

**ISSUES RELATING TO DETENTION
AND CONFISCATION OF GOODS
(WITH PRACTICAL CASE STUDIES AND CASE LAWS)
& RECENT AMENDMENTS UNDER GST**

BY:

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SECTIONS	RULES
SEC 68- INSPECTION OF GOODS IN MOVEMENT	RULE 55A –TAX INVOICE AND BILL OF SUPPLY TO ACCOMPANY TRANSFER OF GOODS
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
SEC129- DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCE IN TRANSIT	RULE 138A-DOCUMENTS AND DEVICES TO BE CARRIED BY PERSON-IN-CHARGE OF CONVEYANCE
SEC 130- CONFISCATION OF GOODS OR CONVEYANCE AND LEVY OF PENALTY	RULE 138B- VERIFICATION OF DOCUMENTS AND CONVEYANCE
	RULE 138C- INSPECTION AND VERIFICATION OF GOODS
	RULE 138D- FACILITY FOR UPLOADING INFORMATION REGARDING DETENTION OF VEHICLE
	RULE 140- BOND AND SECURITY FOR RELEASE OF SEIZED GOODS
	RULE 141- PROCEDURE IN RESPECT OF SEIZED GOODS

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.

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

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.

RULE 138B

Verification of documents and conveyances

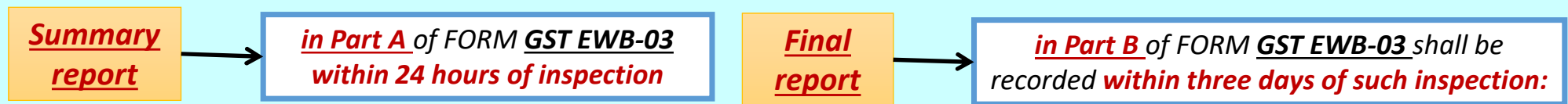
- (1) The **Commissioner or an officer empowered by him** in this behalf may authorize the proper officer **to intercept any conveyance to verify the e-way bill** in physical or electronic form for all inter-State and intra-State movement of goods.
- (2) The Commissioner shall **get Radio Frequency Identification 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



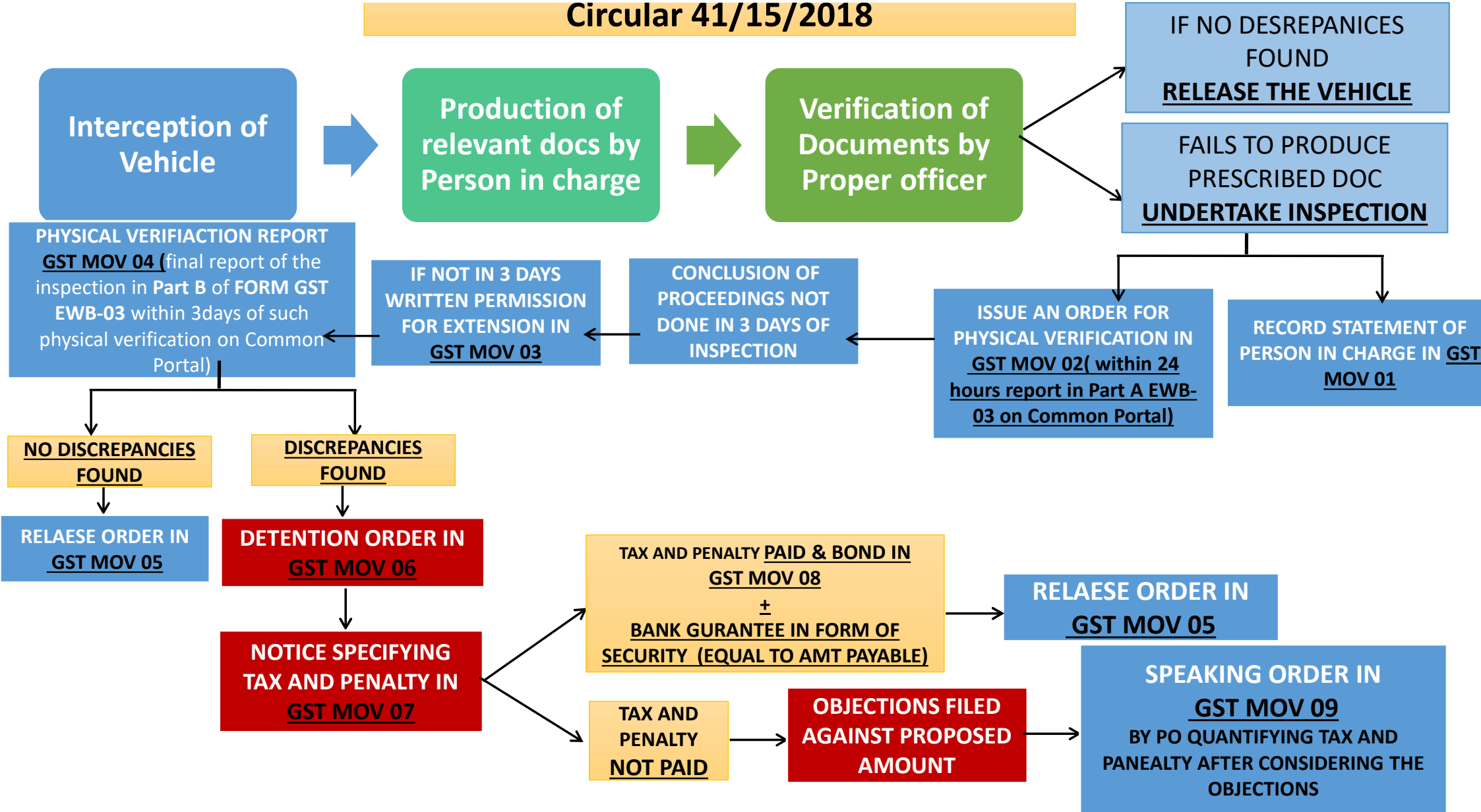
[Provided that where the circumstances so warrant, the Commissioner, or any other officer authorised by him, may, on sufficient cause being shown, extend the time for recording of the final report in Part B of FORM EWB-03, for a further period not exceeding three days.

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.]

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

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

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

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 131

xxxv. Rule 152

xxxvi. Rule 153

xxxvii. Rule 155

xxxviii. Rule 156

4. Superintendent of Central Tax

i. Sub-section (6) of Section 35

ii. Sub-sections (1) and (3) of Section 61

iii. Sub-section (1) of Section 62

iv. Sub-section (7) of Section 65

v. Sub-section (6) of Section 66

vi. Sub-section (11) of Section 67

vii. Sub-section (1) of Section 70

viii. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73

²[(viii)(a). Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74]

ix. Sub-rule (6) of Rule 56

x. Sub-rules (1), (2) and (3) of Rule 99

xi. Sub-rule (1) of Rule 132

xii. Sub-rule (1), (2), (3) and (7) of Rule 142

xiii. Rule 150

5. Inspector of Central Tax

i. Sub-section (3) of Section 68

ii. Sub-rule (17) of Rule 56

iii. Sub-rule (5) of Rule 58

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

Notwithstanding anything contained in this Act, where any person transports/ stores any goods---**While they are in transit**—In contravention of provisions of this ACT or rules made thereunder---

All such **goods** and **conveyance** and **documents relating to such goods** shall be liable for detention/ seizure

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

<u>In case of Taxable Goods</u>	<u>In case of Exempted Goods</u>
(a) Owner comes forward to pay tax and penalty	
Pay tax + Penalty= 100% of tax	Pay =2% of value of goods or Rs. 25000 w.i. less
(b) Owner doesn't comes forward to pay tax and penalty	
Pay tax+ Penalty= 50% of Tax paid	Pay =5% of value of goods or RS. 25000 w.i.less
(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form <u>GST INS-04</u> and manner as may be prescribed <u>(under Rule 140)</u>	

Pay amount provided u/s 129(1) For notice u/s 129(3)----all the proceedings deemed to be concluded

Fails to pay tax & penalty within 7 days of detention of seizure--- Further proceedings as per sec. 130

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.

