to be bona fide inasmuch as the detail of vehicle, dispatch date is same. The case in hand appears to be a case where e-way bill was generated wrongly in the name of petitioner on account of some clerical or typographical error, therefore, the impugned orders are quashed.</u></p>

8	2020 (10) TMI 1128 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH INTEGRATED CONSTRUCTIVE SOLUTIONS VERSUS ACST & E-CUM-PROPER OFFICER, CHAMBA CIRCLE	<p>Detention of goods and vehicle - validity of EWB - the vehicle no. in the Part B of the EWB not updated - contravention of Rule 138(5) of CGST/SGST Rules, 2017 - HELD THAT:- It appears that there is no dispute regarding quantity of goods and further all concerns documents were placed before the proper officer. The only mistake the E-way Bill part-B was that the number of the vehicle in which the material was transhipped had not been entered at the time of inspection of the vehicle.</p> <p><u>As there is no doubt that the taxpayer has made procedural lapse and violated the provisions of the CGST/HPGST Act, 2017 and HPGST Rules 138(10) which says as "Provided further that where, under circumstances of an exceptional nature, including transshipment, the goods cannot be transported within validity period of E-way Bill, the transporter may extend the validity period after uploading the detail in part B of the FORM GST EWB-01, if required". Therefore appellant should have updated the part 8 of EWB before resuming his journey further. So keeping in view the above facts the appellant is liable to pay minor penalty.</u></p> <p>The tax and penalty deposited by the appellant under Section 129(3) may be refunded and a penalty of Rs. Ten Thousand only is imposed on the taxpayer under Section 122(xiv) of the Act - appeal allowed.</p>
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9	<p>[2020] 114 taxmann.com 564 (Kerala) HIGH COURT OF KERALA Umiya Enterprise v. Assistant State Tax Officer*_ ALEXANDER THOMAS, J. W.P. (C). NO. 1141 OF 2020(P) JANUARY 31, 2020</p>	<p>Section 129 of the Central Goods and Services Tax Act, 2017/Section 129 of the Kerala State Goods and Services Tax Act, 2017 - Detention, seizure and release of goods and conveyances in transit - Competent Authority detained goods of assessee in transit from one State to another State as well as vehicle on ground that no IGST was collected in tax invoice and passed order demanding tax and penalty - Assessee filed writ petition contending that in tax invoice element of tax happened to be wrongly shown as CGST and SGST at rate of 9 per cent as against IGST of 18 per cent - <u>This was an inadvertent mistake committed by new accountant of supplier - In E-way Bill tax had been correctly declared as IGST Rs. 1.20 lakhs - Whether Competent Authority was to be directed to release goods and vehicle on assessee executing a simple bond for demanded value - Held, yes [Para 8] [In favour of assessee]</u></p>
10	<p>M/s Commercial Steel co. versus the Assistant of State tax reported as 2020-VIL-116-TEL, dated 04.03.2020</p>	<p>“It has been held as under: ...merely on the basis of the fact that vehicle is found at a different route does not indicate that the petitioner intends to sell such goods locally and evade payment of CGST and SGST when IGST liability has already been discharged by the petitioner considering such supply as inter-state supply. Thus, amount collected by the department towards tax and penalty under the CGST and SGST act, 2017 under the threat of detaining vehicle is arbitrary and is in violation of Articles 14, 265 and 300-A of the constitution of India, Accordingly, said amount is required to be refunded by the department along with interest @ 6% per annum.”</p>

11	<p>Bhushan Power & Steel Ltd Vs ACST&E (Proper Officer) Circle Mall Road [2020] 114 taxmann.com 454 (AA- GST - HP)</p>	<p>“Where Assistant Commissioner raised additional amount of tax and imposed penalty on ground that e-way bill issued to assessee for movement of goods had expired, in view of fact that Rule 138(10) mentions that validity of e-way bill may be extended within 8 hours from time of its expiry, but, in instant case vehicle was practically apprehended in almost 08 to 09 hours of expiry of e-way bill, prima facie it appeared that assessee had not been given reasonable opportunity to update Part-A of e-way bill and, moreover, it also apparent that Part-B of e-way bill was duly filled which put to rest any doubt about intention of assessee to evade tax, impugned order passed by authority below was to be set aside”</p> <p><u>“In the view of above circumstances the instant appeals are accepted and the order passed by Asst. Commissioner State Taxes & Excise-cum-Proper Officer, the Mall Road Circle, Shimla are set aside. Since the appellant has made minor procedural lapse as required to follow under rule 138(10) therefore a penalty of Rs. One thousand only (Rs- 1000/- IGST Act) in each case is imposed on the tax payer under section 125 under the CGST/HPGST Act 2017</u></p>
12	<p>[2020] 116 taxmann.com 25 (Gujarat) HIGH COURT OF GUJARAT Meghmani Organics Ltd. v. State of Gujarat*</p>	<p>GST: Where Competent Authority had detained goods of assessee under transport and passed order under section 129(3) imposing tax and penalty without giving opportunity of hearing, impugned order deserved to be set aside and Competent Authority was to be directed to pass appropriate order after giving opportunity of hearing to assessee</p>

13	<p>[2020] 121 taxmann.com 104 (AA- GST - HP)</p> <p>Appellate Authority - GST, HIMACHAL PRADESH</p> <p>Integrated Constructive Solutions</p> <p>v.</p> <p>ACST & E-Cum-Proper Officer, Chamba Circle</p> <p>ROHIT CHAUHAN, MEMBER APPEAL NO. 018 OF 2019 ENDST. NO. EXN. -018/2019-AA/GST SHIMLA HP - 3159 - 64 FEBRUARY 14, 2020</p>	<p>Section 129, read with section 122, of the Central Goods and Services Tax Act, 2017/Section 129, read with section 122, of the Himachal Pradesh Goods and Services Tax Act, 2017 - Detention, seizure and release of goods and conveyances in transit - Held - <u>Whether as assessee had made procedural lapse and violated provisions of GST Act, it was liable to pay minor penalty under section 122 - Held, yes - Whether impugned order deserved to be set aside - Held, yes - Whether a penalty of Rs. 10,000 was to be imposed upon assessee under section 122 - Held, yes [Paras 8, 9 and 10] [In favour of assessee]</u></p>
14	<p>[2018] 98 taxmann.com 387 (Allahabad)</p> <p>HIGH COURT OF ALLAHABAD</p> <p>Rajavat Steels</p> <p>v.</p> <p>State of U.P.*</p> <p>ASHOK KUMAR, J. WRIT TAX NO. 1300 OF 2018 SEPTEMBER 27, 2018</p>	<p>Section<u>68</u>, read with section<u>129</u>, of the Central Goods and Services Tax Act, 2017 and rules <u>138</u> and <u>140</u> of the Central Goods and Services Tax Rules, 2017/Section <u>68</u>, read with section<u>129</u>, of the Uttar Pradesh Goods and Services Tax Act, 2017 and rules <u>138</u> and <u>140</u> of the Uttar Pradesh Goods and Services Tax Rules, 2017 - Search, seizure, etc. - Goods in movement, inspection of (NR) - Competent Authority had seized goods of assessee under transport and vehicle on ground that in invoice, E-way bill and weigh slip truck number was mentioned being U.P. - 78 - DN 7983 instead of U.P. - 78 - DN 7938 - Whether since due to mistake or human error vehicle number was mentioned different, Competent Authority was to be directed to release goods and vehicle on assessee furnishing indemnity bond to extent of amount of penalty demanded - Held, yes [Para 11] [In favour of assessee]</p>

15	<p>2022 (4) TMI 352 - ALLAHABAD HIGH COURT</p> <p>M/S A.S. ENTERPRISE VERSUS COMMISSIONER OF STATE TAX U.P. AND 2 OTHERS</p>	<p>Demand of tax along with interest and penalty - absence of required documents at the stage of interception of the goods and physical verification - goods imported into the State of U.P. in contravention of law or not - Section 20 of the Central Goods and Services Tax Act 2017 and Section 129(3) of the Uttar Pradesh Goods and Services Tax Act 2017 -</p> <p>There is no dispute to the fact that the documents that were produced by the petitioner though at the stage of the show cause notice were original tax invoices issued by the petitioner. No enquiry was made to doubt the genuineness of such tax invoices or to doubt the date of issue of such invoices. Thus, all tax invoices produced by the petitioner to cover the disputed goods are dated 31.07.2021. No enquiry appears to have been made from the revenue authorities in the State of Punjab to confirm if the transactions were genuine. Then, it is not the case of the revenue that the goods found transported were different from the goods disclosed in the tax invoices produced by the petitioner. No enquiry was conducted by the respondent authorities either from the purchasing dealers or the Assessing Authority to doubt the transaction at the end of the consignee.</p> <p>In view of the lack of enquiry and lack of reasonable doubt, the continued seizure and confiscation as also the demand of tax and penalty is based solely on presumptions and conjectures. While the mistake claimed by the petitioner gave rise to the valid suspicion with the revenue authorities inside State of U.P.as to the genuineness of the transaction as an inter-state sale claimed (at that stage orally), however, upon furnishing of the original tax invoices at the stage of the show cause notice itself, initial onus that rested on the assessee was discharged.</p> <p>The petitioner is a registered dealer. He has issued tax invoice after charging Integrated Goods and Services Tax. That evidence being undoubted, the seizure and confiscation and consequent demand of tax and penalty is based on no cogent material and evidence - though the detention did not suffer from any illegality, however, the further orders of the seizure etc. are found to be not based on any material or evidence on record</p>
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16	<p>2022 (5) TMI 1075 - CALCUTTA HIGH COURT</p> <p>ASSISTANT COMMISSIONER, STATE TAX, DURGAPORE RANGE, GOVERNMENT OF WEST BENGAL VERSUS ASHOK KUAMR SUREKA, PROPRIETOR OF SUBHAM STEEL</p>	<p>Detention of goods along with the vehicle - breakdown of vehicle - non-extension of the validity of the e-way bill - <u>intent to evade tax or not</u> - according to the writ petitioner the vehicle transporting goods had broken down and on account of which, there was delay and there was no willful intention to evade payment of tax - HELD THAT:- In the instant case, the bona fides of the writ petitioner has to be tested on the documents, which were available on record.</p> <p>The case has to be approached by considering the bona fides of the transaction as to whether the case warrants detention of the goods and collection of tax and penalty. Admittedly, the first e-way bill dated 7th September, 2019 was valid upto 9th September, 2019. Therefore, in the absence of second e-way bill, the tax authorities at Durgapur could not have intercepted or detained the vehicle. Therefore, the explanation offered by the respondent / writ petitioner was an acceptable explanation and a case <u>cannot be made out</u> that there was a deliberate and willful attempt on the part of the respondent / writ petitioner to evade payment of tax so as to justify invocation of the power under Section 129 of the Act.</p>
17	<p>2022 (4) TMI 1095 - ALLAHABAD HIGH COURT</p> <p>PREMIUM TRADERS VERSUS STATE OF U.P. AND 2 OTHERS</p>	<p>Detention of goods alongwith vehicle - absence of e-Way Bill - undervaluation - bogus invoice -GSTIN number not mentioned on the invoice - HELD THAT:- It is admitted case of the respondents that the invoice accompanied with the goods in question was issued by the petitioner. Therefore, the respondent no.3 has committed a manifest error of law not to afford any opportunity of hearing to the petitioner despite persuasion made by the petitioner. Thus, the impugned order under Section 129(1)(b) of the CGST/UPGST Act, 2017 has been passed in breach of principles of natural justice. Consequently, the impugned order dated 14.03.2022, under Section 129 of CGST/UPGST Act, can not be</p>

18	<p>2018(5) TMI 455- Allahabad High Court</p> <p>VSL Alloys (India) Pvt. Ltd. Vs State Of U.P. And Another (Allahabad High Court)</p>	<p>GST :All the documents were accompanied the goods, details are duly mentioned which reflects from the perusal of the documents. Merely of none mentioning of the vehicle no. in Part-B of E-Way Bill cannot be a ground for seizure of the goods. We hold that the order of seizure is totally illegal and once the petitioner has placed the material and evidence with regard to its claim, it was obligatory on the part of the respondent no.2 to consider and pass an appropriate reasoned order. In this case, no reasons are assigned nor any discussion is mentioned in the impugned order of seizure and notice of penalty.</p>
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The issue involved in case of Nikita Singhania vs. Assistant Commissioner of State Tax, Bureau of Investigation, South Bengal [2024] 161 taxmann.com 691 (Calcutta)/[2024] 84 GSTL 203 (Calcutta)/[2024] 103 GST 205 (Calcutta)[02-04-2024] is the imposition of penalty under Section 129(3) that the goods were being transported without a valid E-way Bill.

The goods were originally loaded in a vehicle which had suffered a break down on the night of 19.11.2021 and on account of the urgency for transmitting the goods, the transporter has left no other option but to change the vehicle. It is a specific case of the appellant that the transporter could not amend the e-way bill because it was during the midnight.

The department has given a window of eight hours for amendment of the e-way bill, assuming the goods have been transported in the vehicle in which it was originally loaded no problem would have arisen but, however, on account of certain contingencies beyond the control of the appellant the vehicle had to be changed but the new vehicle had transported the goods and arrived at the destination at Purulia at 06.20 a.m. on 20.11.2021.

Thus, it is not a case where there was any intention on the part of the appellant to evade the tax for authority to invoke the provisions of the CGST Act and imposed tax and penalty - the imposition of tax and penalty by the adjudicating authority has confirmed by the appellate authority calls for interference.

The Hon'ble Court with the above findings, allowed the writ petition.

5.1) The following case laws are worth considering where in the Hon'ble courts have duly held that the Penalty u/s 129 cannot be levied for instances covered by **Circular 64/38/2018-GST** and where there is no intent to evade or Clerical errors.

Sr. No.	Name & Citation	Particulars
1	2021 (3) TMI 540 - TRIPURA HIGH COURT TIRTHAMOYEE ALUMINIUM PRODUCTS VERSUS STATE OF TRIPURA, CHIEF COMMISSIONER OF STATE TAX, INSPECTOR OF STATE TAX GOVERNMENT OF TRIPURA, HINDALCO INDUSTRIES LTD., UNION OF INDIA	Confirmation of demand of GST with penalties - Principle of natural justice - Detention of goods - E-way bill had expired on account of a clerical error which would not result into any tax liability - HELD THAT:- As per this Circular dated 14th September, 2018, in case the goods are accompanied by an invoice as also an E-way bill, proceedings under Section 129 of the CGST Act, 2017 should not be initiated if there is a error of one or two digits in a document number mentioned in the E-way bill. In such a situation, at best, penalty of ₹ 500 & 1000/- under State and Central GST may be collected under Section 125 of the Act.
2	2022 (5) TMI 184 - GUJARAT HIGH COURT DHABRIYA POLYWOOD LIMITED VERSUS UNION OF INDIA	Detention of goods alongwith the vehicle - Selection of the ODC vehicle type while generating e-Way Bill - clerical/technical error or done intentionally - levy of penalty/tax under Section 129(1) for such clerical errors - evasion of tax or not - HELD THAT:- CBEC/20/16/03/2017-GST Circular makes it clear that in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, the proceedings under Section 129 of the CGST Act may not be ordinarily initiated, more particularly, in the situation, as highlighted in para 5 of the circular.

4	<p>2022 (4) TMI 704 - MADHYA PRADESH HIGH COURT</p> <p>M/S. CREATE CONSULTS, REPRESENTED THROUGH ITS PROPRIETOR SHRI RALSTON ANIL RAJVAIDYA VERSUS THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY, COMMISSIONER, STATE GST, JOINT COMMISSIONER, STATE TAX CUM APPELLATE OFFICER STATE GST, STATE TAX OFFICER, OFFICE OF ASSISTANT COMMISSIONER, MADHYA PRADESH</p>	<p>Refund alongwith the interest - generation of e-way bill in the name of petitioner was a bona fide mistake or not - Section 129 of Central Goods and Service Tax Act, 2017 - HELD THAT:- Perusal of courier receipt/invoice which has been produced on record at page 19 shows that the consignor name was AVGOL India Pvt. Ltd. and the consignee details were mentioned as SIDWIN FABRIC PVT. LTD. It is also important to note that in the same invoice, registration of truck number by which the consignment was to be transported was also mentioned as GJ-01-FT-7770. It is also relevant to note that the shipping date was mentioned as 20/06/2019. <u>Apparently, courier receipt/invoice and away bill, pertains to same transaction but the generation of e-way bill is in incorrect name. The mistake appears to be bona fide inasmuch as the detail of vehicle, dispatch date is same. The case in hand appears to be a case where e-way bill was generated wrongly in the name of petitioner on account of some clerical or typographical error, therefore, the impugned orders are quashed.</u></p>
5	<p>2020 (10) TMI 1128 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH</p> <p>INTEGRATED CONSTRUCTIVE SOLUTIONS VERSUS ACST & E-CUM-PROPER OFFICER, CHAMBA CIRCLE</p>	<p>Detention of goods and vehicle - validity of EWB - the vehicle no. in the Part B of the EWB not updated - contravention of Rule 138(5) of CGST/SGST Rules, 2017 - Circular No. 64/38/2018, dated 14-9-2018 - HELD THAT:- It appears that there is no dispute regarding quantity of goods and further all concerns documents were placed before the proper officer. The only mistake the E-way Bill part-B was that the number of the vehicle in which the material was transhipped had not been entered at the time of inspection of the vehicle. <u>As there is no doubt that the taxpayer has made procedural lapse and violated the provisions of the CGST/HPGST Act, 2017 and HPGST Rules 138(10) which says as "Provided further that where, under circumstances of an exceptional nature, including transshipment, the goods cannot be transported within validity period of E-way Bill, the transporter may extend the validity period after uploading the detail in part B of the FORM GST EWB-01, if required". Therefore appellant should have updated the part 8 of EWB before resuming his journey further. So keeping in view the above facts the appellant is liable to pay minor penalty.</u> <u>The tax and penalty deposited by the appellant under Section 129(3) may be refunded and a penalty of Rs. Ten Thousand only is imposed on the taxpayer under Section 122(xiv) of the Act - appeal allowed.</u></p>

6	<p>[2020] 114 taxmann.com 564 (Kerala) HIGH COURT OF KERALA Umiya Enterprise v. Assistant State Tax Officer*_ ALEXANDER THOMAS, J. W.P. (C). NO. 1141 OF 2020(P) JANUARY 31, 2020</p>	<p>Section 129 of the Central Goods and Services Tax Act, 2017/Section 129 of the Kerala State Goods and Services Tax Act, 2017 - Detention, seizure and release of goods and conveyances in transit - Competent Authority detained goods of assessee in transit from one State to another State as well as vehicle on ground that no IGST was collected in tax invoice and passed order demanding tax and penalty - Assessee filed writ petition contending that in tax invoice element of tax happened to be wrongly shown as CGST and SGST at rate of 9 per cent as against IGST of 18 per cent - <u>This was an inadvertent mistake committed by new accountant of supplier - In E-way Bill tax had been correctly declared as IGST Rs. 1.20 lakhs - Whether Competent Authority was to be directed to release goods and vehicle on assessee executing a simple bond for demanded value - Held, yes [Para 8] [In favour of assessee]</u></p>
7	<p>2021] 133 taxmann.com 165 (SC) SUPREME COURT OF INDIA State of Madhya Pradesh v. Robbins Tunnelling and Trenchless Technology (India) (P.) Ltd.*_</p>	<p>Seizure - Detention of goods in transit - Wrong shipping address in e-way bill - Assessee imported certain goods from its parent company from USA - Its clearing agent while shipping goods from Custom Station, Mumbai to assessee's place of business in Katni (Madhya Pradesh), generated e-way bill in which by mistake erroneously entered its own name in column of consignee - Competent Authority detained aforesaid goods of assessee under transport due to wrong shipping address in e-way bill and levied tax and penalty - Appellate Authority rejected appeal of assessee and affirmed order of tax and penalty levied by Competent Authority stating that in e-way bill name and address of recipient, while matching with Bill of Entry and Bill of Lading, was not same and such mistake could not be treated to be a clerical mistake - <u>High court held that Appellate Authority was not justified in rejecting appeal of assessee on ground that mistake committed while generating e-way bill was not a clerical mistake and quashed impugned orders - HELD : Special Leave Petition filed against</u></p>

