

Chapter 15

Inspection, Search, Seizure and Arrest

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67. Power of inspection, search and seizure

(1) *Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that –*

- (a) *a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or rules made thereunder to evade tax under this Act; or*
- (b) *any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,*

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

- (2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents, books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

- (3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.
- (4) The officer authorized under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.
- (5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorized officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.
- (6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.
- (7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months

- (8) *The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.*
- (9) *Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorized by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.*
- (10) *The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.*
- (11) *Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.*
- (12) *The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.*

Extract of the CGST Rules, 2017

139. Inspection, Search and Seizure

- (1) *Where the proper officer not below the rank of a Joint Commissioner has reasons to believe that a place of business or any other place is to be visited for the purposes of inspection or search or, as the case may be, seizure in accordance with the provisions of section 67, he shall issue an authorisation in FORM GST INS-01 authorising any other officer subordinate to him to conduct the inspection or search or, as the case may be, seizure of goods, documents, books or things liable to confiscation.*

- (2) *Where any goods, documents, books or things are liable for seizure under sub-section (2) of section 67, the proper officer or an authorised officer shall make an order of seizure in FORM GST INS-02.*
- (3) *The proper officer or an authorised officer may entrust upon the owner or the custodian of goods, from whose custody such goods or things are seized, the custody of such goods or things for safe upkeep and the said person shall not remove, part with, or otherwise deal with the goods or things except with the previous permission of such officer.*
- (4) *Where it is not practicable to seize any such goods, the proper officer or the authorised officer may serve on the owner or the custodian of the goods, an order of prohibition in FORM GST INS-03 that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.*
- (5) *The officer seizing the goods, documents, books or things shall prepare an inventory of such goods or documents or books or things containing, inter alia, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.*

140. Bond and security for release of seized goods

- (1) *The seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in FORM GST INS-04 and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.*

Explanation.- For the purposes of the rules under the provisions of this Chapter, the "applicable tax" shall include central tax and State tax or central tax and the Union territory tax, as the case may be and the cess, if any, payable under the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017).

- (2) *In case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the tax, interest and penalty and fine, if any, payable in respect of such goods.*

141. Procedure in respect of seized goods

- (1) *Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment.*

(2) Where the taxable person fails to pay the amount referred to in sub-rule (1) in respect of the said goods or things, the ¹[proper officer] may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

FORM	Rules	Description
GST INS-01	139(1)	Authorisation for inspection or search or Seizure
GST INS-02	139(2)	Order of seizure
GST INS-03	139(4)	Order of prohibition
GST INS-04	140(1)	Bond and security for release of seized goods
GST INS-05	141(1)	Order of release of goods/ things of perishable or hazardous nature

Related provisions of the Statute

Section or Rule	Description
Section 2(107)	Definition of 'Taxable person'
Section 16	Eligibility and conditions for taking input tax credit
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.
Section 130	Confiscation of goods or conveyances and levy of penalty
Section 31	Tax invoice
Section 35	Accounts and records

67.1 Analysis

- (i) **Inspection:** A proper officer *not below* the rank of Joint Commissioner, may issue an authorisation (in form GST INS-01) to any other sub-ordinate officer to carry out an inspection of any places of business, if such proper officer 'has reasons to believe' that:
- (a) the taxable person:
- (i) has suppressed any transaction of supply of goods or services or both; or
 - (ii) has suppressed information relating to stock in hand; or
 - (iii) has claimed input tax credit in excess of his entitlement; or
 - (iv) has contravened any of the provisions of the GST law, with an intent to evade taxes;

¹ Substituted vide Nof No. 16/2020 – CT dt. 23-03-2020. Earlier it read as "Commissioner".

- (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place:
- (i) is keeping goods which have escaped payment of tax; or
 - (ii) has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under the GST law
- (ii) **Understanding of Reasons to Believe:** The phrase 'reasons to believe' has been interpreted by various courts distinguishing it from 'reason to suspect'.

In the case of *Crompton Greaves Ltd. vs. State of Gujarat*, [2000] 120 STC 510, the High Court observed that, "these words suggest that belief must be that of honest and reasonable person based upon reasonable grounds, and that the Commissioner may act under this section on direct or circumstantial evidence not on mere suspicion, gossip or rumor.

The powers under the present section are wide but not plenary; the words of the section are 'reason to believe' and not 'reason to suspect'." The word "believe" is a much stronger word than "suspect". Although these reasons cannot be called into question to prevent an inspection but later during adjudication, any "palpable absence" of reasons to believe can be brought out to challenge the correctness of inspection. However, experts hold the view that inspection can be non-specific and general investigation may lead to findings that were not the 'reasons to believe' at the start of this exercise.

Analyzing section 67(2) of the CGST Act, the High Court of Delhi in a recent judgment of *R.J. Trading Co. vs. Commissioner of CGST, Delhi North & Ors.*, W.P. (C) No. 4847/ 2021 has held that the belief of the concerned authority should be based on an actionable material actually perused. However, in absence of a clue that 'any' goods of the petitioner or 'any' documents or books or things would be useful, for formation of a reason to believe, the very trigger for conducting the search and seizure was held as flawed and unsustainable.

Search and seizure: A proper officer *not below* the rank of Joint Commissioner, may issue an authorisation (in form GST INS-01) to any other officer subordinate to him (or himself) to search and seize any goods / documents / books / things² which in his opinion would be useful for / relevant to proceedings under the GST Law, when he has reason to believe that any goods liable to confiscation are secreted in any place.

Important points to note in respect of search and seizure:

- (a) The order of seizure shall be made in form GST INS-02.

² The High Court of Madhya Pradesh in *Kanishka Matta vs. Union of India* before High Court of Madhya Pradesh WP No. 8204 of 2020 has held that the word 'things' also includes money.

- (b) The owner or custodian of the goods may be entrusted upon the custody of such goods or things for safe upkeep.
 - (c) Where it is not practicable to seize such goods, an order of prohibition (In form GST INS-03) may be served on the person / custodian of the goods that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of the officer.
 - (d) Seizure of the accounts, registers or documents produced before proper officer- If proper officer has reasons to believe that any person has evaded or is attempting to evade the taxes, the officer may seize the accounts, registers or documents of the said person produced before him on recording the reasons in writing and granting a receipt of such seizure to such person. In this regard, it may be noted that the seized accounts / registers / documents can be retained for any period in respect of any proceedings for prosecution.
- (iii) The following are important to note in respect of goods or documents or books or things which have been seized by the officer:
- (a) **Retention:** The said officer:
 - (i) shall retain the documents or books or things so seized so long as may be necessary for their examination and for any inquiry or proceedings under this Act i.e., relied upon documents (RUD)
 - (ii) However, shall return the documents, books or things seized or produced by a taxable or any other person on which no reliance has been placed for issuing notice, within a period of 30 days from the date of issue of notice.
 - (b) **Power to Seal/Break upon (where access is denied):** If the officer authorised to conduct search and seizure is denied access to any premises, almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, then he shall have the power to:
 - seal or break open the door of any premises; or
 - break open any almirah, electronic devices, box, receptacle
 - (c) **Inventory of seized goods etc.**-The officer seizing the goods, documents, books or things shall prepare an inventory of such items containing, *inter alia*, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.
 - (d) **Copies or extract of seized documents:**
 - (a) The person from whose custody, documents are seized is entitled to:
 - (i) make copies or
 - (ii) take extract of such documents

in the presence of an authorized officer at such place and time as may be indicated by such officer.