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

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 [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 [fourteen days] may be reduced by the proper officer.

Upon Execution of a Bond and
furnishing of a security

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

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 of section 129.

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 percent, 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;”;
129(2)	The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.	omitted

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.	No tax, interest or penalty 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)	<p>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:</p> <p>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></p>	<p>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):</p> <ul style="list-style-type: none"> ➤ Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less: ➤ 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, the said period of fifteen days may be reduced by the proper officer.”

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

Budgetary Amendment of section 129.

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.

Cases where in 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.



CONFISCATION U/S 130

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

(1) Notwithstanding anything contained in this Act, if 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:

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 penalty u/s 129(1)

Redemption fine for conveyance- tax payable on goods transported

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 under section 129 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/-)

Budgetary Amendment of section 130

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, if 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**

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.

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.

Synergy Fertichem (P.) Ltd.

v.
State of Gujarat
[2019] 112 taxmann.com 370 HIGH COURT OF GUJARAT

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.K. 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.

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

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.

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 - Whether 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 under section 129(3) as having abated or truncate such proceedings and initiate proceedings under section 130 for confiscation with issuance of notice thereunder - Held, yes - Whether proper officer would have to determine applicable tax and penalty under sec 129 while simultaneously initiating proceedings for adjudging confiscation u/s130 - Held, yes

**[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]

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

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.**

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

Under valuation of a good in the invoice cannot be ground for detention of the goods and vehicle for a proceeding to be drawn under Section 129 of the CGST Act,2017

[2021] 124 taxmann.com 294 (Allahabad) Ranchi Carrying Corporation v. State of U.P.*

Section 169, read with section 129, of the Central Goods and Services Tax Act, 2017/Section 169, read with section 129, of the Uttar Pradesh Goods and Services Tax Act, 2017 - Notice, service in certain cases - Competent Authority by an order passed under section 129(3) detained goods of assessee under transport - Appellate Authority vide order dismissed appeal filed by assessee holding that as no reply was filed by assessee to notices sent, grounds taken in appeal appeared to be after thought - Assessee argued before High Court that none of notices as required to be served under section 129 had been served upon it and as such proceedings initiated and concluded against it were ex parte - Revenue, on other hand, stated that notices were got served on driver of truck in question and detention order was served through a fixation on truck - Assessee in reply submitted that service on driver or a fixation of copy of order on truck was none of methods prescribed under section 169 and thus it was clear that notices or order were never served upon it and proceedings were held ex parte - Whether as at no point of time assessee was granted an opportunity of submitting its reply and grounds taken by assessee before Appellate Authority were not considered recording them to be an afterthought, a failure of natural justice had been occasioned to assessee - Held, yes - Whether impugned orders deserved to be set aside with a liberty to Competent Authority to conclude proceedings against assessee in accordance with law - Held, yes [Paras 10 and 11] [In favour of assessee]

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)

ABB India Ltd. v. Union of India [2020] 114 taxmann.com 157

Issue

Whether Competent Authority was to be directed to release goods and vehicle on assessee depositing an amount and furnishing bank guarantee ?

Facts of the case

Competent Authority detained goods of assessee under transport as well as vehicle and issued a notice under section 129(3) calling upon assessee to appear before him on 31-12-2019

Assessee filed writ petition seeking relief in this regard

In meantime Competent Authority passed an order under section 129(3) imposing tax and penalty amounting to Rs. one crore

Held

The legal issues, which have been raised by the learned counsel appearing for the writ-applicant shall be heard and decided on the returnable date. However, concerned authority is inclined to pass an interim order for the release of the goods and the vehicles. We direct the writ-applicant to deposit an amount of Rs.50,40,972/- towards the tax with the respondent no.2 and the balance amount of Rs.50,40,972/- towards the penalty shall be in the form of a bank guarantee of any nationalized bank. **On deposit of the requisite amount and the bank guarantee, the authority concerned shall release the goods and the vehicles forthwith.**

Radha Tradelinks (P.) Ltd. v. State of Gujarat [2020] 121 taxmann.com 48

Facts of the case

Competent Authority detained goods of assessee under transport as well as vehicle on ground that many discrepancies were noticed as regards documents, etc.

He further passed an order under section 129 determining amount of tax and penalty to be paid by assessee

Simultaneously he issued notice under section 130 calling upon assessee to show cause as to why goods and conveyance should not be confiscated

Assessee filed writ petition seeking relief in this regard

Held

Whether Competent Authority was to be directed to release goods as well as vehicle on assessee depositing Rs. 1.70 lacs towards tax and penalty and furnishing bank guarantee of Rs. 17 lacs of any Nationalized Bank –

Held, yes

Whether adjudication of confiscation proceedings under section 130 required to be proceeded in accordance with law

Held, yes

Where Competent Authority detained goods of assessee under transport as well as vehicle and passed order under section 129 determining tax and penalty to be paid by assessee, said Authority was to be directed to release goods and vehicle on assessee depositing Rs. 1.70 lacs towards tax and penalty and furnishing bank guarantee of Rs. 17 lacs

Secretary to Government Department of Finance v. K.S. Arcanut Stores [2020] 118 taxmann.com 451

Issue

Where it was specific contention of Government that goods which had been carried in conveyance did not belong to respondents and revenue had already passed an order under section 129 (1)(b) by rejecting documents tendered by person in charge, Whether order passed by Single Judge under section 129 (1)(a) directing release of goods/conveyance?

Facts of the case

Vigilance Cell of Commercial Tax intercepted goods conveyance which was carrying arecanut - Subsequently, said goods had been taken possession and both consignors had been summoned to appear before Officer

Hereafter, owner of conveyance came forward and discharged fine under section 130(2) and pursuant to payment of fine, conveyance was released, however, owner of goods did not come forward to discharge tax/penalty and as such goods were confiscated and stored in warehouse and were later auctioned following due process -

On appeal, Single Judge directed release of detained goods/conveyance on payment of tax and penalty as determined under section 129(1)(a)

Held

The appeals are allowed, **the impugned order passed is *set aside*** and the matter is remitted to the learned Single Judge for considering afresh all the points and to pass an order in accordance with law.

Secretary to Government Department of Finance v. K.S. Arcanut Stores [2020] 118 taxmann.com 451

Held

Whether Single Judge without looking into said provisions, by taking shelter under section 168, relied upon circular dated 31-12-2018 and passed order –

Held, yes

Whether therefore, impugned order passed without expressing any opinion on order passed by Government was not in consonance with provisions of law and therefore, was to be remitted to Single Judge for fresh consideration to meet ends of justice –

Held, yes

Where it was specific contention of Government that goods which had been carried in conveyance did not belong to respondents and revenue had already passed an order under section 129 (1)(b) by rejecting documents tendered by person in charge, order passed by Single Judge under section 129 (1)(a) directing release of goods/conveyance without first setting aside above order being contrary to statutory provisions was to be set aside

D B Impex v. State of Gujarat [2020] 119 taxmann.com 212

Issue

Whether final order of Confiscation be passed without giving opportunity of being heard?

Held

Whether where final order of confiscation of goods and conveyance of applicant was passed, however, applicant was not given any opportunity of hearing before final order came to be passed, **matter was to be remanded back** so as to give an opportunity to applicant to make good his case why goods and conveyance were not liable to be confiscated under section 130 –

Held, yes

Where applicant was not given any opportunity of hearing before final order of confiscation of goods and conveyance of applicant came to be passed, matter was to be remanded back for adjudication afresh

Shri Durga Traders v. State Tax Officer [2020] 117 taxmann.com 780

Issue

Can confiscation proceedings be halted on petition challenging validity of notice under section 130?