8	M/s Commercial Steel co. versus the Assistant of State tax reported as 2020-VIL-116-TEL, dated 04.03.2020	<p>“It has been held as under: ...merely on the basis of the fact that vehicle is found at a different route does not indicate that the petitioner intends to sell such goods locally and evade payment of CGST and SGST when IGST liability has already been discharged by the petitioner considering such supply as inter-state supply. Thus, amount collected by the department towards tax and penalty under the CGST and SGST act, 2017 under the threat of detaining vehicle is arbitrary and is in violation of Articles 14, 265 and 300-A of the constitution of India, Accordingly, said amount is required to be refunded by the department along with interest @ 6% per annum.”</p>
9	Bhushan Power & Steel Ltd Vs ACST&E (Proper Officer) Circle Mall Road [2020] 114 taxmann.com 454 (AA- GST - HP)	<p>“Where Assistant Commissioner raised additional amount of tax and imposed penalty on ground that e-way bill issued to assessee for movement of goods had expired, in view of fact that Rule 138(10) mentions that validity of e-way bill may be extended within 8 hours from time of its expiry, but, in instant case vehicle was practically apprehended in almost 08 to 09 hours of expiry of e-way bill, prima facie it appeared that assessee had not been given reasonable opportunity to update Part-A of e-way bill and, moreover, it also apparent that Part-B of e-way bill was duly filled which put to rest any doubt about intention of assessee to evade tax, impugned order passed by authority below was to be set aside”</p> <p><u>“In the view of above circumstances the instant appeals are accepted and the order passed by Asst. Commissioner State Taxes & Excise-cum-Proper Officer, the Mall Road Circle, Shimla are set aside. Since the appellant has made minor procedural lapse as required to follow under rule 138(10) therefore a penalty of Rs. One thousand only (Rs- 1000/- IGST Act) in each case is imposed on the tax payer under section 125 under the CGST/HPGST Act 2017 in accordance to CBIC Circular No. 64/38/2018-GST, dated 14th Sep 2018 and the State Circular no. dated 13th March 2019 and may be recovered accordingly. The judgment</u></p>

10	<p>[2018] 100 taxmann.com 23 (Kerala) HIGH COURT OF KERALA Sabitha Riyaz v. Union of India_ DAMA SESHADRI NAIDU, J. WP (C) NO. 34874 OF 2018 OCTOBER 31, 2018</p>	<p>Section 68, read with section 129, of the Central Goods and Services Tax Act, 2017 and rule 138 of the Central Goods and Services Tax Rules, 2017 - Section 68, read with section 129, of the Uttarakhand Goods and Services Tax Act, 2017 and rule 138 of the Uttarakhand Goods and Services Tax Rules, 2017 - Search, seizure, etc. - Goods in movement, inspection of - Competent Authority of Uttarakhand Goods and Services Tax Department had detained goods of assessee under transport from Kerala to Uttarakhand <u>on ground that in E-way bill distance between Kerala and destination at Uttarakhand was shown as 280 kms instead of 2800 kms - Assessee filed writ petition before Kerala High Court seeking directions to Competent Authority for release of detained goods and contended that error in E-way bill was minor apart from being typographical and it stood covered and exempted under Circular No. 64/38/2018 - GST, dated 14-9-2018 - Whether Competent Authority was to be directed to consider assessee's request for release in terms of above circular - Held, yes [Para 6] [In favour of assessee]</u> Circulars and Notifications: CBEC Circular No. 64/38/2018 - GST, dated 14-9-2018</p>
11	<p>[2020] 121 taxmann.com 104 (AA- GST - HP) Appellate Authority - GST, HIMACHAL PRADESH Integrated Constructive Solutions v. ACST & E-Cum-Proper Officer, Chamba Circle ROHIT CHAUHAN, MEMBER APPEAL NO. 018 OF 2019 ENDST. NO. EXN. -018/2019-AA/GST SHIMLA HP - 3159 - 64 FEBRUARY 14, 2020</p>	<p>Section 129, read with section 122, of the Central Goods and Services Tax Act, 2017/Section 129, read with section 122, of the Himachal Pradesh Goods and Services Tax Act, 2017 - Detention, seizure and release of goods and conveyances in transit - Competent Authority detained goods of assessee under transport on ground that vehicle No. at time of checking was PB10CT6249; whereas in E-way Bill vehicle No. was PB35Q8464 and initiated proceedings under section 129(3) - Assessee's explanation before Competent Authority was that due to break down of vehicle No. PB35Q8464 goods had been shifted to new vehicle No. PB10CT6249 and updation of new vehicle in already generated E-way Bill could not be done due to weak internet connectivity - In between assessee had also updated Part-B of E-way Bill - However, Competent Authority vide order passed under section 129(3) imposed tax and penalty upon assessee amounting to Rs. 16.28 crores - Whether since Competent Authority had passed order in a mechanical manner and had ignored corrected and updated E-way Bill as produced by assessee within two hours of detaining goods, tax and penalty imposed under section 129(3) was unsustainable - Held, yes - <u>Whether as assessee had made procedural lapse and violated provisions of GST Act, it was liable to pay minor penalty under section 122 - Held, yes - Whether impugned order deserved to be set aside - Held, yes - Whether a penalty of Rs. 10,000 was to be imposed</u></p>

	<p>[2018] 100 taxmann.com 270 (Kerala)</p> <p>HIGH COURT OF KERALA</p> <p>Daily Express</p> <p>v.</p> <p>Assistant State Tax Officer, Thiruvananthapuram*</p> <p>DAMA SESHADRI NAIDU, J.</p> <p>WP (C) NO. 35665 OF 2018</p> <p>NOVEMBER 29, 2018</p>	<p>Section <u>68</u>, read with section <u>129</u>, of the Central Goods and Services Tax Act, 2017 and rule <u>138</u> of the Central Goods and Services Tax Rules, 2017/Section <u>68</u>, read with section <u>129</u>, of the Kerala State Goods and Services Tax Act, 2017 and rule <u>138</u> of the Kerala State Goods and Services Tax Rules, 2017 - Search, seizure, etc. - Goods in movement, inspection of - Competent Authority had detained goods of petitioner under transport - It filed writ petition seeking appropriate directions to Competent Authority - Whether since issue involved in instant case was squarely covered in favour of petitioner by a judgment of Kerala High Court rendered in case of Sabitha Riyaz v. Union of India [2018] 100 taxmann.com 23 (Ker.), wherein Competent Authority was directed to consider assessee's request for release of detained goods in terms of Circular No. 64/38/2018-GST, dated 14-9-2018, writ petition was to be disposed of applying ration of said judgment - Held, yes [Paras 2 and 3] [In favour of assessee]</p>
13	<p>[2018] 98 taxmann.com 387 (Allahabad)</p> <p>HIGH COURT OF ALLAHABAD</p> <p>Rajavat Steels</p> <p>v.</p> <p>State of U.P.*</p> <p>ASHOK KUMAR, J.</p> <p>WRIT TAX NO. 1300 OF 2018</p> <p>SEPTEMBER 27, 2018</p>	<p>Section<u>68</u>, read with section<u>129</u>, of the Central Goods and Services Tax Act, 2017 and rules <u>138</u> and <u>140</u> of the Central Goods and Services Tax Rules, 2017/Section <u>68</u>, read with section<u>129</u>, of the Uttar Pradesh Goods and Services Tax Act, 2017 and rules <u>138</u> and <u>140</u> of the Uttar Pradesh Goods and Services Tax Rules, 2017 - Search, seizure, etc. - Goods in movement, inspection of (NR) - Competent Authority had seized goods of assessee under transport and vehicle on ground that in invoice, E-way bill and weigh slip truck number was mentioned being U.P. - 78 - DN 7983 instead of U.P. - 78 - DN 7938 - Whether since due to mistake or human error vehicle number was mentioned different, Competent Authority was to be directed to release goods and vehicle on assessee furnishing indemnity bond to extent of amount of penalty demanded - Held, yes [Para 11] [In favour of assessee]</p>

14	<p>2019 (12) TMI 1089 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH M/S. K.B. ENTERPRISES CHAIL CHOWK, DISTT MANDI VERSUS THE ASSISTANT COMMISSIONER STATE TAXES & EXCISE CHAMBA, HP</p>	<p>Levy of penalty - clerical mistake in generation of E-Way bill - minor mistakes - relied as provided vide circular - circular No 64/38/2018 and the HP circular no.12-25/2018-19-EXN-GST-(575)-6009-6026 - supply of taxable goods falling under chapter 24 of GST Tariff Act - bidis - detention order as per section 129(1) of the CGST/HPGST Act. - HELD THAT:- The circular clearly states that, in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated in case of minor mistakes like error in one or two digits/characters of the vehicle number. Further Para 6 of the said circular states that in case of minor errors mentioned in Para 5, penalty to the tune of ₹ 500/- each under section 125 of the CGST Act and the respective HPSGST Act should be imposed (₹ 1000/- under the IGST Act) in FORM GST DRC-07 for every consignment.</p>
15	<p>2020 (3) TMI 722 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH MAHALAKSHMI PACKAGERS MANUFACTURE VERSUS ACST & E-CUM- PROPER OFFICER, PAONTA CIRCLE-II</p>	<p>Invocation of proceedings u/s 129 of the CGST/HPGST Act - vehicle number was written wrong in E-way Bill and rightly on invoice issued by the appellant - HELD THAT:- It is revealed that due to a typographic error by the consignee while issuing tax invoice and generating E-way Bill, the Vehicle No. HP-17B1790 has been mentioned instead of the Vehicle No. HP-17B-4290 on both tax invoice and as well as in E-way Bill. Apart from this there is no dispute on quantity/quality of goods in question and validity of E-way Bill.. As per the facts in hand it appears that the mistake of two digits while entering vehicle no. in invoice and E-way Bill is a typographic error and may be treated as a minor one. <u>The said circular 64/38/2018-GST and the subsequent notification under the HPGST Act have to be followed and the benefit cannot be denied to the appellant for paltry errors of two digits in the vehicle number. The e-way bill has been duly generated and no</u></p>

ISSUE

The issues involved in case of **MS VARUN BEVERAGES LIMITED VERSUS STATE OF UP AND 2 OTHERS WRIT TAX No. - 958 of 2019 ALLAHABAD HIGH COURT** are the **imposition of penalty under Section 129(3) for entering the wrong vehicle number in the e-way bill** without any intention to evade tax.

FACTS

The dealer was making a stock transfer from its unit at Gautam Buddha Nagar, Greater NOIDA depot to a sale depot at Kuberpur, Agra. The goods were being transported through **Truck No. HR-73/6755** which was **accompanying delivery challan, e-way bill and bilty on 10.06.2018**. But in E-way bill the vehicle number has been mentioned as **UP-13T/6755**.

Submission by Department

Any mistake in entering details of the transporter in the e-way bill, **one or two digits can be ignored by the taxing authorities, but where the entire digit as has been entered in the e-way bill is not matching with the vehicle in transit**, the explanation given by the dealer cannot be accepted.

Held That

It was found that it is an admitted fact that **it is a case of stock transfer and there is no intention on the part of dealer to evade any tax, the minor discrepancy as to the registration of vehicle in State in the e-way bill would not attract proceedings for penalty under Section 129.**

The Hon'ble Court with the above findings, **allowed the writ petition by setting aside the orders** and holding that the **orders are not sustainable in the eyes of law.**

5.2) The following case laws are worth considering where in the Hon’ble courts have duly held that DRC forms are merely a summary and proper procedure as laid down in Rule 142 must be followed i.e The proper officer shall serve DRC on portal, along with the Notice and order .

Sr. No.	Name and Citation	Particulars
1	2022 (4) TMI 1026 - JHARKHAND HIGH COURT M/S. GODAVARI COMMODITIES LTD. VERSUS THE STATE OF JHARKHAND, COMMISSIONER, STATE TAX, JOINT COMMISSIONER OF STATE TAX (ADMINISTRATION) RANCHI, DEPUTY COMMISSIONER OF STATE TAX, RANCHI., ASSISTANT COMMISSIONER OF STATE TAX, THE PRINCIPAL COMMISSIONER, CENTRAL GST & CENTRAL EXCISE, RANCHI.	Validity of “summary of the order” as contained in Form-GST DRC 07 dated 11.09.2020 - Rule 142(1) of the GST Rules - specific case of the petitioner is that no show cause notice was ever issued to the petitioner and even in the summary of the show cause notice, no time line was provided as to when the petitioner was to submit its reply - Whether the very initiation of the adjudication proceeding without issuance of show cause notice is void ab initio and any consequential adjudication order passed thereto is non est in the eye of law as the same has been passed without issuance of proper show cause notice and, thus, amounts to violation of principles of natural justice.
2	[2021 (10) TMI 880 - JHARKHAND HIGH COURT] M/s NKAS Services Private Limited Vs. State of Jharkhand and ors,	<p>‘Summary of Show Cause Notice’ was issued and Adjudication Order was passed pursuant thereto, this Court has observed that the impugned show cause notice as contained in Annexure-1 does not fulfill the ingredients of a proper show-cause notice and thus amounts to violation of principles of natural justice, the challenge is entertainable in exercise of writ jurisdiction of this Court.</p> <p><u>A summary of show-cause notice as issued in Form GST DRC-01 in terms of Rule 142(1) of the CGST/JGST Rules, 2017 cannot substitute the requirement of a proper show-cause notice</u></p> <p>- the Commissioner of State Tax Department are directed to issue appropriate guidelines/circular/notification elaborating therein the procedure which is to be adopted by the State Tax authorities regarding the manner of issuance of Show Cause Notice, adjudication and recovery proceedings, so that proper procedure is followed by the State Tax authorities in conduct of the adjudication proceedings, as huge revenue of the State is involved and it would be in ultimate interest of the Respondent-State of Jharkhand itself that the adjudication proceedings are conducted after following due procedure and process of law.</p> <p>The summary of show cause notices, both dated 14.03.2020, Adjudication Order Dated 13.08.2020 and summary of orders, both dated 11.09.2020, issued against the petitioner in both the writ petitions, are hereby, quashed and set aside - Application allowed.</p>

3	<p>[2021] 124 taxmann.com 295 (Allahabad) HIGH COURT OF ALLAHABAD Singh Traders v. Additional Commissioner, Grade-2*</p>	<p>GST : Where Competent Authority by an order passed under section 129(3) detained goods of assessee under transport, since service of detention order on driver of truck would not fall within any of category specified from clauses (a) to (j) of section 169(1), same could not be deemed to be a valid service and thus, period of limitation would commence from day when a certified copy/copy of order is made available to the assessee.</p>
4	<p>Tanay Creation Vs State of Gujarat [2021] 133 taxmann.com 78 (Gujarat)</p>	<p>“Owner of goods was not afforded opportunity of personal hearing and no show cause notice was issued to him or owner of conveyance - Order was served on truck driver instead of owner of goods - Impugned order was quashed and set aside as there was a complete breach of principles of natural justice - Department was directed to issue a fresh show cause notice [Sections 129 and 130 of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act 2017] [Paras 18, 21 and 22]”</p>
5	<p>Madhya Pradesh Court in case of Akash Garg Vs State of M.P vide order dated 19.11.2020</p>	<p><u>Held that statutory procedure prescribed for communicating show-cause notice or order under Rule 142(1) of CGST Act is required to be followed mandatorily by the revenue.</u></p>

DATE OF COMMUNICATION ????

[2021] 133 taxmann.com 222 (Bombay) Meritas Hotels (P.) Ltd.v. State of Maharashtra*

GST : Date of communication of order by e-mail, and not subsequent date of uploading in GST portal, was to be considered for computing time-limit for filing appeal with Appellate Authority

Date of Uploading order is to be considered as Communication

[2022] 142 taxmann.com 444 (Andhra Pradesh)Navya Foods (P.) Ltd. v. Superintendent of Central*

GST : Time period to file appeal would start only when order was uploaded on GST portal even if physical copy of adjudication order was handed over to petitioner earlier

**[2021] 124 taxmann.com 98 (Gujarat)
HIGH COURT OF GUJARAT
Gujarat State Petronet Ltd.**

v.

Union o India*

GST : Where even though physical copy of adjudication order was handed over to assessee, limitation period to file appeal would start only when adjudication order was uploaded on GST portal



EXPIRY OF E-WAY BILL

[2023] 152 taxmann.com 121 (Calcutta)
HIGH COURT OF CALCUTTA
Perfect Enterprise
v.
State of West Bengal
KRISHNA RAO, J.
W.P.A. NO. 532 OF 2023
JUNE 15, 2023

FACTS OF THE CASE

1. Goods Dispatched **from Gujrat to Silliguri** and the e-waybill was valid up to **May 2, 2022**
2. The said vehicle **reached Silliguri** on May 2, 2022 **before the expiry of e-waybill**
3. Vehicle could **not enter stockyard for unloading of goods** due to **national holiday on May 3, 2022**
4. On **May 4, 2022, vehicle was intercepted** by State Tax Officers and they noted that e-way bill was expired

EXPIRY OF E-WAY BILL

5. The goods and the vehicle were detained by issuing a detention order on the ground of vehicle being found in transit with an expired e-waybill

6. The **petitioner submits that there is no lack of bona fide** on the part of the petitioner to state that there was wilful misconduct committed by the petitioner while transporting the goods. He further submits that there is every possibility that even if an application was made for extension of the **e-waybill within the time permitted, May 3, 2022** being national holiday on account of Ed-UI-Fitr, the e-waybill, in **all probabilities, would not have been revalidated within eight hours period.**

Held - There was no lack of bona fide on part of assessee to state that there was wilful misconduct committed by assessee while transporting goods - Accordingly, impugned orders were to be set aside and quashed [Section 129 of Central Goods and Services Tax Act, 2017/West Bengal GST Act, 2017] [In favour of assessee]

Vehicle was detained and order imposing 200 per cent penalty was passed on ground that first E-Way Bill was not renewed

Held - Violation committed by assessee was not as grave enough to call for imposition of penalty at rate of 200 per cent
Since on date when vehicle was intercepted goods were covered by a valid E-Way Bill which satisfies requirement under section 129

Therefore, writ petition was allowed and impugned order imposing penalty were to be set aside [Section 129 of Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017] [Paras 7 and 8] [Partly in favour of assessee]

[2023] 152 taxmann.com 688 (Calcutta)

HIGH COURT OF CALCUTTA

Aryavrata Steel (P.) Ltd.

v.

Inspector of CGST

MD. NIZAMUDDIN, J.

W.P.A. NO. 14982 OF 2023

JULY 12, 2023

GST : E-Way Bill being expired during transit due to mechanical fault in vehicle, demand and penalty was not imposable as period of expiry of e-waybill was only three hours

Period of expiry of **e-waybill being very minor i.e. just only three hours** and reason for such expiry was being supported with relevant documents,

HELD: **Petitioner was entitled to get refund of penalty and tax in question expeditiously** [Section 129 of Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017] **[In favour of assessee]**

[2023] 152 taxmann.com 239 (Calcutta)

HIGH COURT OF CALCUTTA

Pushpa Devi Jain

v.

Assistant Commissioner of Revenue, Bureau of Investigation*

T. S. SIVAGNANAM AND HIRANMAY BHATTACHARYA, JJ.

FACTS OF THE CASE

1. **E-WAY BILL expired at 11:59 hours on 22nd April, 2022**, As per the statute, the owner of the goods / transporter had eight hours time to revalidate the e-waybill, **which would have been at 8 a.m. on 23rd April, 2022.**

2. The **vehicle was intercepted at 8.52 a.m.** when it was travelling towards the destination and at a distance of about 20 kilometers from the destination.

HELD : There was no lack of bona fide on part of appellant to state that there was wilful misconduct committed by it while transporting goods – **Owner of goods/transporter had eight hours time to revalidate e-waybill, which was at 8 am on 23-4-2022 - Though till then no such application was filed, even if an application was made for extension of e-waybill within time permitted, there was every possibility that 23-4-2022, being a Saturday, e-waybill would not have been revalidated within eight hours period**
Thus, penalty was not to be imposed on [In favour of assessee]

EXPIRY OF E-WAY BILL

Nirmal Kumar Mahaveer Kumar
v.
Commissioner of Central Goods & Services Tax
[2023]149taxmann.com128(Delhi)

- Goods were detained in transit on ground that E-Way Bill was already expired
- Assessee claimed that due to break down of earlier vehicle, it was changed and another vehicle was requisitioned
- They were given seven days time to file reply to show cause notice and to appear for personal hearing; however, demand was determined on same day on which said show cause notice was issued and, consequently, assessee could not avail opportunity to explain their case
- Since, tax that was raised on account of expiry of E-Way Bill, stood already paid, there could not be any intention to evade tax

HELD : Matter was to be remanded for fresh decision after giving opportunity to assessee to explain reasons as to why goods did not reach their destination before expiry of E-Way Bill [Section 129 of Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017] [Paras 9.1 to 21] [In favour of assessee]

EXPIRY OF E-WAY BILL

State of Karnataka
v.
Hemanth Motors
[2021]133taxmann.com323(Karnataka)

- Vehicle carrying assessee's goods reached destination on date of expiry of validity of e-way bill- Unloading of vehicle could not take place on same day
 - When vehicle was being unloaded on next day, Competent Authority visited spot and issued notice under section 129(3)
- Appellate Authority dismissed appeal filed by assessee - Single Judge of High Court took view that Appellate Authority should have considered merits of proceedings in light of provisions of rule138(10) which prescribed validity of e-way bill with extension of further period of eight hours after expiry and quashed order passed by Appellate Authority**

Held : As action by Competent Authority was taken at destination and not during transit, an inference had to be drawn that vehicle reached destination well within subsistence of valid period stipulated in e-way bill -Thus, order of Single Judge did not require any inference [Section 129 of Central Goods and Services Tax Act, 2017 read with rule 138 of Central Goods and Services Tax Rules,2017/Karnataka Goods and Services Tax Act, 2017] [Para 6] [In favour of assessee]

Ajay Shaw

v.