(b) However, copies or extracts may be denied if the officer believes that such an act will prejudicially affect the investigation

(e) Provisional release of Seized Goods: The goods so seized shall be released on a provisional basis, upon:

(a) execution of Bond in **Form GST INS -04** for the value of the goods and

(b) furnishing of security in the form of Bank Guarantee equal to the amount of applicable tax (incl. SGST / UTGST / IGST / Cess) + interest + penalty

or on payment of applicable tax, interest and penalty payable, as the case may be.

Once the goods are provisionally released and where the person fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the liabilities in respect of such goods.

An important point to note here is that provisional release of goods has to be mandatorily taken by the concerned person within one month of executing the bond. In case of failure to do so, the proper officer has the power to dispose off the said goods as per *Notification No. 27/2018-Central Tax dated 13.06.2018* [Sl. No. 17 of the Schedule appended to such notification]

(f) Release of perishable or hazardous goods or things: Where the goods or things seized are of perishable or hazardous nature, and if the taxable person:

- pays an amount equivalent to the market price of such goods or things; or
- the amount of tax, interest and penalty that is or may become payable by the taxable person,

whichever is lower, such goods or things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment.

Where the taxable person fails to pay the above amount, the ³[proper officer] may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

(g) Return of Seized Goods: If no notice has been issued within 6 months (or an extended period of another 6 months by the proper officer, on the basis of sufficient grounds), the seized goods/exhibits ought to be returned to the person from whom the goods were seized.

³ Substituted vide *Notf No. 16/2020 – CT dt. 23-03-2020*. Earlier, it read as "Commissioner"

(h) **Disposal of seized goods:** The Government may, by way of a notification, specify the goods or class of goods which are to be disposed of by the proper officer as soon as the same have been seized where:

- (a) the goods are of perishable nature; or
- (b) the goods are of hazardous nature; or
- (c) the goods would depreciate in value with the passage of time; or
- (d) there are constraints of storage space; or
- (e) any other relevant considerations as may be prescribed.

The Proper Officer shall also maintain an inventory of the said specified goods in the prescribed manner,

The CBIC, vide its *Notification No 27/2018-Central Tax dated 13.06.2018* has specified 17 categories of goods / class of goods in this regard. The said schedule of goods / class of goods is as under:

1. Salt and hygroscopic substances
2. Raw (wet and salted) hides and skins
3. Newspapers and periodicals
4. Menthol, Camphor, Saffron
5. Re-fills for ball-point pens
6. Lighter fuel, including lighters with gas, not having arrangement for refilling
7. Cells, batteries and rechargeable batteries
8. Petroleum Products
9. Dangerous drugs and psychotropic substances
10. Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
11. Pharmaceutical products falling within Chapter 30 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
12. Fireworks
13. Red Sander
14. Sandalwood
15. All taxable goods falling within Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)

16. All unclaimed/abandoned goods which are liable to rapid depreciation in value on account of fast change in technology or new models etc.
 17. Any goods seized by the proper officer under section 67 of the said Act, which are to be provisionally released under sub-section (6) of section 67 of the said Act, but provisional release has not been taken by the concerned person within a period of one month from the date of execution of the bond for provisional release.
- (i) **Applicability of Code of Criminal Procedure, 1973:** The provisions of Code of Criminal Procedure, 1973 relating to search and seizure shall be applicable to the GST Laws and in section 165(5) of the code of criminal procedure, the word 'Magistrate' should be read as 'Commissioner'.

CBIC has reiterated the guidelines regarding procedure to be followed during search operations vide Instruction No. 01/2020-21/GST - Investigation dated 02.02.2021

Following are the some of the relevant guidelines to be adhered by the department while carrying out search proceedings:

- (a) Search should be carried out with proper search authorization issued by Competent Authority, who shall record valid and justifiable reasons in the file.
 - (b) Following Instructions related to generation of Document Identification Number (DIN) by the officer authorizing the search.
 - (c) The premises shall be searched only on the authority of a valid search warrant
 - (d) A lady officer shall form part of a search conducted at residence
 - (e) Search to be conducted in the presence of two or more individual witnesses
 - (f) A Panchnama containing truthful account of the search with the list of documents/ goods/ things recovered should be made
 - (g) In sensitive premises, videography of the search proceeding may also be done
 - (h) Appropriate COVID-19 pandemic protocol as provided by the government should be followed.
- (j) **Surprise Check:** The Commissioner or an officer authorized by him can further authorize any other person to purchase any goods and / or services from the business premises of any taxable person in order to check the manner of issuance of tax invoices / bills of supply and the taxable person or any person in charge of the business premises shall:
- (a) refund the tax paid thereon when the goods so purchased are returned (no time limit prescribed in this regard) after cancelling the tax invoice or any bills of supply issued earlier in this regard.

The Proper Officer can:

Inspect: any place of business of the taxable person who has evaded the tax or is attempting to evade the tax or of the transporter who transported such tax evading goods or godown/warehouse operator in which such tax evading goods or accounts relating thereto have been stored

Search & seize: the goods or any documents or books or things which are liable for confiscation and which will be instrumental in the proceedings under this act during the enquiry period.

Seal or Break: open the door of any premises, storage, electronic devices, box or receptacle where goods, books of accounts etc. are suspected to be concealed when access to the same is denied to the said officer.

Please consider the comparative understanding of seizure and confiscation (in terms of section 130) to appreciate the areas of similarity and difference:

Criteria	Seizure (section 67)	Confiscation (section 130)
Applicability	Any goods, documents, books or things	Only offending goods
Manner	Actual custody or constructive custody	Actual custody
Authority	Held in trust, no change of ownership	Held in trust, no change of ownership unless adjudication completed
Duration of holding	Until required for examination / inquiry / proceedings. If no notice issued, 6 months (and a further period of 6 months if extended by proper officer)	Until issue of notice for adjudication and opportunity to pay penalty-in-lieu of confiscation
Conclusion	Return articles that are not 'offending articles'	Title to pass and vest with Central Government as per order of adjudication

67.2. Issues and concerns:

1. While the law provides for seizure of goods liable to confiscation, documents, books and things. The law does not impose the proper officer to explain to the person from whom the same are seized, as to what were the reasons for doing so. This may cause undue hardship to the taxable persons.
2. It may be noted that the provision for checking of issuance of tax invoice / bill of supply merely provides for return of goods, and the question of return or cancellation of service does not arise. Therefore, the tax paid on any services received for test-checks cannot be refunded and shall be a cost to the Revenue.

67.3. FAQs

Q1. Under what circumstances there can be inspection, search or seizure operations?

Ans. Initiation of action under this section is when the proper officer not below rank of Joint Commissioner '**has reasons to believe**' that

- (a) the taxable person has suppressed any transaction of supply of goods or services or stock in hand or claimed excess input tax credit or has contravened any of the statutory provisions to evade payment under GST law.
- (b) any person engaged in the business of transportation of goods or an owner or operator of a warehouse or godown or any other place is keeping goods which have escaped tax payment or has kept his accounts or goods in a manner likely to cause tax evasion.

Q2. What is the meaning of the phrase 'reason to believe'?

Ans. The phrase 'reason to believe' has been interpreted by various courts distinguishing it from 'reason to suspect'. In the case of *Crompton Greaves Ltd. vs. State of Gujarat*, [2000] 120 STC 510, the High Court observed that, "*these words suggest that belief must be that of honest and reasonable person based upon reasonable grounds, and that the Commissioner may act under this section on direct or circumstantial evidence not on mere suspicion, gossip or rumor. The powers under the present section are wide but not plenary; the words of the section are 'reason to believe' and not 'reason to suspect'.*"

Q3. Whether goods so seized can be released on provisional basis?