Facts of the case

Assessee entered into a contract for supply of groundnuts - Consignment of groundnuts was dispatched from Madhya Pradesh to reach Rajkot

In course of transportation, vehicle was intercepted and a few discrepancies were found in e-way bill - Accordingly, a show cause notice was issued under section 130

Assessee filed instant petition challenging legality and validity of said notice

Held

The confiscation proceedings shall proceed further on its own merits in accordance with law.

Whether, on facts, authority concerned had to be allowed to proceed with adjudication of show cause notice –

Held, yes

Whether, therefore, instant petition was to be disposed of with a direction to concerned authority to release goods confiscated subject to deposit of certain amount by assessee towards tax and penalty –

Held, yes

Petition challenging validity of notice under section 130 was to be disposed of with a direction to concerned authority to proceed with adjudication of said notice and, to release goods confiscated subject to deposit of certain amount by assessee towards tax and penalty.

Hanuman Trading Co. v. State of Gujarat [2020] 116 taxmann.com 488

Facts of the case

Competent Authority detained goods of assessee in transit as well as vehicle - He further issued on assessee a notice under section 130 for confiscation of goods and vehicle and levy of penalty

Assessee filed writ petition seeking relief in this regard

Held

Whether Competent Authority was to be directed to release goods and vehicle on payment of requisite tax amount –

Held, yes –

Whether assessee was to be directed to make good its case before Competent Authority that impugned notice deserved to be discharged in view of judgment of Gujarat High Court rendered in case of Synergy Fertilchem (P.) Ltd. v. State of Gujarat [2019] 103 taxmann.com 426/72 GST 641 (Guj.) –

Held, yes

Where Competent Authority detained goods of assessee in transit and vehicle and issued notice for confiscation of goods and vehicle and levy of penalty, said authority was to be directed to release goods and vehicle on payment of requisite tax amount.

AV Traders v. State of Gujarat [2020] 116 taxmann.com 17

Facts of the case

Competent Authority detained goods of assessee under transport as well as conveyance and passed an order under section 129(3) imposing tax and penalty amounting to Rs. 4.02 lakhs

Further he passed an order under section 130 for confiscation of goods and conveyance

Assessee filed writ petition seeking relief in this regard

Held

Whether Competent Authority was to be directed to release goods and conveyance on assessee depositing amount of Rs. 4.02 lakhs as determined under section 129(3) –

Held, yes –

Whether further Competent Authority was to be directed to initiate fresh proceedings with regard to confiscation of goods and conveyance and decide matter keeping in mind principles of law as explained by Gujarat High Court in case of Synergy Fertilchem (P.) Ltd. v. State of Gujarat [\[2019\] 112 taxmann.com 370](#) -

Held, yes

Where Competent Authority had detained goods of assessee under transport as well as conveyance and passed order under section 129(3) imposing tax and penalty, said Authority was to be directed to release goods and conveyance on assessee depositing amount of tax and penalty

Cooking Systems v. Assistant Commissioner [2019] 108 taxmann.com 392

Facts of the case

Assessee filed writ petition challenging assessment order with respect to assessment year 2011-12 on ground that assessment was initiated beyond time limit stipulated in section 25(1) of Kerala Value Added Tax Act

It also challenged constitutional validity of section 174 of Kerala State GST Act - Single Judge of High Court dismissed writ petition holding that issue involved stands squared covered against assessee through judgment of Kerala High Court in case of Sheen Golden Jewels (India) (P.) Ltd. v. State Tax Officer [\[2019\] 102 taxmann.com 208 \(Kerala\)](#)

Held

Whether since judgment in case of Sheen Golden Jewels (India) (P.) Ltd. (supra) deals only with question regarding validity of section 174, writ petition required to be remitted to Single Judge for fresh consideration and disposal on grounds raised other than validity of section 174 –

Held, yes

Where assessee filed writ petition challenging assessment order on ground that assessment was initiated beyond time limit stipulated in section 25(1) of Kerala VAT Act and also constitutional validity of section 174 of Kerala State GST Act and Single Judge of High Court dismissed said petition holding that issue involved stands covered against assessee through judgment in case of Sheen Golden Jewels (India) (P.) Ltd. v. State Tax Officer [\[2019\] 102 taxmann.com 208 \(Ker.\)](#), since said judgment deals only with question regarding validity of section 174, writ petition required to be remitted for fresh consideration

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

A blue horizontal scroll graphic with a vertical strip on the left side, resembling a rolled-up document. The text "Section 122" is centered on the scroll.

Section 122

Section 122:- Penalty for certain offences



If a taxable person

Involved in

Sec 2(107) person²(84) liable to be registered u/s 22/24, whether or not actually registered

21 offences as specified in section 122(1)

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,	

Section 132 :- Punishment for certain offences.

12
offences

(1) ^{79a}[Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences],

namely:—

Invoice  Supply 

a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

Invoice but No G/S 
BOGUS BILL

b) 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 leading to wrongful availment or utilisation of input tax credit or refund of tax;

c) *avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;*

d) 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) evades tax, ^{79c}[****] or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

Transporter
also covered

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

Section 132 :- Punishment for certain offences.

- h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- i) receives or is in any **way concerned with the supply of**, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- j) **tampers with or destroys any material evidence** or documents;
- k) **fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him,** that the information supplied by him is true) supplies false information; or
- l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

Section 132 :- Punishment for certain offences.

shall be punishable—

- (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine; **Max**
- (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;
- (iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine
- (iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both

Persons covered under Sec 132

Whoever commits, or causes to commit and retain the benefits.

Punishments

Amount of default	Punishment
Exceeds 5 crores	Imprisonment upto 5 years with Fine*
Exceeds 2 crores but less than 5 crores	Imprisonment upto 3 years with Fine*
Exceeds 1 crores but less than 5 crores	Imprisonment upto 1 year with Fine*
Other Specified offences	Imprisonment upto 6 months with fine or both

Note 1 *Minimum period shall be 6 months

Note 2 Repeated offence period shall be upto 5 years with fine

Section 132 :- Punishment for certain offences.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the **second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.** 5 years

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a **term not less than six months.** Min 6 mnths

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

a/b/c/d—cognizable+ non bailable	Others non- cognizable + bailable
----------------------------------	-----------------------------------

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) **and** punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

Mere Non-Extension of Validity of E-Way Bill doesn't amount to Tax Evasion: Telangana High Court

Satyam Shivam Papers Pvt. Ltd. Vs Asst. Commissioner ST and 4 Others (Telangana High Court) WP No. 9688 of 2020

Paper Products



The petitioner, M/S Satyam Shivam Papers Pvt Ltd is a sole distributor of M/s.International Papers Limited, Andhra Pradesh

Petitioner had dispatched goods on the auto trolley and the driver of the auto trolley had in his possession tax invoice as well as an e-way bill