**Assistant Commissioner of State Tax
[2022]145taxmann.com162(Calcutta)**

GST : E-Way Bill being expired during transit due to break down of vehicle, demand and penalty was not imposable in absence of any intention to evade tax

Penalty was not imposable, there being no intention of evasion of tax on part of petitioner
Consequently, petitioner was entitled to get refund of tax and penalty in question subject
to compliance of legal formalities [Section 129 of Central Goods and Services Tax
Act,2017/West Bengal Goods and Services Tax Act, 2017] [In favour of assessee]

Sanskruthi Motors
v.
Joint Commissioner(Appeals)
[2022]145taxmann.com164(Kerala)

GST : Where there was no finding on attempt to evade tax while transporting goods with expired e-way bill, authority was to re-consider quantum of penalty

Adjudicating Authority rejected contention of petitioner that vehicle used for transportation had mechanical problem because of which goods could not be transported within time -

HELD : Demand of tax and imposition of major penalty were not sustainable
Penalty was to be imposed after granting opportunity of personal hearing and considering precedents [Section 129 of Central Goods and Services Tax Act, 2017/Kerala State Goods and Services Tax Act, 2017
Rule 138 of Central Goods and Services Tax Rules, 2017/Kerala State Goods and Services Tax Rules, 2017] [Para 4][Partly in favour of assessee]

Expiry Of E-way Due To Clerical Error

[2020] 114 taxmann.com 453 (AA- GST - HP)
Appellate Authority - GST, HIMACHAL PRADESH
Godrej Consumer Products Ltd.

v.

ACST & E-Cum-Proper Officer Circle Baddi, HP*
ROHIT CHAUHAN, ADDITIONAL COMMISSIONER
ORDER NOS. 2986-91†
FEBRUARY 11, 2020

1. A **Typographic error** while generating E-way bill

2. Petitioner mentioned **approx. distance between Puducherry to Himachal Pradesh as 20 kms. instead of 2000 kms.**

3. Appellant's truck **was carrying all legal documents including E-way bill, said E-way bill duly** contained all information which ought to be filled under rule 138

4. Result of which, **a validity of one day had been calculated by E-way bill portal instead of twenty days**

HELD: As per the circumstantial evidence and as per the decision of the Kerala High Court, it appears that the mistake in entering distance in E-way bill is a typographic error and may be **treated as a minor one(IN FAVOUR OF ASSESSEE)**

No Penalty for movement with Expired Eway Bill if mens-
rea not proved by Revenue

Orson Holdings Company Ltd.
v.
Union Of India
[2023]147taxmann.com71(Gujarat)

GST : E-Way Bill being expired during transit of huge distance, penalty recovered was to be refunded along with interest in absence of any ill-intent on part of assessee

E-way bill expired 48 hours prior to detention of goods

Petitioner company situated at Howrah, West Bengal and place of delivery was a distant place being Jamnagar, Gujarat - **No ill-intent on part of petitioner to use expired e-**

Waybill was established - Impugned order was to be quashed - Penalty recovered from petitioner was to be refunded along with interest [Section 129 of Central Goods and Services Tax Act,2017] [Paras 7, 9 and 11] [In favour of assessee]

ERROR IN GENERATING E-WAY BILL

NON AVAILABILITY OF ADDRESS OR PRINCIPAL PLACE OF BUSINESS OF SELLER

[2023] 153 taxmann.com 325 (Andhra Pradesh)
HIGH COURT OF ANDHRA PRADESH
Arhaan Ferrous And Non-Ferrous Solutions (P.) Ltd.
v.
Deputy Assistant Commissioner-1(ST)*
U.DURGA PRASAD RAO AND VENKATA JYOTHIRMAI PRATAPA, JJ.
WRIT PETITION NOS. 15481, 15482, 15486 AND 15487 OF 2023
AUGUST 3, 2023



SUPPLIER POS :
VIJAYWADA



RECEIPT :
Telangana

Revenue authority initiated proceedings against R-4 consignor under section 130 of CGST Act in view of **his absence in given address and not holding any business premises at Vijayawada**

HELD: Revenue authority could not confiscate goods of petitioner purchaser merely for reason that petitioner purchased goods from R-4 - **Responsibility of petitioner purchaser would be limited to extent of establishing that he bonafidely purchased goods** from R-4 for valuable consideration by verifying GST registration of R-4 available on official web portal and he needed not aware of credentials of said R-4 - Purchaser had to establish mode of payment of consideration and mode of receiving of goods through authenticated documents

WRONG SHIPPING ADDRESS & NAME IN E-WAY BILL

[2021] 133 taxmann.com 165 (SC)

SUPREME COURT OF INDIA

State of Madhya Pradesh

v.

Robbins Tunnelling and Trenchless Technology (India) (P.) Ltd.*

DR. D.Y. CHANDRACHUD AND MRS. B.V. NAGARATHNA, JJ.

SLP APPEAL (C) NO(S). 14196 OF 2021†

SEPTEMBER 17, 2021

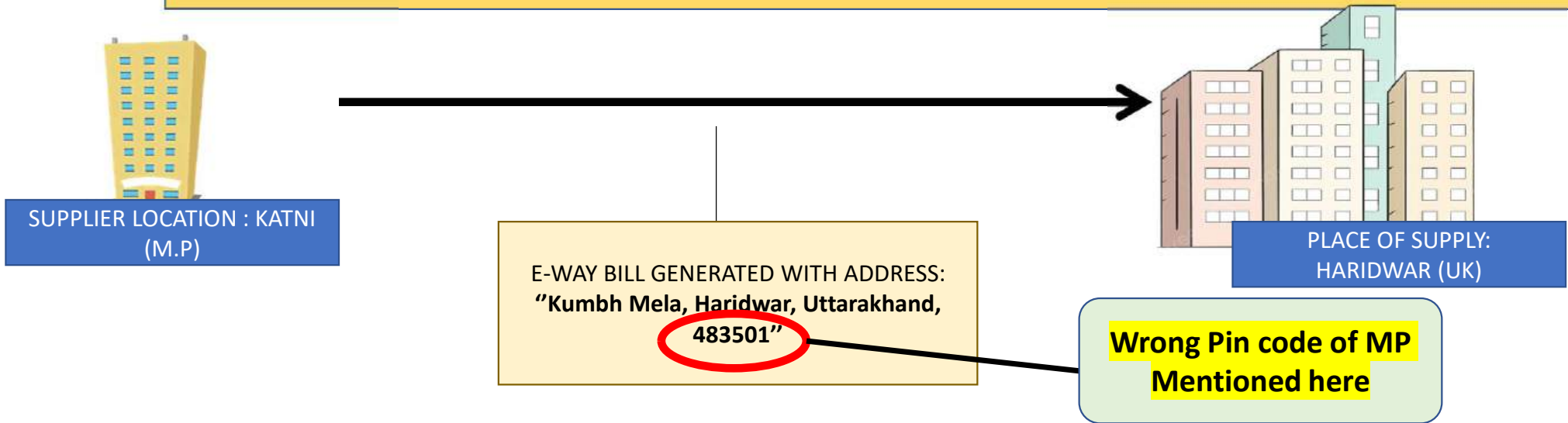
- Assessee **imported certain goods** from its parent company from USA
- Goods reached at custom Station (**Mumbai**)
- Clearing agent while shipping goods from Custom Station, Mumbai to assessee's place of business in Katni (Madhya Pradesh), generated e-way bill in **which by mistake erroneously entered its own name in column of consignee**
- Competent Authority detained aforesaid goods of assessee under transport due to **wrong shipping address in e-way bill and levied tax and penalty**

➤ Appellate Authority rejected appeal of assessee and affirmed order of tax and penalty levied by Competent Authority stating that in e-way bill name and address of recipient, **while matching with Bill of Entry and Bill of Lading, was not same and such mistake could not be treated to be a clerical mistake**

➤ High court held that Appellate Authority was not justified in **rejecting appeal of assessee on ground that mistake committed while generating e-way bill was not a clerical mistake** and quashed impugned orders

HELD : Special Leave Petition filed against judgment and order of High Court deserved to be dismissed [Section 129 of Central Goods and Services Tax Act, 2017 read with rule 138 of Central Goods and Services Tax Rules, 2017 Madhya Pradesh Goods and Services Tax Act, 2017]] [Para 2] [In favour of assessee]

WRONG PIN CODE IN E-WAY BILL



As address was wrongly filled up , software generated e-waybill of **validity period of one day**

While in transit through State of U.P. department found that E-waybill had expired

HELD : Assessee had rightly disclosed place of shipment as Haridwar, Uttarkhand –

Mere adding Pin Code of assessee's office at Katni, Madhya Pradesh after term 'Uttarakhand' should not be fatal

It seemed to be as a bonafide mistake and in absence of any allegation or material found showing ill-intent on part of assessee to transport goods for purposes of sale, imposition of tax and demand of penalty was wholly unfounded [Section 129 of Central Goods and Services Tax Act, 2017/Uttar Pradesh Goods and Services Tax Act, 2017] [In favour of assessee]

WRONG INVOICE NUMBER IN E-WAY BILL

[2022] 140 taxmann.com 228 (Uttarakhand)

HIGH COURT OF UTTARAKHAND

Sonal Automation Industries

v.

State of Uttarakhand*

SHARAD KUMAR SHARMA, J.

WRIT PETITION (M/S) NO. 1969 OF 2021

APRIL 27, 2022

Order imposing penalty was passed on sole ground that invoice number was wrongly mentioned in e-waybill being an inadvertent error at time of furnishing details

HELD: As per clause 5 of Circular No. 64/38/2018-GST minor errors/discrepancies that may arise while furnishing e-waybill details are to be overlooked –

Provisions of section 129 are not to be invoked invariably where it does not affect financial implications or liabilities

Penalty imposed on account of human error in invoice number was pardonable in terms of clause 5 of said Circular [In favour of assessee]

Wrong Tax Element in Tax Invoice

[2020] 114 taxmann.com 564 (Kerala)
HIGH COURT OF KERALA
Umiya Enterprise
v.
Assistant State Tax Officer*

1. Goods Supplied from one State to Another State

2. Tax invoice issued With CGST & SGST @9%

3. Competent Authority detained goods on ground that **no IGST was collected** in tax invoice and passed order demanding tax and penalty

Assessee filed writ petition contending that in tax invoice element of tax happened to be **wrongly shown as CGST and SGST at rate of 9 per cent as against IGST of 18 per cent**

HELD: In E-way Bill tax had been correctly declared as IGST Rs. 1.20 lakhs Hence ,Competent Authority was to be directed to release goods and vehicle on assessee executing a simple bond for demanded value [Para 8] [In favour of assessee]

WRONG TAX ELEMENT

S. P. Traders
v.
Assistant State Tax Office
[2023]147taxmann.com139(Kerala)

Penalty in terms of section 129 of CGST Act was imposed on ground that tax paid was shown as CGST/SGST in tax invoice instead of showing it as IGST

Assessee contended that mistake made in invoice was corrected at time of issuing credit note/debit note and in GSTR-3B return filed for July, 2022, amount paid had been correctly shown as IGST

HELD: Departmental officer was to be directed to verify GSTR-3B return to see if amount paid had been correctly shown as IGST - In case such amount had been correctly shown, officer should consider whether mistake committed could be penalized by imposing a minor penalty - Assessee was to be directed to appear before concerned officer for verification [Section 129 of Central Goods and Services Tax Act, 2017/Kerala State Goods and Services Tax Act, 2017] [Para 2] [Partly in favour of assessee]

Swapping Name Of Supplier And Recipient

[2022] 141 taxmann.com 116 (TRIPURA)
HIGH COURT OF TRIPURA
Satguru Impex
v.
State of Tripura*
INDRAJIT MAHANTY, CJ.
AND S.G. CHATTOPADHYAY, J.
WP(C) NO. 413 OF 2022
MAY 18, 2022

Name of buyer and seller was inadvertently mixed up in original E-waybill

Petitioner submits that the tax invoice and the E-waybill under Annexure-1 at pages-12 and 13 to the writ petition **erroneously mixed up the name of the seller and the buyer**. Apparently, that mistake existed in the original E-waybill produced. **However, mistake was duly corrected and another fresh E-waybill was generated**

HELD:Seizure although justified but goods and vehicle were to be released once error was rectified and corrected E-waybill was produced [Section 129 of Central Goods and Services Tax Act, 2017/Uttar Pradesh Goods and Services Tax Act, 2017] [Paras 6 to 8] [In favour of assessee]

Mere incorrect mentioning of address of one branch instead of another does not entail levy of penalty

Same Deutzfahr India(P.) Ltd.

v.

State of Telangana

***[2022]143taxmann.com123(TELANGANA)**

Mismatch between details in E-way Bill and goods in transport

Goods were transported from Ranipet, Tamil Nadu to Bongalur Village, Ibrahimpatnam Mandal, Hyderabad, **but as per E-way Bill, goods should have been transported to Hayathnagar in Telangana**

Petitioner contended that **there was only a stock transfer from its factory in Ranipetto its Depot at Bongalur Village as GST registration of petitioner in Telangana itself showed its principal place of business at Hayathnagar and additional place at Bongalur Village**

HELD :Payment of tax and penalty demanded was under economic duress and under apprehension of arrest - There was no illegal activity indulged as tax invoice showed that supplier had corporate office in Ranipet and that goods were being shipped to its depot in Bongalur Village -Department was to be directed to refund CGST and SGST collected along with penalty imposed on petitioner with interest [Section 129 of Central Goods and Services Tax Act, 2017/Telangana Goods and Services Tax Act, 2017] [Paras 14 to 17] [In favour of assessee]

Entire details of courier receipt were correctly mentioned in E-Way Bill system except for description of generator of E-Way Bill

Create Consults
v.
State of Madhya Pradesh
[2022]141taxmann.com526(Madhya Pradesh)

Bona fide clerical error resulted in generation of E-Way Bill in petitioner's name instead of manufacturer's name –

Entire details of courier receipt were correctly mentioned in E-Way Bill system except for description of generator of E-Way Bill -CBI&C Circular No. 64/38/2018-GST (F. No. CBEC/20/16/03/2017-GST), dated 14-9-2018 clarifying that **in case of consignment of goods accompanied with invoice or any other specified document and also with E-Way Bill, proceeding under section 129 might not be initiated –**

Order passed under section 129 was to be quashed - Respondent-revenue was granted liberty to consider petitioner's case for imposition of a minor penalty treating mistake to be clerical mistake as per said circular [Section 129 of Central Goods and Services Tax Act, 2017/Madhya Pradesh Goods and Services Tax Act, 2017] [Paras 7 to 10] [In favour of assessee]

GST: Consignment of goods meant for stock transfer could not be detained under section 129 on basis that e-way bill showed consignee as an unregistered person

**ABCO Trades(P.)Ltd.
v.
Assistant State Tax Officer
[2020]120taxmann.com180(Kerala)**

Assessee submitted that invoice that **accompanied transportation clearly referred to GSTIN of consignee and that mention of tax applicable in delivery challan was by mistake** and when goods were stock transferred and not sold, there was no need to pay tax at all –

Whether reasons shown for detaining consignment were not sufficient to attract provisions of section 129 and therefore respondent was to be directed to immediately release goods and vehicle - Held, yes [Para 4][In favour of assessee]

ERROR IN MENTIONING DATE

Green lights Power Solutions
v.
StateTaxOfficer
[2022]140taxmann.com295(Kerala)

Petitioner contended that error had occurred due to reason that instead of day-month-year (dd-mm-yy) format of Indian system, computer generated bill under month-day-year (dd-mm-yy) format-

HELD : All other details in invoice and e-Way Bill including nature of goods transported, details of consignor and consignee, GSTIN of supplier and recipient, place of delivery, invoice number, value of goods, HSN code, vehicle number etc. were tallied and had no discrepancy - Situation warranted imposition of only minor penalty as contemplated under C.B.I.&C. Circular No. 64/38/2018-GST, dated 14-9-2018 [Section 129 of Central Goods and Services Tax Act, 2017/Kerala State Goods and Services Tax Act, 2017 and Article 226 of Constitution of India] [Paras 8 to 14]

Incorrect distance being shown while generating E-way bill

**Tirthamoyee Aluminium Products
v.
State of Tripura
[2021]127taxmann.com680(TRIPURA)**

Whether in case goods are accompanied by an invoice as also an E-way bill, proceedings under section 129 should not be initiated if there is a error of one or two digits in a document number mentioned in E-way bill, and in such a situation, at best, penalty of Rs. 500 and 1000 may be collected under section 125 –

GST : In **case goods are accompanied by an invoice as also an E-way bill, and proceedings under section 129 should not be initiated if defect in E-way bill was as a result of a a minor oversight** and a clerical error and it was solely on account of incorrect distance being shown while generating E-way bill

GST : No Tax evasion could be alleged and seizure would not be sustainable where GST registration was amended by inclusion of address as provided in supplier's tax invoice and E-way Bill

**Algae Labs (P.) Ltd.
v.
State Tax Officer-
[2022]141taxmann.com225(Madras)**

Petitioner had placed purchase order for supply of a specialized spray dryer and parts and goods were accompanied with E-way Bill

Vehicle along with spray dryer were seized by respondent on ground that address of Consignee mentioned was **not a place mentioned in GST Registration of petitioner**

Both petitioner and respondent admitted that as on date such address had been included in petitioner's place of business in GST Registration

Post facto amendment of GST registration by inclusion of address, which was mentioned in tax invoice raised by supplier and in E-way Bill - In such case, there was no attempt to evade tax - Hence, seizure was set aside

[Section 129 of Central Goods and Services Tax Act, 2017 and Tamil Nadu Goods and Services Tax Act, 2017]

[Para 11] [In favour of assessee]

GST : Where petitioner had taken steps ex post facto to include new place of business for altering GST Registration, breach was only a technical one without any intention to evade tax and thus, vehicle and goods were to be released

Smart Roofing (P.)Ltd.
v.
State Tax Officer(INT),Madurai
[2022]141taxmann.com141(Madras)

There was **wrong declaration in E-Way Bill as to additional place of business**

However, **consignor and consignee were one and same entity, namely**, Head Office and Branch Office

Petitioner **had new place of business, but had not altered GST Registration** but steps had been taken ex post facto to include new place of business altering GST registration and registration certificate also had been amended

Vehicle and consignment was to be released to petitioner as there was only technical breach committed by petitioner without any intention to evade tax [Section 129 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 6 and 7] [In favour of assessee]

Wrong Vehicle Type Mentioned In Bill

GST : Where though vehicle type in e-way bills was **wrongly mentioned as ODC** while assessee used common truck.

[2023] 153 taxmann.com 5 (Allahabad)
HIGH COURT OF ALLAHABAD
Dish India (P.) Ltd.
v.
Assistant Commissioner GST
PRITINKER DIWAKER, CJ.
AND ASHUTOSH SRIVASTAVA, J.
WRIT TAX NO. 890 OF 2023
JULY 21, 2023

It was alleged that E-way Bills generated on basis of tax invoices was for ODC vehicle type but vehicle being used for transporting goods was truck (open body) (HGV) common truck

As **ODC vehicle type in e-way bills its validity was for 4 days** whereas petitioner had been using common truck (open body) (HGV) validity being only 24 hours to transport goods in violation of section 138(10) of CGST Act

HELD : Prima facie, petitioner had no intent to evade tax, nor was there any allegation by Asstt. Commissioner that petitioner had intent to evade duty nor any duty has been evaded

ERROR DURING GOODS-IN-TRANSIT

E-WAY BILL IN CASE OF GOODS SOLD IN TRANSIT

[2023] 152 taxmann.com 122 (Calcutta)
HIGH COURT OF CALCUTTA
Bitumix India LLP
v.
Deputy Commissioner of Revenue, State Tax

FACTS OF THE CASE

1. Goods were being transported and were covered by a valid E-waybill

2. Due to breakdown of vehicle goods did not move to its destination and E-waybill was expired

3. Consignee sold goods which were in transit to another purchaser

4. Goods were transported by same vehicle after generating a new E-Way Bill

Driver opted Different Route

[2020] 113 taxmann.com 176 (Kerala)
HIGH COURT OF KERALA
Kannanga yathu Metals
v.
Assistant State Tax Officer*
A.K. JAYASANKARAN NAMBIAR, J.
W.P. (C) NO. 30185 OF 2019
NOVEMBER 8, 2019

Pazhoor-Peppathi

Vettoor road-
Kaniyapuram

Competent Authority had detained goods of assessee under transport and also vehicle at a **place Vazhayila** on ground that e-Way Bill in respect of consignment showed that it was to cover a transportation from Pazhoor-Peppathi to Vettoor road-Kaniyapuram, **whereas Vazhayila was not on that route**

Assessee filed writ petition contending that there was no mandate under section 129 for detaining goods that were covered by a valid e-Way Bill **merely because driver of vehicle took an alternate route to reach same destination**

HELD: Since in instant case there was **no attempt at transportation contrary to e-Way Bill**, Competent Authority was to be directed to forthwith release goods and conveyance to assessee - Held, yes [Para 3] [In favour of assessee]

Presence of vehicle at a different route cannot be a basis for detention of goods and levying tax and penalty on the same.

