



How to handle cases of detention, seizure, confiscation and release of goods and conveyances in transit

Pune Branch of WIRC of ICAI

8th February 2025

CA Chaitanya S Vakharia

Disclaimer

Pune Branch of WIRC of ICAI may or may not subscribe to speaker views because views of the speakers are personal. Moreover, the views of the speaker are in personal capacity and not as a practicing Chartered Accountant.

Budget Speech of FM dated 5th July 2019

Introduction of E-Invoicing

*Para 132) It is also proposed to move to an electronic invoice system wherein invoice details will be captured in a central system at the time of issuance. This will eventually be used to prefill the taxpayer's returns. **There will be no need for a separate e-way bill.** Its roll out would begin from January, 2020. Electronic invoice system will significantly reduce the compliance burden.*

CST

Applicable Sections



Section 68

Inspection of Goods in Movement, outlining document and device requirements.



Section 122

Penalty for Certain Offences, Offences, detailing repercussions for non-compliance.



Section 129

Detention, Seizure, and Release of Goods and Conveyance in Transit, the core of our analysis.



Section 130

Confiscation of Goods or Conveyance and Levy of Penalty, addressing severe consequences.

Applicable Rules

- **Rule 55A** – Tax Invoice and Bill of Supply to accompany transport of goods
- **Rule 138** – Information to be Furnished Prior To Commencement of Movement of Goods and 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 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

Inspection of Goods in Movement – Section 68

Documents & Devices

Requires the person in charge of a conveyance carrying goods exceeding a specified value to carry prescribed documents and devices as per Rule 138 & 138A.

Validation

Details of documents must be validated as prescribed under Rule 138B, ensuring authenticity and compliance.

Interception

If intercepted by a **proper officer**, the person in charge must produce documents, devices for verification, and allow inspection.

Proper officer under CGST Act, 2017

Section 2(91) of CGST Act, 2017

Section 5(2) of the CGST Act, 2017

Circular 3/3/2017 – GST dated 5-7-2017

(As amended by circular no. 31/05/2018-GST dated 9-2-2018)

Rule 138A – Documents to be carried during transit

Invoice/Bill of Supply

The person in charge must carry the **original invoice, bill of supply, or delivery challan**, as applicable, to validate the goods being transported.

E-way Bill

A **physical or electronic copy of the e-way bill**, or its number mapped to a Radio Frequency Identification Device (RFID) (RFID) must be present, except for rail, air, or vessel vessel transport.

Imported Goods

For imported goods, a copy of the **bill of entry** filed by the importer, indicating its number and date in Part A of FORM GST EWB-01



Rule 138B – Verification Process



1

Authorization

The Commissioner can **authorize officers** to intercept conveyances to verify e-way bills for both inter-State and intra-State movement.