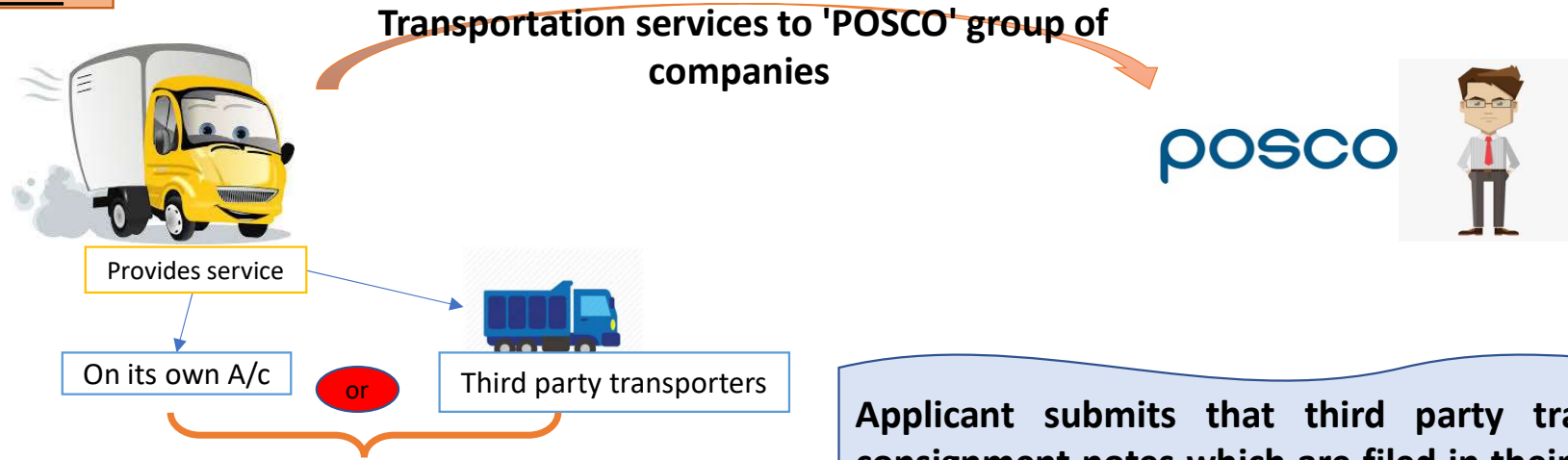
the driver of auto trolley took the goods to his residence with a desire to deliver the goods on the next day due to some circumstances. **The attempt was made by the driver of the auto trolley to deliver them to the buyer on 6.1.2020 when it was detained at 12.35 pm by issuing detention notice dt.06.01.2020.**

Held

It was held that **mere Non-Extension of Validity of E-Way Bill doesn't amount to Tax Evasion**

- as there was no material before the respondent to come to the conclusion that there was evasion of tax by the petitioner merely on account of lapsing of time mentioned in the e-way bill.
- because even the respondent does not say that there was any evidence of an attempt to sell the goods to somebody else on.
- On account of the non-extension of the validity of the e-way bill by the petitioner or the auto trolley driver, no presumption can be drawn that there was an intention to evade tax.

Facts



In both situations, it is **applicant who issues consignment notes which are stamped by receiver of transported goods**

Applicant submits that third party transporters also issue consignment notes which are filed in their respective offices and which are not stamped by consignee of said goods

Issue on which advance ruling sought

Classification of transportation services where applicant issues consignment notes, however, actual transportation is done through third party transporters

Held

- Whether since applicant is providing services in relation to transport of goods by road to 'POSCO' group of companies and they are also issuing consignment notes for such transactions, applicant can be considered as Goods Transport Agency (GTA) and, thus, services rendered by applicant are classifiable under Heading No. 9965 –
 - Ans:- yes

Where applicant, engaged in providing transportation services to 'POSCO' group of companies, issues consignment notes, however, actual transportation is done through third party transporters, applicant can still be considered as Goods Transport Agency (GTA) and, thus, services rendered by applicant are classifiable under Heading No. 9965.

[2020] 117 taxmann.com K.M. Trans Logistics (P.) Ltd., In

Facts



Appellant is engaged in providing transport services by using its own vehicles/lorries to various manufacturers of motor vehicles for carrying their vehicles from factory to various cities in India where authorised dealers are located

Appellant stated that goods are transported under E-way bill and there will be no generation of consignment note

AAR by order ruled that appellant is a registered GTA Service provider and service of transportation without issuance of consignment note is not exempted from GST

On appeal, appellant submitted that since they do not issue consignment note, service of transportation of goods by own vehicle are out of purview of GST

Held

•Whether a consignment note is only a document by which responsibilities and rights are reduced in writing and its non-issuance does not affect rights of parties –

Held, yes –

•Whether if lien of goods is transferred and appellant becomes responsible for goods till its safe delivery to consignee, services will be classifiable as goods transport agency services; mere non-issuance of consignment note in such cases does not make them entitled for exemption from payment of GST

Held, yes

Consignment note is only a document by which responsibilities and rights are reduced in writing and its non-issuance does not affect rights of parties, hence GST on services provided by Goods Transport Agency cannot be avoided by mere non-issuance of consignment note

Facts

[2020] 117 taxmann.com 917 (AAR - ANDHRA PRADESH) Pulluri Mining & Logistics (P.) Ltd.



Applicant

S' is providing HSD Oil to equipments and vehicles used by applicant for executing mining contract



S Cement Company

Valuation

work order from cement company 'S' for carrying out mining work for them

service provider rendering support services relating to mining

Held

- Whether HSD Oil issued free of cost by service recipient, i.e., 'S' to applicant would form part of value of supply of service by applicant –
 - Yes
- Where applicant, engaged in carrying out support services in mining, receives work from cement company 'S' for executing mining for them and applicant also receives HSD Oil from 'S' for equipments and vehicles used for executing mining contract, in terms of section 15(2)(b), value of said HSD Oil would form part of value of supply of service by applicant

Facts

[2020] 117 taxmann.com 290 YKK India (P.) Ltd., *In re*



Applicant

engaged various transporter on contractual basis who provided transportation services to ensure that employees of applicant reached factories situated in remote area in time



Held

- Whether applicant is eligible to take input tax credit on GST charged by contractor for hiring of buses having approved seating capacity of more than thirteen persons for transportation of employees after amendment in CGST Act vide Central Goods and Services Tax (Amendment) Act, 2018 with effect from 30-8-2018; prior to 30-8-2018 Input Tax Credit on hiring of buses was not admissible –
 - Held, yes -
- Whether applicant is not eligible to take input tax credit on GST charged by contractor for hiring of cars for transportation of employees –
 - Held, yes –
- Whether restrictions on 'Rent-a-Cab' service specified in Section 17(5)(b)(iii) at relevant time is applicable to input tax credit on GST charged by contractor for hiring of buses for transportation of employees; however, after amendment in CGST Act, with effect from 30-08-2018, there is no such restriction on hiring and renting of motor vehicles having approved seating capacity of more than thirteen persons –
 - Held, yes –
- Whether restrictions on 'Rent-a-Cab' service specified in Section 17(5)(b)(iii) is applicable to input tax credit on GST charged by contractor for hiring of cars for transportation of employees; further, even after amendment of CGST Act, with effect from 30-8-2018, input tax credit is not available on GST charged by contractor for hiring/renting of motor vehicles having approved seating capacity of not more than thirteen persons (including Driver) for Transportation of passengers –
 - Held, yes

After amendment in CGST Act with effect from 30-8-2018, hirer would be eligible to take input tax credit on GST charged by contractor/transporter for hiring of buses having approved seating capacity of more than thirteen persons for transportation of its employees; however, input tax credit would still not be available for motor vehicles having approved seating capacity of not more than thirteen persons

[2020] 117 taxmann.com 569 L & T Hydrocarbon Engineering Ltd. V State of Karnataka

Assessee was moving goods from its SEZ unit to its bonded warehouse



In course of transportation, vehicle was intercepted and goods therein were confiscated on ground that wrong quantity of goods was mentioned in documents on record

An order was passed under section 129 demanding tax and penalty

Assessee filed instant petition challenging validity of said order on ground that wrong quantity of goods transported was mentioned in documents due to a typographical error

Held

- Whether since an remedy of appeal was available to assessee against impugned order as per section 107, there was no necessity to examine and adjudicate matter in writ jurisdiction –
 - Held, yes

Where goods were confiscated on ground that wrong quantity of goods in transportation was mentioned in documents, while assessee claimed it was a typographical error, assessee should avail statutory remedy of appeal as per section 107

A blue horizontal banner with rounded corners and a scroll effect on the left and right sides. The text "RECENT AMENDMENTS" is centered in white, uppercase letters.