In the, case of M/s Commercial Steel co. versus the Assistant of State tax reported as 2020-VIL-116-TEL, dated 04.03.2020

When the consignment was coming from Vidyanagar with all requisite documents through a vehicle, it was detained at Jeedimetla and a notice under Section 129 (3) of the C.G.S.T. Act, 2017 (for short, 'the Act') was issued alleging 'wrong destination' and directing payment of 9% of the Central Tax and 9% of State Tax and penalty equal to tax estimating the purchase value of Rs.11,14,579/- as against the actual tax invoice value of Rs.4,16,447/-

It has been held as under:

...merely on the basis of the fact that vehicle is found at a different route does not indicate that the petitioner intends to sell such goods locally and evade payment of CGST and SGST when IGST liability has already been discharged by the petitioner considering such supply as inter-state supply. Thus, amount collected by the department towards tax and penalty under the CGST and SGST act, 2017 under the threat of detaining vehicle is arbitrary and is in violation of Articles 14, 265 and 300-A of the constitution of India, Accordingly, said amount is required to be refunded by the department along with interest @ 6% per annum

**Karnataka Traders
v.
State of Gujarat
[2022] 137 taxmann.com 18 (Gujarat)**

- **Mere change in Route or undervaluation not sufficient to confiscate or detain the goods in transit**

The High Court in the instant case quashed the entire confiscation proceedings keeping in mind two things: First, mere change of route without anything more would not necessarily be sufficient to draw an inference that the intention was to evade tax. In the same manner, mere undervaluation of the goods also by itself is not sufficient to detain the goods and vehicle from being liable to confiscation

Rumki Biswas
v
Senior Joint Commissioner, Commercial Taxes
[2023] 148 taxmann com 359
(CALCUTTA)

FACTS

Part A of e-way bill was generated on 22-3-2022 and part B was generated on 24-3-2022

Since the goods could not be loaded into the vehicle, the appellant appears to have cancelled part A e-way bill dated 22nd March, 2022 and generated new part A e-way bill on 24th March, 2022.

The vehicle was intercepted, the driver was carrying part B of e-way bill in respect of which part A has been cancelled.

Prima facie, this could be considered to be a bona fide error and would not tantamount to intention to evade payment of duty or with a view to clandestinely move certain goods - However, appellate authority was required to establish bona fides of appellant and to prove that there was no wilful intention to evade payment of duty barring imposition of penalty - Appellate authority having not adequately dealt with this aspect, matter was to be remanded to appellate authority [Section 129 of Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017 - Rule 138 of Central Goods and Services Tax Rules, 2017/West Bengal Goods and Services Tax Rules, 2017] [Paras 7, 8 and 10][In favour of assessee]

NE Equipment Solutions Pvt Ltd
v
State of Tripura
2022 138 taxmann com 96 (TRIPURA)

FACTS

Detention of vehicle and seizure of machinery in transit

Necessary GST was collected by petitioner on sale of machinery as indicated in sale invoice and same was deposited with Government revenue

Vehicle was carrying proper E-way Bill; however, validity thereof expired on account of delay in **crossing check post as transport department stopped movement of vehicle on ground that machinery was not registered in State of Tripura**

Vehicle was release only after payment of fine by petitioner but, in meantime, validity of E-way Bill was expired. New E-way Bill generated by petitioner was not accepted by GST Department of State-

HELD : Machinery was to be released as Government had already earned substantial tax -Fault of petitioner if at all is rather technical - Detaining machinery at check post would expose it to deterioration particularly in prevailing season of heavy rainfall - His projects and works which must be in pipeline would also suffer - IGST liability having been fully discharged, no intention could be attributed on part of petitioner to evade tax - Accordingly, respondents were to be directed to release transport vehicle and machinery [Section 129 of Central Goods and Services Tax Act, 2017/Tripura Goods and Services Tax Act, 2017] [Paras 6 to 8] [In favour of assessee]

VEHICLE ERROR

E-WAY BILL IN CASE OF DEMO VEHICLE

[2023] 152 taxmann.com 9 (Madhya Pradesh)
HIGH COURT OF MADHYA PRADESH
KIA Motors India (P.) Ltd.
v.
State of Madhya Pradesh
SHEEL NAGU AND HIRDESH, JJ.
WRIT PETITION NO. 20600 OF 2020
MAY 1, 2023

Detention of goods and conveyance -

Demo vehicle was being transported in State of Madhya Pradesh, During course of transportation, vehicle was intercepted and it was found that no e-waybill as per requirement of section 129, read with rule 138 of GST Rules, 2017, was generated by assessee - **It was submitted by assessee that e-waybill was not required to be generated as demo vehicle being transported was not for sale and no financial consideration was involved in transaction**

HELD: Bare perusal of relevant statutory rule 138(1)(ii) makes it clear that causing of movement of a goods exceeding value of Rs. 50,000 **even for reasons or than supply**, makes it incumbent upon supplier to inform about supply of goods in Form-A GST, EWB-01 electronically on common portal - No such information as mandatory in rule 138(1) of GST Rules was given by assessee - **Therefore, entry of demo car into State rendered it exigible to GST** –

Hence, there was no fault or jurisdictional error in imposing tax and penalty [In favour of revenue]

DISCREPANCY IN DESCRIPTION OF VEHICLE

Varun Beverages Ltd.
v.
State of U.P
[2023]147taxmann.com341(Allahabad)
ROHIT RANJAN AGARWAL, J.
WRIT TAX NO. 958 OF 2019
FEBRUARY 2, 2023 .

Wrong vehicle number mentioned in e-way bill was to be considered as human error and same was covered under C.B.I. & C. Circular Nos.41/15/2018-GST dated 13-4-2018 and 49/23/2018-GST dated 21-6-2018

In instant case, there was Stock transfer which was not disputed –

No evidence was placed by department to prove **that there was any intention on part of dealer to evade tax**

Further, discrepancy in description of vehicle in e-way bill was minor - Orders for detention and penalty were to be set aside [Section 129 of Central Goods and Services Tax Act, 2017/Uttar Pradesh Goods and Services Tax Act, 2017] [Paras 7, 8, 9 and 10] [In favour of assessee]

No Penalty for not filling up Part B since intent to evade not proved

City kart Retail Pvt. Ltd.
v.
Commissioner Commercial Tax U.P. Gomti Nagar
[2022]144taxmann.com155(Allahabad)

Error in not filling form in part B of e-way bill on account of technical glitch and supported by Circular issued by Ministry of Finance wherein problem arising in filling part-B of e-way bill had been noticed and advisories were issued

Prima-facie no intent to evade duty could be ascertained, only on ground of non-mentioning of vehicle no. in Part-B – Orders were to be set aside and respondents were to be directed to refund amount collected and paid by petitioner in pursuance to impugned order [Section 129 of Central Goods and Services Tax Act, 2017/Uttar Pradesh Goods and Services Tax Act, 2017] [Paras 7 to 9] [In favour of assessee]

No Requirement of Recipient to be a Registered Person in a “Bill to Ship to” Transaction

DCM Shriram Ltd.
v.
StateTaxOfficer1(INT.)
[2023]148taxmann.com176(Madras)

❖ **GSTN/Unique Identity Number of recipient was not mentioned in invoice and ship to address was of an unregistered person**

Transaction in question was arranged as a **'Bill to-Ship to'** transaction wherein invoice reflecting consignee as taxable entity in transaction for administrative and logistical purposes and delivery of **consignment would be to a third party destination**

Rule 46 of Central Goods and Services Tax Rules, 2017 requires tax invoice to reflect GSTN/Unique Identity Number of recipient. **Full disclosure in regard to purchaser, including GST particulars, address and PAN number made by assessee in tax invoice and e-way bill**

Order of detention was to be set a side with direction to release detained consignment along with cargo [Section 129 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017 - Rule 46 of Central Goods and Services Tax Rules, 2017/Tamil Nadu Goods and Services Tax Rules, 2017] [Paras 9,10 and 11] [In favour of assessee]

NON-CANCELLING OF E-WAY BILL



Petitioner had waited 10 long days and did not cancel said E-waybill and had evaded tax

HELD :If movement had not been commenced on same day when e-waybill was generated, said e-waybill should be cancelled electronically as per Rule 138(9) -

Since, petitioner had waited 10 long days and did not cancel said E-waybill and had evaded tax, concerned authorities had rightly passed an order of seizure of goods [Section 129 of Central Goods and Services Tax Act, 2017/Uttar Pradesh Goods and Services Tax Act, 2017 - Rule 138 of Central Goods And Services Tax Rules, 2017/Uttar Pradesh Goods And Services Tax Rules, 2017][Paras 11, 12 and 14][In favour of revenue]

**CASE: Ayann Traders v. State of U.P(2023] 148 taxmann.com 357 (Allahabad)
HIGH COURT OF ALLAHABAD)**

SECTION 129 RELATED ISSUE

QUANTUM OF PENALTY

Sri Gopi Krishna Infrastructure (P Ltd)
v
State of Tripura
2021 125 taxmann com 291 (TRIPURA)

- **Competent Authority detained goods of assessee under transport on plea that vehicle was not carrying valid e-way bill**
- **He further passed an order under section 129(3) on assessee and imposed a tax of Rs. 3.56 lacs and penalty of Rs. 3.56 lacs (equivalent to tax payable) upon it**
- **Assessee filed writ petition challenging quantum of penalty**

Whether in instant case breach was covered under section 122(xiv) - Held, yes - Whether for breach which was covered under section 122(xiv) penalty was fixed at Rs. 10,000 - Held, yes - Whether assessee was to be directed to pay a sum of Rs. 10,000 as penalty for breach which was covered under section 122(xiv) - Held, yes [Para 9][In favour of assessee]

MOVEMENT OF GOODS NOT COMPLETED WITHIN SPECIFIED TIME

**Hanuman Ganga Hydro projects (P.) Ltd.
v.
Joint Commissioner, State Tax Authority, Siliguri
[2022]142taxmann.com348(Calcutta)**

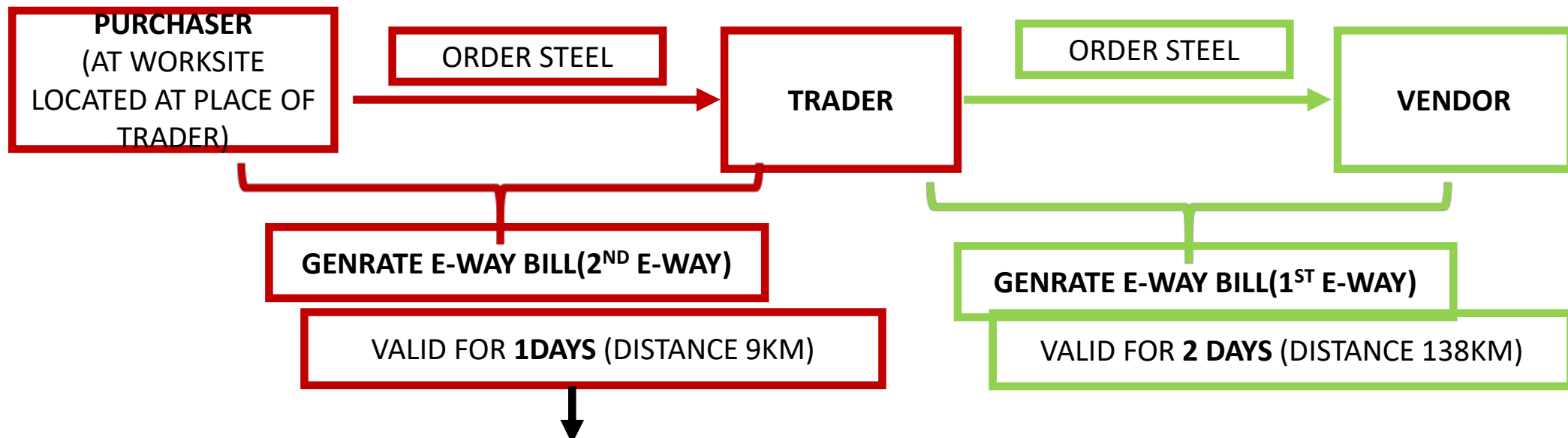
Goods and conveyance were detained on ground that validity of e-way bill stood expired

HELD : Movement of goods could not be completed within specified time on account of heavy nature of goods and length of vehicle

Period between expiry of validity period of e-way bill and time of interception and consequent detention of such vehicle was not substantial –

Considering nature of breach, same was not a grave offence Penalty was not imposable in instant case as there was no tax evasion - Authorities had not returned finding in impugned orders that there was any deliberate and wilful attempt to evade payment of tax - Penalty imposed was paid and conveyance was released and same was not disputed - Impugned orders were to be quashed and set aside -Department was directed to refund tax and penalty [Section 129 of Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017/Rule 138 of Central Goods and Services Tax Rules, 2017/West Bengal Goods and Services Tax Rules, 2017] [Paras 11, 14, 17,19 and 20] [In favour of assessee]

TIME LIMIT OF E-WAY



When vehicle was intercepted and detained by then second e-way bill had expired - It was alleged that expired e-way bill was used willfully to evade payment of tax –

Held: **No wilful attempt to evade payment of tax could be concluded as first e-way bill** was valid though second one had expired- Vehicle and goods are not liable for detention [Section 129 of Central Goods and Services Tax Act, 2017/ West Bengal Goods and Services Tax Act, 2017] [Paras 2, 8 to 11] [In favour of assessee]

Assistant Commissioner, State Tax v Ashok Kumar Sureka [2022] 141 taxmann com 378 (CALCUTA)

Mismatch in quantities was not so huge to entail proceedings

**Raghav Metals
v.
State of Haryana
[2022]141taxmann.com179(Punjab & Haryana)**

HELD : Person who had already paid a tax of Rs. 12,76,717 could not be said to have an intent to evade tax of Rs. 11000 - **Mismatch in quantities was not so huge to entail proceedings under section 129 of Haryana Goods and Services Tax Act, 2017**
[Section 129 of Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act, 2017] [Paras 8 and 9] [In favour of assessee]

TIME FRAMES UNDER SECTION 129 NOT FOLLOWED

[2022] 143 taxmann.com 201 (Madras)
HIGH COURT OF MADRAS
D.K. Enterprises
v.
Assistant/Deputy Commissioner (ST) Adjudication, Intelligence-I*
DR. ANITA SUMANTH, J.
W.P. NO. 22646 OF 2022
AUGUST 29, 2022

FACTS

1. **The consignment in question was intercepted on 13-8-2022 at 2.15 a.m. and immediately upon interception, statement of the driver in Form GST MOV-01 was issued on the same day**
2. **Simultaneous there with, Form GST MOV-02, being an order of physical verification/inspection of the conveyance, goods and documents, was also issued.**
3. **The reason for interception was the presumption of the officer that the goods were proposed to be unloaded at an unregistered place.** No reasons or details in respect of this assumption are assigned.

4. On 13-8-2022, Form GST MOV - 04, being physical verification report was also issued.

5. **Thereafter, there has been no notice issued by the respondents in terms of section 129 (3) of the Goods and services Tax Act, 2017 (in short 'Act') requiring a show cause notice to be issued within 7 days** from date of detention/seizure and hence this Writ Petition.

According to the petitioner, the time frames that have been set out under the Act, particularly Section 129(1) proviso and 129(3) have not been adhered to in the present case

Such time limit is not 7 working days, as is clear from amendment brought to clause 2(e) of CBI & C Circular No. 41/15/2018-GST, dated 13-4-2018 vide CBI & C Circular No. 49/23/2018-GST, dated 21-6-2018 -

Form GST MOV-02 issued does not tantamount to order of detention

HENCE Procedure followed by revenue being contrary to statutory requirements as well as instructions issued by Commissioner, proceedings were vitiated in entirety [Section 129 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017][Paras 9, 12, 13 and 17] [In favour of assessee]

ORDER PASSED BEYOND TIME LIMIT

DETENTION OF GOODS BY
DEPARTMENT

WITHIN 7
DAYS

ISSUED NOTICE

WITHIN 7
DAYS

FAILED TO PASS AN ORDER

[2023] 147 taxmann.com 35 (Madras)

HIGH COURT OF MADRAS

Deepam Roadways

v.

Deputy State Tax Officer*

ABDUL QUDDHOSE, J.

W.P. NOS. 33851 OF 2022 & 476 OF 2023

W.M.P. NOS. 33322 OF 2022, 425 & 428 OF 2023

JANUARY 23, 2023

HELD : Department was to be directed to release both goods and conveyance
Impugned orders were to be quashed [Section 129 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services
Tax Act, 2017] **[In favour of assessee]**

Personal Hearing is mandatory before passing any order section 129 detained demand

GST : Where conveyance was intercepted and notice was issued to which assessee filed a detailed reply and on same date revised notice was issued and no opportunity was granted to assessee to respond to that notice, consequent order for detention of goods was contrary to principles of natural justice; impugned order was to be set aside

[2023] 151 taxmann.com 141 (Madras)
HIGH COURT OF MADRAS
Shido Pharma
v.
Assistant Commissioner (ST)
DR. ANITA SUMANTH, J.
W.P. NOS. 10371 TO 10373 OF 2023
W.M.P. NOS. 10334 TO 10336 OF 2023
APRIL 3, 2023

Conveyance was intercepted and notice was issued by department in response to which assessee filed a detailed reply stating that provisions of IGST Act were inapplicable to transaction in question - On same date, **department issued a revised notice proposing to apply provision of CGST/SGST Act - However, no opportunity was granted to assessee to respond to that notice and assessee was never heard - Consequently, order for detention of goods was passed by department under section 129(3) - HELD: Proceedings had been concluded contrary to principles of natural justice** - Therefore, impugned order was to be set aside [Section 129 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Para 6] [In favour of assessee]

EXPIRED E-WAY BILL

GST : Where in matter relating to movement of goods and conveyance after expiry of e-waybill, notice was issued and order was passed simultaneously without granting opportunity of hearing, matter was to be remanded for fresh adjudication

[2023] 151 taxmann.com 359 (Patna)

HIGH COURT OF PATNA

Sangam Wires

v.

State of Bihar*

K. VINOD CHANDRAN, CJ.

AND MADHURESH PRASAD, J.

CIVIL WRIT JURISDICTION CASE NO.4924 OF 2023

APRIL 24, 2023

A number of
High Courts
including
Supreme Court
**Satyam
Shivam
Papers(P.)Ltd.**
([2022] 134
taxmann.com
241

HELD : Matter was to be remanded back to authority as it was evident that notice and order were passed simultaneously by same authority **without granting opportunity of hearing to petitioner –**

Impugned order was to be set aside [Section 129 of Central Goods and Services Tax Act, 2017/Bihar Goods and Services Tax Act, 2017] [Paras 9 to 13] [In favour of assessee]

Synergy Fertilizer (P.) Ltd. v. State of Gujarat
[2019] 112 taxmann.com 370 HIGH COURT OF GUJARAT

GST: While section 129 provides for deduction, seizure and release of goods and conveyances in transit, section 130 provides for their confiscation and, thus, **section 130 is not dependent to subject to section 129; for issuing notice of confiscation under section 130, mere suspicion is not sufficient and authority should make out a very strong case that assessee had definite intent to evade tax**

158. In many matters of the present type, we have noticed that the **goods are detained on the ground that the tax paid on the product was less**. In such matters, although the documents were found to be in order and the description of the product also accorded with the relevant declaration, still the consignment were detained on the ground that the tax paid was less.

159. In our opinion, the detention and seizure of goods on such ground cannot be justified. **In such an eventuality, the correct procedure which the inspecting authority is Expected to follow is to alert the Assessing Authority to initiate the proceedings for assessment of any alleged sale at which the dealer will have his opportunities to put forward his pleas on law and on fact**. What we want to convey is that the process of detention of the goods cannot be resorted to when the dispute is bona fide especially concerning the exigibility of tax and, more particularly, the rate of that tax. In the aforesaid context, we may refer to and rely upon a decision of the Kerala High Court in the case of N.V. Mohammed Sulthan Rawtger & Sons Dindigul, Tamil Nadu, Represented by Managing Partner, Raja Mohammed & Ors. vs. Union of India & Ors., reported in (2019) 61 GSTR 307-2018-VIL-502-KER.

Sections 129 and 130 are mutually exclusive and independent of each other.

Hon'ble High Court of Gujarat vide its order dated 23.12.2019 in the case of

Synergy Fertichem Pvt. Ltd. v. State of Gujarat, reported as [2019] 112 taxmann.com 370 (Gujarat) has, inter alia, held as under:

- if amount of tax and penalty, as determined under section 129 for the purpose of release of goods and conveyance, is not deposited within statutory time period, then consequence of same would be forfeiture of goods and vehicle with Government, this does not necessarily imply that confiscation proceedings can be initiated only in even of failure on part of owner of goods or conveyance in depositing amount towards tax and liability determined under section 129 of the Act.
- For the purpose of section 129(6), it would not be necessary for department to establish any intention to evade payment of tax - If tax and penalty, as determined under section 129, is not deposited within statutory time period, then goods and conveyance shall be liable to be put to auction and sale proceeds shall be deposited with the Government.
- Similarly, the reference to Sections 73 and 74 respectively of the Act is not warranted for the purpose of interpreting Sections 129 and 130 of the Act, more particularly, when they all are independent of each other. The provisions of Sections 73 and 74 of the Act are similar to the provisions of Section 11A of the Central Excise Act and Section 28 of the Customs Act, which deal with the adjudication proceedings. Despite this, Section 110 is present in the Customs Act, which speaks about seizure and similarly, Section 129 is present in the Act for detention/seizure. Therefore, Sections 129 and 130 of the Act have non-obstante clauses, whereby they can be operated upon in spite of Sections 73 and 74 of the Act.

