

# **GOODS & SERVICES TAX / IDT UPDATE – 46**

*“Corrigendum : Earlier update 46 be read as 45”*

## **Procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances**

The Central Government vide *Circular no. 41/15/2018-GST* has issued the following instructions regarding the procedure to be followed in case of interception of conveyances for inspection of goods in movement and detention , seizure and release and confiscation of such goods and conveyances:

- The proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods. The proper officer shall verify such documents and where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further. An e-way bill number may be available with the person in charge of the conveyance. Wherever a facility exists to verify the e-way bill electronically, the same shall be so verified, either by logging on to <http://mis.ewaybillgst.gov.in> or the Mobile App or through SMS by sending EWBVER to the mobile number 77382 99899 (For e.g. EWBVER 120100231897).
- 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 addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods. The proper officer shall, within 24 hours of the aforementioned issuance of FORM GST MOV-02, prepare a report in Part A of FORM GST EWB-03 and upload the same on the common portal.
- The proper officer shall conclude the inspection proceedings within 3 working days (extendable with the permission of commissioner), either by himself or through any other proper officer authorised in this behalf.
- On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a report of such physical verification in FORM GST MOV-04 and serve a copy of the said report to the person in charge of the goods and conveyance. The proper officer shall also record, on the common portal, the final report of the inspection in Part B of FORM GST EWB-03 within 3 days of such physical verification/inspection.
- Where no discrepancies are found after the inspection of the goods and conveyance, the proper officer shall issue forthwith a release and allow the conveyance to move further. 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 and a notice, specifying the tax and penalty payable.
- The proper officer shall, after the amount of tax and penalty has been paid in accordance with the provisions of the CGST Act and the CGST Rules release the goods and conveyance by an order in FORM GST MOV-05. Further, the order shall be uploaded on the common portal and the demand accruing from the proceedings shall be added in the electronic liability register and

the payment made shall be credited to such electronic liability register by debiting the electronic cash ledger or the electronic credit ledger of the concerned person in accordance with the provisions of section 49 of the CGST Act.

- Where the owner of the goods, or the person authorized by him, or any person other than the owner of the goods comes forward to get the goods and the conveyance released by furnishing a security under clause (c) of sub-section (1) of section 129 of the CGST Act, the goods and the conveyance shall be released, by an order in FORM GST MOV-05, after obtaining a bond in FORM GST MOV-08 along with a security in the form of bank guarantee equal to the amount payable under clause (a) or clause (b) of sub-section (1) of section 129 of the CGST Act. The finalisation of the proceedings under section 129 of the CGST Act shall be taken up on priority by the officer concerned and the security provided may be adjusted against the demand arising from such proceedings.
- Where any objections are filed against the proposed amount of tax and penalty payable, the proper officer shall consider such objections and thereafter, pass a speaking order in FORM GST MOV-09, quantifying the tax and penalty payable.
- In case the proposed tax and penalty are not paid within 7 days from the date of the issue of the order of detention in FORM GST MOV-06, action under section 130 of the CGST Act shall be initiated by serving a notice in FORM GST MOV10, proposing confiscation of the goods and conveyance and imposition of penalty.
- 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.
- An order of confiscation of goods shall be passed, 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. Once the order of confiscation is passed, the title of such goods shall stand transferred to the Central Government. In the said order, a suitable time not exceeding 3 months shall be offered to make the payment of tax, penalty and fine imposed in lieu of confiscation and get the goods released.
- An order of confiscation of conveyance shall be passed, after taking into consideration the objections filed by the person in charge of the conveyance and the same shall be served on the person concerned. Once the order of confiscation is passed, the title of such conveyance shall stand transferred to the Central Government. In the order passed above, a suitable time not exceeding 3 months shall be offered to make the payment of penalty and fines imposed in lieu of confiscation and get the conveyance released.
- In case neither the owner of the goods nor any person other than the owner of the goods comes forward to make the payment of tax, penalty and fine imposed and get the goods or conveyance released within the time specified in FORM GST MOV11, 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

- The procedure narrated above shall be applicable mutatis mutandis for an order or proceeding under the IGST Act, 2017.
- Demand of any tax, penalty, fine or other charges shall be added in the electronic liability ledger of the person concerned. Where no electronic liability ledger is available in case of an unregistered person, a temporary ID shall be created by the proper officer on the common portal and the liability shall be created therein. He shall also credit the payments made towards such demands of tax, penalty or fine and other charges by debiting the electronic cash ledger of the concerned person.
- 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.

**List of Forms prescribed to follow the above procedure:**

Sl. No.	Form	Purpose
1.	FORM GST MOV01	For recording statement of the person in charge of the conveyance
2.	FORM GST MOV-02	An order for physical verification/inspection of the conveyance, goods and documents
3.	FORM GST MOV-03	For taking permission , for extension of time beyond three working days of concluding the inspection proceedings
4.	FORM GST MOV-04	Report of such physical verification
5.	FORM GST MOV-05	Release order to allow the conveyance to move further
6.	FORM GST MOV-06	An order of detention of goods
7.	FORM GST MOV-07	Notice specifying the tax and penalty payable
8.	FORM GST MOV-08	Bond for release of goods and conveyance
9.	FORM GST MOV-09	Form for release of goods on payment of tax and penalty.
10.	FORM GST MOV10	Notice proposing confiscation of the goods and conveyance and imposition of penalty.
11.	FORM GST MOV-11	An order of confiscation of goods

*Comment: Commendable circular laying down detailed steps to be adhered to. While inspections cannot call for vague information (on the part of tax administration) as it must be 'prima facie' satisfactory, failure to adhere to the requirements(on the part of trade) may not be viewed with any lenience.*

*[Circular no. 41/15/2018-GST ]*

**Clarification regarding procedure for recovery of arrears under the existing law and reversal of inadmissible input tax credit-reg.**

The Central Government vide *Circular No. 42/16/2018-GST dated 13<sup>th</sup> April, 2018* specified the

procedure to be followed for recovery of arrears arising out of proceedings under the existing law.