RECENT AMENDMENTS

GST CHANGES PROPOSED BY 45TH GST COUNCIL MEETING DATED 17 SEPT, 2021



DECREASE IN RATE



INCREASE IN RATE



ITC



REFUND



CRITICAL CHANGES



COMPLIANCES



MISCELLANIOUS



Which Industries got Relief !

Covid-19 Treatment Drugs

- Concessional rate of 5% to continue till 31.12.2021

Bio Diesel

- Bio diesel supplied to OMCs for blending with diesel reduced from 12% to 5%

Grant of National Permit of Goods Carriages

- Reduced from 18% to nil

Skill Training

- For which government bears 75% or more of expenditure reduced from 18% to nil
- Services related to AFC's Women Asia Cup 2022 from 18% to nil

Transport of Goods

- Validity of GST exemption on transport of goods by vessel and air from India is extended upto 30.09.2022



Impact on various Industries!

Mining

Ores of Iron, Copper, aluminium increased from 5% to 18%

Paper Packaging

Cartons, boxes, cards, catalogue increased from 12% to 18%

Renewable Energy

Specified parts and devices increased from 5% to 12%

Railway

Parts and locomotives increased from 12% to 18%

Waste and Scrap

Polyurethanes and other plastics increased from 5% to 18%

Pens

All kinds of pens will be taxed at 18%

Entertainment

- Due to rising popularity of OTT platforms, Binge watching made costlier.
- Licensing to broadcast films increased from 12% to 18%

Cloud Kitchen

- Will be treated same as restaurants and liable to pay GST @ 5%

E- commerce

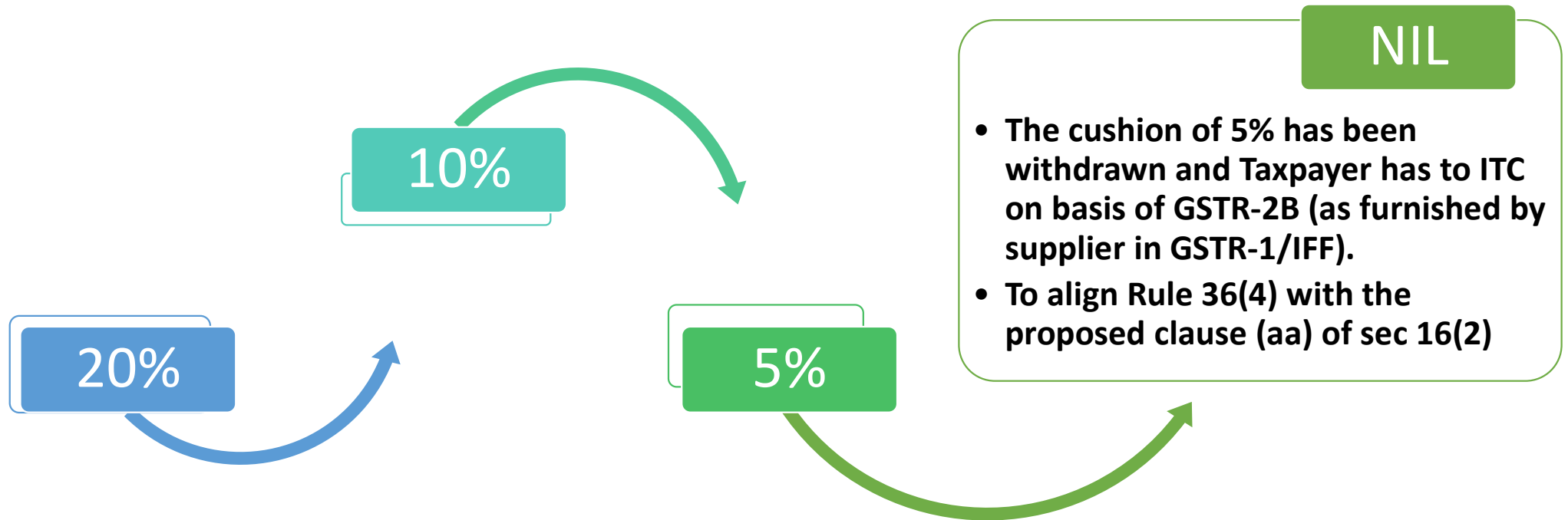
- Every E- commerce operator providing transportation and restaurant services liable to GST w.e.f . 01.01.2022
- Will effect Zomato, Swiggy, Ola and Uber lead to increase in prices

Ice cream Sector

- Ice cream palors to pay GST @ 18%.
- Currently, many such players claim themselves as Restaurants and pay @5%.



100% ITC Matching & Goodbye GSTR-2A





Extended Time limit to claim ITC on debit notes

W.e.f 01.01.2021, the date of issuance of Debit note and not of underlying invoice) shall determine the relevant F.Y. for purpose of Sec 16(4) to claim ITC.

A welcome Amendment! However, opens a Paradox box for similar debit notes issued prior to 1.02.2021 – vide circular no. 160/16/2021-GST

• **Illustration 1.** A debit note dated 07.07.2021 is issued in respect of the original invoice dated 16.03.2021. As the invoice pertains to F.Y. 2020- 21, the relevant financial year for availment of ITC in respect of the said invoice in terms of section 16(4) of the CGST shall be 2020-21. However, as the debit note has been issued in FY 2021-22, the relevant financial year for availment of ITC in respect of the said debit note shall be 2021-22 in terms of amended provision of section 16(4) of the CGST Act.

Illustration 2. A debit note has been issued on 10.11.2020 in respect an invoice dated 15.07.2019. As per amended provision of section 16(4), the relevant financial year for availment of input tax credit on the said debit note, on or after 01.01.2021, will be FY 2020-21 and accordingly, the registered person can avail ITC on the same till due date of furnishing of FORM GSTR-3B for the month of September, 2021 or furnishing of the annual return for FY 2020-21, whichever is earlier.

CIRCULAR NO.

160/14/2021

DATED 20.09.2021

Delinking of Debit Notes

FA,2020

Document Type	Document date	Due date for availing credit
Before Amendment		
Debit note	15-08-2021 (Linked to Invoice dated 01-03-2021)	Return for the month of sept. 2021
Debit note	15-11-2021 (Linked to Invoice dated 01-03-2021)	Return for the month of sept. 2021. The credit was not getting availed for Debit notes issued after 6 months from end of Financial Year to which Invoice pertains to.
After amendment		
Debit note	15-08-2021 (Linked to Invoice dated 01-03-2021) Invoice Linkage became irrelevant	Return for the month of sept. 2022
Debit note	15-11-2021 (Linked to Invoice dated 01-03-2021) Invoice Linkage became irrelevant	Return for the month of sept. 2022. The credit which was earlier not getting availed for Debit notes issued after 6 months from end of Financial Year to which Invoice pertains to <u>will now be available.</u>



No Interest on Ineligible ITC claimed but not utilized

Sec 50(3) of CGST Act to be amended retrospectively, w.e.f 01.07.2017

Interest is to be paid by a taxpayer on “ineligible ITC availed and utilized” and
NOT on “ineligible ITC availed”.

Interest would be levied @18% in case of
“Ineligible ITC availed and utilized”
w.e.f. 01.07.2017



Oil Industry

- ✓ **Supply of Mentha oil** from unregistered person has been brought **under reverse charge**.
- ✓ Further, Council has also recommended that **exports of Mentha oil should be allowed only against LUT** and consequential refund of input tax credit.
- ✓ Notifications u/s 5(3) of IGST Act and u/s 9(3) of CGST Act would be issued.

Construction Industry

- ✓ **Brick kilns would be brought under special composition scheme** with threshold limit of Rs. 20 lakhs, **w.e.f 1.4.2022**.
- ✓ **Bricks would attract GST at the rate of 6% without ITC** under the scheme.
- ✓ **GST rate of 12% with ITC** would otherwise apply to bricks.