2

RFID Readers

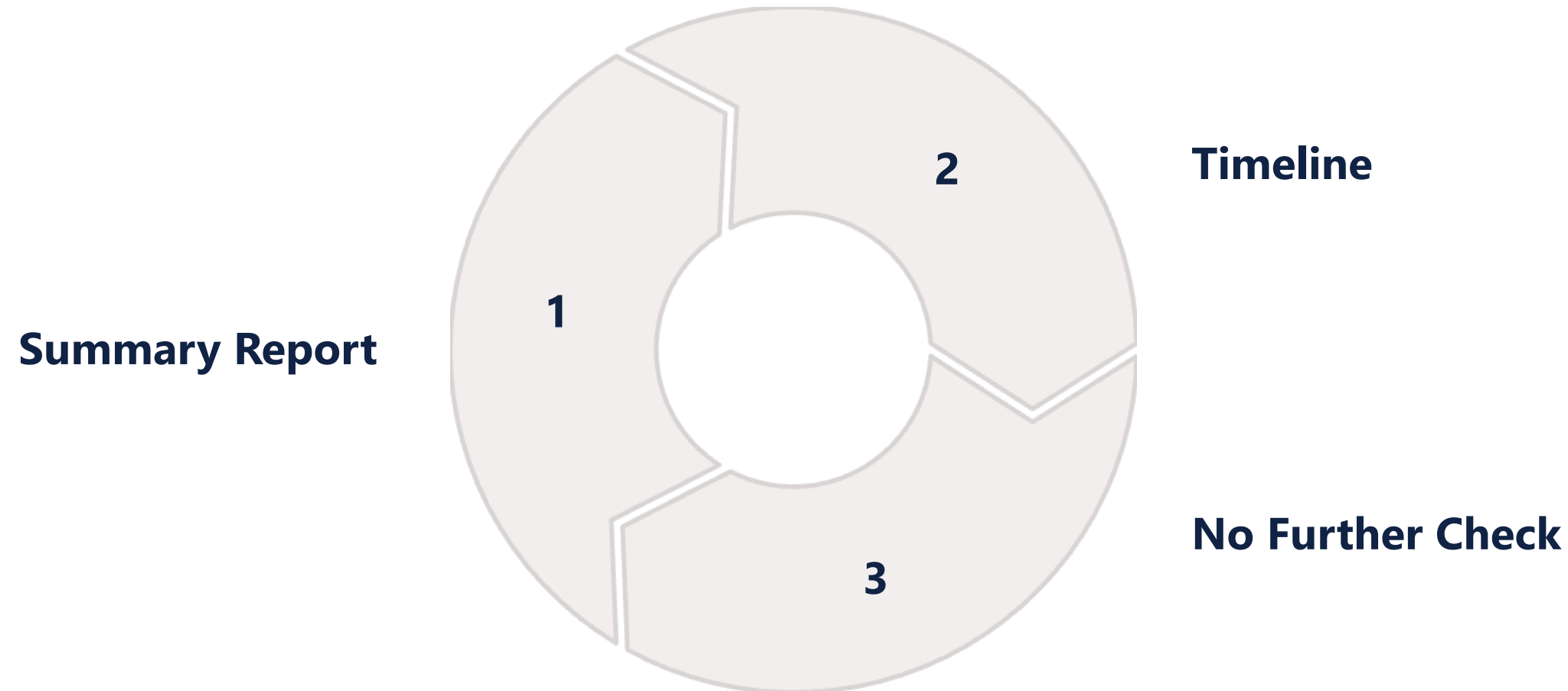
RFID readers should be installed to verify vehicle movement where e-way bills are mapped with the devices, streamlining the process.

3

Physical Verification

Proper officers conduct physical verification, with specific information on tax evasion leading to further further inspection with approval.

Rule 138C – Inspection of Goods



A **summary report** (Part A of FORM GST EWB-03) must be recorded **online within 24 hours of inspection**. The **final report** (Part B) must be **recorded within three days**, extendable by the Commissioner. If physical verification is done once, **no further checks** occur unless there's specific evasion information.

Section 129 – Detention, seizure and release of goods and conveyances *in transit*

(1) Notwithstanding anything contained in this Act, where any person **_ transports any goods_** or stores any goods while while **_ they are in transit_** in contravention of the provisions of this Act or the rules made thereunder, all such goods and goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, —

1

(a) on payment of the **penalty equal equal to 200% of the tax** payable on on such goods and, in case of **exempted goods**, on payment of an **amount equal to 2% of the value value of goods or Rs. 25,000/-, whichever is less**, where the **owner of the goods comes forward** for payment of such tax and penalty;

2

(b) on payment of the penalty equal equal to the **50% of the value of the the goods or 200% of tax whichever whichever is higher** and in case of **exempted goods**, on payment of an amount equal to **5% of the value value of goods or Rs. 25,000/- whichever is less**, where the **owner of the goods does not come forward forward** for payment of such tax and **and penalty;**

3

(c) upon furnishing a **security** equivalent to the amount payable under clause (a) or clause (b) in such 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 seizure on the person transporting the goods.

Section 129 (Contd.)

(3) The proper officer **detaining** or seizing goods or conveyances shall **issue a notice within seven days** 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 tax and penalty under clause (a) or clause (b) or clause (c).

(4) No 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 penalty as provided in 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 subsection (3) or one lakh rupees, whichever is less

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 fifteen days may be reduced by the proper officer.

Penalty under section 129 cannot be invoked after transportation is complete

Penalty under section 129 is an 'penalty in action', that is, penalty cannot be imposed after 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.

Case Study:

M/s Pushpa Limited generated e-invoice and e-way bill for supply of goods to M/s Murugan amounting to Rs. 10,00,000/- plus Rs. 1,80,000/- GST. The goods were intercepted by Mr. Bhanwar Singh Shekhawat (Authorized Person) at Chennai border. M/s Pushpa limited wants to understand the process of inspection, opportunity provided to M/s Pushpa to prove the case and consequences in case of non-payment of penalty.

Further, M/s Pushpa Limited also wishes to understand appeal procedure in case of appeal to Mr. Sidappa Naidu (Appellate Authority).