**A. Legal provisions relating to the recovery of arrears of central excise duty and service tax and CENVAT credit thereof arising out of proceedings under the existing law**

i. Recovery of arrears of wrongly availed CENVAT Credit:

Any claim for CENVAT credit recoverable out of any proceeding of appeal, review or reference initiated, whether before, on or after the appointed day, under the existing law, shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [**Section 142(6)(b) of the CGST Act**].

ii. Recovery of CENVAT Credit carried forward wrongly:

CENVAT credit of central excise duty/service tax availed under the existing law, not admissible in terms of section 140 of the CGST Act, shall be recovered as an arrear of tax **under section 79 of the CGST Act**.

iii. Recovery of arrears of central excise duty and service tax:

- a. Any amount of tax, interest, fine or penalty becomes recoverable as a result of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [**Section 142(8)(a) of the CGST Act refers**].
- b. Any amount of output duty or tax becomes recoverable, as a result of any proceedings of appeal, review or reference relating to output duty or tax liability initiated, whether before, on or after the appointed day, under the existing law, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [**Section 142(7)(a) of the CGST Act refers**].

iv. Recovery of arrears due to revision of return under the existing law:

Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under the CGST Act [**Section 142(9) (a) of the CGST Act refers**].

**B. Procedure prescribed for the recovery of arrears:**

- i. Recovery of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law and inadmissible transitional credit:
  - a. The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit shall be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of

the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

b. The arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations discussed above, shall, unless recovered under the existing law, be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

ii. Recovery of interest, penalty and late fee payable:

a. The arrears of interest, penalty and late fee in relation to CENVAT credit wrongly carried forward, arising out of any of the situations discussed above, shall be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

b. The arrears of interest, penalty and late fee in relation to arrears of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law arising out of any of the situations discussed above, shall, unless recovered under the existing law, be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in the electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

iii. Payment of central excise duty & service tax on account of returns filed for the past period:

With effect from 1st April, 2018, the return filed on portal [www.aces.gov.in](http://www.aces.gov.in), the registered person shall be automatically taken to the payment portal i.e. ICEGATE portal for the payment relating to Central Excise / Service Tax return.

iv. Recovery of arrears from assesseees under the existing law in cases where such assesseees are not registered under the CGST Act, 2017:

Such arrears shall be recovered in cash, under the provisions of the existing law and the payment of the same shall be made as per the procedure mentioned in point iii above.

*Comment: It is important to note that recourse of recovery as arrears of GST is a remedy available not optionally but only after exhausting recovery measures prescribed under the earlier laws. Hence, attempts to invoke provisions under GST law may require establishment of the failure of recovery measures under earlier laws. Also, currently 'other payments' in the GST returns populates the payment under CGST and SGST. Some resolution is required to allow only CGST payment if provisions of section 140(6) to (9) are to be invoked.*

[Circular No. 42/16/2018-GST dated 13<sup>th</sup> April, 2018]

**Clarification regarding queries on processing of refund applications for UIN agencies**

The Central Government vide [Circular No. 43/17/2018-GST dated 13<sup>th</sup> April, 2018](#) clarified certain issues arising out of Circular No. 36/10/2017 regarding the processing of refund to agencies which have been allotted UINs:-

**A. Providing statement of invoices while submitting the refund application:**

As per rule 95 of the CGST Rules, refund application shall be made on quarterly basis in Form RFD-10 along with a statement of inward invoices in FORM GSTR-11. Where system generated **FORM GSTR-11** does not have invoice-level details, UIN agencies have to furnish a statement containing the details of all the invoices on which refund has been claimed, along with refund application. Further, the officers would not request for original or hard copy of the invoices unless necessary.

**B. No mention of UINs on Invoices:**

As per rule 46 of the CGST Rules, 2017 suppliers are required to record the UINs on the invoices issued to UIN agencies and in case, suppliers / vendors are not recording the UINs, action may be initiated against them under the provisions of the CGST Act, 2017.

Further, in cases where, UIN has not been recorded on the invoices pertaining to refund claim for the quarters of July – September 2017, October – December 2017 and January – March 2018, a one-time waiver is being given by the Government, subject to the condition that copies of such invoices will be submitted to the jurisdictional officers and will be attested by the authorized representative of the UIN agency.

*Comment: It is learnt that UIN-holders have internal policy restrictions (from respective Governments) on engaging external advisors with respect to refund of GST and are undertaking these activities on their own. The procedural relaxation allowed in these cases is impressive and enviable by exporters awaiting refund.*

[\[Circular No. 43/17/2018-GST dated 13<sup>th</sup> April, 2018\]](#)

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