Mere suspicion is not sufficient to invoke the provision of the confiscation.

**A.P. Refinery (P.) Ltd. v. State of Uttarakhand - [2021] 130 [taxmann.com](https://www.taxmann.com) 307
(Uttarakhand High Court)**

The petitioner was transporting Rice Bran Oil from its factory located in Jagraon, Punjab to a dealer and the GST officers intercepted vehicles.

The drivers produced e-Invoices, e-Way bills, bilty etc. but e-way bills were expired and vehicles were detained.

The department also issued confiscation order and the **petitioner challenged the confiscation orders by filing writ petition**. It was **contended that no opportunity of being heard was given before passing the confiscation orders under Section 130 in Form GST MOV-11**.

The honorable High Court observed that

- **the department failed to prove that the opportunity of being heard was given to the assessee** before the passing the orders of the confiscation in Form GST MOV-11.
- Moreover, before invoking the provisions of Section 130 for confiscation, there should be a very strong base to proceed for confiscation. **Mere suspicion is not sufficient to invoke the provision of the confiscation.**
- Therefore, it was found that **order under Section 130 was not passed in accordance with law** and liable to be set aside.
- The **court also directed to release the vehicles and goods upon execution of a bond** for the value of the goods in Form GST INS-04 and furnishing of a security in form of a bank guarantee.

Synergy Fertichem (P.) Ltd. v. State of Gujarat [2020] 116 taxmann.com 221

Issue

Where Competent Authority detained goods of assessee in transit and vehicle on ground that goods were not accompanied by E-way Bill, Whether goods shall be released **where tax has already been paid at the time of import?**

Facts of the case

Competent Authority detained goods of assessee in transit as well as vehicle on ground that goods were not accompanied by E-way Bill - He further issued on assessee a show cause notice under section 130 as to why goods in question as well as vehicle should not be confiscated for non-payment of an amount of Rs. 60.72 lakhs

Assessee filed writ petition seeking relief in this regard - It submitted that tax had already been paid on goods in question at time of import thereof

Held

Whether Competent Authority was to be directed to release goods and vehicle forthwith –

Held, yes –

Whether assessee was to be directed to make good its case before Competent Authority that show cause notice issued under section 130 deserved to be discharged in view of judgment of Gujarat High Court rendered in case of **Synergy Fertichem (P.) Ltd. v. State of Gujarat [2019] 112 taxmann.com 370 -**

Held, yes

Kerala High Court

**M/s. Indus Towers Limited v. The Assistant State Tax Officer (Intelligence)
2018 (01) LCX 0010=2018 (11) G.S.T.L 229(Ker.)**

- A combined reading of Sections 129 and 130, especially the provision contained in sub-section (6) of Section 129 indicates that the **detention of the goods is contemplated under the statutes only when it is suspected that the goods are liable to confiscation.**
- This aspect is seen clarified by the Central Board of Excise & Customs in FAQs published by them on 31-03-2017 also, Section 130 dealing with the confiscation of goods indicates beyond doubt that the confiscation of goods is contemplated under the statutes only when a taxable supply is made otherwise than in accordance with the provision contained in statutes and rules made there under with the intend to evade payment of tax. If that be so, mere **infraction of the procedural Rules like rules 55 and 138 of the CGST Rules can not result in detention of goods. Though they may result in imposition of penalty.** In other words, **detention of goods merely for infraction of the procedural Rules in transactions which do not amount to taxable supply is without jurisdiction.**

Siddhbali Stone Gallery v. State of Gujarat

[2020] 115 taxmann.com 313 (Gujarat) HIGH COURT OF GUJARAT

- **Where Competent Authority detained goods of assessee under transport as well as vehicle and issued notice under section 130,** said authority was to be directed to release goods on payment of tax amount and further assessee was to be advised to make good its case before Competent Authority that notice issued under section 130 deserved to be quashed
- The authorities concerned cannot invoke Section 130 of the Act at the threshold, i.e., at the stage of detention and seizure. **What we are trying to convey is that for the purpose of invoking Section 130 of the Act at the very threshold, the authorities need to make out a very strong case.**
- Merely on suspicion, the authorities may not be justified in invoking Section 130 of the Act straightway. **If the authorities are of the view that the case is one of invoking Section 130 of the Act at the very threshold, then they need to record their reasons for such belief in writing, and such reasons recorded in writing should,** thereafter, be looked into by the superior authority so that the superior authority can take an appropriate decision whether the case is one of straightway invoking Section 130 of the Act. Any opinion of the authority to be formed is not subject to objective test
- **GST : Where Competent Authority detained goods of assessee under transport as well as vehicle and issued notice under section 130,** said authority was to be directed to release goods on payment of tax amount and further assessee was to be advised to make good its case before Competent Authority that notice issued under section 130 deserved to be quashed

Age Industries (P.) Ltd. v. Assistant State tax Officer[2018] 89 taxmann.com 276

Section 129 of the Kerala Goods and Services Tax Act, 2017 read with rules 55 and 138 of the Kerala Goods and Services Tax Rules, 2017 - Detention, seizure and release of goods and conveyances in transit - Assessee was engaged in manufacture and sale of surgical gloves - It sent goods to three parties for quality appraisal on job work basis against series delivery challans - Adjudicating Authority, in exercise of power under section 129, detained said goods for reasons that (i) they were not accompanied by document provided for under rule 138(2), and (ii) they were intended to be supplied to an unregistered firm - Whether detention of goods on above reasons was illegal - Held, yes [Paras 4,5,6] [In favour of assessee]

Kerala High Court earlier in writ petition (C) No. 196 of 2018 held that the power of detention contemplated under section 129 can be exercised only in respect of goods which are liable to be confiscated under section 130. **There is no taxable supply when goods are transported on delivery challans so long as the authenticity of the delivery challan is not doubted. Therefore, such goods cannot be detained merely for infraction of rule 138(2).** In the light of the said judgment, the first reason on which the goods are detained *viz.* that the goods were not accompanied by the document provided for under rule 138(2) is unsustainable. [Para 4]

[2021] 123 taxmann.com 23 (Karnataka) HIGH COURT OF KARNATAKA
M.S. Meghdoot Logistics v. Commercial Tax Officer, (Enforcement-09), Bengaluru

GST: Where after detention of conveyance and seizure of goods in transit with issuance of notice under section 129(3), there is information about intent to evade payment of tax, it is not open to proper officer to treat notice issued under section 129(3) as having abated or truncate such proceedings and initiate proceedings under section 130 for confiscation with issuance of notice thereunder; proper officer to determine applicable tax and penalty under section 129 while simultaneously initiating proceedings for adjudging confiscation under section 130 [Para 29]

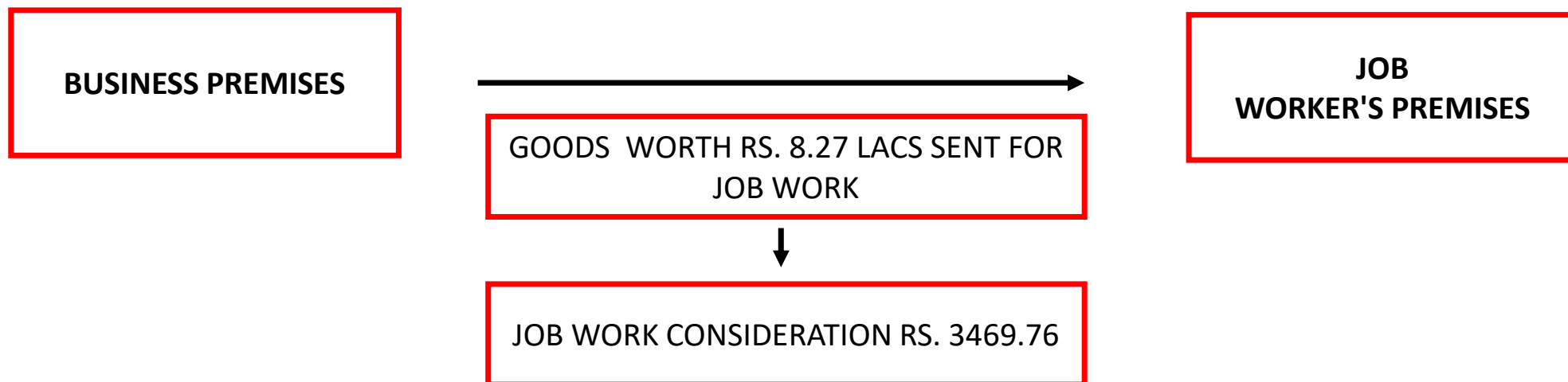
Section [129](#), read with section [130](#) - Detention, seizure and release of goods and conveyances in transit - Petitioner, a transporter, was approached by a consignor for transportation of certain tobacco products to a consignee - Revenue after noting that consignee's place of business was Tamil Nadu where tobacco products were banned passed order of detention under section 129(1) for confirmation of existence of consignor and consignee - Accordingly, revenue issued show cause notice under section 129(3) calling upon petitioner why there should not be levy of tax and penalty - Thereafter, revenue issued subsequent notice under section 130 to show cause why goods and conveyances should not be confiscated, holding that show cause notice issued under section 129(3) had abated on premise that goods were brought into State of Karnataka with documents raised in favour of taxpayers in Tamil Nadu with ulterior motive and mala fide intent to evade taxes -

**[2019] 105 taxmann.com 154 (Karnataka)
HIGH COURT OF KARNATAKA
Shree Enterprises
v.
COMMERCIAL TAX OFFICER***

Section [129](#), read with section [130](#), of the Central Goods and Services Tax Act, 2017/Section [129](#), read with section [130](#), of the Karnataka Goods and Services Tax Act, 2017 - Detention, seizure and release of goods and conveyances in transit - Competent Authority detained goods of assessee under transport and also vehicle and issued a penalty notice under section 129(1)(b), to which assessee filed objections - Competent Authority without considering objections filed by assessee passed order of confiscation of goods and conveyance - Assessee filed writ petition challenging order of confiscation - Whether impugned order of confiscation of goods and conveyance deserved to be set aside - Held, yes - Whether Competent Authority was to be directed to consider objections filed by assessee and pass appropriate orders after quantifying tax and penalty for purpose of section 129 - Held, yes [Para 12] [In favour of assessee]

Discrepancies In Valuation

E-WAY BILL IN CASE OF SERVICE



The Detention of goods made during return journey from job worker's premises to assessee's premises for reason that value shown in e-way bill that accompanied MS plates on its return journey was only Rs. 3,469; whereas consignment of MS plates that was sent for job work was valued at Rs. 8.27 lacs

As per the statutory provisions, when goods are sent to other premises for job work, it is the same delivery challan that has to accompany the transportation for the onward and return journey as well. At any rate the objection of the respondents is only with regard to the value shown in the e-way bill that accompanied the goods on its return journey.

The value shown in the e-way bill on the return journey had to correspond with the value shown in the invoice raised by the job worker, and the rate of Rs. 3469.76/- shown in both the documents was the actual consideration paid to the job worker for the job work done on the goods sent to him by the petitioner.

The e-way bill as also the job work- invoice, the quantity of the goods and description of goods is correctly shown. In as much as there could be no doubt with regard to the identity of the goods that were being transported,

HELD :The difference in the value shown in the e-way bill (from that shown in the original delivery chalan) **was only on account of the requirement of maintaining uniformity in the value shown in the tax invoice raised by the job worker and the e-way bill generated**

Detention goods was wholly unjustified and Competent Authority was to be directed to release goods to assessee - [In favour of assessee]

[2021] 124 taxmann.com 299 (Kerala)
HIGH COURT OF KERALA
P.H. Muhammad Kunju and Brothers

v.

Assistant State Tax Officer, Palakkad*
A.K. JAYASANKARAN NAMBIAR, J.
W.P. (C) NO. 25943 OF 2020 (P)
NOVEMBER 25, 2020

Discrepancies In Valuation Of Goods

Authority detained goods of assessee under transport as well as vehicle on ground that there were **discrepancies in valuation of goods being transported**, i.e., valuation did not seem to have been properly conducted and passed order u/s 129(3) and demand tax & penalty



According to the petitioners, the respondents if at all in the course of inspection of the vehicle or the moment they find that there was **discrepancy in the valuation, they could not have seized and detained the vehicle or the goods rather should have permitted the vehicle to proceed further to the destination of supply as per the invoice.**



As regards the dispute of valuation, the respondent authorities could have initiated a proceeding **against the petitioners in accordance with law as is applicable for evasion of tax**

HELD: Impugned order passed under section 129 and order of demand of tax and penalty both being unsustainable deserved to be set aside and Competent Authority was to be directed to release goods and vehicle forthwith [In favour of assessee]

**K.P. Sugandh Ltd. v. State of Chhattisgarh [2020] 122 taxmann.com 291
(Chhattisgarh)**

Undervaluation cannot be reasons for detention of goods in transit if vehicle containing the goods is accompanied by proper invoice and e-way bill

Hon'ble Allahabad High Court in case of M/S Shamhu Saran Agarwal and Company Versus Additional Commissioner Grade-2 and 2 Others in Writ Tax No. - 33 of 2022 decided on January 31, 2024

6. In the present case, there is no dispute that the invoice, e-way bill and all other relevant documents were accompanied with the goods. Furthermore, there was no mismatch in the description of the goods with the documents. The only ground for detention of the goods was that the valuation of the goods as per the invoice was not correct. In my view, this is not a valid ground for detaining the goods as the officer concerned was not competent to carry out such detention.

7. In the event of under valuation, appropriate notice under Sections 73 or 74 of the Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as "the Act") is required to be issued as per the procedure provided therein. If the Court holds such a detention to be valid, it would be open to the authorities to carry out detention on their whims and fancies. The detention of the goods in such a scenario is not envisaged under the Act and the officers have not been vested with such a power to detain the goods and thereafter impose penalty under Section 129 of the Act. Specific provisions have been provided for detection of under valuation and the GST officials have to adhere to the same. It is to be noted that only after issuance of notice under Sections 73 or 74 of the Act, if the goods are found under valued, penalty can be imposed.

VALUE OF E-WAY BILL

Shri Surya Traders
v.
Union of India
[2022]137taxmann.com51(Allahabad)

- 90 bags of Betel Nut Product were sold to two different registered dealers** by issuing two tax invoices, were being transported to its destination and the same were along with tax invoices & e-way bill.
- The said goods were intercepted by the proper officer on 9-10-2019 around 17:33 hours at Varanasi. **On the physical verification, three bags of Betel Nut Product were found without tax invoice and a show cause notice was issued to the petitioner**
- The said goods were intercepted by the proper officer on 9-10-2019 around 17:33 hours at Varanasi. **On the physical verification, three bags of Betel Nut Product were found without tax invoice AND E-WAY BILL and a show cause notice was issued to the petitioner**
- It was stated that value of **three bags of betel nut product was less than Rs. 50,000;** therefore, e-way bill was not generated

HELD : Rule 138 requires that if value of transaction is more than Rs. 50,000 then only e-way bill is required .Value of three bags was below Rs. 50,000 –
So far as consignment of 87 bags of betel nut product was concerned, same was duly accompanied with all proper documents as prescribed under GST Act/Rules –

Authorities below were not justified in detaining goods and demanding security for release of same(In favour of assessee)

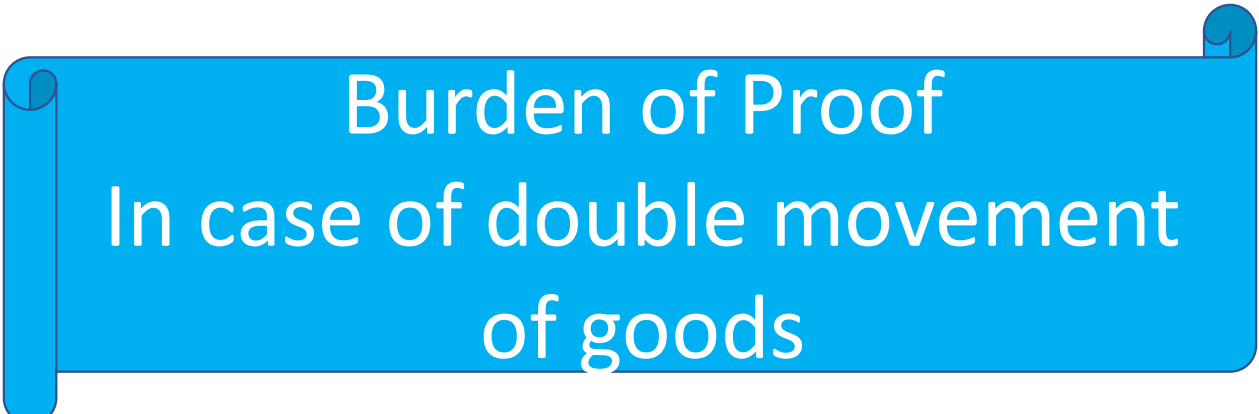
Applicability of section 129 (3)

Issues:

Poddar Trading Company vs. Commissioner, Commercial Tax, U.P. [2024] 160 taxmann.com 492 (Allahabad)[11-03-2024]

Where penalty under section 129(3) was imposed upon assessee in spite of there being search and seizure carried out under section 67.

HELD : There did not seem to be any controversy with regard to imposition of penalty under section 129, in spite of there being search and seizure carried out under section 67 - In light of same, entire proceedings that had been initiated had no feet to stand, and accordingly, **impugned orders were to be quashed** [Paras 5 and 6] **[In favour of assessee]**



Burden of Proof
In case of double movement
of goods

M/S ANANDESHWAR TRADERS VERSUS STATE OF U.P. AND 2 OTHERS 2021 (1) TMI 1091 - ALLAHABAD HIGH COURT

ISSUE

E-way bills were not cancelled and the transportation of the goods commenced four days thereafter, it has been inferred that the said e-way bills had been reused.

Rule 138(9) does not mandate automatic e-way bill cancellation if goods are not transported promptly. Rule 138(9) does not specify consequences for not canceling e-way bills within 24 hours.

The appellate authority have not made any inquiry from the purchasing dealer or any toll plaza or other source, nor the petitioner was confronted with any adverse material and shifted the onus on the assessee to establish non-transportation of goods on an earlier occasion .

The Court highlighted that the assessing authority failed to establish through evidence that goods were transported twice, shifting the onus to the authority.

The judgment emphasized that conclusions must be based on factual evidence, not assumptions. The appeal authority's actions erroneous and set aside the order, noting the lack of findings on tax evasion or document reuse. Remanding the case was deemed unnecessary, and any deposited amount was to be returned to the petitioner.

HELD THAT

M/S K Y Tobacco Works Pvt. Ltd. vs. State Of U.P. And 4 Others Citation: 2024 LiveLaw (AB) 319 [WRIT TAX No. - 574 of 2019]

FACTS

The detention was based on a statement by the driver, who **allegedly claimed that he was transporting goods for the second time using the same documents.** This statement was recorded on form MOV-01, which was not provided to the petitioner. It is to be noted that The petitioner's goods were intercepted, and all relevant documents were found to be in order, matching the description of the transported goods.

HELD THAT

From the documents available, it is clear that the respondent authorities have not been able to indicate or prove any mens rea for evasion of tax.

In view of the ratio laid down in the judgement in M/s Anandeshwar Traders v. State of U.P. and Others [2021 (1) TMI 1091 - ALLAHABAD HIGH COURT], it is clear that it is the duty of the authorities to ascertain that whether the double movement of the goods has taken place actually. In the present case, no such burden of proof has been discharged by the respondents.

The impugned orders dated August 13, 2018, August 14, 2024 and the appellate order dated January 8, 2019 are quashed and set aside - amount of penalty and security that has been deposited by the petitioner to be refunded within a period of six weeks from date.

The petition is allowed.

A blue scroll-shaped banner with white text. The banner has a vertical strip on the left side that looks like a scroll edge, and the top and bottom edges are slightly curved. The text is centered within the banner.

E-way Bill must be issued
before the movement starts

ISSUE

The issue involved in case of **GURUNANAK ARECANUT TRADERS v. COMMERCIAL TAX & ANR. WRIT TAX No. - 1177 of 2022 dated 05.03.2025 Allahabad High Court** is the imposition of penalty under Section 129(3) for generating E-Way bill after detention of the goods.

FACTS

Petitioner's goods were intercepted at Mathura at 4:28 a.m. on 10.06.2022. The goods while in transit were not carrying the e-way bill , which was generated on 10.06.2022 at 7:36 a.m. . Moreover the goods in transit is taxable @ 18% and not @5% as declared by the petitioner.