Ans. The goods so seized can be released on provisional basis upon execution of a bond for the value of the goods and furnishing of a security in the form of bank guarantee equivalent to the amount of applicable tax, interest and penalty payable or upon payment of applicable tax, interest and penalty payable as the case may be.

Q4. How long can the goods as well as other documents, books and things that are relied upon for issuance of notice can be retained by the proper officer?

Ans. The goods seized can be retained up to a maximum period of 6 months (and additional 6 months in the case of sufficient cause) of the seizure, in case a notice is not issued.

Documents, Books and other Things – No specific time period. Can be retained as long as may be necessary for their examination and for any inquiry or proceedings

Goods: To be retained until provisionally released by the concerned person by furnishing proper bond and security.

Q5. What goods / class of goods can be disposed off by the proper officer, having regard to the perishable or hazardous nature of any goods, etc.?

Ans. The list of goods / class of goods as specified in *Notification No. 27/2018-Central Tax dated 13.06.2018*.

67.5. MCQs

Q1. Initiation of action under this section is by proper officer not below the rank of

- (a) Superintendent
- (b) Inspector
- (c) Joint Commissioner
- (d) Commissioner

Ans. (c) Joint Commissioner

Q2. In how many days, the officer shall return the seized goods / documents which are not relied upon while issuing notice?

- (a) 15 days
- (b) 30 days
- (c) 60 days
- (d) 90 days

Ans. (b) 30 days

Statutory provisions

68. *Inspection of goods in movement*

- (1) *The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.*
- (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.

Extracts of the CGST Rules, 2017

⁴[138. Information to be furnished prior to commencement of movement of goods and generation of 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:

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

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

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

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

⁵*[Explanation 1. – For the purposes of this rule, the expression “handicraft goods” has the meaning as assigned to it in the Government of India, Ministry of Finance,*

⁴ Substituted vide Notf No.12/2018-CT dt. 07-03-2018..

⁵ Substituted vide Notf No. 74/2018 – CT dt. 31-12-2018

Notification No. 56/2018-Central Tax dated the 23rd October, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1056 (E) dated the 23rd October, 2018 as amended from time to time].

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.

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

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

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

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

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

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

Provided also that where the goods are transported for a distance of upto fifty kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the

supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

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

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

- (4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.
- (5) Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in Part A of the FORM GST EWB-01, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in Part B of FORM GST EWB-01:

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

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

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

- (6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 maybe generated by him on the said common portal prior to the movement of goods.
- (7) Where the consignor or the consignee has not generated the e-way bill in FORM GST EWB-01 and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees, the transporter, except in case of

transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods:

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

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

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

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

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

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

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

Table

S.No.	Distance	Validity period
(1)	(2)	(3)
1.	Upto [200 km]. ⁶	One day in cases other than Over Dimensional Cargo ⁷ [or multimodal shipment in which at least one leg involves transport by ship]
2.	For every [200 km.] ⁸ or part thereof thereafter	One additional day in cases other than Over

⁶ Substituted vide Notf No. 94/2020 - CT dt. 22-12-2020 w.e.f. 01-01-2021

⁷ Inserted vide Notf No. 31/2019 – Central Tax dt. 28-06-2019

⁸ Substituted vide Notf No. 94/2020 - Central Tax dt. 22-12-2020 w.e.f. 01-01-2021

		<i>Dimensional Cargo</i> ⁹ [for multimodal shipment in which at least one leg involves transport by ship]
3.	<i>Upto 20 km</i>	One day in case of <i>Over Dimensional Cargo</i> ¹⁰ [for multimodal shipment in which at least one leg involves transport by ship]
4.	<i>For every 20 km. or part thereof thereafter</i>	One additional day in case of <i>Over Dimensional Cargo</i> ¹¹ [for multimodal shipment in which at least one leg involves transport by ship]

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

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

¹²*[Provided also that the validity of the e-way bill may be extended within eight hours from the time of its expiry.]*

Explanation 1.—For the purposes of this rule, the “relevant date” shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill.

Explanation 2.— For the purposes of this rule, the expression “Over Dimensional Cargo” shall 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 (59 of 1988).

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

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

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

⁹Inserted vide NotfNo. 31/2019 – Central Tax dt. 28-06-2019

¹⁰ Inserted vide Notf No. 31/2019 – Central Tax dt. 28-06-2019

¹¹ Inserted vide Notf No. 31/2019 – Central Tax dt. 28-06-2019

¹² Inserted vide Notf No. 31/2019 – CT dt. 28-06-2019

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

- (12) *Where the person to whom the information specified in sub-rule (11) has been made available does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details.*
- (13) *The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State or Union territory shall be valid in every State and Union territory.*
- (14) *Notwithstanding anything contained in this rule, no e-way bill is required to be generated—*
- (a) *where the goods being transported are specified in Annexure;*
 - (b) *where the goods are being transported by a non-motorised conveyance;*
 - (c) *where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;*
 - (d) *in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the State or Union territory Goods and Services Tax Rules in that particular State or Union territory;*
 - (e) *where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to notification No. 2/2017- Central tax (Rate) dated the 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 674 (E) dated the 28th June, 2017 as amended from time to time;*
 - (f) *where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel;*
 - (g) *where the supply of goods being transported is treated as no supply under Schedule III of the Act;*
 - (h) *where the goods are being transported—*
 - (i) *under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or*
 - (ii) *under customs supervision or under customs seal;*
 - (i) *where the goods being transported are transit cargo from or to Nepal or Bhutan;*

- (j) where the goods being transported are exempt from tax under Notification No. 7/2017-Central Tax (Rate), dated 28th June 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 679(E) dated the 28th June, 2017 as amended from time to time and Notification No. 26/2017-Central Tax (Rate), dated the 21st September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1181(E) dated the 21st September, 2017 as amended from time to time;
- (k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;
- (l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;
- (m) where empty cargo containers are being transported; and
- (n) where the goods are being transported upto a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55.
- ¹³[(o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.]

Explanation. The facility of generation, cancellation, updation and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be.

ANNEXURE
[(See rule 138 (14)]

S. No.	Description of Goods
(1)	(2)
1.	Liquefied petroleum gas for supply to household and non-domestic exempted category (NDEC) customers
2.	Kerosene oil sold under PDS
3.	Postal baggage transported by Department of Posts
4.	Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)

¹³ Inserted vide Notf No. 26/2018 – CT dt. 13-06-2018

5.	<i>Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) [excepting Imitation Jewellery (7117)]¹⁴</i>
6.	<i>Currency</i>
7.	<i>Used personal and household effects</i>
8.	<i>Coral, unworked (0508) and worked coral (9601)</i>

¹⁵[138A. Documents and devices to be carried by a person-in-charge of a conveyance

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

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

(b) *a copy of the e-way bill in physical form or 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:

¹⁶*[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.]¹⁷*

(3) *Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.*

(4) *The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.*

(5) *Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the*

¹⁴ *Inserted vide Notf No. 26/2022-CT dt. 26.12.2022.*

¹⁵ *Substituted vide Notf No.12/2018 -CT dt. 07-03-2018*

¹⁶ *Inserted vide Notf No. 39/2018 – CT dt. 04-09-2018*

¹⁷ *Substituted vide Notf N. 72/2020 - CT dt. 30-09-2020*

conveyance to carry the following documents instead of the e-way bill

- (a) tax invoice or bill of supply or bill of entry; or
- (b) a delivery challan, where the goods are transported for reasons other than by way of supply.”]

¹⁸[138B. Verification of documents and conveyances

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

¹⁹[138C. Inspection and verification of goods

- (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.

²⁰[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.

