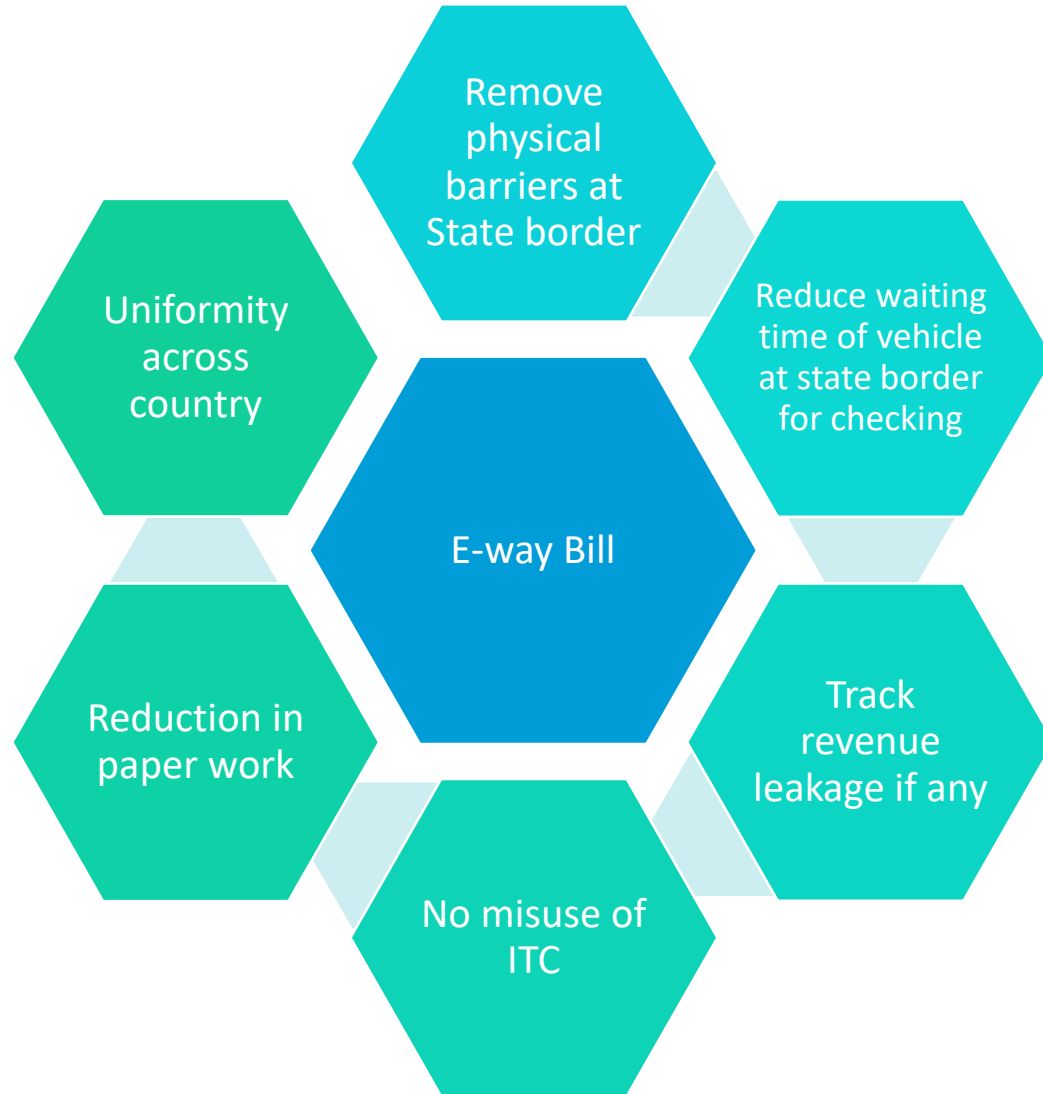


UNDERSTANDING E- WAY BILL AND INELIGIBLE ITC

CA Vaishali Kharde
(15.06.2024)



Why E-Way Bill



E-way Bill Implementation

February 2018

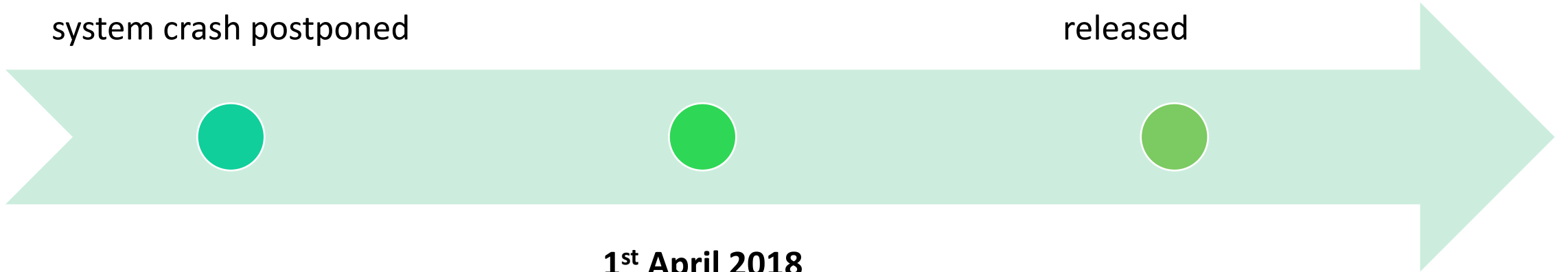
e-way bill portal was
launched however due to
system crash postponed

1st June 2024

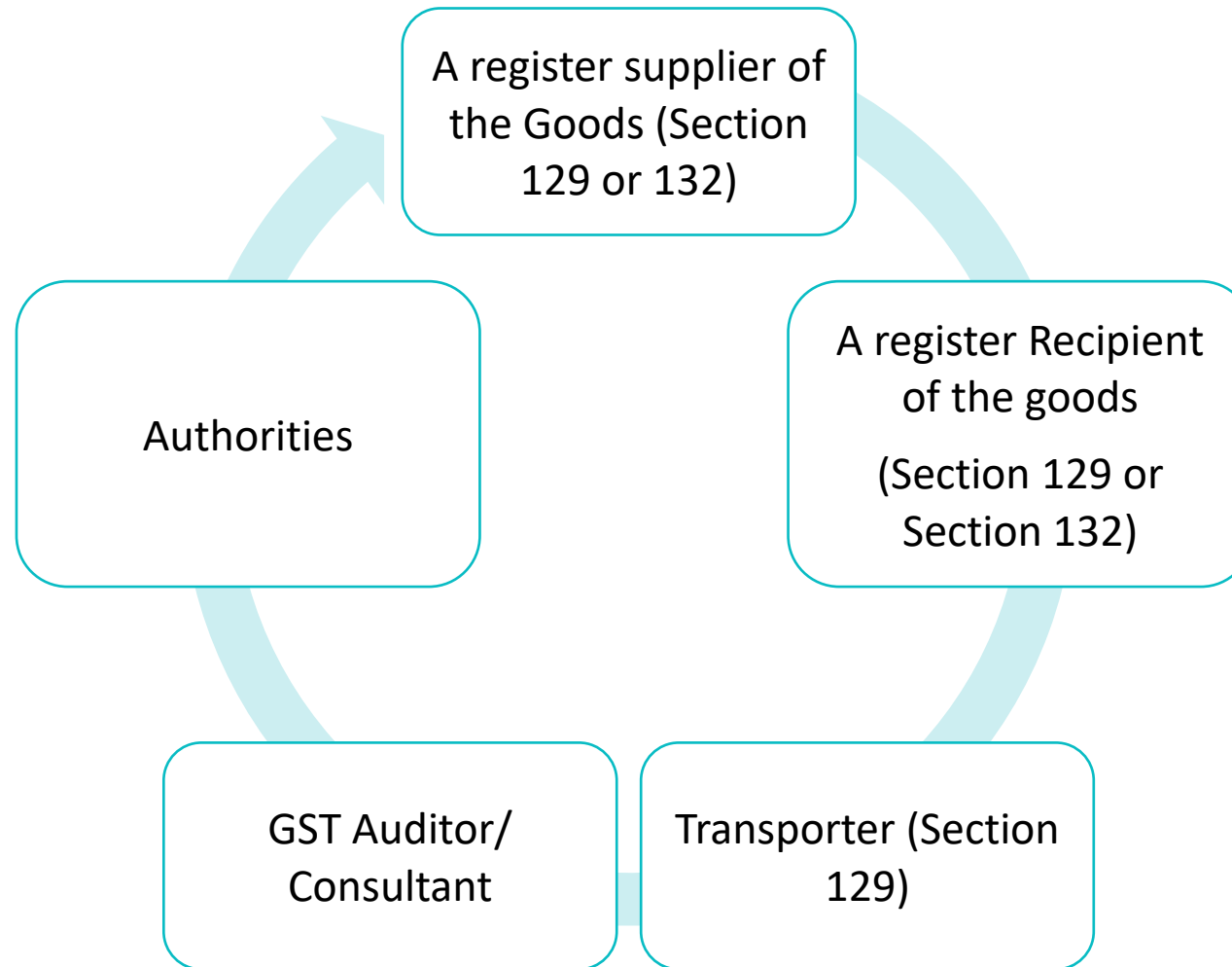
- E-way bill2 portal
released

1st April 2018

E-way bill implemented



Why E-way bill is critical



Rule 138 –E-way Bill

- *(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—*
- *(i) in relation to a supply; or*
- *(ii) for reasons other than supply; or*
- *(iii) due to inward supply from an unregistered person,*
- *shall, **before commencement of such movement**, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:*

Rule 138 –E-way Bill

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

Rule 138 –E-way Bill

When E-Way bill is required to be generated?