Clarification in relation to GST rate on Goods

1. Pure henna powder and paste, having no additives, attract **GST @ 5%**. under Chapter 14.
2. Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues, falling under HS code 2303 attract **GST @ 5%**.
3. All laboratory reagents and other goods falling under heading 3822 attract **GST @ 12%**.
4. Scented sweet supari and flavored and coated illachi falling under heading 2106 attract **GST at the rate of 18%**
5. Carbonated Fruit Beverages of Fruit Drink" and "Carbonated Beverages with Fruit Juice" attract **GST rate of 28% and Cess of 12%**. This is being prescribed specifically in the GST rate schedule.
6. Tamarind seeds fall under heading 1209, and **hitherto** attracted **nil rate** irrespective of use. However, henceforth they would attract **5% GST rate** (w.e.f. 1.10.2021) for use other than sowing. **Seeds for sowing** will continue at **nil rate**.

Clarification in relation to GST rate on Goods

- 7. External batteries sold along with UPS Systems/ Inverter** attract GST rate applicable to batteries [28% for batteries other than lithium-ion battery] while UPS/inverter would **attract 18%**.
- 8. GST on specified Renewable Energy Projects** can be paid in terms of the 70:30 ratio for goods and services, respectively, during the period from 1.7.2017 to 31.12.2018, in the same manner as has been prescribed for the period on or after 1st January 2019.
- 9.** Due to ambiguity in the applicable rate of GST on **Fibre Drums**, the supplies made at **12% GST** in the past have been regularised. Henceforth, a uniform **GST rate of 18%** would apply **to all paper and paper board containers**, whether corrugated or non-corrugated.
- 10.** Distinction between **fresh and dried fruits** and nuts is being clarified for application of **GST rate of “nil” and 5%/12% respectively;**
- 11.** It is being clarified that **all pharmaceutical goods** falling under heading 3006 attract **GST at the rate of 12%** [not 18%]
- 12.** Essentiality certificate issued by Directorate General of Hydrocarbons on imports would suffice; **no need for taking a certificate every time on inter-state stock transfer.**

Clarification in relation to GST rate on Services

1. Coaching services to students provided by coaching institutions and NGOs under the central sector scheme of 'Scholarships for students with Disabilities' is exempt from GST
2. Overloading charges at toll plaza are exempt from GST being akin to toll.
3. The renting of vehicle by State Transport Undertakings and Local Authorities is covered by expression 'giving on hire' for the purposes of GST exemption
4. The services by way of grant of mineral exploration and mining rights attracted GST rate of 18% w.e.f. 01.07.2017.
5. Admission to amusement parks having rides etc. attracts GST rate of 18%. The admission to such facilities that have casinos etc, GST rate of 28% applies
6. Alcoholic liquor for human consumption is not food and food products for the purpose of the entry prescribing 5% GST rate on job work services in relation to food and food products.



Refund related Changes

TRANSFER OF UNUTILISED BALANCE IN CGST & IGST CASH LEDGER BETWEEN DISTINCT PERSONS

- ✓ Distinct persons (entities having same PAN but registered in different states)
- ✓ Transfer **ALLOWED without going through the refund procedure**, subject to certain safeguards.

REFUND OF WRONGFUL PAYMENT OF TAX

Provision to be incorporated in in CGST Rules, 2017 for removing ambiguity regarding procedure and time limit for filing refund of tax wrongfully paid as specified in section 77(1) of the CGST/SGST Act and section 19(1) of the IGST Act.

Section 54(3)- Prohibiting refund of unutilized ITC applicable in case of export of goods having NIL rate of export duty -vide circular no. 160/15/2021

- It has clarified that **only those goods which are actually subjected to export duty** i.e. on which some export duty has to be paid at time of export, **will be covered in Sec 54(3)**.
- Goods which are **not subject to any export duty** and in respect of which NIL rate is specified under CTA,1975 or which are fully exempt from export duty – **would not be covered by Sec 54(3)**.



Critical Changes

SET UP OF GoM

- ✓ to examine **the issue of correction of inverted duty structure** for major sectors;
- ✓ rationalize **the rates and review exemptions** from the point of view of revenue augmentation, from GST.
- ✓ to discuss **ways and means of using technology** to further improve compliance including monitoring through improved **e-way bill systems, e-invoices, FASTag data**
- ✓ strengthening the **institutional mechanism for sharing of intelligence** and coordinated enforcement actions by the Centre and the States.

INVERTED DUTY STRUCTURE

- In footwear and textiles sector will be implemented with effect from 01.01.2022.

(after SC Judgment in VKC Footsteps India Pvt Ltd dated September 13,2021.)

[2021] 130 taxmann.com 193 (SC)

SUPREME COURT OF INDIA

Union of India

v.

VKC Footsteps India Pvt Ltd.

DR. DHANANJAYA Y. CHANDRACHUD AND M.R. SHAH, JJ.

CIVIL APPEAL NOS.4802, 4804 TO 4811 OF 2021 AND OTHS.

SEPTEMBER 13, 2021

Appeal No.

4802 of 2021,4804 of 2021,4805 of 2021,4806 of 2021,4807 of 2021,4808 of 2021,4809 of 2021,4810 of 2021,4811 of 2021,Civil Appeal Nos.4802, 4804 to 4811 of 2021 and OTHS.

Judges

Dr. Dhananjaya Y. Chandrachud, M.R. Shah

Counsel Name

-

Decision Date

13-09-2021

HEAD NOTE:

Explanation (a) to substituted rule 89(5) which denies refund of 'unutilised input tax' paid on 'input services' as part of 'input tax credit' accumulated on account of inverted duty structure is in conformity with section 54(3)

Clause (ii) of the first proviso to Section 54(3) is not merely a condition of eligibility for availing of a refund but a substantive restriction under which a refund of unutilized ITC can be availed of only when the accumulation is relatable to an inverted duty structure, namely the tax on input goods being higher than the rate of tax on output supplies.

There is therefore no disharmony between Rule 89(5) and Section 54(3), Clause (ii) of its first proviso.

Explanation (a) to Rule 89(5) in defining 'Net ITC' to mean ITC availed on inputs (goods) is, as a matter of fact, entirely in line with the main provision, Section 54(3)

[VKC Footsteps India (P.) Ltd. v. Union of India [2020] 118 taxmann.com 81 (Gujarat) disapproved.

Tvl. Transtonnelstroy Afcons Joint Venture v. Union of India [2020] 119 taxmann.com 324 / 43 GSTL 433 (Madras) affirmed.]

VKC Footsteps India (P.) Ltd v. Union of India[2020]

Explanation (a) to substituted rule 89(5) which **denies** refund of '**unutilised input tax**' paid on '**input services**' as part of 'input tax credit' accumulated on account of inverted duty structure is in conformity with section 54(3)

Mr G Natarajan's submission indicates an **aberration** where a registered person with a **single product with an inverted duty structure is neither able to use the unutilized ITC for the payment of tax on output supply nor is allowed a refund**. On the other hand, a registered person with products involving an inverted duty structure and otherwise, is in a position to utilise the ITC availed on input services for payment of tax on turnover not having an inverted rate structure. Mr G Natarajan has given the following example:

The formula in Rule 89(5) is reproduced below:

"Maximum Refund Amount= {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services" (emphasis supplied)

S. No.	Description	Tax payer having only turnover of inverted rate structure	Tax payer having both turnover of inverted rate structure and other turnover
(i)	(ii)	(iii)	(iv)
1	Value of supply of goods, attracting 5% GST (Turnover having inverted rate structure)	Rs. 50,00,000	Rs. 50,00,000
2	Value of supply of goods, not having inverted rate structure	NIL	Rs. 50,00,000
3	Adjusted Total Turnover (1+2)	Rs. 50,00,000	Rs. 1,00,00,000
4	GST payable @ 5% on turnover having inverted rate structure 5% on (1)	Rs. 2,50,000	Rs. 2,50,000
5	GST payable @ 18% on turnover not having inverted rate structure	NA	Rs. 9,00,000
5	ITC on inputs availed during the tax period	Rs. 3,00,000	Rs. 6,00,000
6	ITC on input services availed during the tax period	Rs. 50,000	Rs. 1,00,000
7	Refund entitlement as per the formula	$[Rs. 3,00,000 \times Rs. 50,00,000 / Rs. 50,00,000] - Rs. 2,50,000 =$ Rs. 50,000	$[Rs. 6,00,000 \times Rs. 50,00,000 / Rs. 1,00,00,000] - Rs. 2,50,000 =$ Rs. 50,000
8	Remarks	The ITC of Rs. 50,000 availed on input services is neither allowed as refund, nor used for payment of tax on output supply, but allowed to accumulate.	The Balance input credit of Rs. 3,00,000 and the entire credit of Rs. 1,00,000 availed on input services can be used for payment of tax on turnover not having inverted rate structure.