¹⁸ Substituted vide Notf No.12/2018 – dt.. 07-03-2018

¹⁹ Substituted vide Notf No.12/2018 - dt. 07-03-2018

²⁰ Inserted vide Notf No. 28/2018 – CT dt. 19-06-2018

²¹[138D. Facility for uploading information regarding detention of vehicle

Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in FORM GST EWB-04 on the common portal.]

[Explanation. - For the purposes of this Chapter, the expressions 'transported by railways', 'transportation of goods by railway', 'transport of goods by rail' and 'movement of goods by rail' does Not include cases where leasing of parcel space by Railways takes place."]²²

²³[138E. Restriction on furnishing of information in PART A of FORM GST EWB-01.-

Notwithstanding anything contained in sub-rule (1) of rule 138, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01— [in respect of any outward movement of goods of a registered person, who, —]²⁴

- a. being a person paying tax under section 10 ²⁵[or availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 189, dated the 7th March, 2019], has not furnished the [statement in FORM GST CMP-08]²⁶ for two consecutive [quarters]²⁷; or
- b. being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of [two tax periods]²⁸;
- c. [being a person other than a person specified in clause (a), has not furnished the statement of outward supplies for any two months or quarters, as the case may be.]²⁹
- d. [being a person, whose registration has been suspended under the provisions of sub-rule (1) or sub-rule (2) or sub-rule (2A) of rule 21A.]³⁰

Provided that the Commissioner may, [on receipt of an application from a registered person in FORM GST EWB-05,]³¹ on sufficient cause being shown and for reasons to be recorded in writing, by order ³²[in FORM GST EWB-06], allow furnishing of the said information in PART

²¹ Substituted vide Notf No. 12/2018 -CT dt. 07-03-2018

²² Inserted (w.e.f. 01.04.2018) vide Notf No. 14/2018-C.T., dt. 23.03.2018.

²³ Inserted (w.e.f. 21.11.2019 vide Notf No. 36/2019-C.T., dt. 20.08.2019) by Notf No. 74/2018-C.T., dt. 31.12.2018.

²⁴ Substituted vide Notf No. 15/2021 -CT dt. 18-05-2021

²⁵ Inserted vide Notf No. 31/2019-CT dt. 28.06.2019

²⁶ Substituted vide Notf No. 31/2019 – CT dt. 28.06.2019 for "returns".

²⁷ Substituted vide Notf No. 31/2019 – CT dt. 28.06.2019 for "tax periods".

²⁸ Substituted vide Notf No. 94/2020 – Central Tax dt. 22-12-2020 for "two months".

²⁹ Inserted vide Notf No. 75/2019 – Central Tax dt. 26-12-2019 w.e.f. 11-01-2020

³⁰ Inserted vide Notf No. 94/2020 – Central Tax dt. 22-12-2020

³¹ Inserted vide Notf No. 33/2019-CT dt. 18.07.2019

³² Inserted vide Notf No. 33/2019 – Central Tax dt. 18-07-2019

A of FORM GST EWB 01, subject to such conditions and restrictions as may be specified by him:

Provided further that no order rejecting the request of such person to furnish the information in PART A of FORM GST EWB-01 under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard:

Provided also that the permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

[Provided also that the said restriction shall not apply during the period from the 20th day of March, 2020 till the 15th day of October, 2020 in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period February, 2020 to August, 2020.]³³

["Provided also that the said restriction shall not apply during the period from the 1st day of May, 2021 till the 18th day of August, 2021, in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period March, 2021 to May, 2021."];³⁴

Explanation: – For the purposes of this rule, the expression “Commissioner” shall mean the jurisdictional Commissioner in respect of the persons specified in clauses (a) and (b)]

Other Updates available on the EWB portal:

1. Representations have been received from various trade bodies stating that they are not able to generate EWB for movement of those goods where their principal supply is classifiable as a service, since there is no provision for generating E-way Bill by entering SAC (Service Accounting Code-Chapter 99) alone on the E- way bill portal.
2. To overcome this issue, the taxpayers are advised as below:
 - a) Rule 138 of CGST Rules, 2017, inter alia, states “Information to be furnished prior to commencement of movement of goods and generation of e-way bill.-(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees....” Thus, E way bill is required to be generated for the movement of Goods.
 - b) Therefore, in cases where the principal supply is purely a supply of service and involving no movement of goods, the e-way bill is not required to be generated.
 - c) However, in cases where along with the principal supply of service, movement of

³³ Inserted vide Notf No. 79/2020 – Central Tax dt. 15-10-2020

³⁴ Inserted vide Notf No. 32/2021 – Central Tax dt. 29-08-2021

some goods is also involved, e-way bill may be generated. Such situations may arise in cases of supply of services like printing services, works contract services, catering services, pandal or shamiana services, etc. In such cases, e-way bill may be generated by entering the details of HSN code of the goods, along with SAC (Service Accounting Code) of services involved.

Related provisions of the Statute

Section or Rule	Description
Section 31	Tax invoice
Rules 46 – 55A	Form and manner of documents prescribed in Section 31
Section 15	Value of supply
Section 2(68)	Definition of Job Work
Section 2(52)	Definition of Goods
Section 2(67)	Definition of Inward Supply
Section 2(45)	Definition of E-Commerce Operator
Section 7	Supply
Section 10 (IGST)	Place of supply of goods other than goods imported into or exported from India

68.1. Introduction

Section 68 of CGST Act stipulates that the person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount shall carry with him **prescribed documents and devices** (invoice or bill of supply or delivery challan, as the case may be, also bill of entry in case of import of goods) which shall be validated in the prescribed manner. If such conveyance is **intercepted** by the proper officer at any place, the person in charge of the conveyance shall be liable to **produce the documents** and devices for verification and also allow the inspection of goods.

Rules 138 to 138E of the CGST Rules lay down, in detail, the provisions relating to e-way bills. As per the said provisions, in case of transportation of goods by road, an e-way bill is required to be generated **before** the commencement of movement of the consignment. In case of transportation of goods by road, person in charge of a conveyance shall also carry 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.

When there is any document-deficiency, then consequences laid out in section 129 will immediately follow which provides for **detention, seizure** and release of goods and conveyances in transit. Section 130 provides for the confiscation of goods or conveyances and imposition of penalty.

The following notes provide some information to help in better understanding about **Procedural and Practical Aspects of E-Way Bill under GST** and provide a walk-through the various steps involved in preparation, issuance and use of e-way bills.

68.2. Analysis

(i) Applicability

E-way Bill (“EWB”) is not required for all transactions undertaken by a taxable person. It is required only for those transactions **which involve movement of goods**. Every registered person (supplier or recipient) who causes movement of goods of consignment value exceeding **fifty thousand rupees** (States may have different limits for intra-state movement) is required to generate e-way bill electronically before commencement of such movement. Such movement of goods may be:

- in relation to a supply; or
- for reasons other than supply; or
- due to inward supply from an unregistered person.

Some transactions though involving movement of goods are deemed to be a supply of services such as leasing of goods, or supply of food & beverages, etc. and hence will require EWB.

EWB prescribed under CGST Act will apply to all inter-State movement of goods and those prescribed under SGST Acts will apply to intra-State movement of goods.

Furnishing of information in EWB:

E-way bill (EWB) shall be in **two parts- Part A and Part B**. Information relating to the relevant goods is required to be furnished in Part A of FORM GST EWB-01 along with such other information as may be required on the common portal. After furnishing of such information, a unique number is generated on the said portal. This number remains valid for a period of **fifteen days** for updating Part B of FORM GST EWB-01.

The information in Part A can be furnished by the:

- **registered person** (supplier or the recipient); or
- **transporter**, on an authorization received from the registered person; or
- by an **e-commerce operator** or courier agency on an authorization from the consignor where the goods to be transported are supplied through them.