Who is responsible for Generation of E-way bill?

Whether transporter is responsible for generation of Part A of the E-way Bill

How to determine Value of Goods or limit of 50 Thousand or 1 Lakh?

Whether E-way bill can be generated for goods of value below 50,000/- or 1,00,000/- as the case may be.

Rule 138 –E-way Bill

- *Rule 138 (1) Explanation 2*
- *Explanation 2.- For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of **section 15, declared in an invoice**, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and **also includes the central tax, State or Union territory tax, integrated tax and cess charged**, if any, in the document and **shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.***

Key Aspects

Applicability

- Movement of goods of consignment value exceeding fifty thousand rupees: (Within Mah – 1 Lakh)
- Even for other than Supply

In following two cases, e-way bill is applicable **even if** value of consignment is **below fifty thousand rupees**:

- **Inter-State job-work**;
- **Handicraft goods** transported **inter-State** under who has been exempted from obtaining from registration as turnover of goods below Rs. 20 lakh (or 10 lakh in specified state) and enjoying exemption under Notification No. 32/2017-CT, dated 15-9-2017 - first and second proviso to rule 138(1) of CGST Rules inserted w.e.f. 15-9-2017.

Key Aspects

Form Prescribed

- EWB-01
- Part A of EWB is to be prepared by person who causes movement of goods
- Part B is by person who is transporting the goods

Person liable to generate is the person who causes movement of goods

- Consignor of Goods
- Consignee of Goods
- Transporter of goods

Person who is liable to generate E-way bill in case Movement of the Goods given below

- Movement from Registered Supplier to Unregistered Recipient
- Movement from Unregistered Supplier to Registered Recipient
- Movement of the goods from unregistered supplier to unregistered recipient

Person – Responsible for generation of E-way Bill

Scenario	Part -A	Part-B
By Road – Normal Scenario	Consignor, Consignee or Transporter (On Authorization received from the registered person,)	Transporter
Goods to be transported are supplied through an e-commerce operator	e-commerce operator(on an authorization received from the consignor)	Transporter
Courier agency,	courier agency (on an authorization received from the consignor,)	Transporter
Own conveyance or a hired one or a public conveyance, by road,	Consignor or Consignee who causes the Movement	Consignor or Consignee who causes the Movement
Goods are transported by railways or by air or vessel	Consignor or Consignee who causes the Movement	Consignor or Consignee who causes the Movement

E-WAY BILL NOT REQUIRED

A. Goods Based

Sr	Description
A.	Goods transported are -
a.	Exempt from tax
b.	By a non-motorised conveyance
c.	Nil Rated Goods other than de-oiled cake
d.	Alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel
e.	Not Treated as Supply (Schedule III)
f.	Transit cargo from or to Nepal or Bhutan
g.	Empty cargo containers
h.	Specified in annexure

E-WAY BILL NOT REQUIRED

Annexure

Sr	Description of Goods
1	Liquefied petroleum gas for supply to household and non domestic exempted category (NDEC) customers
2	Kerosene oil sold under PDS
3	Postal baggage transported by Department of Posts
4	Natural or cultured pearls and precious or semi-precious stones, precious metals and metals clad with precious metal
5	Jewellery, goldsmiths and silversmiths wares and other articles
6	Currency
7	Used personal and household effects
8	Coral, unworked and worked coral

E-WAY BILL NOT REQUIRED

B. Movement Based

Sr	Description
1	Goods are transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by customs
2	Goods are transported under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port
3	Goods are transported under customs supervision or under customs seal.
4	Movement of goods within such areas as are notified by State or Union territory in that particular State or Union territory. (?)
5	Goods transported upto a distance of 20 KM from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan.

E-WAY BILL NOT REQUIRED

C. Person Based

Sr	Description
1	Movement of goods caused by defence formation under Ministry of defence as a consignor or consignee
2	Consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail

VALIDITY OF PART A OF THE E-WAY BILL

- The unique number generated after filing of Part A shall be valid for a **period of 15 for updation of Part B of FORM GST EWB-01.**

VALIDITY – OTHER THAN OVER DIMENSIONAL CARGO VEHICLES

- Validity is **calculated from the date and time of generation of e-way bill.**

Distance	Valid from	Valid for
Up to 200 Km	Date & Time at which E way bill is generated	1 Day
Every 200 Km or part	Date & Time at which E way bill is generated	Additional a Day

VALIDITY - OVER DIMENSIONAL CARGO VEHICLES

- Over Dimensional Cargo mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules 1989 made under the Motor Vehicles Act, 1988.
- Validity is **calculated from the date and time of generation of e-way bill:**

Distance`	Valid from	Valid for
< 20 Km	Date & Time at which E way bill is generated	1 Day
Every 20 Km or part	Date & Time at which E way bill is generated	Additional a Day

EXTENSION OF VALIDITY

- Under circumstances **of an exceptional nature**, there is an option under e-way bill to extend the validity period.
- Here, transporter will enter the e-way bill number and enter the reason for the requesting the extension, from place (current place), approximate distance to travel and Part-B details. He cannot change the details of Part-A. He will get the extended validity based on the remaining distance to travel.

Key Aspects

Acceptance

- Recipient /consignor shall accept/reject within 72 hours else its deemed that he has accepted

Part B of E-Way Bill Optional

- Up to 50km within the State from the POB of the consignor to the POB of the transporter for further transportation.
- Up to 50km within the State from POB of the transporter finally to POB of the consignee

Part B

- Can be updated in case transferring goods from one conveyance to another

Other Aspect

- Validity of the e-way bill may be extended within eight hours from the time of expiry [Proviso to Rule 138 (10) of CGST Rules)
- Can be cancelled within 24 hours of its generation

To Discuss

- Relevant Legal Provisions



- Procedure To Handle Litigation In Case Of Interception/Detention Of Goods Or



- Penalties and Way Forward



- Legal Precedent



- Key Highlights



- Way Forward to Mitigate Risk of Litigation





Relevant Legal Provisions

Relevant Legal Provisions

Section 68 of CGST Act

- Inspection of goods in movement

Section 122 of CGST Act

- Penalty for certain offences.

Section 125 of CGST Act

- General penalty

Section 126 of CGST Act

- General disciplines related to penalty.

Section 129 of CGST Act

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

Section 130 of CGST Act

- Confiscation of goods or conveyances and levy of penalty.

Relevant CGST Rules -8

Rule 55A

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

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.-

Rule 138B.

- Verification of documents and conveyances.

Rule 138E.

- Restriction on furnishing of information in PART A of FORM GST EWB-01

Rule 139

- Inspection, search and seizure.

Rule 140

- Bond and security for release of seized goods.

Rule 141

- Procedure in respect of seized goods.-

Relevant Notifications -14

NT-07/2017-IT

- Registration Exemption-Job Worker

NT-27/2017-CT

- E-way bill rules notified.

NT-32/2017-CT

- Exemption for handicraft goods if turnover is <20 lakhs.

NT-34/2017-CT

- inserts provisos in Rule 138(1) and amends Form GST EWB-01

NT-38/2017-CT

- Amends notification 32/2017

NT-03/2018-CT

- Rule is substituted with effect from 01-02-2018.