Streamlining Compliances

Aadhaar authentication of registration to be made mandatory for being eligible for filing :

- Refund claim and
- Application for revocation of cancellation of registration.

Late fee for delayed filing of FORM GSTR-1

to be auto-populated and collected in next open return in FORM GSTR-3B.

Refund to be disbursed in the bank account, which is linked with same PAN on which registration has been obtained under GST.

Relaxation in the requirement of filing FORM GST ITC-04 (Job work) under Rule 45(3) :

Taxpayers whose annual aggregate turnover in PFY above Rs. 5 crores

Furnish ITC-04 once in six months

Taxpayers whose annual aggregate turnover in PFY upto Rs. 5 crores

Furnish ITC-04 once annually

Rule 59(6) of the CGST Rules

to be amended w.e.f. **01.01.2022** to provide that a registered person shall not be allowed to furnish **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for the preceding month.



Miscellaneous Provisions

Separate company is separate legal entities. -vide circular no. 161/17/2021

It has been clarified that a person incorporated in India under Companies Act, 2013 and a related establishment of same person incorporated under laws of another country are to be treated as separate legal entities.

and would **not be barred by condition (v) of Sec 2(6) of IGST Act, relating to term “merely establishment of distinct person”** AND would qualify as a supply of service as export of services.

Extension of compensation cess till April 2026.

It will be utilised in repayment of borrowings and debts servicing made to bridge the gap in 2020-21 and 2021-22

CIRCULAR NO.
159/15/2021
DATED 06.09.2021

Clarification on doubts related to scope of “Intermediary”

‘Intermediary’ has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST” Act) as under

– “Intermediary means a broker, an agent or any other person, by whatever name called, who **arranges or facilitates** the supply of goods or services or both, or securities, between two or more persons, but does **NOT** include a person who supplies such goods or services or both or securities on his own account.”

Primary Requirements for intermediary services

Intermediary service provider to have the character of an agent, broker or any other similar person:

Minimum of Three Parties:

An intermediary essentially “arranges or facilitates” another supply (the “main supply”) between two or more other persons and, does not himself provide the main supply.

Two distinct supplies:

(1) Main supply, between the two principals, which can be a supply of goods or services or securities; (2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals.

Sub-contracting for a service is not an intermediary service!

CIRCULAR NO.
159/15/2021
DATED 06.09.2021

Clarification on doubts related to scope of “Intermediary”

Illustration

An insurance company ‘P’, located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by ‘P’ to the clients. For processing insurance claims, ‘P’ decides to outsource this work to some other firm. For this purpose, he approaches ‘Q’, located in India, for arranging insurance claims processing service from other service providers in India. ‘Q’ contacts ‘R’, who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by ‘R’ to ‘P’. ‘Q’ charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by ‘R’ to ‘P’.

In such a case, main supply of insurance claims processing service is between ‘P’ and ‘R’, while ‘Q’ is merely arranging or facilitating the supply of services between ‘P’ and ‘R’, and not himself providing the main supply of services. Accordingly, in this case, ‘Q’ acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

CIRCULAR NO.
157/13/2021
DATED 20.07.2021

Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021.

The extract of the Hon'ble Supreme order dated 27th April 2021 is reproduced below for reference:

*"We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of **all judicial or quasi-judicial proceedings**, whether condonable or not, **shall stand extended till further orders**. It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings. We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities."*

OBSERVATIONS OF THE LEGAL OPINION

i) Hon'ble Supreme Court has stepped into to grant extensions only with reference to **judicial and quasi-judicial proceedings in the nature of appeals/ suits/ petitions etc.** and has not extended it to every action or proceeding under the CGST Act.

ii) As on date, the Orders of the Hon'ble Supreme Court **apply to appeals, reviews, revisions etc., and not to original adjudication.**

iii) Even under category **judicial and quasi-judicial proceedings**, Hon'ble Supreme Court Order, **applies only to a list which needs to be pursued within a time frame fixed by the respective statutes.**

iv) Wherever proceedings are pending, judicial or quasi-judicial which requires to be heard and disposed off, **cannot come to a standstill by virtue of these extension orders.** Those cases need to be adjudicated or disposed off either physically or through the virtual mode based on the prevailing policies and practices besides instructions if any.

v) The following actions such as **scrutiny of returns, issuance of summons, search, enquiry or investigations and even consequential arrest in accordance with GST law** would not be covered by the judgment of the Hon'ble Supreme Court.

vi) As regards **issuance of show cause notice, granting time for replies and passing orders**, the present Orders of the Hon'ble Supreme Court may **not cover** them **even though they are quasi-judicial proceedings** as the same has only been made applicable to matters relating to petitions/applications/suits, etc.

CLARIFICATIONS OF THE LEGAL OPINION

(a) **Proceedings that need to be initiated or compliances that need to be done by the taxpayers:-** These actions **would continue to be governed only by the statutory mechanism and time limit provided/ extensions granted** under the statute itself. Various Orders of the Hon'ble Supreme Court would not apply to the said proceedings/ compliances on part of the taxpayers.

(b) **Quasi-Judicial proceedings by tax authorities:-** The **tax authorities can continue to hear and dispose off proceedings where they are performing the functions as quasi-judicial authority**. This may inter-alia include disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc.

Similarly, **appeals which are filed and are pending, can continue to be heard and disposed off and the same** will be governed by those extensions of time granted by the statutes or notifications, if any.

(c) **Appeals by taxpayers/ tax authorities against any quasi-judicial order:-**

Wherever any appeal is required to be filed **before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order** or where a **proceeding for revision or rectification of any order** is required to be undertaken, the time line for the same would **stand extended** as per the Hon'ble Supreme Court's order.

CIRCULAR NO.
158/14/2021
DATED 06.09.2021

Clarification regarding extension of time limit to apply for revocation of cancellation of registration in view of Notification No. 34/2021-Central Tax dated 29th August, 2021

The extract of the Notification No. 34/2021-Central Tax dated 29th August, 2021 is given below for reference:

The Government, on the recommendations of the Council, hereby notifies that where a registration has been cancelled under clause (b) or (c) of sub-section (2) of section 29 of the said Act and
- the time limit for making an application of revocation of cancellation of registration under sub-section (1) of section 30 of the said Act falls during the period from the 1st day of March, 2020 to 31st day of August, 2021,
the time limit for making such application shall be extended upto the 30th day of September, 2021.