Bar on EWB Facility for Return-default

No person shall be allowed to furnish information in Part-A of FORM GST EWB-01 in respect of any outward movement of goods of a registered person where composition taxable person or those ³⁵[availing the benefit of *Notification No. 02/2019– CT (Rate), dt. 7.3.2019*] fails to furnish the statement in **FORM GST CMP-08** for two (2) consecutive quarters and a regular taxable person fails to file returns for two (2) consecutive tax periods³⁶ or statement of outward supplies for any two months or quarters, as the case may be³⁷, (Rule 138E). It is relevant to note that generation of EWB will be barred for defaulting supplier's GSTIN only and not on recipient or transporter. Please note that bar on EWB facility will not follow any procedure of giving notice and conducting a hearing. After EWB facility is barred, an application in **FORM GST EWB-05** may be made by the registered person requesting to allow this facility and order permitting/rejection the application would be issued by the Commissioner in **FORM GST EWB-06** following a procedure of personal hearing.

EWB is generated after furnishing the details of conveyance in PART B of EWB-01 and a unique EWB number (EBN) is made available to the supplier, recipient and the transporter on the common portal.

Generation of EWB by whom:

When goods are transported by	Generation of EWB by
Road:	
By a registered person as a consignor or the recipient of supply as the consignee in own conveyance or a hired one or a public conveyance	the registered person as a consignor or the recipient of supply as the consignee
By a transporter	the transporter on the basis of information relating to such transporter furnished by the registered person in Part A of FORM GST EWB-01
The registered person or, the transporter may, at his option, generate and carry the EWB even if the value of the consignment is less than fifty thousand rupees.	
Railways or by air or vessel	the registered person, being the supplier or the recipient, either before or after the

³⁵ Inserted vide *Notf No. 31/2019 – Central Tax dt. 28-06-2019 w.e.f. 28.6.2019*

³⁶ Substituted vide *Notf No. 94/2020 – Central Tax dt. 22-12-2020 for "months"*

³⁷ Inserted vide *Notf No. 75/2019 – Central Tax dt. 26-12-2019 w.e.f. 11-01-2020*

<p>³⁸Explanation to Rule 138D. - For the purposes of this Chapter, the expressions 'transported by railways', 'transportation of goods by railways', 'transport of goods by rail' and 'movement of goods by rail' does not include cases where leasing of parcel space by Railways takes place.</p>	<p>commencement of movement. However, where the goods are transported by railways, the railways shall not deliver the goods unless EWB is produced at the time of delivery.</p>
<p>By an unregistered person either in his own conveyance or a hired one or through a transporter</p>	<p>the unregistered person or the transporter. However, according to Explanation 1 to Rule 138(3), where the goods are supplied by an unregistered supplier to a registered recipient, the movement shall be said to be caused by such recipient (i.e., registered person) if the recipient is known at the time of commencement of the movement of goods.</p>

When details of conveyance in Part B is not required to be furnished:

Where the goods are transported for a distance of up to 50 kms within the State or Union territory:

- from the place of business of the consignor to the place of business of the transporter for further transportation;
- from the place of business of the transporter finally to the place of business of the consignee

The EWB shall not be valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished except in the case of movements as mentioned above- Explanation 2 to Rule 138(3).

(ii) Transport

Transport or movement of goods must be distinguished from 'delivery' of goods. Transport and delivery seem synonymous, but they are not. Movement or journey is a part of transportation and it can be said that transportation has commenced as soon as the Consignor hands over the goods with clear and irrevocable instructions to a Carrier to put them on its journey to a specified destination and hand them over to a specified (or altered) Consignee (or his order). At this point, the actual journey or movement has not

³⁸ Inserted vide Notf No. 14/2018 – dt. 23-03-2018 w.e.f. 1st of April, 2018.

even begun but transportation has already begun. After the journey commences, it can be interrupted or be continuous, but transportation continues to remain in-progress. Likewise, journey may end but transportation would still be in progress. Now, transportation will conclude only when the instructions of the Consignor have been satisfactorily discharged by the Carrier on handing over the goods to the Consignee (or his order). EWB is required 'before' commencement of transportation regardless of commencement of journey. Delivery is that legal responsibility where title is transferred, as section 10(1) (a) *inter alia* provides that, "movement terminates for delivery.....". Delivery assumes legal significance which must carefully be observed in each transaction.

(iii) Place of Delivery

Form GST EWB 01 requires 'place of delivery' to be specified. Please note that this term is not to be misconstrued to be 'place of supply'. EWB is intended to create contemporaneous trail of physical movement of the goods. It is not meant to address the legalistic concept of 'place of supply' which can vastly differ from 'place of delivery'. Though physical movement of the goods may be from one location to another, in the eyes of law, 'place of supply' could very well be the location of the recipient. So, it is not conceivable for EWB to require information about 'place of supply' but very simply, the 'place of delivery' or 'destination of journey'. In fact, it can be seen that, when GSTIN of recipient is incorporated, the place of delivery will auto-populate.

One who effects supply is the Supplier and Consignor is one who causes movement of the goods. Very often Supplier and Consignor may be the same person, but not always. Supplier may be the mind behind the supply but warehouse keeper could still be the Consignor. Similarly, recipient is defined in section 2(93) to be the one who pays consideration, but such person may not always be a Consignee.

(iv) Consignment Value

Transaction Value is understood from section 15, whereas the value referred to in the EWB provisions happens to be 'consignment value' – i.e., where the consignment value exceeds the threshold limit, an EWB becomes mandatory. This 'consignment value' is computed so as to be the transaction value plus applicable GST but excluding the value of any exempt supplies (in case of a tax-invoice-cum-bill-of-supply). It must be noted that EWB itself requires both these values to be specified – transaction value as well as GST amount. In this regard, it is relevant to note that the consignment value must contain the measure of value of section 15 in all cases. This means, supplies where the consideration is in non-monetary terms, would also require the issuance of EWB. Please refer to the discussions in Chapter 4A of this BGM to better understand the valuation principles in respect of supplies not having a consideration in wholly monetary terms. For example, equipment costing Rs.100 lacs moved inter-State under a monthly lease of Rs. 5 lacs would require an EWB to be carried along. In such case, it is suggested that to curb

practical difficulties during the transit, a challan for value of goods of Rs. 100 lacs be prepared and the same value be declared in EWB.

In the following cases, an EWB shall be required to be issued regardless of the consignment value:

- ✓ Where goods are sent by a principal located in one State / UT to a job worker located in any other State / UT – the e-way bill shall be generated either by the principal or the registered job worker [third proviso to Rule 138(1) of the CGST Rules];
- ✓ Where handicraft goods are transported from one State / UT to another by a person who has been exempted from the requirement of obtaining registration under Section 24(i) and (ii) [fourth proviso to Rule 138 (1) of the CGST Rules].

(v) Non-EWB Goods

No EWB is required to be generated in respect of exempt goods and specific cases covered under Rule 138(14). It may be noted that movement of goods exempted under *Notification No. 2/2017- Central Tax (Rate) dated June 28.2017* except de-oiled cake do not require EWB pursuant to Rule 138(14)(e) of CGST Rules. Moreover, movement of goods notified under Clause (d) of Rule 138(14) of State/UT GST Rules will also be excluded under the Central GST Rules. This also acknowledges that State/UT GST Rules are stand-alone on the requirements of EWB in respect of intra-State movement and the Central GST Rules are limited only in respect of inter-State movement. EWB is not even required when there is a supply without any movement of goods (see section 10(1)(c) of the IGST Act, 2017).