NT-12/2018-CT-

- Rule Amended

NT-26/2018-CT-

- Rule amended

NT-56/2018-CT

- Casual Taxable Persons exempted from registration

NT-03/2018-IT

- Exempts certain Casual Taxable persons from registration

NT-74/2018-CT

- Explanation -1 replaced in Rule 138(1)

NT-31/2019-CT

- Sub rule (10) amended multi dimensional ship

NT-47/2020-CT

- Proviso to NT-35/2020-CT is substituted

NT-94/2020-CT

- Amends Kms per day to 200 kms

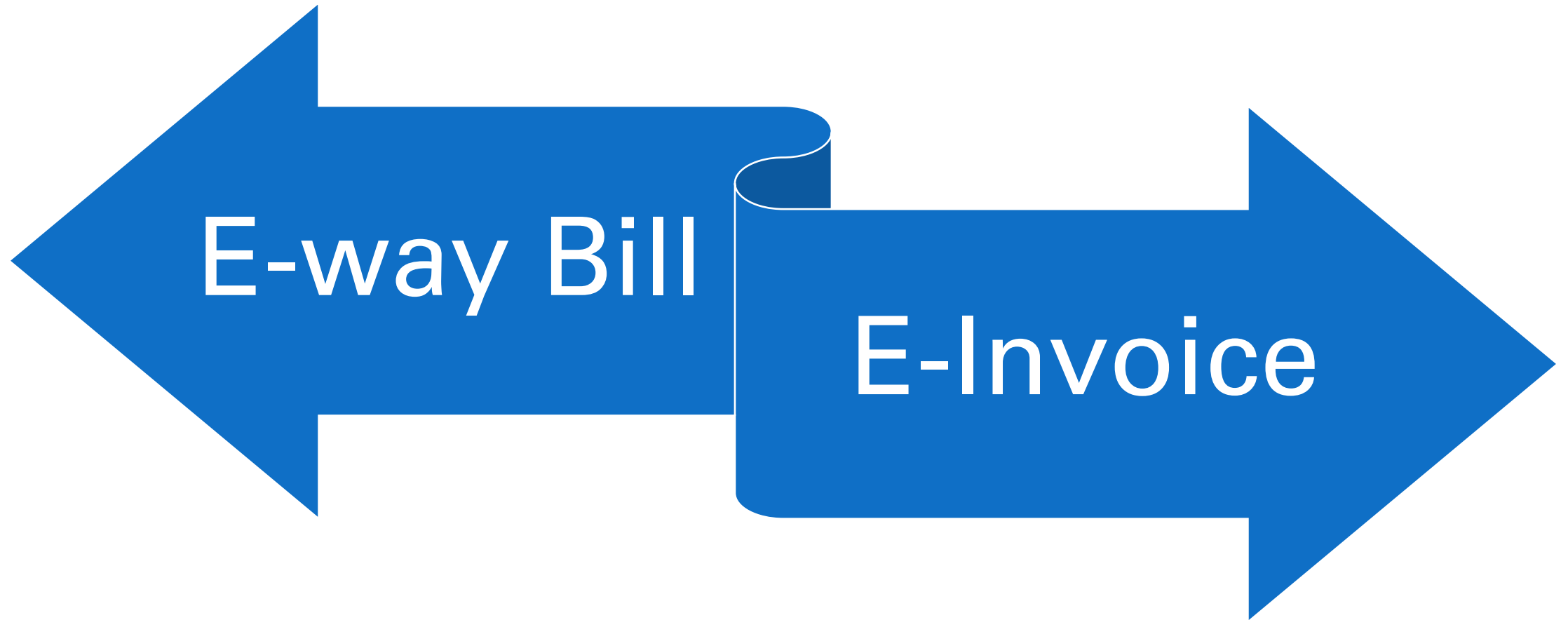
Section 68 of CGST Act

- (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.**
- (2) The details of documents required to be carried under **sub-section (1) shall be validated in such manner as may be prescribed.**
- (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**

Documents to be Reproduced – Rule 138A

- (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 the e-way bill number in 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:**
- *Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel:*
- *[Provided further that in case **of imported goods**, the person in charge of a conveyance shall also carry a copy of **the bill of entry filed** by the importer of such goods and shall indicate the number and date of the **bill of entry in Part A of FORM GST EWB-01***
- *[(2) In case, invoice is issued in the manner prescribed under sub-rule (4) of rule 48, the **Quick Response (QR) code** having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.]*

Differentiate



**Procedure To Handle Litigation In
Case Of Interception/Detention
Of Goods and/or Vehicles**



Procedure – Form Prescribed

MOV-01

- Record Statement on Person In Charge of Vehicle

MOV-02

- Issue an Order for Physical inspection of conveyance

EWB-01 –Part A

- Online intimation for Physical inspection of conveyance

MOV-03

- Extension Given for Final Order

MOV-04

- Physical Inspection Report

EWB-01 –Part B

- Online Physical inspection report

MOV-05

- Order where no discrepancies are found

MOV-06

- For Detention in case no intention to evade taxes

MOV-07

- SCN in case no intention to evade taxes

MOV-08

- Provisional payment on liability via Bond

MOV-09

- Order of SCN against MOV-07

DRC-07

- Online Order against SCN MOV -07

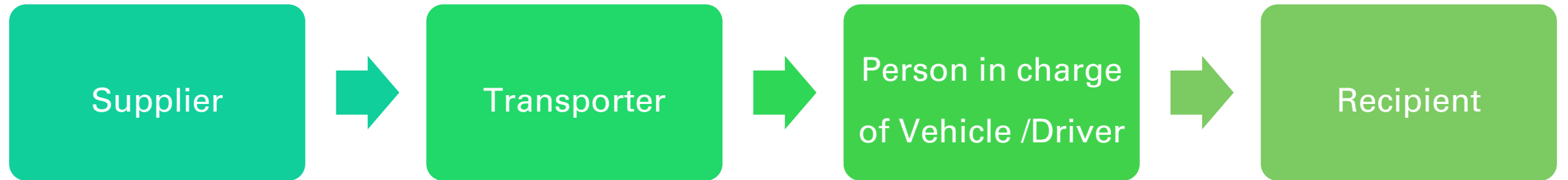
MOV-10

- SCN proposing Confiscation of Goods and Conveyance

MOV-11

- Order of Confiscation against SCN issued in MOV-10

Detention of Vehicle – Parties Involved



Inspection and verification of goods – Rule 138C

- *(1) A summary report of every inspection of goods in transit shall be recorded online by the proper officer in **Part A of FORM GST EWB-03 within twenty four hours of inspection and the final report in Part B of FORM GST EWB-03 shall be recorded within three days of such inspection.***
- *[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.*

Procedure on Detention of Vehicle -Circular No. 41/15/2018-GST

GST MOV-01

- Record a statement of the person in charge of the conveyance

GST MOV-02

- Issue an order for physical verification

Part A of GST EWB-03

- Within twenty-four hours issue a summary report via online portal

MOV-03

- Extension given for Final Order

MOV-04

- Physical Inspection Report

Part B of GST EWB-03

- Within three days or extended period issue a Final report via online portal

Procedure on Detention of Vehicle -Circular No. 41/15/2018-GST

The period of 24 hours or 3 days shall be counted from the midnight of the date on which the vehicle was intercepted.

The Commissioner, or any other officer authorised by him, is empowered to extend time for recording of the final report in Part B of EWB-03 [not exceeding 3 days] [Proviso to rule 138C]

Procedure on Detention of Vehicle -Circular No. 41/15/2018-GST

After Inspection

Where no discrepancies
are found

Where discrepancies as
given in Circular 64 (6
Situation

Where opinion to be detained

Release Order in GST
MOV-05

Penalty of Rs 1,000/-

Issue an order of
detention in GST MOV-
06 and

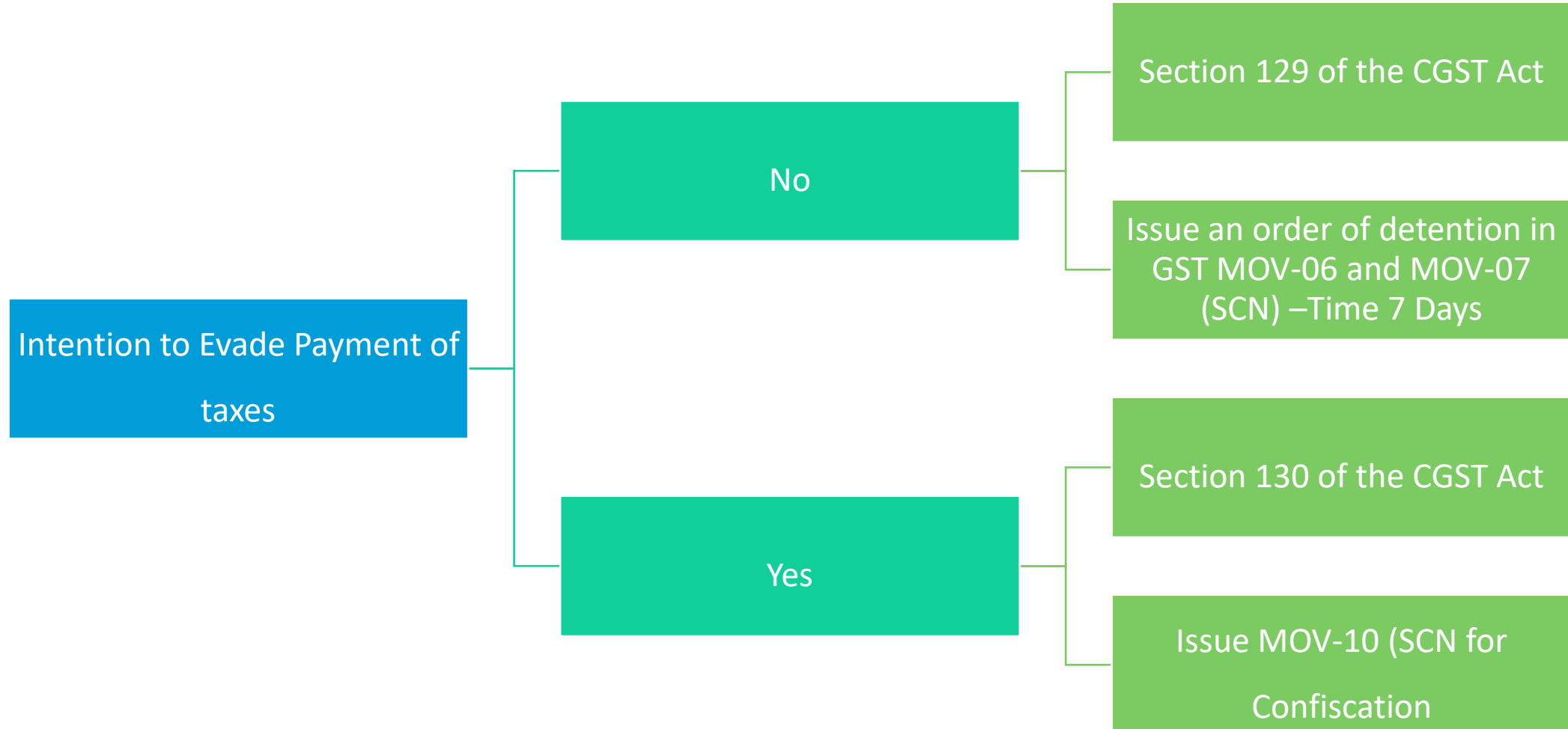
A notice of penalty
payable in GST MOV-07