Held That

- Mere furnishing of the documents subsequent to the interception can not be a valid ground to show that there was no intention to evade tax. There must be some reasonable grounds to justify the nonproduction of documents at the proper time.
- The application of Section 129(3) of the Act by the authorities is valid and just in law.
- Moreover, conduct of the petitioner clearly reveals that an intention to evade the tax is there as not only the goods in transit were not accompanied by e-way bill but also the description of goods declared by petitioner was different which was intercepted by the taxing authorities on 10.06.2022. Goods declared were taxable @5% while the goods found on verification were taxable @18%.
- The petitioner herein has not complied with the provisions of law, hence the steps taken by the respondent authorities are proper and in accordance with the law and require no interference by this court

The Hon'ble Court with the above findings, **dismissed the writ petition.**



Section 129 (3) is an
alternative

STATE OF U.P. THRU. SECY. INSTITUTIONAL FINANCE UP LKO AND ORS VERSUS M/S MAA
VINDHYAVASINI TOBACCO PVT LTD THRU DIR UDAY PRAKASH
2022 (10) TMI 999 - ALLAHABAD HIGH COURT

Issues:

Challenge to order setting aside tax and penalty under Section 129(3) of the CGST Act based on **intercepted goods transported on pre-used tax invoices.**

The case involves a challenge to an order passed by the appellate authority setting aside the demand of tax and penalty imposed under Section 129(3) of the CGST Act. The goods being transported by the respondent were intercepted based on intelligence that they were being transported on pre-used tax invoices. The authorities passed an order directing the respondent to pay tax and cess on the goods. The appellate authority set aside this order, stating that there was no material for detention and seizure of the goods under Section 129. The **appellate authority emphasized that the levy of tax and penalty cannot be based on presumption alone.**

The petitioner argued that the goods were being transported twice over on the same set of invoices, but the **court found this argument not acceptable**. The court highlighted that goods must be accompanied by E-way bills as per Section 138 of the CGST Act rules, which was not considered in the assessment order. The court noted that the provisions in Chapter 19, including Section 129, provide for the release of intercepted goods during transportation, giving the assessee an **opportunity** to pay the required amounts for release. **The power under Section 129(3) determines the penalty to be paid, offering an alternate mode for assesseees to avoid future litigation by paying the amount.**

Since the respondent did not avail the benefit under Section 129 and the appellate authority found **the basis for proceedings to be non-existent, the court declined to interfere with the appellate authority's order.** The court emphasized that if the assessee does not utilize the benefits under Section 129, the department can take steps under Chapter 15 and Section 122 of the CGST Act to determine tax liability and penalty. Consequently, the writ petition was dismissed, and the interim order was vacated.

[2023] 150 taxmann.com 158 (Allahabad)

HIGH COURT OF ALLAHABAD

Maa Mahamaya Alloys (P.) Ltd.

v.

State of U.P.*

PANKAJ BHATIA, J.

WRIT TAX NO. 31 OF 2021

MARCH 23, 2023

ISSUE 1

GST : Entire tax determined and penalty levied only on basis of survey by taking recourse under section 130 of CGST Act instead of recourse to section 74 ibid was not sustainable

Failure to issue show-cause notice or initiate proceedings under section 74 ibid –

Entire tax determined and penalty levied only on basis of survey by taking recourse under section 130 ibid instead of recourse to section 74 ibid was not sustainable [Section 130, read with sections 67 and 74, of Central Goods and Services Tax Act, 2017/Uttar Pradesh Goods and Services Tax Act, 2017] [Paras 11, 12, 13, 20 and 21] [In favour of assessee]

ISSUE 2

GST : Service of show-cause notice on accountant of assessee-firm was not valid service

Service of notice is completed only when it is tendered to taxable person or on his Manager or authorized representative

Hence, Service on accountant of assessee-firm is neither contemplated nor provided for under section 169(1)(a) and thus, service as claimed on accountant could not be held to be a valid service

ISSUE 3

GST : Valuation done at appellate stage without resorting to mandate and manner prescribed in section 15 of CGST Act read with Rules was not sustainable

There is no prescription for valuation of goods on basis of eye estimation

Valuation done at appellate stage without resorting to mandate and manner prescribed in section 15 of Central Goods and Services Tax Act, 2017, read with rule 27 of Central Goods and Services Tax Rules, 2017, was not sustainable [

INTERPLAY OF SEC 129 & Sec 130

- Practically in all cases of detention and seizure of goods and conveyance, the authorities would straightway invoke Section 130 of the Act and thereby issue a notice calling upon the owner of the goods or the owner of the conveyance to show-cause as to why the goods or the conveyance, as the case may be, should not be confiscated.
- Once such a notice under Section 130 of the Act is issued right at the inception, i.e, right at the time of detention and seizure, then the provisions of Section 129 of the Act pale into insignificance.

**Section 129, clause (6)
provides that if the tax and
penalty is not paid within 14
days of detention or seizure**

then further proceedings would be initiated in accordance with the provisions of Section 130.

- The **first thing the authorities need to look into closely is the nature of the contravention of the provisions of the Act or the Rules.**
- The second step in the process for the authorities to examine closely is whether such contravention of the provisions of the Act or the Rules was with an intent to evade the payment of tax.
- **For the purpose of issuing a notice of confiscation under Section 130 of the Act at the threshold, i.e., at the stage of Section 129 of the Act itself, the case has to be of such a nature that on the face of the entire transaction,** the authority concerned is convinced that the contravention was with a definite intent to evade payment of tax.

SECTION 129 V/S SECTION 130

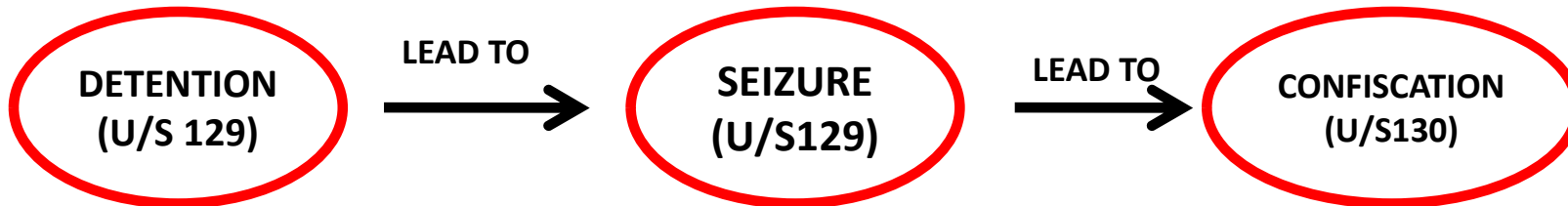
•**SECTION 129:** Specify & indicate that it provides for detention, seizure and release of goods and conveyances in transit

•Invoking section 129 of the GST Act, all that is required is '**contravention of the provisions of the Act or the Rules.**

•**Section 130:** Confiscation of goods or conveyances and levy of penalty

•Invoking the provisions relating to confiscation which fundamentally requires the presence of '**intent to evade payment of tax**'.

Since, **detention & seizure of goods and confiscation of goods has been differently envisaged in the GST law by providing separate & dedicated provisions of section 129 and section 130 respectively.**



SECTION 129 V/S SECTION 130

•**SECTION 129**: **BARING THE RIGHT OF ACCESS TO THE OWNER OF THE GOODS BY A LEGAL ORDER**

•**SECTION 130**: **Transfer of the title of the goods → government authority.**

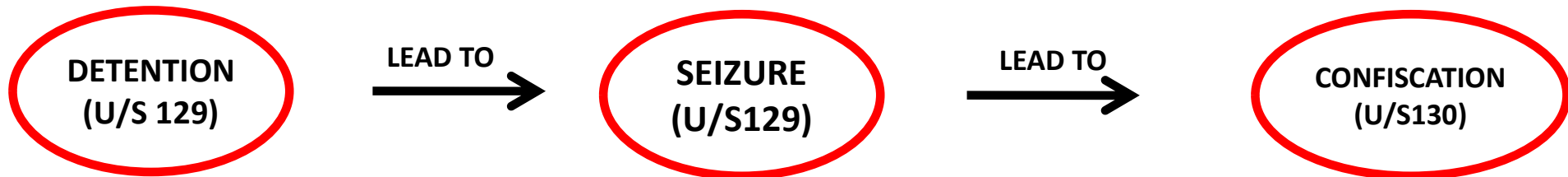
•**SECTION 129**: Specify & indicate that it provides for detention, seizure and release of goods and conveyances in transit

•Invoking section 129 of the GST Act, all that is required is '**contravention of the provisions of the Act or the Rules.**

•**Section 130**: **Confiscation of goods or conveyances and levy of penalty**

•Invoking the provisions relating to confiscation which fundamentally requires the presence of '**intent to evade payment of tax**'.

Since, detention & seizure of goods and confiscation of goods has been differently envisaged in the GST law by providing separate & dedicated provisions of section 129 and section 130 respectively.



• SECTION 129: THE **OWNERSHIP** OF THE GOODS STAYS WITH THE **OWNER** ONLY

• SECTION 130: THE **OWNERSHIP + POSSESSION** OF THE GOODS transfers to the **Government authority**

• SECTION 129: THE **DETENTION** IS THE **FIRST STEP** IN CASE OF SUSPICION

• SECTION 130: THE **CONFISCATION** IS THE **FINAL STEP** OF THE PROCEEDINGS

SECTION 129:

Instances when goods/conveyance shall be liable to detention as per GST Laws

- **Goods or conveyance in transit contravening the Act or rules are liable for detention or seizure.**
- **Documents related to such goods and conveyance are also subject to action.**

SECTION 130:

Instances when goods/conveyance shall be liable to confiscation as per GST Laws

- **Supplies or receives goods in contravention of the Act with intent to evade tax.**
- **Fails to account for goods liable to tax.**
- **Supplies goods liable to tax without obtaining registration.**
- **Contravenes any provision or rule under the CGST/SGST Act with intent to evade tax.**
- **Uses a conveyance as a means of transport for goods in contravention of the Act.**

SECTION 129: Time period of 14 days is given to pay tax and penalty for release of goods u/s 129.

SECTION 129: Time period of 3 months is given to pay fine in lieu of confiscation u/s 130.

Section 129
Vs
Section 130

In the case of Synergy Fertichem Pvt. Ltd. vs. State of Gujarat, the Gujarat High Court R/SPECIAL CIVIL APPLICATION NO. 4730 of 2019 provided a detailed interpretation of Sections 129 and 130 of the Central Goods and Services Tax (CGST) Act, 2017. The Court highlighted several key distinctions and principles regarding the detention and confiscation of goods and conveyances under these sections.

1.

Independent Operation of Sections 129 and 130:

Section 129 pertains to the detention, seizure, and release of goods and conveyances in transit, while Section 130 deals with the confiscation of goods or conveyances and the levy of tax, penalty, and fine. Although both sections begin with a non-obstante clause, a harmonious reading indicates that they are independent of each other. Section 130 is not dependent on or subject to Section 129; **both sections are mutually exclusive.**

2.

Requirement of Intent to Evade Tax for Confiscation:

The phrase "**with an intent to evade the payment of tax**" in **Section 130** is significant. Mere failure to pay tax does not suffice; there must be a deliberate attempt to defeat the provisions of the law. However, the element of **mens rea (guilty mind) cannot be read into Section 130.**

3.

Procedural Safeguards Before Confiscation:

The Court emphasized that authorities must **not issue a notice of confiscation under Section 130 without complying with the procedure outlined in Section 129.** Specifically, no tax, interest, or penalty shall be determined without giving the person concerned an opportunity of being heard.

4.

Confiscation Not Justified on Mere Suspicion:

The Court held that for issuing a **notice of confiscation** under Section 130, **mere suspicion is insufficient.** Authorities must have material evidence to form a belief in good faith that there was **an intent to evade tax.** The formation of such an opinion should reflect intense application of mind.

5.

Detention Not Warranted for Bona Fide Disputes:

Goods should not be detained solely because the tax paid on the product was less. In cases of bona fide disputes, especially **concerning the eligibility or rate of tax,** the inspecting authority should alert the assessing authority to initiate appropriate proceedings, allowing the dealer to present their case.

6.

Confiscation as a Penal Measure:

Confiscation under Section 130 is considered an aggravated form of action, intended to deter tax evasion. It is not applicable in every case of contravention of the Act or Rules. The action must be held in good faith and should not be a mere pretence.

7.

Legislative Review Suggested:

The Court observed inconsistencies between Sections 129 and 130 and suggested that the Legislature should revisit these provisions to remove ambiguities and ensure clarity in their application.

It may be noted that just for the reason of **minor procedural lapses** which might have occurred due to human error/mistake without any 'intention to evade tax', goods are being subject to 'detention' and 'seizure' as per the present provisions of Section 129 of the GST Act, 2017 and penalty is being imposed for trivial reasons.

The Controlling Authorities or even the first Appellate Authorities within the CGST/SGST Departments are not even proceeding to apply their mind and wisdom to distinguish as to whether the default or so-called **contravention if any may really lead to any monetary advantage to the taxpayer or whether the transaction is really a genuine & legitimate transaction because they have not to examine and decide whether there is any presence of 'intention to evade tax' in the questioned transaction.**

This situation is creating large number of disputes all over the country and huge amount of scarce money of the taxpayer is being blocked in penalty payment for release of Goods & Conveyance in transit. **Further, non-availability of GST Tribunal is creating great trouble, as every small matter which is totally factual in nature gets subject to litigation before Hon'ble High Courts resulting in unwanted burden and pendency before Hon'ble High Courts.**

Circular No. 64/38/2018-GST dated 14.09.2018 issued by CBIC, wherein directions had been given in **very few listed circumstances in which proceedings under Section 129 of the CGST Act must not be initiated which may have occurred due to human error/mistake in the documents**, this supports the view that large number of seizure of Goods are being made for inconsequential & frivolous reasons. The relevant extract is as under:

Further, in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the following situations:

- (a) **Spelling mistakes in the name** of the consignor or the consignee but the GSTIN, wherever applicable, is correct;
- (b) **Error in the pin-code** but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;
- (c) **Error in the address of the consignee** to the extent that the locality and other details of the consignee are correct;
- (d) **Error in one or two digits of the document number** mentioned in the e-way bill;
- (e) **Error in 4 or 6 digit level of HSN where the first 2 digits** of HSN are correct and the rate of tax mentioned is correct;
- (f) **Error in one or two digits/characters of the vehicle number.**

On Perusal of the above, there have been some instances wherein the Circular of CBIC itself says that proceedings under Section 129 of the CGST Act, 2017 could not be initiated. But still there are many other similar circumstances wherein Seizure are being done without any justifiable reason, the presence of 'intention to evade tax' in the transaction of supply of goods must be the mandatory requirement for any action of 'seizure' of Goods in Section 129 as has already been prescribed the related provision for 'confiscation' of Goods in Section 130 of the GST Act, 2017.

INTENTION TO EVADE PAYMENT OF TAX

It may be noted that the basic difference between Section 129 and 130 of the CGST/SGST Act, 2017 is the element of intention/ mens rea, has been clearly provided in Section 130, **but the same element is not explicitly mentioned in Section 129.**

The concept of mens rea/ **"intention to behind evasion of tax"** has been established by recent Judgments pronounced by Hon'ble Telangana High Court. Due to these Rulings, trappings of Section 130 are being introduced in Section 129 pertaining to the element of "intention to evade tax".

Reference is invited to **the Judgment of Sree Rama Steels v Deputy State Tax Officer [2021] 124 taxmann.com 97/44 GSTL 228/85 GST 259** was pronounced by the Hon'ble Telangana High Court wherein at para 54 it was observed as under

- (i) that at the time of detention and seizure of goods or conveyance, the first thing the authorities need to look into closely is the nature of the contravention of the provisions of the Act or the Rule;
- (ii) the second step in the process for the authorities to examine closely is whether such contravention of the provisions of the Act or the Rules was with an intent to evade the payment of tax;
- (iii) a holistic reading of the statutory provisions and the Circular noted above, indicates that the Department does not paint all violations/transgressions with the same brush and makes a distinction between serious and substantive violations and those that are minor/procedural in nature; and in a given case, the contravention may be quite trivial or may not be of such a magnitude which by itself would be sufficient to take the view that the contravention was not with the necessary intent to evade payment of tax.

On bare perusal of the above, it could be said that the Hon'ble Telangana High Court have laid emphasis and uphold the Jurisprudence on the penalty provisions that penalty could only be levied if there is an intention to evade tax

MEANING OF THE WORDS "DETENTION", "SEIZURE" AND "CONFISCATION"

Distinction between the words "detention" and "seizure" has been prescribed in the Judgment of Friendly Video Vision v. Commissioner of Customs Import & General, 2019 (369) ELT 1090 (Tri. – Delhi),

It was way-back been clarified by Hon'ble High Court of Kolkata in the case of Collector of Customs & Central Excise v. Hindustan Motors Ltd. 1979 (4) ELT J313 that mere direction of the proper Officer asking the owner of the goods to not to remove them except with the permission may be a simple prohibitory order but when there is an overt act that amounts to exercise of dominion over the goods that it becomes an act of seizure of goods.

Distinction between detention and seizure **stating that detention can be for the purpose of enquiries without making seizure**

At the time of enquiry the assessee has all opportunity to produce the documentary proof in order to establish the correctness. **If the documents prove bonafide, the goods detained shall be returned with immediate effect without any formal procedure to be followed.**

But in case those **documents are not sufficient to satisfy the objection** raised by the Competent Officer, it is at this stage that the control of goods shall be taken by the Department and loss of complete domain over the goods and the **technical order of the competent authority about something called as seizure is announced**

"Confiscation" has been defined in the Judgment of
Gunwantal Godawat v Union of India, 2017 (356) ELT 321 (S.C.),

It had roots in the latin word Confiscare-to consign to fiscus i.e. transfer to treasury, as a punishment or in enforcement of law. Though, the expression is generally understood as having implications associated with a crime. However, it is now well settled at least by two 14 earlier judgments of this Court that the liability for confiscation of property could be purely civil in nature as a consequence of the violation of some prescription of law commonly described as 'forfeiture'. **The words 'forfeiture' and 'confiscation' have come to be used interchangeably.** The General Clauses Act, 1972 does not employ the word 'confiscation'. On the other hand, it employs the word 'forfeiture' in Section 6(d)15. Having regard to the long history of the usage of those two expressions, we are of the opinion **that 'forfeiture' is an expression which takes within its sweep 'confiscation' also for the purpose of law.**" (emphasis supplied)

TRAPPINGS OF SECTION 130 IS PRESENT IN SECTION 129

Section 130 are very much present in Section 129

As provision of **section 129(6)** specifically provides selling of goods and depositing money into Government Treasury in case specified penalties are not being paid.

Section 130 is explicitly mentioned in the provision itself that "there should be intention to evade tax" which is absent in section 129 while the provision of section 129(6) fairly brings the concept of "confiscation"; while "confiscation" clearly based on "**intention to evade tax**" is distinctly prescribed under section 130.

129(6) "Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under subsection (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under subsection (3)".

On bare perusal of the above, it could be said that section 129(6) is having trappings of section 130 and therefore section 129(6) should have the requisite of "intention to evade taxes". Without mentioning the words "**intention to evade taxes**", the provision is providing plenary powers to the revenue which is being to abuse.

The Legislature could make suitable amendments in section 129(6) pertaining to "intention to evade taxes" as discussed in the abovementioned Judgments of Hon'ble Telanagana High Court or could add a sub-clause in section 129 to adopt the trappings of section 130 in section 129 and in furtherance to it, section 130 could be omitted.

"REASONS TO BELIEVE" SHOULD BE RECORDED UNDER SECTION 129 & SECTION 130 OF THE GST ACT

It may be noted that neither in section 129 nor section 130 of the CGST Act, 2017 the concept of "Reasons to Believe" has not been incorporated, which has resulted in draconian powers to the GST Authorities in the terms of issuing Notices without recording any logical reasons especially under section 129 where there is presently no principle of "intention to evade tax". Therefore the concept of "Reasons to believe" should be inserted in order to stop the abuse of powers illogically by the GST Authorities specially the Mobile Squad Officers.

It may be noted that in the similar provisions pertaining to "Seizure", concept of "Reasons to believe" has been provided in section 110 of the Customs Act, 1962 and section 26 of the Gold Control Act, 1965 so guidance may be taken from such well-established provisions of Indian Law.

It is also important to consider that in the erstwhile law of Sales Tax or Trade Tax or Commercial Tax or VAT in every state of the country, the concept of 'intention to evade tax' and presence of mans-rea was an essential requirement before seizure of goods and imposition of penalty; the Mobile Squad Officer was required to pass the logical order for seizure of goods based on 'reason to believe' proving presence of 'intention to evade tax'.

The erstwhile law thus was more reasonable as the goods in transit could not be seized by Mobile Squad Officers for trivial and frivolous issues caused due to human errors/mistake usual course of business; judicial process always came to rescue the genuine and valid transaction.