Inspection Procedure

Recording Statement

Where the person in charge of the conveyance **fails to produce** any prescribed document or where the **proper officer intends** to undertake an inspection, he shall **record a statement** of the person in charge of the conveyance in **FORM GST MOV-01**.

Upload Inspection Report

The proper officer shall, **within twenty-four hours** of the aforementioned issuance of FORM FORM GST MOV-02, prepare a report in Part A of of FORM GST EWB-03 and **upload the same on on the common portal**.

1

2

3

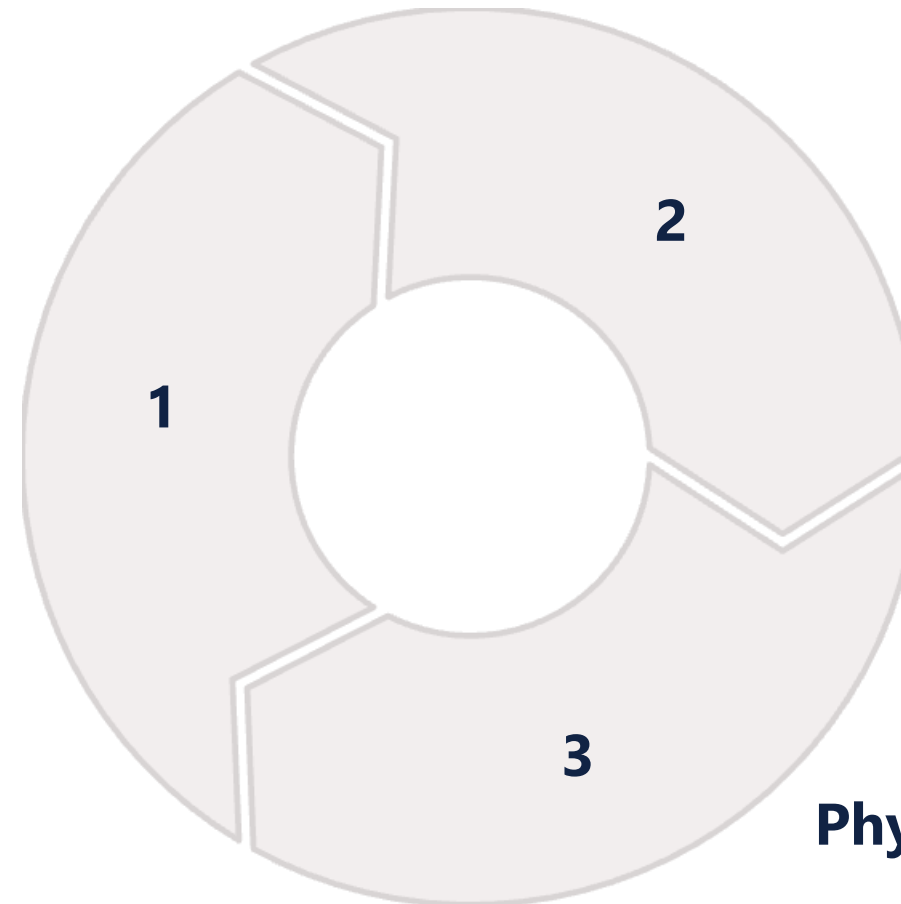
Issuing Inspection Order

The proper officer shall issue an **order for physical verification/inspection** of the conveyance, goods and documents in FORM GST GST **MOV-02**, requiring the person in charge of of the conveyance to station the conveyance at at the place mentioned in such order and allow allow the inspection of the goods.

Inspection Timeframe

Initial Inspection Period

Within three days from the date of issue of FORM GST MOV-02, the proper officer shall conclude the inspection proceedings.



Extension Request

Where circumstances warrant such such time to be extended, he shall shall obtain a written permission in in FORM GST MOV-03 from the Commissioner or an officer authorized by him. (extension max max 3 days)

Physical Verification Report

Final Physical verification report to to be provided in FORM GST MOV MOV – 04 and upload Part B of FORM GST EWB-3

Inspection Outcomes

Release Order

Where no discrepancies are found after the inspection of the goods and conveyance, the proper officer shall issue forthwith a release order in **FORM GST MOV-05** and allow the conveyance to move further.

Detention Required

Where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129 of the CGST Act, he shall issue an **order of detention in FORM GST MOV-06 and a notice in FORM FORM GST MOV-07** in accordance with the provisions of sub-section (3) of section 129 of the CGST Act, specifying the tax and penalty payable.