12.9 E-way Bill Clarification-Circular No. 61/35/2018-GST

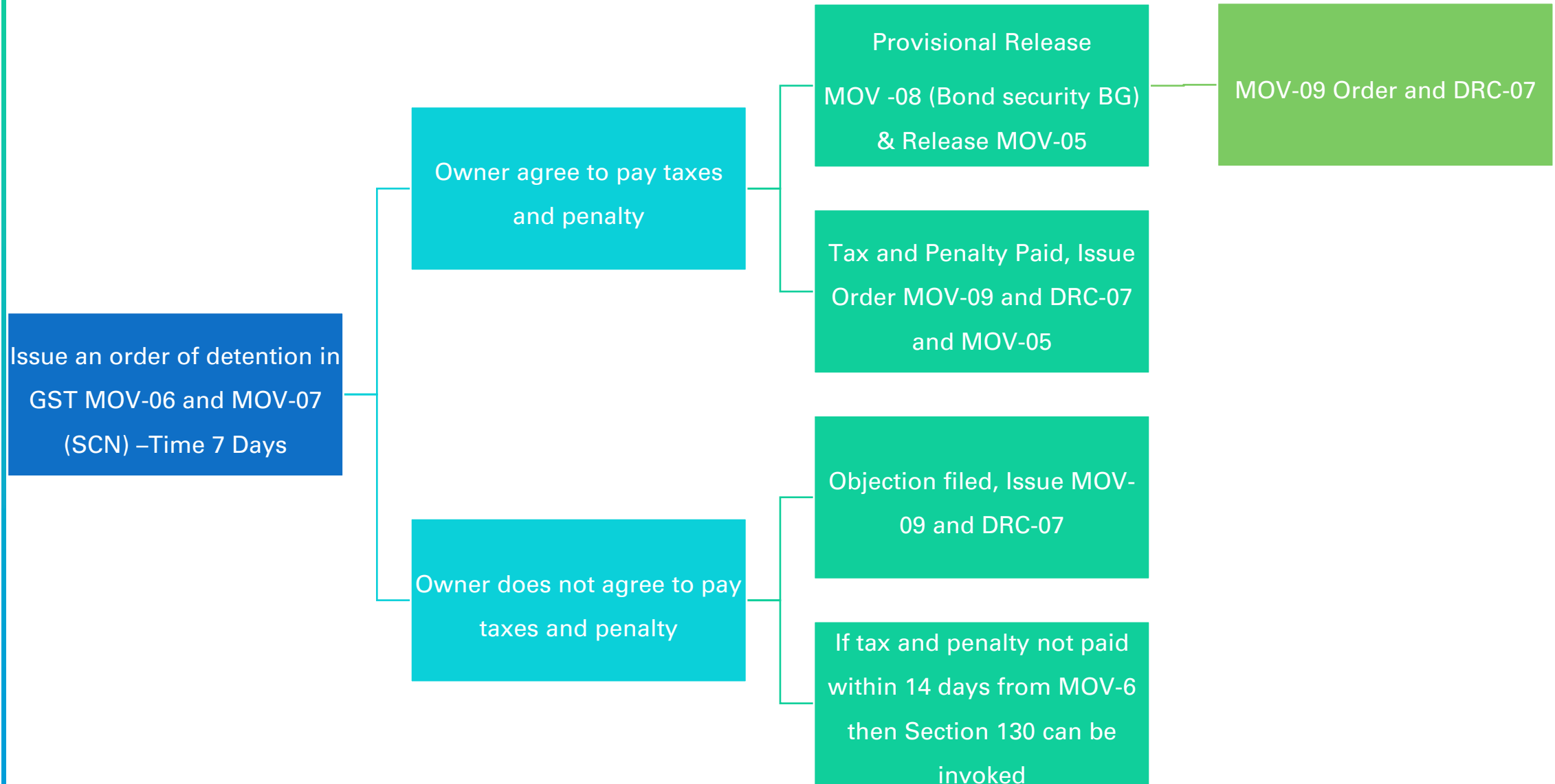
In case of given mistakes and/or error revised penalty to the tune of Rs.500/- +500/- should be imposed

- Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;
- 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;
- Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;
- Error in one or two digits of the document number mentioned in the e-way bill
- 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;
- Error in one or two digits/characters of the vehicle number

Procedure on Detention of Vehicle -Circular No. 41/15/2018-GST



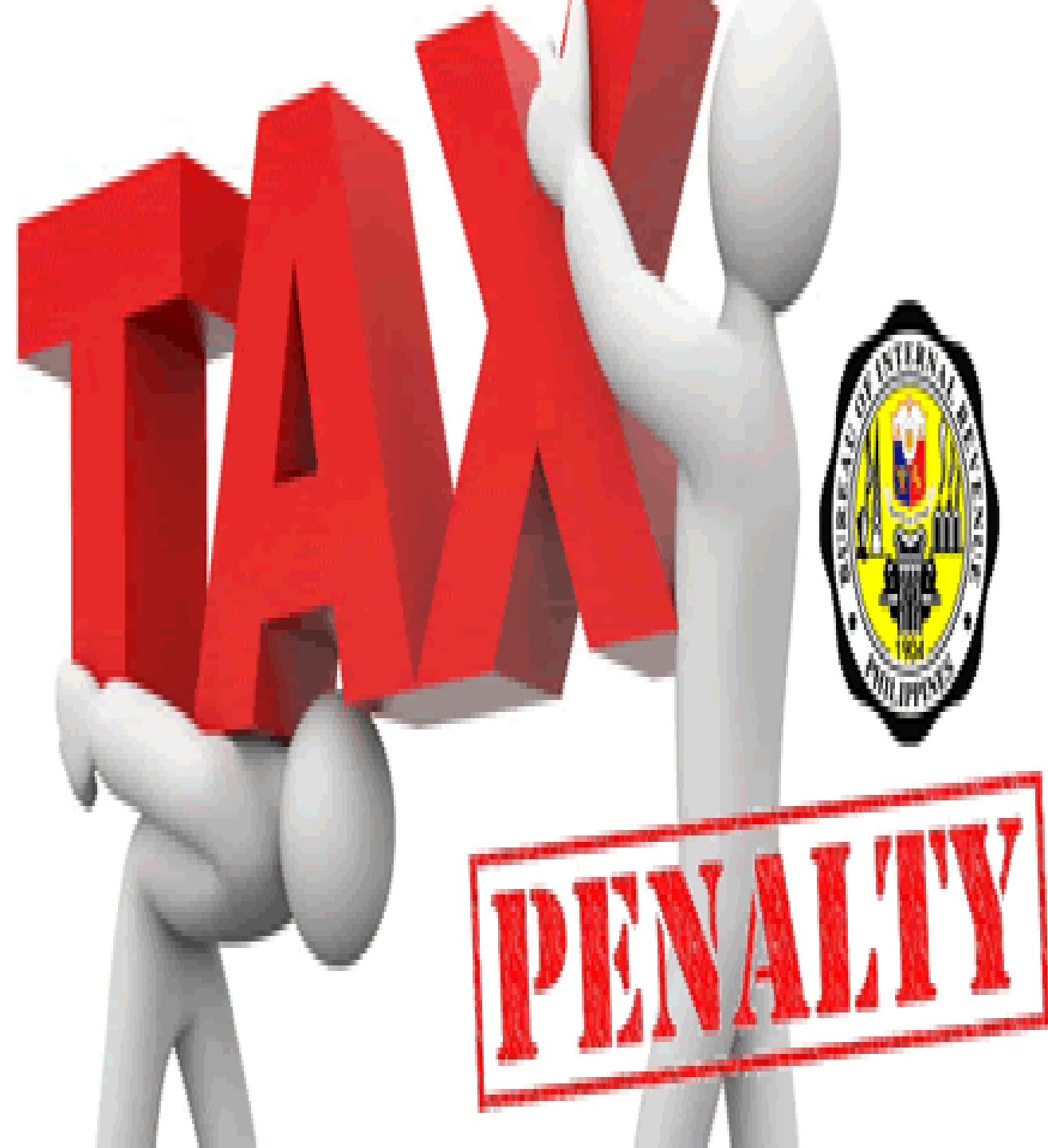
Procedure on Detention of Vehicle -Circular No. 41/15/2018-GST