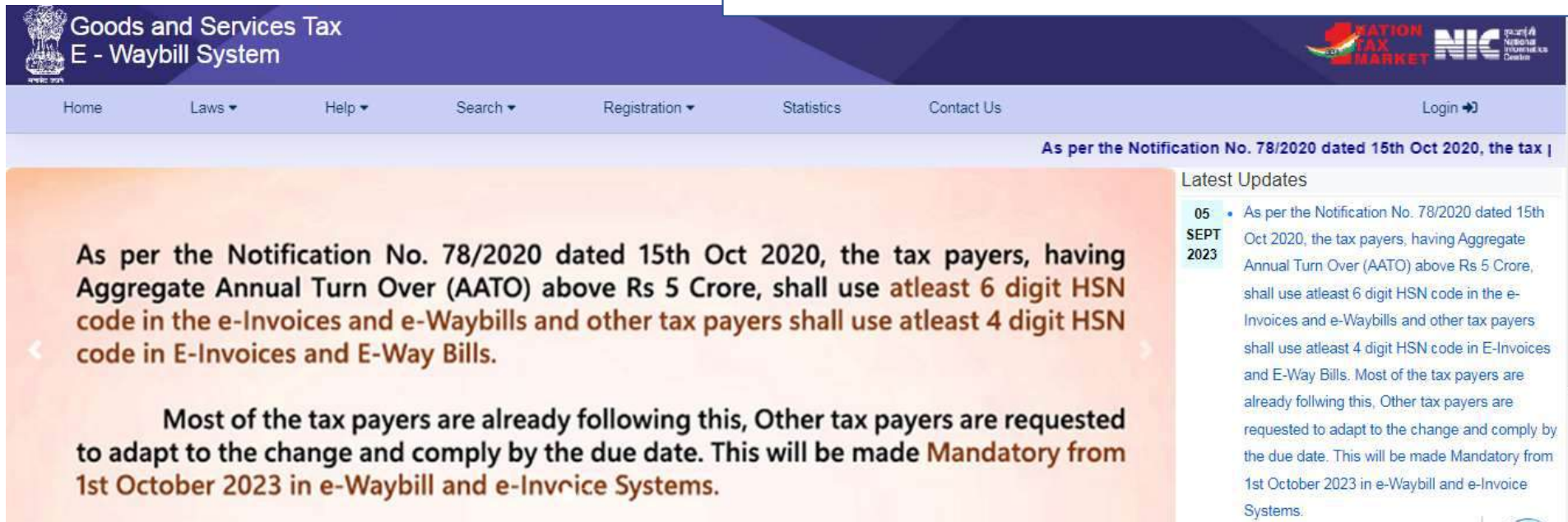
Section 131 :- Confiscation or penalty not to interfere with other punishments.

**Administrative
provision**

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973 (2 of 1974), no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

Eg. Prosecution, arrest

[Notification No. 78/2020 dated October 15, 2020](#)



The screenshot shows the GST E-Waybill System website. The header includes the Government of India logo, the text 'Goods and Services Tax E - Waybill System', and logos for 'NATION TAX MARKET' and 'NIC'. The navigation menu contains 'Home', 'Laws', 'Help', 'Search', 'Registration', 'Statistics', 'Contact Us', and 'Login'. A main notification banner states: 'As per the Notification No. 78/2020 dated 15th Oct 2020, the tax payers, having Aggregate Annual Turn Over (AATO) above Rs 5 Crore, shall use at least 6 digit HSN code in the e-Invoices and e-Waybills and other tax payers shall use at least 4 digit HSN code in E-Invoices and E-Way Bills. Most of the tax payers are already following this, Other tax payers are requested to adapt to the change and comply by the due date. This will be made Mandatory from 1st October 2023 in e-Waybill and e-Invoice Systems.' A 'Latest Updates' sidebar on the right shows a date of '05 SEPT 2023' and a partial text of the notification.

The GST E-way bill system has issued an ***Update dated September 05, 2023*** stating that, As per the [Notification No. 78/2020 dated October 15, 2020](#), the taxpayers, having Aggregate Annual Turn Over (“AATO”) **above Rs 5 Crore**, shall use **at least 6 digit HSN code in the e-Invoices and e-Waybills and other taxpayers shall use at least 4 digit HSN code in E-Invoices and E-Way Bills.**

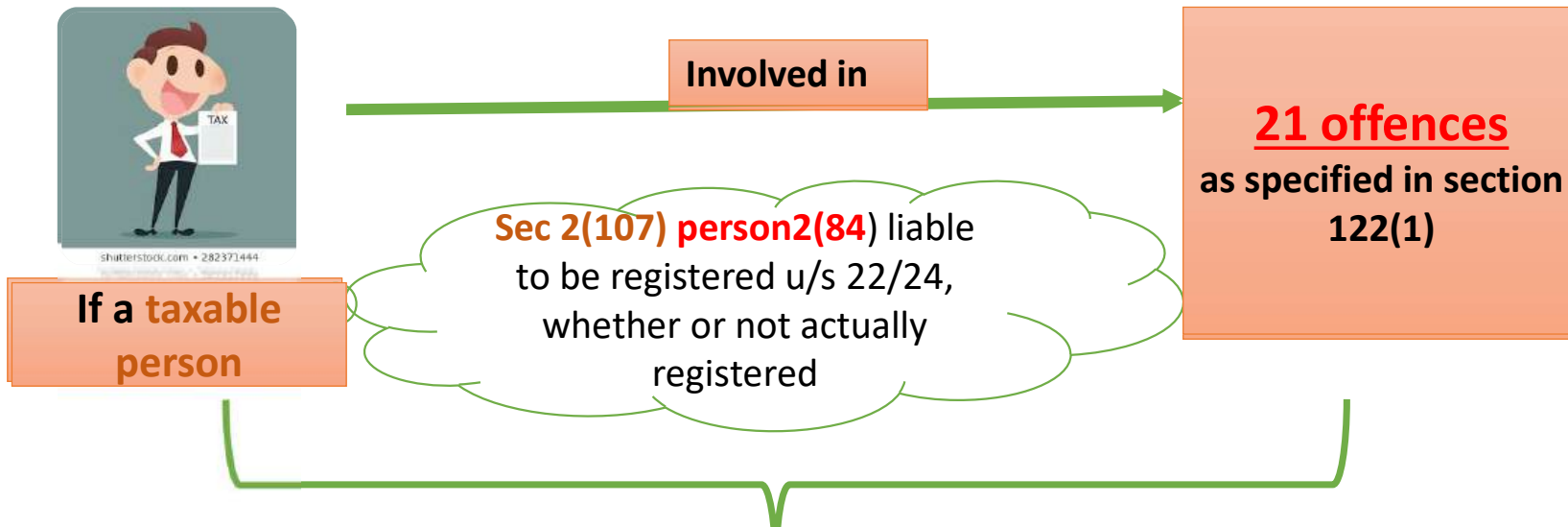
Most of the tax payers are already following this, Other tax payers are requested to adapt to the change and comply by the due date.

This will be made Mandatory from October 01, 2023 in e-Waybill and e-Invoice Systems.



Section 122

Section 122:- Penalty for certain offences



shall be liable to pay a penalty of

A. RS. 10000 or **10000*2**

B. an amount equivalent to the

100%

Tax, TDS, TCS, ITC, Refund

i. tax evaded or

ii. TDS (the tax not deducted under section 51 or short deducted or deducted but not paid to the Government) or

iii. TCS (tax not collected under section 52 or short collected or collected but not paid to the Government) or

iv. input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently,

whichever is higher

List of 21 offences as mentioned in sec. 122(1)

(i) supplies any goods or services or both **without issue of any invoice** or **issues an incorrect or false invoice** with regard to any such supply;

Invoice  Supply 

Invoice incorrect  Supply

e.g Mr. A sells cement (@28%) whereas he raises an invoice titled sand (@5%) and pays concessional rate of tax @5%. This is an offence of classification and evades tax of @23%

(ii) issues any invoice or bill **without supply of goods or services or both** in violation of the provisions of this Act or the rules made thereunder; e.g Bill Selling



Invoice but No G/S  BOGUS BILL

(iii) collects any **amount** as tax but **fails to pay the same** to the Government beyond a period of **three months** from the date on which such payment becomes due; e,g persons selling goods on MRP

(iv) collects **any tax** in **contravention of the provisions of this Act** but **fails to pay** the same to the Government beyond a period of three months from the date on which such payment becomes due;
e.G Hotel charge tax on supply of services where the tariff of rooms is below INR 1,000/-. At a later stage, they claim the supply being exempt and does not deposit.

(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

Fails to collect TDS or collects Lesser Amount or Fails to pay TDS

List of 21 offences as mentioned in sec. 122(1)

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

Fails to collect TCS or collects Lesser Amount or Fails to pay TCS

(vii) **takes** or utilizes input tax credit **without actual receipt of goods or services** or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

ITC-without Receipt of G/S

(viii) **fraudulently obtains refund** of tax under this Act;

Fraudulent Refund

(ix) takes or **distributes input tax credit in contravention of section 20**, or the rules made thereunder;

ISD

(x) **falsifies** or **substitutes financial records** or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

False Records

(xi) is liable to be registered under this Act but **fails to obtain registration**;

No Registration

e.g. Mr. Rohit is engaged in inter-state supply of various taxable goods. As per sec 24(i) of the CGST Act, he is mandatorily required to take registration in GST but fails to take registration.

(xii) furnishes any **false information** with regard to registration particulars, either at the time of applying for registration, or subsequently;

False Particulars for Registration

e.G Additional Place of Business not disclosed

List of 21 offences as mentioned in sec. 122(1)

(xiii)	obstructs or <u>prevents any officer in discharge of his duties</u> under this Act;	Prevents Officers on duty
(xiv)	transports any taxable goods <u>without the cover of documents</u> as may be specified in this behalf;	e.g E way Bill missing found after delivery
(xv)	<u>suppresses his turnover leading to evasion of tax</u> under this Act;	
(xvi)	<u>fails to keep, maintain or retain books of account and other documents</u> in accordance with the provisions of this Act or the rules made thereunder;	
(xvii)	<u>fails to furnish information or documents called for</u> by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;	
(xviii)	supplies, transports or stores any goods which he has reasons to believe <u>are liable to confiscation under this Act;</u>	
(xix)	issues any invoice or document by <u>using the registration number of another registered person;</u>	
(xx)	tampers with, or <u>destroys any material evidence</u> or document;	
(xxi)	disposes off or <u>tampers with any goods that have been detained, seized, or attached</u> under this Act,	

Various DRC Forms

Form GST DRC-01A	Intimation of tax ascertained as being payable under Sec 73(5)/ 74(5)
Form GST DRC-01	Summary of Show Cause Notice
Form GST DRC-02	Summary of Statement
Form GST DRC-03	Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement.
Form GST DRC-04	Acknowledgement of acceptance of payment made voluntarily
Form GST DRC-05	Intimation of conclusion of proceedings
Form GST DRC-06	Reply to the Show Cause Notice
Form GST DRC-07	Summary of the order



CASE STUDY

2) *E-way bill clarification in respect of material received from Indian Oil Corporation Limited (IOCL), Delhi.*

- a. As regards the above issue, your good self has raised the concern that the assessee is buying its raw material (Plastic Granules) from Indian Oil Corporation Limited (IOCL), which is a Government-owned Company and a public sector undertaking (PSU) of the Government of India. The comparative purchases from IOCL during the period 1.4.2018 till 31.3.2024. The detail of the same is tabulated as under:

							Amount in Rs	
Vendor Name and the place	GST No	Taxable Value	CGST	SGST	IGST	Total Amt	Remarks	
Indian Oil Corporation Limited-Delhi	[REDACTED]	38,012,204	3,421,098	3,421,098	-	44,854,401	Apr'18 till Mar'23	
Indian Oil Corporation Limited-Odisha		2,799,342	-	-	503,882	3,303,224	Single purchase in July'2021	
Indian Oil Corporation Limited-UP		2,424,514	-	-	436,413	2,860,927	Only 2 Purchases (July'21 and Mar'23)	
Indian Oil Corporation Limited-Panipat		138,247,567			24,884,562	163,132,129	May'18 till Sep'23	
Total Purchases		181,483,627	3,421,098	3,421,098	25,824,856	214,150,680		

- b. With regard to raw material purchases made by the assessee from IOCL, Delhi, we like to submit that the billing is made by IOCL, Delhi (GSTIN 07AAACI1681G1ZR), however the material is getting dispatched from their Consignee Stockist and Distributor Channel Agent (DCA) M/s BLS Polymers Limited, a Public Limited Company having GSTIN 07AAACB0421B1ZO, their office at 604, Indraprakash Building, 21 Barakhamba road, Connaught Place, Central Delhi, New Delhi-110001 and Godown at Indian Oil Corporation Ltd (DOPW) DCA Operated Polymer Warehouse (Code 03B7) C/O BLS Polymers Ltd at A 7/7 Jhilmil Industrial area, Shahdara, East Delhi, Delhi-110095. The above godown is duly appearing as additional place of business in the GST registration certificate of M/s BLS Polymers Limited (Copy of GST RC of DCA enclosed at Annex A). These details have also been confirmed by the DCA in their email dated 22nd January'2025 to the assessee. (copy enclosed at Annex A1).
- c. In the tax invoice issued by IOCL, Delhi, it has been clearly mentioned that the supplier is IOCL DOPW C/O BLS polymers Ltd (Address at Jhilmil Industrial Area, Delhi 110095) and consignee as well as ordering party name has been mentioned as M/s Xyz Metals Pvt Ltd, 77, Rajasthani Udyog Nagar Industrial Area, GT Karnal Road, Delhi 110033.

- d. At the time of preparing the E-way bill by the taxpayer, when the assessee entered the GSTIN of IOCL, Delhi (07AAACI1681G1ZR), **the place of dispatch got auto populated** as IOCL, Delhi's Stockist and DCA office address at "New Delhi-110001" whereas the place of delivery got auto populated as Delhi-110033, which is the factory address of the assessee. The assessee while generating the Eway bill did not manually change the place of dispatch to A 7/7 Jhilmil Industrial Area, Delhi-110095 which is the address of the godown of the Consignee Stockist and DCA M/s BLS Polymers Limited, from where the movement of goods had originated simply because (i) the assessee was not aware of the entire arrangement between IOCL, Delhi and its Consignee Stockist and DCA M/s BLS Polymers Limited, (ii) nor was the assessee made aware by IOCL, Delhi or its DCA M/s BLS Polymers Limited to manually change the dispatch details on the E-way bill portal from Delhi-110001 to Delhi-110095.
- e. It is also humbly submit that even as on date, at the time of preparing the E-way bill, upon entering the GSTIN of IOCL, Delhi (07AAACI1681G1ZR) the place of dispatch is getting auto populated as Stockist and DCA office address at "World Trade Centre Indian Oil Corporation Limited, 2nd Floor, Babar Lane, New Delhi-110001" due to portal's in built feature. (Pls ref the screenshot taken on 20th Jnauary'25 enclosed at Annex B).
- f. We understand that even in the case of billing made by IOCL, Delhi to its other customers as well, having similar arrangement as ours, the E-way bills are generated with the same address.
- g. It may please be noted that both the addresses (office as well as godown of Stockist and DCA M/s BLS polymers Limited) mentioned above pertains to the State of Delhi only. The goods have moved intrastate from Delhi to Delhi.
- h. It will be also appropriate to mention here that the goods were accompanied with the valid tax invoice and purchase order from the recipient where all the particulars i.e. the party name, taxable value and the tax amount, place of delivery, GSTIN of the purchaser, quantity of the goods were correctly mentioned and when matched with the EWAY Bill generated w.r.t. the consignment, all the particulars are correctly appearing in the EWAY Bill except for the place of deliver which belonged to the purchaser only as his principal place of business.
- i. From perusal of the **above it can clearly be visualized that it is merely an unintentional clerical mistake due to auto populate option on the E-way portal**. The generation of E-way bill and the tax invoice before the movement of the goods and handling over both the tax invoice and E-way bill to the transporter for the purpose of delivery clearly shows the intension of the party was never to evade the tax but it is only an **inadvertent error**.

- j. From Perusal of the chart given below, it is clearly evident that there was only a clerical error in mentioning Principal Place of Business of Purchaser instead of Additional Place of Business being correct place of delivery. Even all the particulars of Invoice, E way Bill and Purchase Order duly matches with the goods transported.



<u>Particulars</u>	<u>Invoice</u>	<u>E-way Bill</u>	<u>P.O. on Record</u>
Purchaser Name	✓	✓	✓
Address of Purchaser	✓	✓	✓
GST no. of Purchaser	✓	✓	✓
Amount of Shipment	✓	✓	✓
Quantity of goods delivered	✓	✓	✓
Goods Description	✓	✓	✓
Documents Accompanied	✓	✓	✓
Generation of Document before Delivery	✓	✓	✓
Place of Delivery	✓	Principal Place of Business instead of Additional Place of Business of delivery.	✓
Tax Particulars	✓	✓	✓



In this respect, we wish to humbly submit as under:

- a. The transaction of raw material purchase has taken place with IOCL, a Government-owned company and a public sector undertaking (PSU) of the Government of India. The address as well as other details of the Consignor and consignee are appearing correctly on the Tax Invoice. There are proper invoices as well as E-way bills in possession of the assessee to justify the raw material purchase transactions. The payments in respect of these purchases have been duly made to the vendor (IOCL, Delhi) through banking channels within stipulated timelines.
- b. There is absolutely no intention on part of the assessee to evade the tax. Since this is a clerical error and does not involve any interstate movement of goods, neither there is any loss of revenue to the Department nor there is any case of tax evasion and the assessee has a Bona fide intent, it may be treated as a minor procedural lapse. The GSTIN mentioned in the E-way bill is perfectly correct.

The only clerical error is that while generating the E-way bill, the Delhi office address is getting auto populated (New Delhi-110001) which was not changed manually to the Godown address (Delhi-110095) which is also based in Delhi. Moreover, the assessee was not aware of the entire arrangement between IOCL, Delhi and its Consignee Stockist and DCA M/s BLS Polymers Limited, nor was the assessee made aware by IOCL, Delhi or its DCA M/s BLS Polymers Limited to manually change the dispatch details on the E-way bill portal from Delhi-110001 to Delhi-110095. To add, even till date, as we enter the GSTIN details of IOCL, Delhi (07AAACI1681G1ZR), the E-way bill portal is still automatically auto populating the office address (Delhi-110001) and not the godown address (Delhi-110095).

- c. The goods have moved intrastate within the same State i.e. Delhi to Delhi and there is no inter-state movement and we have the complete documentation to demonstrate that the error was clerical.
- d. One of the conditions for availing ITC as per Section 16 of the GST Act is that the buyer has received the goods and/or services. The goods are said to be received if these are delivered by the supplier to the buyer or his representative or agent or another person as directed, against a document of transfer of title of goods. We also like to add that E-way bill is not the only piece of evidence to justify the movement of goods and the same is also not a mandatory stipulation under Section 16 of the GST Act. The said goods were duly received by the assessee which were used in the production of finished goods on which due output tax was discharged by the assessee upon supply of goods to its Customers.
- e. It's an un-intentional clerical error made by the assessee's accountant and hence the genuine ITC should not be denied to the assessee for this absolutely unintentional clerical mistake which is without any loss to the exchequer for which a referenvce may kindly be made to Assistant Commissioner (ST) & Ors. Vs Satyam Shivam Papers Pvt Ltd (Supreme Court of India 21132/2021 dated January 2022).

f. In our humble view, all the conditions stipulated in Section 16 of CGST Act for availing the ITC are getting complied with and also the ITC has been availed post the ITC appearing on GSTR2A/2B, as stipulated in the law and hence there should be no question of rejecting the ITC availed in a very genuine case of purchase of raw material from a government owned company in the normal course of business.

g. **We also wish to humbly refer to Circular No. 64/38/2018-GST dated 14th Sep'2018 which also states as under:**

In case the consignment of goods is accompanied with an invoice or any other specified document and also an E-way bill, proceedings under Section 129 of the CGST Act may not be initiated, inter alia, in the following situations:

- a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;
- b) Error in the PIN Code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the Pin Code should not have the effect of increasing the validity period of the E-way bill;
- c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;
- d) Error in one or two digits of the document number mentioned in the E-way bill;

In case of the above situations, penalty to the tune of Rs. 500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs.1000/- under the IGST Act) in FORM GST DRC-07 for every consignment. A record of all such consignments where proceedings under section 129 of the CGST Act have not been invoked in view of the situations listed in paragraph 5 above shall be sent by the proper officer to his controlling officer on a weekly basis.²

h) Furthermore it is pertinent to mention here that the E-way bill is meant for the movement of the goods and such minor clerical error does not undermine the ITC eligibility.

(i) Moreover, it is a covered matter by Jurisdictional High Court and various other Hon/ble Courts across the country.

JURISPRUDENCE

5.1) The following case laws are worth considering where in the Hon'ble courts have duly held that the Penalty u/s 129 cannot be levied for instances of Bonafied transactions, clerical / human errors with no intention to evade taxes. In this regard, the following cases are worth considering including Jurisdictional High Court.