For example, where goods move from a DTA unit to SEZ unit or vice-versa located in the same State, there will be no requirement to generate an e-way bill, if the same has been exempted by the particular State under rule 138(14)(d) of the CGST Rules.-*Circular No. 47/21/2018-GST dated 28.06.2018.*

Such exclusion from EWB is allowed to all kinds of goods, if the value is up to Rs.50,000 or the threshold prescribed (refer “Threshold - State EWB” heading in this Chapter) in the case of intra-State Supplies.

Care should be taken not to misapply the threshold limit prescribed by States for use of EWB to inter-State movement. This discretion enjoyed by States in prescribing exceptions (to the CGST Rules) is limited to movement **within** the respective State.

Summary of ‘no EWB’

NO EWB REQUIRED	Short Notes
(a) where the goods being transported are specified in Annexure	8-items listed in Annexure
(b) where the goods are being transported by a non-motorised conveyance	Non-motorized conveyance

(c) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs	Port-to-Port transfers (for customs clearance)
(d) in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the State or Union territory Goods and Services Tax Rules in that particular State or Union territory	State-list of EWB exemption
(e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to <i>Notification No. 2/2017-Central tax (Rate) dated the 28th June, 2017</i>	Goods exempt from GST also exempt from EWB
(f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel	6-items of non-taxable goods
(g) where the supply of goods being transported is treated as no supply under Schedule III of the Act	Schedule III items
(h) where the goods are being transported— (i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or (ii) under customs supervision or under customs seal	Transport under Customs control
(i) where the goods being transported are transit cargo from or to Nepal or Bhutan	Transit cargo (Nepal/Bhutan)
(j) where the goods being transported are exempt from tax under <i>Notification No. 7/2017-Central Tax (Rate), dated 28th June 2017</i> and <i>Notification No. 26/2017-Central Tax (Rate), dated the 21st September, 2017</i>	Transport between CSD Canteens and Nuclear Power Corporation
(k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee	Transport under MOD control/formation
(l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail	Rail-transport 'by' Government or LA

(m) where empty cargo containers are being transported	Empty cargo containers
(n) where the goods are being transported upto a distance of twenty kilometres from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55.	Weighment and back (upto 20 kms)
(o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply	Empty LPG cylinders (other than supply)

(vi) EWBs effect on Place of Supply

Inter-State movement or inter-State supply are two distinct terms to be recognized. By the fiction in section 7 of IGST Act, several transactions are considered to be inter-State supplies but, for the limited purposes of EWB, their actual movement alone determines whether it is inter-State movement (attracting Central EWB) or intra-State movement (attracting State/UT EWB). Here, we may notice that various States/UTs have synchronized their movement to ensure ease of movement whether inter-State or intra-State. EWB is required whether the movement of goods is pursuant to supply or not and pursuant to supply of goods or of services or inward supply from an unregistered person.

- ✓ **Illustration 1:** Goods imported from China arrive at Mumbai port. These goods are transported from Mumbai port to factory in Pune. This is an inter-State supply from China to Pune, but it is an intra-State movement from Mumbai to Pune – Requirement of EWB to be determined under the State GST Law.
- ✓ **Illustration 2:** Goods are sold from Lucknow by a Supplier to Customer in Delhi with instructions for these goods to be delivered to job-worker in Noida. This is an inter-State supply from Lucknow to Delhi but an intra-State movement within UP – Requirement of EWB to be determined under the State GST Law.
- ✓ **Illustration 3:** Generator installed in basement of building being sold to Landlord on termination of lease agreement. EWB will NOT BE REQUIRED as there is 'no movement' in this supply.
- ✓ **Illustration 4:** Contractor carrying portable crane to customer site, both located in same State, as part of the works to be undertaken will require EWB as the movement of crane even though movement (on its own or in any another motorized conveyance) is not for making supply of crane itself but for supply of services using such crane.
- ✓ **Illustration 5:** Laptop carried by an employee of a Company in Delhi, having no other branches, to client-location in Bangalore on business. This movement is not supply

but is incidental to 'services of employee to employer' under Schedule III. EWB will NOT BE REQUIRED for this movement. Contract-staff carrying company-laptop not excluded from EWB requirement.

- ✓ **Illustration 6:** Empty LPG cylinders transported from dealership to bottling plant of Oil Company, is 'excluded' from the requirements of EWB. Thus, EWB will NOT BE REQUIRED for this movement. But EWB will be required for movement of cylinders supplied by fabricator to an oil company.

(vii) Portal Registration

Registration on www.ewaybillgst.gov.in (*Notification No. 9/2018-CT dated 23.01.2018*) is not to be understood as a registration under section 22 of the CGST Act. It may also be noted that a registration under section 22 does not automatically create a registration on this portal. Persons who are already registered under section 22 are also required to register on this portal. Registration on the portal merely refers to creation of user login for use of the features on this portal.

Even a transporter who is not registered under section 22 is allowed to register on this portal for the limited purposes of updating information in Part B of EWB (called as 'enrolment'). Such transporters are issued TRANSIN registration. Considering that TRANSIN is required only for purposes of updating EWB information, a Consignor or Consignee are also permitted to obtain TRANSIN.

It is advisable for every GSTIN-holder to obtain an enrolment with a TRANSIN ID. This will help in modifying information in Part B of the EWB if and when required, to obtain extension of validity in case of *bona fide* delay, and most importantly, reporting detention.

(viii) Reasons for Transportation

Reasons for transportation must be one of the following:

Supply | Export or Import | Job Work | SKD or CKD | Recipient not known |
Line Sales | Sales Return | Exhibition or fairs | for own use | others

One must exercise caution while selecting the appropriate reason, since this information is expected to be **linked** with the returns filed by the registered person in order to correctly differentiate a mere movement of goods from a supply thereof, as it creates a contemporaneous **trail of the movement**. Use of EWB limits any possibility of fictitious transactions being recorded or included after lapse of time.

(ix) Person Responsible

Person causing movement is required to prepare EWB. As a corollary, one who prepared EWB could be implied to be the one who caused movement of the goods. Considering the ingredients applicable in each clause under 10(1) to determine '*place of supply*', it is important that EWB generation is **not causally undertaken**. One must be mindful of the effect it could have on the place of supply declared. If EWB is wrongly prepared or

prepared by a wrong distinct person, this may **adversely impact** the person who is going to report the supply or the nature of the supply in the GST returns.

(x) 'Bill-to-Ship-to' (BTST/B2S2) Transactions

Although bill-to-ship-to transactions could sometimes result in twin-supply transactions, they require a single EWB since the movement is singular. In the e-way bill form, there are two portions under the 'TO' section.

- ✓ in the left-hand-side: 'Billing To' GSTIN and trade name should be entered; and
- ✓ in the right-hand-side: 'Ship to' address of the destination of the movement should be entered.
- ✓ the other details as per invoice should be entered.

In case ship-to State is different from the bill-to State, the tax components are entered as per the details of the bill-to person (bill-to State), i.e., if the bill-to location is inter-State for the supplier, IGST is entered and if the bill-to person is located in the same State as the supplier, SGST and CGST are entered irrespective of the place of delivery (whether within the State or outside the State).

In a typical "bill-to-ship-to" model of supply, three persons are involved in the transaction, namely:

- 'A' is the person who has ordered 'B' to send goods directly to 'C'.
- 'B' is the person who is sending goods directly to 'C' on instructions of 'A'.
- 'C' is the recipient of goods.

In this complete scenario, two supplies are involved and accordingly two tax invoices are required to be issued:

- Invoice -1, which would be issued by 'B' to 'A'.
- Invoice -2 which would be issued by 'A' to 'C'.