Procedure on Detention of Vehicle -Circular No. 41/15/2018-GST



Penalties and Way Forward



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

Penalty Under Section 129

Old provision	Amendment 01.01.2022
When owner comes forward [Sec 129(1)(a)]:	
Taxable goods- Tax + penalty equal to 100% of tax payable	Taxable goods – Penalty equal to 200% of tax payable
Exempted goods – Lowest of 2% of the value of goods or Rs. 25,000/-	Exempted goods – Lowest of 2% of the value of goods or Rs. 25,000/-
When owner does not come forward [Sec 129(1)(b)]:	
Taxable goods – Tax + penalty equal to 50% of value of goods reduced by tax paid.	Taxable goods – Penalty equal to higher of 50% of value of goods or 200% of the tax payable on such goods.
Exempted goods – Lowest of 5% of the value of goods or Rs. 25,000/-	Exempted goods – Lowest of 5% of the value of goods or Rs. 25,000/-

Amendment – Section 129

- **(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—**
 - (a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;
 - (b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twentyfive thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;
 - (c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:
Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

Amendment – Section 129

- *(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]⁹⁹ 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.*

Amendment – Section 129 (a) (1) – Substituted

Earlier

- *(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;*

Revised

- *“(a) on payment of **penalty equal to two 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 penalty;*

Analysis of amendment

As per Amendment for release of conveyance only penalty is required to be paid.

However, Penalty is increased to 200% from 100%.

Amendment – Section 129 (b) – Substituted

Earlier

- *(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;*

Revised

- ***(b) on payment of penalty equal to fifty per cent. Of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, 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;***

Amendment – Section 129 (2) – omitted

Earlier

- *(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.*

Revised

- ~~*(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.*~~

Analysis of amendment

Subsection (2) is omitted. Thus, now conveyance and goods detained cannot be released on merely **on execution of bond and bank guarantee as security. However, Option of the same can be explored under Proviso to Section 129(1).**

Amendment – Section 129 (3) – Substituted

Earlier

- *(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).*

Revised

- *“(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, 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).”;*

Analysis of amendment

Subsection 3 is substituted so that to prescribe time frame. The proper officer detaining or seizing goods or conveyance is now required to issue a notice within seven days of such detention and thereafter, pass an order within a period of seven days from the date of service of such notice.

Amendment – Section 129 (4) – Substituted

Earlier

- *(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*

Revised

- *(4) ~~No tax, interest or penalty~~ No Penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*

Amendment – Section 129 (6) – Substituted

Earlier

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

Amendment – Section 129 (6) – Substituted

Now

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

Analysis of amendment

Subsection 6 has been substituted. As per new subsection

- the goods or conveyance detained or seized shall become liable to be sold or disposed off if **payment of imposed penalty is not made within 15 days from the date of receipt of copy of the order imposing such penalty.**

-Thus delinking of Section 129 and 130 of the CGST Act

-Now Transporter has given an option to release the conveyance on payment of penalty or 1 lakh rupees, whichever is less.

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

Amendment – Section 130 – Substituted

Earlier

- *(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 in*

Revised

- *(1) ~~Notwithstanding anything contained in this Act, -if~~ Where any person – i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or*

Analysis of amendment

Section 130 amended to substitute the word *“Notwithstanding anything contained in this Act, if ”*, with word *“Where”*. Thus, now this section does not have any overriding impact. *Clause 109 of the Bill seeks to amend section 130 of the Central Goods and Services Tax Act, so as 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.*

Amendment – Section 130 (2)– Amended

Earlier

- *(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*

Amendment – Section 130 (2)– Amended

Revised

- *(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit :*
- *Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon :*
- *Provided further that the aggregate of such fine and penalty leviable shall not be less than the ~~amount of penalty leviable under sub-section (1) of section 129:~~ **penalty equal to hundred per cent of the tax payable on such goods***

Amendment – Section 130 (3)– Omitted

- ~~• (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.~~

Analysis of amendment

Section 130 (3) (c) is omitted. Thus, now there will not be any additional tax, penalty and charges in respect of such goods or conveyance

Key Highlights

Section 129 is non obstante clause

Section 129 can be invoked for Detention, seizure and release of **goods and conveyances in transit**

Vs

Section 130 invoked Confiscation of goods or conveyances and levy of Fine in lieu of penalty

Key Highlights

Section 129 applicable when contravention of the provisions of Act or the rules during goods are in transit

Vs

Section 130 is applicable in case of Prescribed scenario

Sections 129 and 130 of CGST Act are mutually exclusive –

Observations of Ho'ble High Court in the case of Synergy Fertichem Pvt Limited [2020 (33) G.S.T.L. 513 (Guj.)]

Sections 129 and 130 of CGST Act are mutually exclusive

Case

- Synergy Fertichem Pvt Limited [2020 (33) G.S.T.L. 513 (Guj.)]

Issue

- The authorities not only imposed 100% penalty under Section 129 of the Act but also imposed fine in lieu of confiscation equal to the value of the goods under Section 130 of the Act.

Observations

- *When the statute talks about intent to evade payment of tax, the same could be co-related with the term “wilful attempt”. For the purpose of evading tax, and that too, with the necessary intention, there is always a wilful attempt.*

Sections 129 and 130 of CGST Act are mutually exclusive

Observations

- *Section 130 of the Act can be invoked even in cases where the amount of tax and penalty is paid in terms of the provisions of Section 129 of the Act. This would be provided, the case is falling in any of the five eventualities prescribed in Section 130(1) of the Act. When it comes to confiscation over and above the tax and penalty, fine can be imposed. Such fine leviable shall not exceed the market value of the goods confiscated, and at the same time, the aggregate of such fine and penalty leviable will not be less than the amount of penalty leviable under sub-section (1) of Section 129.*
- *Sections 129 and 130 of the Act themselves refer to the provisions of Section 122 of the Act, so as to decide/compute the amount of penalty to be imposed upon the Assessees.*

Sections 129 and 130 of CGST Act are mutually exclusive

Observations

- *Thus, once there is no conflict between the provisions of Section 122 of the Act on one hand and Sections 129 and 130 of the Act on the other, there arises no question of invocation of 'non obstante' clause in such a situation.*
- *The plain reading of Section 129 of the Act would indicate that the same talks about detention, seizure and release of goods and conveyances in transit. On the other hand, Section 130 talks about confiscation of goods or conveyances and levy of tax, penalty and fine thereon. Both the sections, therefore, should be interpreted harmoniously keeping in mind the object and purpose behind the enactment thereof. .*

Sections 129 and 130 of CGST Act are mutually exclusive

Observations

- *For the purpose of invoking Section 129 of the Act, all that is required is “contravention of the provisions of the Act or the Rules”, whereas specific circumstances are set out in subsection (1) of Section 130 for invoking the provisions relating to confiscation which are basically related to “intent to evade payment of tax”. Thus, we are clear about one thing in our mind that both these sections are independent of each other.*

Sections 129 and 130 of CGST Act are mutually exclusive

Our Comment

- Section 130 can be invoked only if there is intention to evade the tax
- As per Section 129 (6) if owner of the goods fails to pay the amount of tax and penalty within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of Section 130. However whether non payment within specified period can be concluded as intention to evade tax.
- Section 129 and Section 130 amended in Budget 2021
- Whenever Goods are get seized or detained first it is critical to decide intention.

Legal Precedent



1. Detention of Vehicle Due to Absence of E-Way Bill

Case

- Asstt. STO Vs VST And Sons Pvt Ltd [[2021-TIOL-1588-HC-KERALA-GST](#)]

Issue

- Detention of the 'RANGE ROVER' motor vehicle while being transported from Coimbatore to Thiruvananthapuram without E-way Bill.

Observation

- Goods that are classifiable as **used personal and household effect** falls under Rule 138(14) (a) of the Kerala Goods and Services Tax Rules, 2017 and are exempted from the requirement of e-way bill.