Sr. No.	Name & Citation	Particulars
1	<p>(2022)140 Taxman.com418 (Madhya Pradesh) High Court of Madhya Pradesh TechnosteelInfraprojects(P.) Ltd. v. State of Madhya Pradesh</p> <p>SHEEL NAGU AND MANINDER S. BHATTI, JJ. WRIT PETITION NO. 6118 OF 2021 MARCH 30, 2022</p>	<p>Detention - Mistake in e-way bill - Registered office of consignee at Jabalpur mentioned as address on e-way bill instead of its factory at Rewa - Bona fide mistake - Learned counsel for petitioner submits that the mistake while generating E-way bill was an inadvertent human error and there was no intention to evade the tax liability particularly, when the vehicle number which was transporting the goods was same And hence, prays for quashment of the orders. Hence <u>Orders passed pursuant to proceedings under section 129 of Central Goods and Services Tax Act, 2017 were quashed.</u></p> <p><u>Authorities were granted liberty to impose minor penalty treating mistake in question to be a clerical mistake</u></p> <p>[Section 129 of Central Goods and Services Tax Act, 2017 read with rule 138 of Central Goods and Services Tax Rules, 2017 Madhya Pradesh Goods and Services Tax Act, 2017] [Para 2] [In favor of assessee]</p>
2	[2021] 133 taxmann.com	Seizure -Detention of goods in transit - Wrong

	<p style="text-align: center;">165 (SC) SUPREME COURT OF INDIA State of Madhya Pradesh v. Robbins Tunnelling and Trenchless Technology (India) (P.) Ltd.*</p>	<p>shipping address in e-way bill - Assessee imported certain goods from its parent company from USA - Its clearing agent while shipping goods from Custom Station, Mumbai to assessee's place of business in Katni (Madhya Pradesh), generated e-way bill in which by mistake erroneously entered its own name in column of consignee - Competent Authority detained aforesaid goods of assessee under transport due to wrong shipping address in e-way bill and levied tax and penalty - Appellate Authority rejected appeal of assessee and affirmed order of tax and penalty levied by Competent Authority stating that in e-way bill name and address of recipient, while matching with Bill of Entry and Bill of Lading, was not same and such mistake could not be treated to be a clerical mistake - <u>High court held that Appellate Authority was not justified in rejecting appeal of assessee on ground that mistake committed while generating e-way bill was not a clerical mistake and quashed impugned orders - HELD : Special Leave Petition filed against judgment and order of High Court deserved to be dismissed</u> [Section 129 of Central Goods and Services Tax Act, 2017 read with rule 138 of Central Goods and Services Tax Rules, 2017 Madhya Pradesh Goods and Services Tax Act, 2017]] [Para 2] [In favour of assessee]</p>
3	[2022] 142 taxmann.com	E-way bill - Intent to evade tax - Wrong

	<p align="center">192 (Madhya Pradesh) HIGH COURT OF MADHYA PRADESH Amara Raja Batteries Ltd. v. State of Madhya Pradesh* SHEEL NAGU AND DWARKA DHISH BANSAL, JJ. WRIT PETITION NO.6736 OF 2022 JULY 22, 2022</p>	<p>address was mentioned in e-way bill - Petitioner submitted that its Registered Office address at Indore appeared as default address in online option which could not be manually changed and, therefore, it continued to show destination of goods as Indore instead of Jabalpur. HELD : Element of intention to evade tax must be present in order to sustain order of penalty - Inquiry had to be undertaken at level of Appellate Authority to ascertain intention of assessee as to whether mistake was inadvertent or with intent to evade tax - Departmental officers failed to conduct inquiry to ascertain real intent behind act of assessee to mention wrong address in e-way bill - Appellate authority should reconsider appeal to verify whether intent to evade tax was present or not [Section 129 of Central Goods and Services Tax Act, 2017/Madhya Pradesh Goods and Services Tax Act, 2017] [In favour of assessee]</p>
4	<p align="center">[2022] 140 taxmann.com 228 (Uttarakhand) HIGH COURT OF UTTARAKHAND Sonal Automation Industries v. State of Uttarakhand SHARAD KUMAR SHARMA, J. WRIT PETITION (M/S)</p>	<p>Detention of goods - Penalty - E-way bill - Order imposing penalty was passed on sole ground that invoice number was wrongly mentioned in e- way bill being an inadvertent error at time of furnishing details - HELD: As per clause 5 of Circular No. 64/38/2018- GST minor errors/discrepancies that may arise while furnishing e-way bill details are to be overlooked - Provisions of section 129 are not to be</p>

	<p>NO. 1969 OF 2021 APRIL 27, 2022</p>	<p>invoked invariably where it does not affect financial implications or liabilities - Nature of error in present case was not with intent to deceive State where other details provided were correct - Penalty imposed on account of human error in invoice number was pardonable in terms of clause 5 of said Circular - Impugned orders were to be quashed - Penalty already deposited was directed to be refunded [Section 129 of Central Goods and Services Tax Act, 2017/Uttarakhand Goods and Services Tax Act, 2017] [[In favour of assessee]</p>
5	<p>Satyam Shivam Papers Pvt. Ltd. Vs Asst. Commissioner ST (SUPREME COURT OF INDIA) [2022] 134 taxmann.com 241 (SC)</p>	<p><u><i>“Inference by officer that petitioner was attempting to evade tax was baseless - The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. However, as commented at the outset, the amount of costs as awarded by the High Court in this matter is rather on the lower side. Considering the overall conduct of the petitioner No.2 and the corresponding harassment faced by the writ petitioner we find it rather necessary to enhance the amount of costs. Intent in keeping goods in private place was questionable - Goods in question could not be taken to destination within time for reasons beyond control of respondent-taxpayer on</i></u></p>

		<p><i>account of traffic blockage due to agitation - State alone remains responsible for not providing smooth passage of traffic - No question of law relating to operation and effect of section 129 was involved in instant case - Considering department's conduct and harassment faced by taxpayer, costs of Rs. 59,000 was imposed in addition to costs of Rs. 10,000 imposed by High Court [Section 129 of Central Goods and Services Tax Act, 2017/Telangana Goods and Services Tax Act, 2017] [Paras 8 and 9] [In favour of assessee]."</i></p>
6	<p>2021 (3) TMI 540 - TRIPURA HIGH COURT</p> <p>TIRTHAMOYEE ALUMINIUM PRODUCTS VERSUS STATE OF TRIPURA, CHIEF COMMISSIONER OF STATE TAX, INSPECTOR OF STATE TAX GOVERNMENT OF TRIPURA, HINDALCO INDUSTRIES LTD., UNION OF INDIA</p>	<p>Confirmation of demand of GST with penalties - Principle of natural justice - Detention of goods - E-way bill had expired on account of a clerical error which would not result into any tax liability - HELD THAT:- As per this Circular dated 14th September, 2018, in case the goods are accompanied by an invoice as also an E-way bill, proceedings under Section 129 of the CGST Act, 2017 should not be initiated if there is a error of one or two digits in a document number mentioned in the E-way bill. In such a situation, at best, penalty of ₹ 500 & 1000/- under State and Central GST may be collected under Section 125 of the Act.</p>
7	<p>2022 (5) TMI 184 - GUJARAT HIGH COURT</p>	<p>Detention of goods alongwith the vehicle - Selection of the ODC vehicle type while generating e-Way Bill - clerical/technical</p>

	<p>DHABRIYA POLYWOOD LIMITED VERSUS UNION OF INDIA</p>	<p>error or done intentionally - levy of penalty/tax under Section 129(1) for such clerical errors - evasion of tax or not - HELD THAT:- CBEC/20/16/03/2017-GST Circular makes it clear that in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, the proceedings under Section 129 of the CGST Act may not be ordinarily initiated, more particularly, in the situation, as highlighted in para 5 of the circular.</p>
8	<p>2022 (4) TMI 704 - MADHYA PRADESH HIGH COURT</p> <p>M/S. CREATE CONSULTS, REPRESENTED THROUGH ITS PROPRIETOR SHRI RALSTON ANIL RAJVAIDYA VERSUS THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY, COMMISSIONER, STATE GST, JOINT COMMISSIONER, STATE TAX CUM APPELLATE OFFICER STATE GST, STATE</p>	<p>Refund alongwith the interest - generation of e-way bill in the name of petitioner was a bona fide mistake or not - Section 129 of Central Goods and Service Tax Act, 2017 - HELD THAT:- Perusal of courier receipt/invoice which has been produced on record at page 19 shows that the consignor name was AVGOL India Pvt. Ltd. and the consignee details were mentioned as SIDWIN FABRIC PVT. LTD. It is also important to note that in the same invoice, registration of truck number by which the consignment was to be transported was also mentioned as GJ-01-FT-7770. It is also relevant to note that the shipping date was mentioned as 20/06/2019. <u>Apparently, courier receipt/invoice and ewaybill, pertains to same transaction but the generation of e-way bill is in incorrect name. The mistake appears to be bona</u></p>

	<p>TAX OFFICER, OFFICE OF ASSISTANT COMMISSIONER, MADHYA PRADESH</p>	<p><u><i>fide</i> inasmuch as the detail of vehicle, dispatch date is same. The case in hand appears to be a case where e-way bill was generated wrongly in the name of petitioner on account of some clerical or typographical error, therefore, the impugned orders are quashed.</u></p>
9	<p>2020 (10) TMI 1128 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH</p> <p>INTEGRATED CONSTRUCTIVE SOLUTIONS VERSUS ACST & E-CUM-PROPER OFFICER, CHAMBA CIRCLE</p>	<p>Detention of goods and vehicle - validity of EWB - the vehicle no. in the Part B of the EWB not updated - contravention of Rule 138(5) of CGST/SGST Rules, 2017 - Circular No. 64/38/2018, dated 14-9-2018 - HELD THAT:- It appears that there is no dispute regarding quantity of goods and further all concerns documents were placed before the proper officer. The only mistake the E-way Bill part-B was that the number of the vehicle in which the material was transhipped had not been entered at the time of inspection of the vehicle.</p> <p><u>As there is no doubt that the taxpayer has made procedural lapse and violated the provisions of the CGST/HPGST Act, 2017 and HPGST Rules 138(10)</u> which says as "Provided further that where, under circumstances of an exceptional nature, including transshipment, the goods cannot be transported within validity period of E-way Bill, the transporter may extend the validity period after uploading the detail in part B</p>

		<p>of the FORM GST EWB-01, if required". Therefore appellant should have updated the part 8 of EWB before resuming his journey further. <u>So keeping in view the above facts the appellant is liable to pay minor penalty.</u></p> <p><u>The tax and penalty deposited by the appellant under Section 129(3) may be refunded and a penalty of Rs. Ten Thousand only is imposed on the taxpayer under Section 122(xiv) of the Act - appeal allowed.</u></p>
10	<p>[2020] 114 taxmann.com 564 (Kerala)</p> <p>HIGH COURT OF KERALA</p> <p>Umiya Enterprise</p> <p>v.</p> <p>Assistant State Tax Officer*</p> <p>ALEXANDER THOMAS, J.</p> <p>W.P. (C). NO. 1141 OF 2020(P)</p> <p>JANUARY 31, 2020</p>	<p>Section 129 of the Central Goods and Services Tax Act, 2017/Section 129 of the Kerala State Goods and Services Tax Act, 2017 - Detention, seizure and release of goods and conveyances in transit - Competent Authority detained goods of assessee in transit from one State to another State as well as vehicle on ground that no IGST was collected in tax invoice and passed order demanding tax and penalty - Assessee filed writ petition contending that in tax invoice element of tax happened to be wrongly shown as CGST and SGST at rate of 9 per cent as against IGST of 18 per cent - <u>This was an inadvertent mistake committed by new accountant of supplier - In E-way Bill tax had been correctly declared as IGST Rs. 1.20 lakhs - Whether Competent Authority was to be</u></p>

		<u>directed to release goods and vehicle on assessee executing a simple bond for demanded value - Held, ves [Para 8] [In favour of assessee]</u>
11	M/s Commercial Steel co. versus the Assistant of State tax reported as 2020-VIL-116-TEL, dated 04.03.2020	<p>“It has been held as under: ...merely on the basis of the fact that vehicle is found at a different route does not indicate that the petitioner intends to sell such goods locally and evade payment of CGST and SGST when IGST liability has already been discharged by the petitioner considering such supply as inter-state supply. Thus, amount collected by the department towards tax and penalty under the CGST and SGST act, 2017 under the threat of detaining vehicle is arbitrary and is in violation of Articles 14, 265 and 300-A of the constitution of India, Accordingly, said amount is required to be refunded by the department along with interest @ 6% per annum.”</p>
12	Bhushan Power & Steel Ltd Vs ACST&E (Proper Officer) Circle Mall Road [2020] 114 taxmann.com 454 (AA- GST - HP)	<p>“Where Assistant Commissioner raised additional amount of tax and imposed penalty on ground that e-way bill issued to assessee for movement of goods had expired, in view of fact that Rule 138(10) mentions that validity of e-way bill may be extended within 8 hours from time of its expiry, but, in instant case vehicle was practically apprehended in almost 08 to 09 hours of expiry of e-way bill, prima facie it appeared that assessee had not been given reasonable opportunity to update Part-A of e-way bill and, moreover, it also apparent</p>

		<p>that Part-B of e-way bill was duly filled which put to rest any doubt about intention of assessee to evade tax, impugned order passed by authority below was to be set aside”</p> <p><u>“In the view of above circumstances the instant appeals are accepted and the order passed by Asst. Commissioner State Taxes & Excise-cum-Proper Officer, the Mall Road Circle, Shimla are set aside. Since the appellant has made minor procedural lapse as required to follow under rule 138(10) therefore a penalty of Rs. One thousand only (Rs- 1000/- IGST Act) in each case is imposed on the tax payer under section 125 under the CGST/HPGST Act 2017 in accordance to CBIC Circular No. 64/38/2018-GST, dated 14th Sep 2018 and the State Circular no. dated 13th March 2019 and may be recovered accordingly. The judgment in these cases was reserved on 18-12-2019 which is released today.”.</u></p>
13	<p>[2018] 100 taxmann.com 23 (Kerala) HIGH COURT OF KERALA SabithaRiyaz v. Union of India* DAMA SESHADRI</p>	<p>Section68, read with section129, of the Central Goods and Services Tax Act, 2017 and rule 138 of the Central Goods and Services Tax Rules, 2017 - Section68, read with section129, of the Uttarakhand Goods and Services Tax Act, 2017 and rule 138 of the Uttarakhand Goods and Services Tax Rules, 2017 - Search, seizure, etc. - Goods in movement, inspection of - Competent Authority of Uttarakhand Goods and Services Tax Department had detained goods of</p>

	<p>NAIDU, J. WP (C) NO. 34874 OF 2018 OCTOBER 31, 2018</p>	<p>assessee under transport from Kerala to Uttarakhand <u>on ground that in E-way bill distance between Kerala and destination at Uttarakhand was shown as 280 kms instead of 2800 kms - Assessee filed writ petition before Kerala High Court seeking directions to Competent Authority for release of detained goods and contended that error in E-way bill was minor apart from being typographical and it stood covered and exempted under Circular No. 64/38/2018 - GST, dated 14-9-2018 - Whether Competent Authority was to be directed to consider assessee's request for release in terms of above circular - Held, yes [Para 6] [In favour of assessee]</u> Circulars and Notifications: CBEC Circular No. 64/38/2018 - GST, dated 14-9-2018</p>
14	<p>[2020] 121 taxmann.com 104 (AA- GST - HP) Appellate Authority - GST, HIMACHAL PRADESH Integrated Constructive Solutions v. ACST & E-Cum-Proper Officer, Chamba Circle ROHIT CHAUHAN, MEMBER APPEAL NO. 018 OF 2019</p>	<p>Section 129, read with section 122, of the Central Goods and Services Tax Act, 2017/Section 129, read with section 122, of the Himachal Pradesh Goods and Services Tax Act, 2017 - Detention, seizure and release of goods and conveyances in transit - Competent Authority detained goods of assessee under transport on ground that vehicle No. at time of checking was PB10CT6249; whereas in E-way Bill vehicle No. was PB35Q8464 and initiated proceedings under section 129(3) - Assessee's explanation before Competent Authority was that due to break down of vehicle No. PB35Q8464 goods had been shifted to new</p>

	<p>ENDST. NO. EXN. - 018/2019-AA/GST SHIMLA HP - 3159 - 64 FEBRUARY 14, 2020</p>	<p>vehicle No. PB10CT6249 and updation of new vehicle in already generated E-way Bill could not be done due to weak internet connectivity - In between assessee had also updated Part-B of E-way Bill - However, Competent Authority vide order passed under section 129(3) imposed tax and penalty upon assessee amounting to Rs. 16.28 crores - Whether since Competent Authority had passed order in a mechanical manner and had ignored corrected and updated E-way Bill as produced by assessee within two hours of detaining goods, tax and penalty imposed under section 129(3) was unsustainable - Held, yes - <u>Whether as assessee had made procedural lapse and violated provisions of GST Act, it was liable to pay minor penalty under section 122 - Held, yes - Whether impugned order deserved to be set aside - Held, yes - Whether a penalty of Rs. 10,000 was to be imposed upon assessee under section 122 - Held, yes [Paras 8, 9 and 10] [In favour of assessee]</u> Circulars and Notifications : Circular No. 64/38/2018 - GST, dated 14-9-2018</p>
15	<p>[2018] 100 taxmann.com 270 (Kerala) HIGH COURT OF KERALA Daily Express v.</p>	<p>Section 68, read with section 129, of the Central Goods and Services Tax Act, 2017 and rule 138 of the Central Goods and Services Tax Rules, 2017/Section 68, read with section 129, of the Kerala State Goods and Services Tax Act, 2017 and rule 138 of the Kerala State Goods and Services Tax</p>

	<p>Assistant State Tax Officer, Thiruvananthapuram* DAMA SESHADRI NAIDU, J. WP (C) NO. 35665 OF 2018 NOVEMBER 29, 2018</p>	<p>Rules, 2017 - Search, seizure, etc. - Goods in movement, inspection of - Competent Authority had detained goods of petitioner under transport - It filed writ petition seeking appropriate directions to Competent Authority - Whether since issue involved in instant case was squarely covered in favour of petitioner by a judgment of Kerala High Court rendered in case of SabithaRiyaz v. Union of India [2018] 100 taxmann.com 23 (Ker.), wherein Competent Authority was directed to consider assessee's request for release of detained goods in terms of Circular No. 64/38/2018-GST, dated 14-9-2018, writ petition was to be disposed of applying ration of said judgment - Held, yes [Paras 2 and 3] [In favour of assessee]</p>
16	<p>[2018] 98 taxmann.com 387 (Allahabad) HIGH COURT OF ALLAHABAD Rajavat Steels v. State of U.P.* ASHOK KUMAR, J. WRIT TAX NO. 1300 OF 2018 SEPTEMBER 27, 2018</p>	<p>Section68, read with section129, of the Central Goods and Services Tax Act, 2017 and rules 138 and 140 of the Central Goods and Services Tax Rules, 2017/Section 68, read with section129, of the Uttar Pradesh Goods and Services Tax Act, 2017 and rules 138 and 140 of the Uttar Pradesh Goods and Services Tax Rules, 2017 - Search, seizure, etc. - Goods in movement, inspection of (NR) - Competent Authority had seized goods of assessee under transport and vehicle on ground that in invoice, E-way bill and weigh slip truck number was mentioned being U.P. - 78 - DN 7983 instead</p>

		<p>of U.P. - 78 - DN 7938 - Whether since due to mistake or human error vehicle number was mentioned different, Competent Authority was to be directed to release goods and vehicle on assessee furnishing indemnity bond to extent of amount of penalty demanded - Held, yes [Para 11] [In favour of assessee]</p>
17	<p>2019 (12) TMI 1089 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH</p> <p>M/S. K.B. ENTERPRISES CHAIL CHOWK, DISTT MANDI VERSUS THE ASSISTANT COMMISSIONER STATE TAXES & EXCISE CHAMBA, HP</p>	<p>Levy of penalty - clerical mistake in generation of E-Way bill - minor mistakes - relied as provided vide circular - circular No 64/38/2018 and the HP circular no.12-25/2018-19-EXN-GST-(575)-6009-6026 - supply of taxable goods falling under chapter 24 of GST Tariff Act - bidis - detention order as per section 129(1) of the CGST/HPGST Act. - HELD THAT:- The circular clearly states that, in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated in case of minor mistakes like error in one or two digits/characters of the vehicle number. Further Para 6 of the said circular states that in case of minor errors mentioned in Para 5, penalty to the tune of ₹ 500/- each under section 125 of the CGST Act and the respective HPSGST Act should be imposed (₹ 1000/- under the IGST Act) in FORM GST DRC-07 for every</p>

		consignment.
18	<p>2020 (3) TMI 722 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH</p> <p>MAHALAKSHMI PACKAGERS MANUFACTURE VERSUS ACST & E- CUM-PROPER OFFICER, PAONTA CIRCLE-II</p>	<p>Invocation of proceedings u/s 129 of the CGST/HPGST Act - vehicle number was written wrong in E-way Bill and rightly on invoice issued by the appellant - HELD THAT:- It is revealed that due to a typographic error by the consignee while issuing tax invoice and generating E-way Bill, the Vehicle No. HP-17B1790 has been mentioned instead of the Vehicle No. HP-17B-4290 on both tax invoice and as well as in E-way Bill. Apart from this there is no dispute on quantity/quality of goods in question and validity of E-way Bill..</p> <p>As per the facts in hand it appears that the mistake of two digits while entering vehicle no. in invoice and E-way Bill is a typographic error and may be treated as a minor one. <u>The said circular 64/38/2018-GST and the subsequent notification under the HPGST Act have to be followed and the benefit cannot be denied to the appellant for paltry errors of two digits in the vehicle number. The e-way bill has been duly generated and no mistake has been found in all other information entered in the EWB.</u></p>
19	<p>[2022] 141 taxmann.com 225 (Madras) HIGH COURT OF MADRAS Algae Labs (P.) Ltd. v. State Tax Officer-I* C.</p>	<p>Seizure - Vehicle and goods - Petitioner had placed purchase order for supply of a specialized spray dryer and parts and goods were accompanied with E-way Bill - <u>Vehicle along with spray dryer were seized by</u></p>

THANK YOU

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