CLARIFICATIONS REGARDING EXTENSION OF TIME LIMIT FOR APPLICATION FOR REVOCATION OF CANCELLATION OF REGISTRATION

All applications are covered under the scope of the said notification irrespective of the status of the applications

(i) application for revocation of cancellation of registration has not been filed by the taxpayer

(ii) application for revocation of cancellation of registration has already been filed and which are pending with the proper officer-

(iii) application for revocation of cancellation of registration was filed, but was rejected by the proper officer and taxpayer has not filed any appeal against the rejection -

(iv) application for revocation of cancellation of registration was filed, the proper officer rejected the application and appeal against the rejection order is pending before appellate authority-

(v) application for revocation of cancellation of registration was filed, the proper officer rejected the application and the appeal has been decided against the taxpayer

With effect from **01.01.2021**, proviso to sub-section (1) of section 30 of the CGST Act has been inserted which provides for **extension of time for filing application for revocation of cancellation of registration**

- by **30 days by Additional/ Joint Commissioner** and
- by **another 30 days by the Commissioner**.

CLARIFICATIONS REGARDING THE TIME LIMIT OF 30 DAYS

(i) where the thirty days' time limit falls between 1st March, 2020 to 31st December, 2020, there is no provision available to extend the said time period of 30 days under section 30 of the CGST Act

The time limit to apply for revocation of cancellation of registration stands **extended up to 30th September, 2021 only**

(ii) where the time period of thirty days since cancellation of registration has not lapsed as on 1st January, 2021 or where the registration has been cancelled on or after 1st January, 2021,

The time limit for applying for revocation of cancellation of registration shall stand extended as follows:

(a) Where the time period of 90 days (initial 30 days and extension of 30 + 30 days) since cancellation of registration has elapsed by 31.08.2021

the time limit to apply for revocation of cancellation of registration stands **extended upto 30th September 2021**, without any further extension of time by Joint Commissioner/ Additional Commissioner/ Commissioner.

(b) Where the time period of 60 days (and not 90 days) since cancellation of registration has elapsed by 31.08.2021

the time limit to apply for revocation of cancellation of registration stands **extended upto 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Commissioner**, on being satisfied, as per proviso to section 30(1) of the CGST Act

(c) Where the time period of 30 days (and not 60 days or 90 days) since cancellation of registration has elapsed by 31.08.2021

the time limit to apply for revocation of cancellation of registration stands **extended upto 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Joint/ Additional Commissioner and another 30 days by the Commissioner**, on being satisfied, as per proviso to section 30(1) of the CGST Act

Notification No. 35/2021 – Central Tax dated 24.09.2021

1. In **Rule 10A** of the said rules, with effect from the date as may be notified, -

(a) after the words “details of bank account”, the words **“which is in name of the registered person and obtained on Permanent Account Number of the registered person”** shall be inserted;

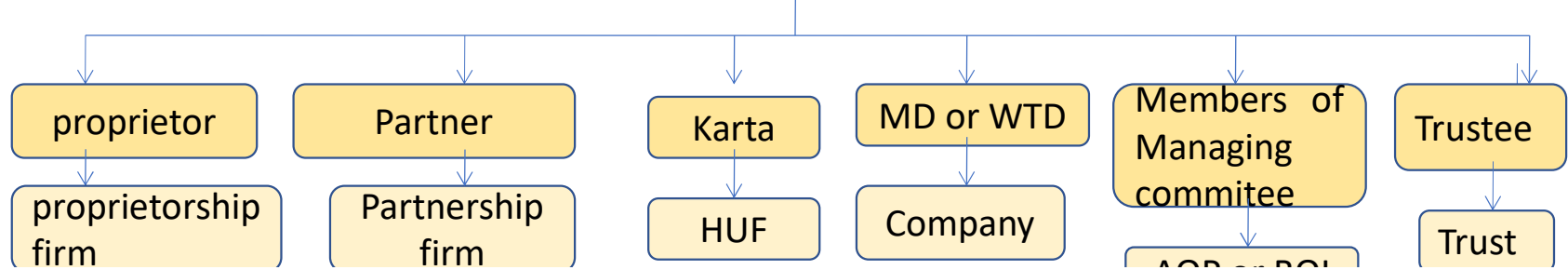
(b) the following proviso shall be inserted, namely:- **“Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.”**;

Requirement of furnishing of the bank account details under GST.

2.

After **Rule 10A** of the said rules, with effect from the date as may be notified, the following rule shall be inserted, namely: -

“Rule 10B. Aadhaar authentication for registered person .— The registered person, other than a person notified under sub-section (6D) of section 25, who has been issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number of the



2.

Contd.

in order to be eligible for the purposes as specified in column (2) of the Table below:

S. No.	Purpose
(1)	(2)
1.	For filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23
2.	For filing of refund application in FORM RFD-01 under rule 89
3.	For refund under rule 96 of the integrated tax paid on goods exported out of India

Provided that **if Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: –**

- (a) her/his Aadhaar Enrolment ID slip; and
 - (i) Bank passbook with photograph; or
 - (ii) Voter identity card issued by the Election Commission of India; or
 - (iii) Passport; or
 - (iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988):

Provided further that such person shall undergo the authentication of Aadhaar number within a period of thirty days of the allotment of the Aadhaar number.”;

3

**Revocation of Cancellation
of Registration.**

In **Rule 23** of the said rules, in sub-rule (1), with effect from the date as may be notified, after the words “on his own motion, may”, the words, figures and letter “ **subject to the provisions of rule 10B,**” shall be inserted

4.

**Restrictions on Inputs/ Capital
Goods sent for Job Work**

In **Rule 45** of the said rules, in sub-rule (3), with effect from the 1st day of October, 2021, -

- (i) for the words “during a quarter”, the words “during a specified period” shall be substituted;
- (ii) for the words “the said quarter”, the words “the said period” shall be substituted;
- (iii) after the proviso, the following explanation shall be inserted, namely: -

“Explanation. - For the purposes of this sub-rule, the expression “specified period” shall mean.-

- (a) the period of six consecutive months commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and
- (b) a financial year in any other case.”;

Form and manner of furnishing
details of outward supplies

5.

In **Rule 59** of the said rules, in sub-rule (6), with effect from the 1st day of January, 2022, -

- (i) in clause (a), for the words “for preceding two months”, the words “for the preceding month” shall be substituted;
- (ii) clause (c) shall be omitted

6.

(i) in sub-rule (1), with effect from the date as may be notified, after the words “may file”, the words “, subject to the provisions of rule 10B,” shall be inserted;

(ii) after sub-rule (1), the following sub-rule shall be inserted, namely:- “(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.”;

7.

Refund of IGST paid on goods and
services exported out of India

In **Rule 96** of the said rules, in sub-rule (1), after clause (b), with effect from the date as may be notified, the following clause shall be inserted, namely:-

“(c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B;”;

8.

Recovery of refund of unutilized ITC or IGST
paid on export of goods where export
proceeds not realized

After **Rule 96B** of the said rules, with effect from the date as may be notified, the following rule shall be inserted, namely:-

“96C. Bank Account for credit of refund.- For the purposes of sub-rule (3) of **Rule 91**, sub-rule (4) of **Rule 92 and Rule 94**, “bank account” shall mean such bank account of the applicant which is in the name of applicant and obtained on his Permanent Account Number: Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.”;

Grant of
Provisional
Refund

Order
sanctioning
Refund

Order sanctioning
interest on delayed
refund

Notification No. 36/2021 – Central Tax dated 24.09.2021

Makes Amendment in the Notification No. 03/2021-Central Tax, dated the 23rd February, 2021

In the said notification, in the first paragraph after the words “hereby notifies that the provisions of”, the words, brackets, figure and letter “sub-section (6A) or” shall be inserted.

The extract of the Notification No. 03/2021-Central Tax dated the 23rd February, 2021 is given below for reference:

The Government, on the recommendations of the Council and in suppression of Notification no. 17/2020 CT dt 24.03.2020 hereby notifies that the provisions of sub-section (6B) & (6C) OF Section 25 of the act shall NOT apply to :

- (a) Not a citizen of India or
- (b) A Department or Establishment of the Central government or State Government
- (c) A local authority or
- (d) A statutory body or
- (e) A public sector undertaking or
- (f) A person applying for registration under provisions of Sec 25(9)

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

THANK YOU

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