2. Detention of Vehicle Due to Absence of E-Way Bill

Observation

- A temporary registration was also taken apart from the motor vehicle insurance.
- In the decision in KUN Motor Company's case (supra) [Kerala HC TS-661-HC-2018(KER)-NT], the Division Bench of this Court had in an almost identical situation observed as :-Used vehicles, even if it has run only negligible distances are to be categorized as '**used personal effects**'.
- There is no merit in this appeal and the same is dismissed.

2. IGST is already discharged during Import of Goods should be Considered

Case

- Siddhballi Stone Gallery [2019-TIOL-2362-HC-AHM-GST]

Issue

- Due to inadvertence out of three vehicles, in case of one vehicle e-way bill was not generated. Further, the goods in question were imported from Italy and at the time of import thereof IGST was already paid.

Observation

- The documents reveal that the petitioner had paid IGST on the goods in question at the time of import.

2. IGST is already discharged during Import of Goods should be Considered

Observation

- The fact that after the conveyance came to be intercepted, the petitioner has paid the tax and penalty on such goods as computed by the respondent authorities, by way of ad-interim relief the respondents are directed to forthwith release the conveyance being truck number GJ-12-AZ-5184 along with the goods contained therein, subject to the final outcome of the petition.

Our Comment

- In case of Import of goods where duties are appropriately discharged Section 130 of the CGST Act may not be invoked.

3. Fresh Generation of E-way bill after Expiry of Validity Period

Case	<ul style="list-style-type: none">• Ram Charitra Ram Harihar Prasad [2019-TIOL-2063-HC-PATNA-GST]
Issue	<ul style="list-style-type: none">▪ A validity of E-way bill expired before consignment reached its destination and which led to its seizure/detention under Section 129 of 'the Act'. The proceedings initiated thereunder with service of notice & thereafter a fresh e-way bill was generated.
Observations	<ul style="list-style-type: none">• Section 129(1)(a) relates to goods on which tax is yet to be paid. In other words the stipulations present in Section 129(1)(a) regulates the exercise in so far as it concerns non-tax paid goods and in which event the tax to be imposed is to be 100% with equal penalty thereon unless the goods being transported or found to be exempted from the tax.

3. Fresh Generation of E-way bill after Expiry of Validity Period

Observations

- *In so far as the present case is concerned, the document at Annexure -A series would confirm that the goods were tax paid and thus the exercise had to be regulated under the provisions of Section 129(1)(b) which provides for a lenient applicability of the penal provisions and understandably because the tax amount on the goods has already been paid by the dealer.*
- *Once the assessing authority i.e. the Deputy Commissioner, State Tax has recorded in his proceedings on 26.04.2019 that the E-WAY BILL has been generated, meaning thereby the goods carried a valid E-WAY BILL,.*
- *We quash the proceedings in its entirety together with the demand dated 07.05.2019 impugned at Annexure-5 which is accordingly quashed and set aside.*

4. Transportation for Repairs On Which Duty Already Discharged

Case

- M/S Valimohammed Jusab And Company [**2019-TIOL-2315-HC-AHM-GST**]

Issue

- A work order in respect of some job-work for which a Winch Machine was transported to Nirma Ltd., Kala Talav. However, on account of some defect in the machinery, the same was taken back to Yadav Trading Co., The vehicle in question was intercepted and the same has been seized under section 130 mainly on the ground that the e-way bill was not tendered for the goods in movement.

4. Transportation for Repairs On Which Duty Already Discharged

Observations

- *to submit that taxable supply means a supply of goods or services or both which is leviable to tax under the Act. It was submitted that in the present case, the goods were merely being transported back to the premises of Nirma Ltd. for job-work and that no goods or services were leviable to tax in respect thereof.*
- *The old and used Winch Machine was being transported from the premises of Yadav Trading Co. where it had been sent for repairs and was being transported back to Nirma Ltd.,*
- By way ad-interim relief, the respondents are directed to forthwith release Truck No.GJ-04-V-4335 along with the goods contained therein subject to the petitioner depositing a sum of Rs.10,000/- with the respondent authorities.

Litigation

Citation`	Judgement
Pragati Enterprises [2018 (12) G.S.T.L. 9 (All.)	Wrong declaration of date in E-way Bill
TIME TO TIME LOGISTICS [2018 (11) G.S.T.L. 259 (All.)]	The non-filling of the vehicle number, address and name of the driver
GATI KINTETSU EXPRESS PVT. LTD [GATI KINTETSU EXPRESS PVT. LTD	Failure to fill vehicle number in part B of E-way Bill

Litigation

Citation	Judgement
CATERPILLAR INDIA PVT. LTD. [2019 (27) G.S.T.L. 4 (Mad.)]	The facility for Extention of validity of E-way bill is not exercised [Rule 138(10)]
ASIANET DIGITAL NETWORK PVT. LTD.[2020 (32) G.S.T.L. 44 (Ker.)]	Difference in value in E-way Bill and Delivery Challan during transfer of stock liable to penalty to extent value not reflected
KANNANGAYATHU METALS [2019 (31) G.S.T.L. 391 (Ker.)]	Transit of goods by alternate way If there is an attempt at transportation contrary to the e-Way Bill, then penalty can be levied. In the instant case, there is no such indication.

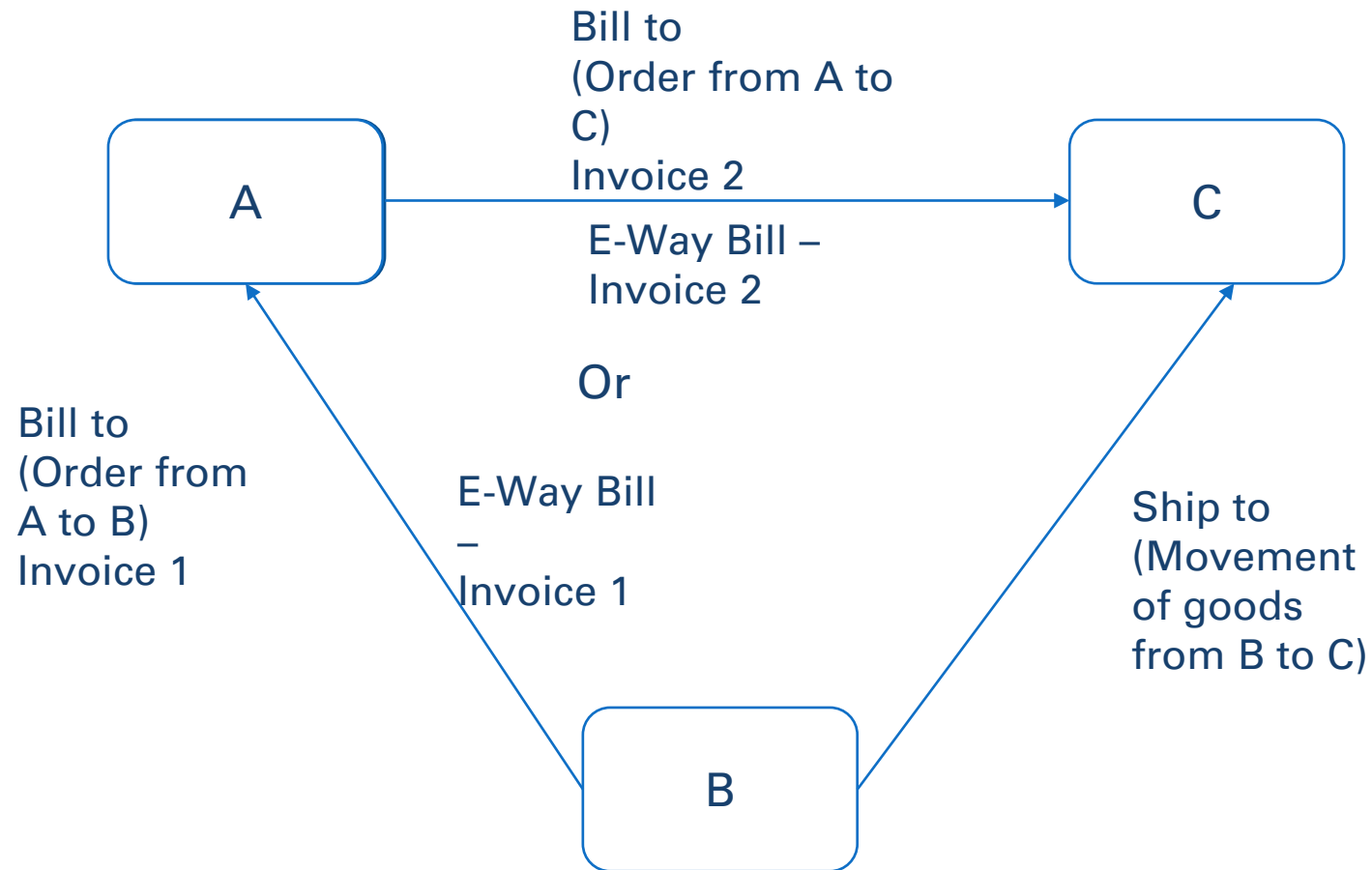
Litigation

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**PRACTICAL
CHALLENGES –
INDUSTRY LEVEL**



| Bill to ship TO



| Goods are moving in multiple vehicle against one Invoice

- How to generate e-way bill, if the goods of one invoice is being moved in multiple vehicles simultaneously ? [semi knocked down or completely knocked down condition]
 - Supplier shall issue the complete invoice before dispatch of the first consignment;
 - Supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
 - each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice;
 - Original copy of the invoice shall be sent along with the last consignment.