Options available post issuance of MOV-07



1

Payment of Penalty

Where the owner of the goods or any person authorized by him comes forward to make the payment of of penalty as applicable under clause (a) of sub-section (1) of section 129 of the CGST Act, the proper officer officer shall release the goods and conveyance by an order in FORM GST MOV-05.



2

Security Furnishing

Where the owner of the goods, or the person authorized by him, or any person other than the owner of the of the goods comes forward to get the goods and the conveyance released by furnishing a security under under clause (c) of sub-section (1) of section 129 of the CGST Act, the goods and the conveyance shall be be released, by an order in FORM GST MOV-05, after obtaining a **bond in FORM GST MOV-08** along with a with a security in the form of bank guarantee.



3

Reply to Show Cause Notice

Where the penalty levied is unreasonable and without any sufficient cause, the owner of the goods may may reply to the show cause notice issued in FORM GST MOV-07.

Cases where detention may not be initiated

In a case where consignment of goods is accompanied with an invoice or any other specified document and 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.
- IV. **Error** in 4 or 6digit level of **HSN** where the first 2 digits of HSN are correct and the rate of tax mentioned is correct.
- V. 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.

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

Issue No. 6

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

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.

Case Law: CREAMLINE DAIRY PRODUCTS PRODUCTS VS STATE TAX OFFICER

(Case No. 12230 of 2022, decided on 20th November 2024)

Non registration of additional place of business is just a procedural irregularity:

A taxpayer is required to add additional place of business, if any at the common portal but in case the taxpayer fails to register the same, and while transportation of goods from such unregistered additional place to the principle place of business or at the registered address, the tax authorities seize the goods or detain the vehicles as mentioned in Sec 129 and if the transporter is in possession of invoice and E-way bill for the same wherein there is no mismatch in the quantity of goods mentioned vis-à-vis the actual goods carried by the transporter, imposition of penalty with a view that registration of the additional place of business was not obtained to evade tax is not justifiable unless there are reasonable grounds to believe so. Non registration in above case was just a procedural non compliance and not an attempt to undisclosed facts or evade taxes.



Case Law: RAM CHARITRA RAM HARIHAR PRASAD VS STATE OF BIHAR

(Case No. 11221 of 2019, decided on 6-8-2019)



Revalidation vis-à-vis fresh issuance of E-way Bill - Under GST law, E-way Bill, inter alia, is one of documents prescribed for person in charge of conveyance to carry while transporting goods - Said document which has a validity of 15 days can be revalidated under exceptional circumstances occurring in transit - Instant case, on expiry of E-way Bill during transit, a fresh Bill was issued before passing of formal demand-cum-detention/seizure order by proper officer - Fact of issuing fresh E-way Bill is recorded in adjudication order itself - Issuance of a fresh E-way Bill instead of revalidation of old Bill does not suffer from infirmity, jurisdictional or otherwise, inasmuch as it is for same vehicle and same goods - There is no bar in Rules that on expiry of old E-way Bill, a fresh E-way Bill cannot be issued.

Case Law: AGE INDUSTRIES (P.) LTD VS ASSISTANT STATE TAX OFFICER

(Appeal No. 1680 of 2018, decided on 18th January 2018)

Cases where non possession of invoice/E-way bill is not a contravention :

Under GST law, it is mandatory that the transporter shall possess documents as mentioned in Sec 138(2) while transit of goods, but where **goods are sent for job work, approval basis, etc** wherein there is no taxable supply of such goods non possession of invoice/E-way bill shall not be held as contravention of GST Act, 2017 or the rules made thereunder, if the transporter possesses a delivery challan for such goods transported and authenticity of such delivery challan or any other document possessed is not questionable. The grounds on which the goods were seized i.e. (i) The transporter did not possess documents as required by Sec 138(2) & (ii) The goods were intended to be supplied to an unregistered firm were held illegal and hence no contravention was proved.



Case Law: M/S COMMERCIAL STEEL CO. VS THE ASSISTANT OF STATE TAX

(Appeal No. 2161 of 2020, decided on 4th March 2020)

Presence of vehicle at a different route cannot be a basis for detention of Goods:

When a consignment is destined to a certain destination and subsequently the vehicle is found to be on a different route which does not lead directly to the pre determined destination, but the transporter possesses all the requisite documents for the goods carried, and the tax liability has already been discharged in the returns , the issuance of a notice under Sec 129 stating that the goods were being transported to a 'wrong destination' and imposition of a penalty is not justifiable unless there are other grounds which indicate contravention of GST Act, 2017.