It is clarified that as per the CGST Rules, 2017 either 'A' or 'B' can generate the e-Way Bill, but it may be noted that only one e-Way Bill is required to be generated as per the following procedure:

[Case -1: Where e-Way Bill is generated by 'B', the following fields shall be filled in Part A of GST FORM EWB-01]³⁹:

1.	Bill From:	In this field details of 'B' are supposed to be filled.
2.	Dispatch From:	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of 'B'.

³⁹ <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1529945>

3.	Bill To:	In this field, details of 'A' are supposed to be filled.
4.	Ship to:	In this field, address of 'C' is supposed to be filled.
5.	Invoice Details:	Details of Invoice-1 are supposed to be filled

[Case -2: Where e-Way Bill is generated by 'A', the following fields shall be filled in Part A of GST FORM EWB-01] ³⁹:

1.	Bill From:	In this field details of 'A' are supposed to be filled.
2.	Dispatch From:	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of 'B'.
3.	Bill To:	In this field details of 'C' are supposed to be filled.
4.	Ship to:	In this field address of 'C' is supposed to be filled.
5.	Invoice Details:	Details of Invoice-2 are supposed to be filled

Illustration 7: Goods supplied from Baroda to intermediate in Chennai but directly delivered to Kolkata. EWB to be generated 'before' commencement of movement with 'bill to Chennai' and 'ship to Kolkata' with the GSTIN of original supplier (Baroda) and intermediate (Chennai).

Illustration 8: Car sold by Dealer in Bangalore to Bank in Mumbai but delivered to Lessee in Bangalore. EWB to be issued 'before' commencement of movement with 'bill to Mumbai' and 'ship to Bangalore'.

Illustration 9: Water cans supplied by Dealer in Road no.1 to Caterer registered in Road no.2 and delivered to central Kitchen in Road no.10 and then carried to marriage hall in Road no.12. EWB to be issued 'before' commencement of movement with 'bill to Road no.2' and 'ship to Road no.10'. Since there is an interval of time after delivery of water cans from Dealer to central Kitchen, this is not a transaction that is inter-linked in two movements. Subsequent movement of entire catering articles involves another EWB independent of the earlier EWB.

(xi) 'Bill from-Ship from' (BFSF) Transactions

Such a situation arises where the supplier prepares the bill from his business premises to the consignee, but moves the consignment from some other premises to the consignee, based on business requirements. In alignment with procedure specified in the preceding paragraph, the system provides a mechanism for this situation as well. In the e-way bill form, there are two portions under 'FROM' section:

- ✓ In the left-hand-side: 'Bill From' supplier's GSTIN and trade name should be entered; and

- ✓ In the right-hand-side: 'Dispatch From', address of the dispatching place should be entered.
- ✓ The other details should be entered as per the invoice.

(xii) EWB to impact Classification (BTST-BFSF)

Use of EWB can impact the classification of the goods in-transit supplies. Although it may seem like a rule that since the goods procured from the original Supplier and resupplied on back-to-back basis, the classification (and hence rate of tax) should remain the same. It is true but with some exceptions, namely:

- Goods procured from various Suppliers and delivered to end Customer's site for undertaking supply of services involving goods such as leasing, works contract, etc. Without questioning the nature of supply – inter-State or intra-State – carefully consider the impact on the classification of the goods. Classification of the outward supply by the intermediate Supplier to end Customer need not mirror the classification of the original Supplier. Clearly, nothing has been done as yet by the intermediate Supplier on the goods to discharge his supply obligations but the EWB must carry the correct HSN. The intermediate Supplier may supply the goods on a back-to-back basis but they may not issue invoice on back-to-back basis as milestone-based invoice may be required as per contract. So, care should be taken **not to 'copy' the HSN** applied by the original Supplier even though the supply to end Customer is in-transit, whether undertaken as BTST or BFSF.

Illustration 10: Cement (HSN 2523) supplied by Dealer is billed to Contractor but delivered to Customer's site on 'in-transit' basis, Contractor's EWB must follow HSN 9954 along with HSN 2523 and not HSN 2523 alone.

- Goods procured from original Supplier and delivered to end Customer's site which is not a supply or has already been subject to tax such as publishing, contract manufacturing, job-work, warranty fulfilment, etc.

Illustration 11: In case of printed books being sent by Publisher to Dealer, the HSN code to be applied will be HSN 9989 along with relevant HSN under Chapter 49 and not HSN 49 alone that is applicable to printed books (relevant kind).

It is important to bear in mind that in BTST or BFSF transactions, the details in EWB may not be the same as the Tax Invoice for the supply, if any. EWB is for 'movement' and Tax Invoice is for 'supply'. Movement of goods is recognized in the EWB itself to be 'other than supply'. Hence, exact mirroring of the EWB and the Tax Invoice is not always possible. Classification too is not static and can undergo change as the other aspects in EWB.

(xiii) EWB Formula

EWBs follow a time-distance-acceptance based formula. EWB has a validity period linked

to the distance the goods have to travel and finally acceptance by the Recipient. Unless accepted / rejected within 72 hours, the EWB is deemed to be accepted. An EWB can only be cancelled within 24 hours of generation (unless the carriage has been intercepted / the goods delivered, prior to such time). Thus, EWB introduces a sense of urgency in the process of movement and promptly recording the transactions.

This requires better preparation and organizing information required to be input in EWBs so that when it is time to carry out movement of goods, the information is correct, complete and free of errors. Booking sales in the last few days of the month may not be easy unless supported by a timely dispatch of goods along with EWB.

(xiv) Watch 'portal' Continuously

One needs to watch portal continuously and **'accept' or 'reject'** an EWB. If not, every EWB uploaded with GSTIN, will be **'deemed as accepted'**. Considering that EWBs become 'valid' from the time Part-B is entered, they will appear as soon as EBN is generated with just Part-A information. **Monitoring** portal regularly is important. Creation of sub-users for this purpose may be beneficial based on projects or SBUs where single GSTIN is used in a State. In order to monitor, POs issued must be available on-hand to be able to 'reject' any unknown or unrecognized EWBs. It is important to bear in mind those Service-POs involving goods will also reflect on the portal against said GSTIN and must not be rejected as it would interrupt transportation. EWB process now assumes great significance, particularly service contracts involving goods.

(xv) Reporting Detention

Detention of goods is required to be reported by TRANSIN-holder if detention exceeds thirty (30) minutes in **GST EWB 04**. This will report the detention to the superior officer who will need to resolve the reasons for detention.

The consequences are provided in section 129 as follows:

- notice (followed by order) of detention
- opportunity to pay penalty as prescribed in each case (section 129(1) limits)
- furnishing security is involved in case of detention

Payment of penalty is **treated as 'conclusion'** of the underlying proceedings. As such, care should be taken not to pay penalty in haste as it implies admission of wrong-doing. These sweeping penalty provisions take away discretion and do not allow elaborate opportunity to prove *bona-fide*. Absence of prescribed documents implies wrong-doing attracting the prescribed penalties to their full extent. Transporter needs to be equipped with sufficient **pre-checks** about the documentation and availability of EWB or ability to furnish bond and security to prevent detention and continue transportation.

Identifying transporter with this knowledge and understanding is strongly recommended.

Earlier suggestion for Supplier or Recipient with GSTIN to additionally obtain TRANSIN or transporter id will facilitate in meeting and addressing detention issues if the transporter is unable to explain the facts. Although the powers of detention show severity, Government assures that it will be used sparingly and in sectors where there is rampant violation. Care must be taken to make an overall sensitive assessment of products / sectors involved and adopt suitable measures so as to remain free from detention concerns.