|Job work Procedure

- What is the consignment value for Mandatory E-Way Bill?
- Who are the responsible person for generation of E-way bill? [Principle as per Section 168 of the CGST Act,
- What is the value?
- Different quantity sent and received against of delivery challan – Job Work challan
- Job work Procedure [Circular No.38/12/2018]

| Practical Challenges

- What is the distance in case of import and export of goods?
- Whether any exemption is available up to 50 Kilometer Distance?
- Whether e-way bill is required, if the goods are being purchased and moved by the consumer to his destination himself?
- Whether one E-way bill can be generated for goods moving in one vehicle for multiple invoices ?
- Generation of E-way bill against one bill of entry (Import) having details of numerous invoice.
- How does the taxpayer register as a transporter in the e-way bill system?

| Import and Export

Details in E-way Bill	Import	Export
Document type	Bill of Entry	Tax Invoice meant for Export
Bill From	?	?
Dispatch From	?	?
Bill To	?	?
Ship To	?	?

| Practical Challenges

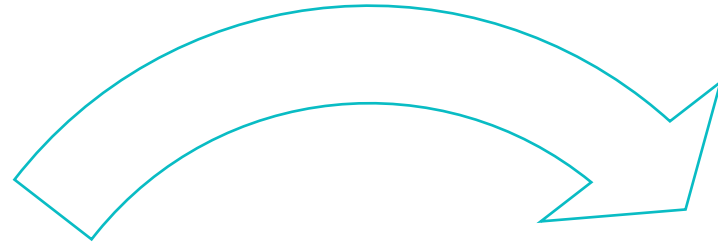
- Goods return/ rejection
- Whether E-way bill is required if motor vehicle is purchased for business?
- What is the value in e-waybill in case goods are sent on lease basis? [explanation 2 of the sub–rule (1) of rule 138.]
- If transporter transporting number of consignment below Rs. 50,000/- however total value of all consignment is greater than 50,000/- [Rule 138 (7)]

KEY HIGHLIGHTS



1. E-way Bill is for
Movement of
Goods!

Whether E-way bill is required for Supply?



Transfer Goods during
transfer of business

Pune Store

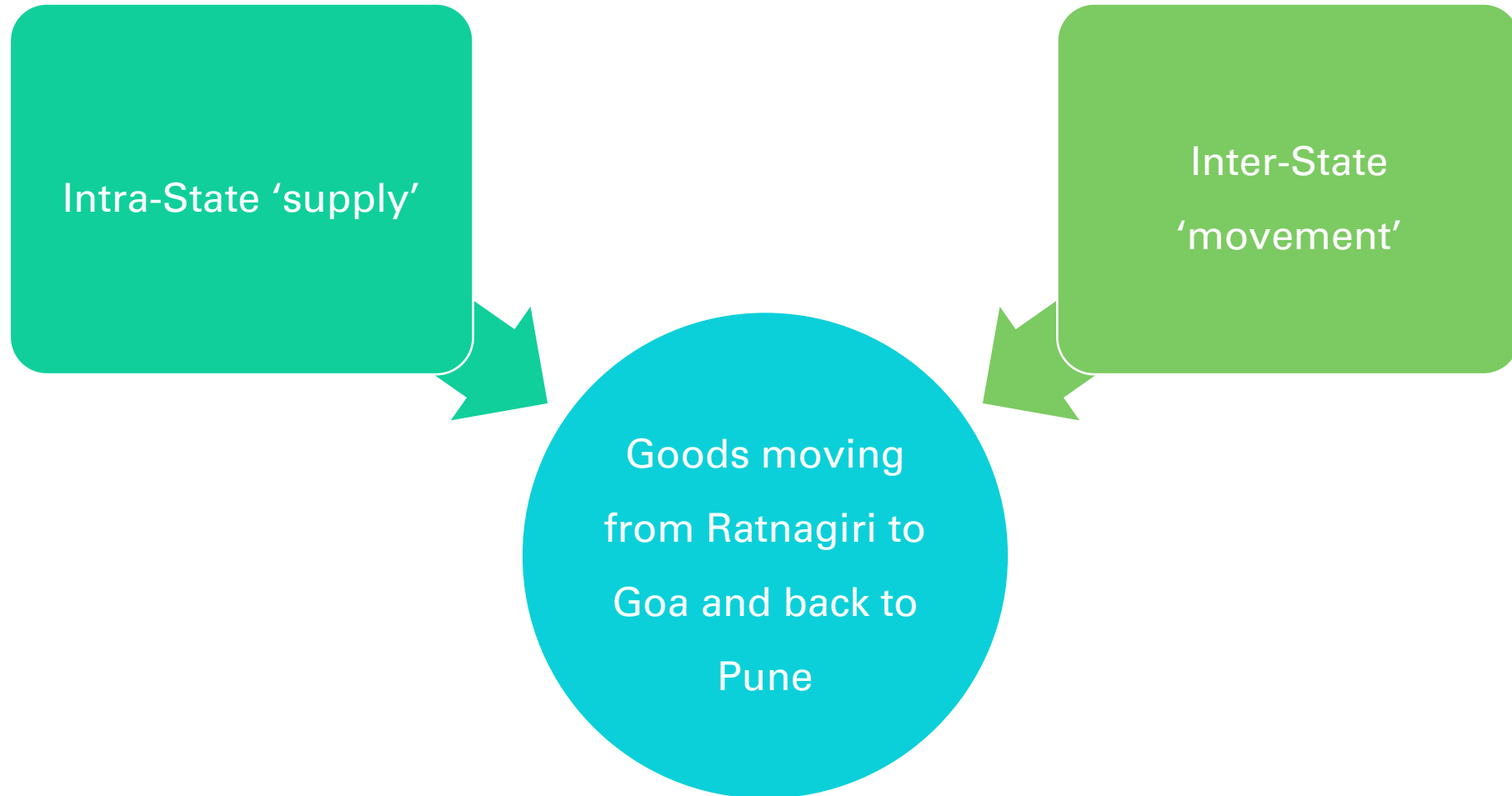


E-way Bill Clarification-Circular No. 61/35/2018-GST

Circular No.
61/35/2018-GST

- *E-way bill is a document which is required for the movement of goods from the supplier's place of business to the recipient taxpayer's place of business. Therefore, the goods in movement including when they are stored in the transporter's godown (even if the godown is located in the recipient taxpayer's city/town) prior to delivery shall always be accompanied by a valid e-way bill.*

Which Exemption is applicable ?



E-way Bill Clarification-Circular No. 47/21/2018-GST

Goods transit through another State while moving from one area in a State to another area in the same State.

- ***E-way bill generation is not dependent on whether a supply is inter-State or not, but on whether the movement of goods is inter-State or not. Therefore, if the goods transit through a second State while moving from one place in a State to another place in the same State, an e-way bill is required to be generated.***



2. Who is the Owner of Goods

Owner of Goods

Reference

- CIR-76/50/2018 Dated 01 January 2019

Issue

- 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.*

Owner of Goods

As per explanation-1 to rule 138(3), **where the goods are supplied by unregistered supplier to a recipient who is registered**, the movement shall be said to be caused by **such recipient if the recipient is known at the time of commencement of the movement of goods**



4. Proper Officer

Power of Officer

Detaining officer do not have power of classification or valuation. Such power is only with the Assessing Officer.

Sameer Mat Industries Vs State of Kerala - [TS-372-HC-2017(KER)-NT]

Alternate Route for Transportation is allowed. No mechanical detention of consignment where driver merely opts for alternate route

Kannangayathu Metals [TS-1055-HC-2019(KER)-NT]

Power of Officer

Officer as prescribed under CIR-3/3/2017-GST should only the proper officer who can inspect vehicle and E-Way bill.