Drafting of reply

- Basic background of the business of the owner of the goods
- Statement of facts (Begin from generation of e-invoice / e-way with timing timing to interception of vehicle number, inspection report, etc)
- Clearly read Physical inspection report and MOV-07. Many times, solution solution is available in inspection report, MOV-07 itself.
- Reference to Circular 64/38/2018
- Invoking Section 129 / 130
- Owner of the goods and proper officer
- Appropriate Case laws

Show Cause Outcomes

Release Order

Where the reply to show cause notice is found to be satisfactory, the proper officer shall issue forthwith a release order in **FORM GST MOV-05** and allow the conveyance to move further.

Pass final order

Where the proper officer is not satisfied with the reply, he shall issue an **order in FORM GST MOV-09**.

Options available post issuance of order in MOV-09



1

Payment of Penalty

Make the entire payment of penalty within 14 days of issuance of order in FORM GST MOV-09 and the officer shall issue release order in FORM GST MOV-05.



2

File appeal u/s 107

File appeal u/s 107 of the CGST Act, 2017 with a minimum pre-deposit of 25% of the amount of penalty as per FORM GST MOV-09. The owner of the goods can also pay the entire penalty amount under protest, get the release order in FORM GST MOV-05 and then file appeal u/s 107 of the CGST Act, 2017.



3

Confiscation of goods

If payment not made within 14 days / no appeal filed, the officer shall initiate action u/s 130 of the CGST Act, 2017 and **propose confiscation of goods in FORM GST MOV-10**. The owner of the goods shall have opportunity of being heard post issuance of MOV-10.

Final Proceedings and Auction

Confiscation Order

An **order** of confiscation of goods shall be passed in **FORM GST MOV-11**, after taking into consideration the objections filed by the person in charge of the goods (owner or his representative), and the same shall be served on the person concerned.

Payment Period

In the said order, a suitable time **not exceeding three months** shall be offered to make the payment of tax, penalty and fine imposed in lieu of confiscation and get the goods released.

Auction Process

In case neither the owner of the goods nor any person other than the owner of the goods comes forward to make the payment within the specified time in FORM GST MOV-11, the proper officer shall auction the goods and/or conveyance by a public auction and remit the sale proceeds to the account of the Central Government.

A summary of every order in FORM GST MOV-09 and FORM GST MOV-11 shall be uploaded electronically in FORM GST-DRC-07 on the common portal

Section 130: Confiscation & Penalty



This section applies when there's intent to evade tax through actions like unauthorized supply, unaccounted goods, or goods, or misuse of conveyance. **Penalties are levied under [section 122](#).**

Consequences of confiscation



1

Penalty

Penalty shall be levied as per section 122 of the CGST Act, 2017. Aggregate of fine and penalty shall not be less than 100% of the tax amount.

2

Fine

Liable for fine which shall not exceed the market value of goods confiscated less the tax chargeable.

3

Owner of conveyance

Owner of conveyance shall be given option to pay in lieu of confiscation of conveyance a **fine equal to the the tax payable** on the goods being transported.

Case Law: SYNERGY FERTICHEM (P.) Ltd. VS STATE OF GUJRAT

(Case No. 4370 of 2019 decided on 23rd December 2019)

Unjustified Issuance of Notice under Sec 130:

At the time of seizure of goods or detention of vehicle, the authorities must first assess nature of contravention, the authorities must also emphasize on the fact that whether the violation was carried out with an intent to evade taxes?. Even though Sec 135 provides for presumption of culpable mental state but such presumption is available only in cases of prosecution and not for the purpose of Sec 130 of the GST Act, 2017. Any minute error which is not of the magnitude that makes it sufficient to believe that such error was carried out deliberately with an intention to evade taxes shall not be considered as violation. Unless there are justifiable grounds to believe that errors or non possession of documents clearly indicate the intent to evade taxes, issuance of notice of confiscation under sec 130 is not justified and such grounds shall be identifiable at the threshold itself i.e. at the time of detention or seizure. Mere non possession of a document does not prove that tax evasion is carried out.



Thank You !

CA Chaitanya S Vakharia
2nd Floor, Modi Mansion,
S. No. 37/2B, Shankar Sheth Road,
Hotel 7 Loves Chowk,
Pune – 411037.



Tel. +91 9158513331



Email:
vakharia.chaitanya@gmail.co
m