Burden of proof of intention is with the Authorities in case of invoking of Section 130 of the CGST Act

Powe of Officer of other State Vs
Temporary Registration

When statute provides Procedure then it is mandatory to do the same as it is,
Taylor (1875 LR 1ChD-426),
Nazir Ahmad [AIR 1936 Privy Council
253)

3. E-way Bill Can be
a Mechanism to
detect Fake Invoice!

Goods and Services not received

Industries which are mostly Investigation

Scrap

Copper wire

Plastic granules

Gold, Silver, Bullion

Garment

Automobile Industry

Automobile Industry

Paint and Sanitary fittings

E- Way Bill without Movement of Goods



Fake Invoice

- In the scenario where E-way bill generated and deemed accepted by the Recipient (after 72 hours) invoking of section 132 of the CGST Act can not be ruled out.
- Maintain the document to substantiate the fact that goods are not moved.
- Request the recipient to Reject E-Way bill within 72 hours
- Intimate the Authorities

GST Authorities Using Radio Frequency Data to Detect Tax Evasion, Fraud



Technology

- Detection of frauds with respect to movement of Goods
- E-way bills were integrated with the radio frequency identification (RFID) tags in January 2021.
- Thus, now cross-verifying the details of vehicle movement specified in the e-way bill with their physical movement will detect mismatches and accordingly will help to detect tax evasion and/or frauds related to fake invoices or firms

GST Authorities Using Radio Frequency Data to Detect Tax Evasion, Fraud



Technology

- Thus, now Authorities have started detecting instances of tax evasion and/or fraud by identifying mismatches between E-way bill issued for transporting goods and the data from radio frequency tags that commercial vehicles use to pass through toll plazas.

Way Forward to Mitigate Risk of Litigation



Way Forward

SOP and internal control system should be in place to avoid litigation

Letter from supplier or responsibility for payment

Reconciliation for goods not transited but E-way bill Generated

PO may specify the details of person who is responsible to generate E-way Bill

Check transporter's readiness

Technical support available with transporter during transit.

E-way bill should be checked time to time

Movement of Goods without E-way bill will lead to huge penalty



Reversal of ITC

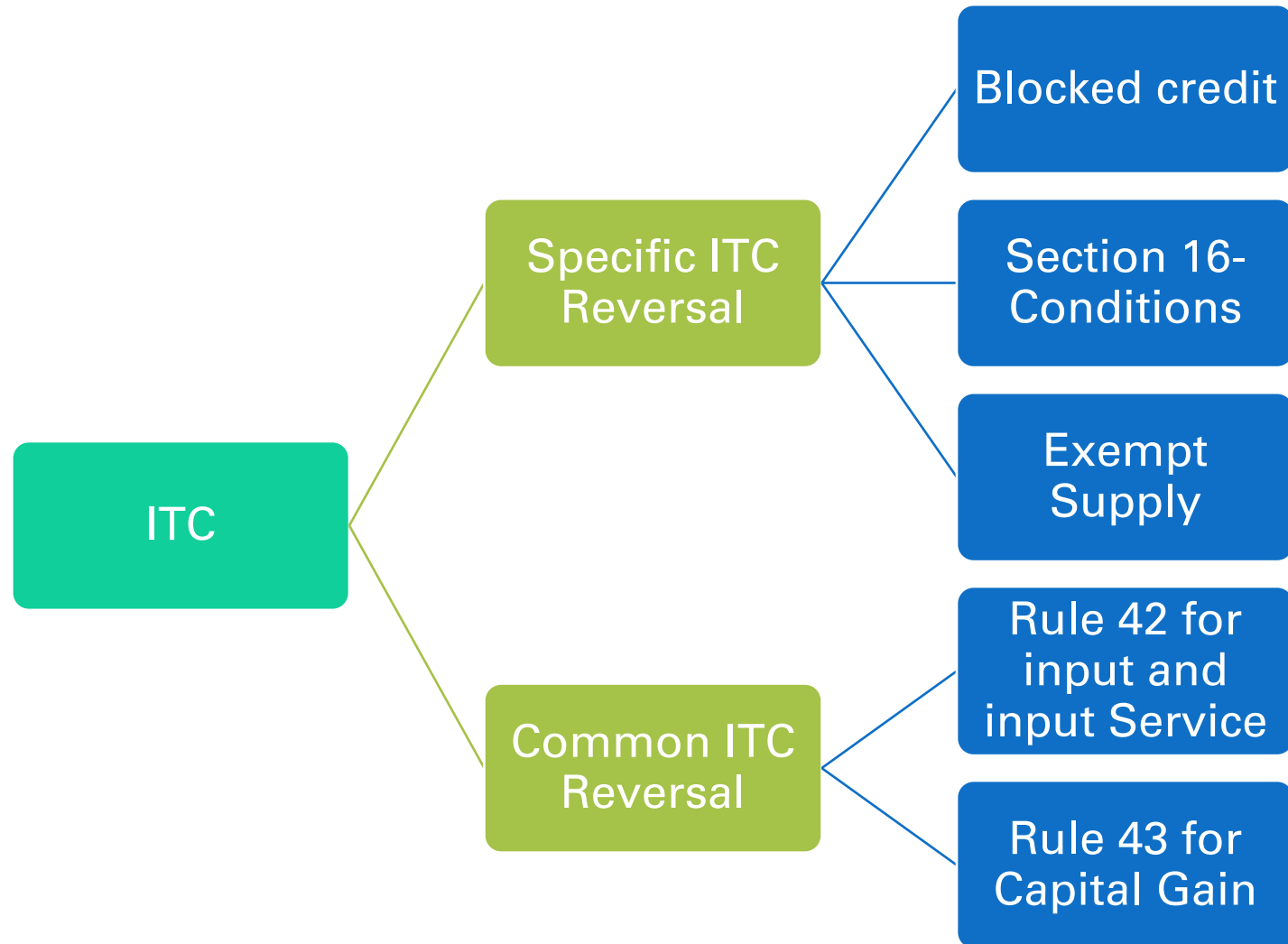
Reversal of ITC

Section 17 (1) of the CGST Act – Goods and Services used partly for business and partly for other purpose	Reversal to the extent of - Restricted to so much of the input tax as is attributable to the purposes of his business
Section 17 (2) of the CGST Act - Taxable supplies including zero rated supply and Exempt Supply	Reversal to the extent of exempt supply and/or nil rated
Section 17(5) of the CGST Act	Negative list

ITC Comprises of`

Nature	ITC Availability
Used for Taxable Supply	Yes
Exclusively used for other than business	No
Exclusively used for Exempt	No
Included in Blocked List [Section 17 (5)]	No
ITC used partly of taxable supply and exempt Supply	Partly available

ITC



Section 17 - Apportionment of credit and blocked credits

- (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is **attributable to the purposes of his business**.
- (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is **attributable to the said taxable supplies** including zero-rated supplies

Section 17

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely :—

- (a) Motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), vessels and aircraft except when they are used -
 - (i) For making the following taxable supplies, namely
 - (A) further supply of such vehicles or
 - (B) transportation of passengers; or
 - (C) imparting training on driving such motor vehicles

Section 17

(aa) Vessels and aircraft except when they are used-

(i) for making the following taxable supplies, namely:-

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) For transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Section 17

- Provided that the input tax credit in respect of such services shall be available-
 - (i) Where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;
 - (ii) Where received by a taxable person engaged-
 - (I) in the **manufacture** of such motor vehicles, vessels or aircraft; or
 - (II) in the supply of **general insurance** services in respect of such motor vehicles, vessels or aircraft insured by him

Section 17

(b) the following supply of goods or services or both-

- (i) Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, **renting or hiring of motor vehicles**, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, **life insurance and health insurance**:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

- (i) Membership of a club, health and fitness centre; and
- (ii) Travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is **obligatory** for an employer to provide to its employees **under any law** for the time being in force.

Section 17

- (c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
- (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business

Explanation. — For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, **to the extent of capitalisation**, to the said immovable property

Section 17

- *Explanation.*— For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—
 - (i) land, building or any other civil structures;
 - (ii) telecommunication towers; and
 - (iii) pipelines laid outside the factory premises.

Safari Retreats P Ltd. [2019-TIOL-1088-HC-ORISSA-GST]

- Input credit obtained on construction of immovable property - On letting out of property covered under GST, assessee retains property and does not dispose it of
- Hence, condition in Section 17(5)(d) ibid of non-availment of input credit of goods or services received by assessee for construction of immovable property, was not applicable
- Denial of credit on narrow interpretation of Department of Section 17(5)(d) ibid, rejected as it would frustrate objective of 2017 Act to prevent multi-taxation and result in assessee paying huge amount of GST for which he was not liable
- if the assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the input credit on the GST, which is required to pay under Section 17(5)(d) of the Central Goods and Services Tax Act, 2017.

Section 17

- (e) goods and/or services on which tax has been paid under section 10;
- (f) goods or services or both received by a non-resident taxable person except on goods imported by him;
 - (fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;*
- (g) goods and/or services used for personal consumption;
- (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
- (i) any tax paid in terms of sections 74, 129 or 130




Way Forward


Compliances



Correct and timely
compliances to avoid
litigation



Timely reconciliation
of data helps for
vendor
communication



Maker checker
methodology will
help for reduction of
error



Join our WhatsApp Group for Updates via link below or Scan QR Code

<https://chat.whatsapp.com/Fzcl94Ekw5h03BOdB2wWJ3>





Link of Our Session on GST Applicability in case of Banking Sector

- [GST | Banking Sector | Concept and Analysis of Legal Provisions | Day 1](#)
- [GST | Banking Sector | Issues/Challenges | Day 2](#)



Thank You



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