No confiscation in case of minor typographical mistakes

It has been clarified vide Circular No. 64/38/2018-GST dt. 14.09.2018 that:

in case a consignment of goods is accompanied by an invoice or any other specified document and

- not an e-way bill - proceeding under section 129 of the CGST Act may be initiated.
- also an e-way bill- proceedings under section 129 of the CGST Act **may not be initiated**, *inter alia*, in the following situations:
 - (a) spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;
 - (b) error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;
 - (c) error in the address of the consignee to the extent that the locality and other details of the consignee are correct;
 - (d) error in one or two digits of the document number mentioned in the e-way bill;
 - (e) error in 4 or 6 digits level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct; and
 - (f) error in **one or two digits**/characters of the **vehicle number**.

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

(xvi) Effective Date – Central EWB

Central GST Rules address only inter-State movement (not necessarily inter-State supply). EWB system was implemented **with effect from 1st April, 2018** in case of inter-

state movement. It is to be noted that EWBs must be in harmony with the tax charged in respect of the supply involved. In case of an in-transit supply, it has been clarified that one (1) EWB will suffice for the entire movement involved, though the goods may take a different (and direct) route to the final destination. Imports also require EWB but by the Consignee who causes the movement of goods from the port to the final location. Exports will require EWB up to the port but where Recipient is an 'unregistered person'.

(xvii) Effective Date – State EWB

States/Union Territories have notified EWB requirements for intra State movement as under:

Threshold Limit for EWB in case of Intra State Supply	State(s)	Union Territories
Consignment Value Above Rs. 1,00,000	West Bengal; Tamil Nadu, Delhi, Bihar, Maharashtra	-
Consignment Value Above Rs. 50,000	Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Manipur, Mizoram, Nagaland, Odisha, Punjab, Rajasthan, Sikkim, Telangana, Uttarakhand, Uttar Pradesh, Puducherry	Lakshadweep, Daman and Diu, Andaman and Nicobar Islands, Dadra and Nagar Haveli, Chandigarh, Jammu & Kashmir

However, **inter-State movement** must follow the **threshold of Rs. 50,000** prescribed under the CGST Act and registered persons in any State where a relaxation is granted cannot rely on the State threshold for inter-state movement.

Transfer of goods from one conveyance to another:

In such cases, the consignor or the recipient, who has provided information in Part A or the transporter shall, before such transfer and further movement of goods, update the details of conveyance on common portal in Part B.

Assignment of E-Way bill number EBN:

The consignor or the recipient, who has furnished the information in Part A or the transporter, may assign the EBN to another registered or enrolled transporter for updating

the information in Part B for further movement of the consignment. However, after the details of the conveyance have been updated by the transporter in Part B, the consignor or recipient, as the case may be, who has furnished the information in Part A shall not be allowed to assign the EBN to another transporter.

Transportation of multiple consignments in one conveyance:

In such cases, the transporter may, prior to the movement of goods, generate a consolidated EWB in **FORM GST EWB-02**, indicating the serial number of EWBs generated in respect of each such consignment electronically on the common portal.

Making available information furnished in EWB:

The information furnished in Part A shall be made available to the registered supplier on the common portal. He may utilize the same for furnishing the details in FORM GSTR-1.

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

Validity of EWB:

The validity of an EWB or a consolidated EWB depends upon the distance the goods have to be transported within the country from the relevant date.

Validity period of EWB is one day upto 200 km and one additional day for every 200 km or part thereof thereafter. In case of Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship], the limit is 20 km instead of 200 km.

The EWB generated under rule 138 of the CGST rule or of the SGST/UTGST Rules of any State or Union territory shall be valid in every State and Union territory.

“**Relevant date**” shall mean the date on which the EWB has been generated and the period of validity shall be counted from the time at which the EWB has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of EWB.

The expression “**Over Dimensional Cargo**” shall 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 (59 of 1988).

Extension of validity period:

- The Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an EWB for certain categories of goods as may be specified therein.
- Where, under circumstances of an exceptional nature, including trans-shipment, the

goods cannot be transported within the validity period of the EWB, the transporter may extend the validity period after updating the details in Part B, if required.

- [The validity of the EWB may be extended within eight hours from the time of its expiry].

E-way bill in case of storing of goods in godown of transporter- Clarification vide Circular No. 61/35/2018 dated 04.09.2018 (relevant paras)

Para 3: As per rule 138 of the CGST Rules, EWB 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.

Para 4: Further, section 2(85) of the CGST Act defines the “**place of business**” to include “a place from where the business is ordinarily carried out, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both”. An **additional place of business** is the place of business from where taxpayer carries out business related activities within the State, in addition to the principal place of business.

Para 5: Thus, in case the consignee/ recipient taxpayer stores his goods in godown of the transporter, then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer. In such cases, mere declaration by the recipient taxpayer to this effect with the concurrence of the transporter in the said declaration will suffice. Where the transporter's godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer's additional place of business). Hence, e-way bill validity in such cases will not be required to be extended.

Para 6: Further, whenever the goods are transported from the transporters' godown, which has been declared as the additional place of business of the recipient taxpayer, to any other premises of the recipient taxpayer then, the relevant provisions of the e-way bill rules shall apply. Hence, whenever the goods move from the transporter's godown (i.e., recipient taxpayer's additional place of business) to the recipient taxpayer's any other place of business, a valid e-way bill shall be required, as per the extant State-specific e-way bill rules.

Carrying of documents and devices by person in charge of a conveyance- Section 68(1) read with Rule 138 and 138A

The person in charge of the conveyance carrying goods of consignment value **exceeding Rs. 50,000/-** shall carry—

- (a) the invoice or bill of supply or delivery challan, as the case may be;
- (b) a copy of the EWB in physical form or the EBN in electronic form or mapped to a Radio Frequency Identification Device (RFID) embedded on to the conveyance in such manner as may be notified by the Commissioner. As per *Circular No. 41/15/2018 dt. 13/04.2018*, an E-way bill number (EBN) may be available with the person in charge of the conveyance in the form of a printout, SMS or it may be written on an invoice. All these forms of having an e-way bill are valid. However, this requirement of EWB is not applicable in case of movement of goods by rail or by air or vessel.
- (c) ⁴⁰in case of imported goods, 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.

Notwithstanding anything contained in clause (b) above, where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the EWB:

- (a) tax invoice or bill of supply or bill of entry; or
- (b) a delivery challan, where the goods are transported for reasons other than by way of supply.

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.

Where the registered person uploads the invoice as stated above, the information in **Part A of FORM GST EWB-01** shall be auto-populated by the common portal on the basis of the information furnished in **FORM GST INV-1**.

The Commissioner may, by notification, require a class of transporters to obtain a unique RFID and get the said device embedded on to the conveyance and map the EWB to the said RFID prior to the movement of goods.

Validation of documents- Section 68(2)

The details of documents required to be carried by the person in charge of conveyance shall be validated in the prescribed manner.

Interception and verification- Section 68(3) read with Rule 138B, 138C and Circular No. 41/15/2018-GST dt. 13.04.2018

The Jurisdictional Commissioner or an officer empowered by him in this behalf shall, by an order, designate officer/officers as the proper officer/officers to conduct interception

⁴⁰ Inserted vide *Notf No. 39/2018 – CT dt. 04-09-2018*

and inspection of conveyances and goods in the jurisdictional area specified in such order. Such an authorisation shall include verification of EWB in physical or electronic form for all inter-State and intra-State movement of goods. As per *Circular No. 3/3/2017–GST dt. 05.07.2017*, officers designed as ‘Inspector’ have been assigned such powers by the Board.

Where any conveyance is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents and devices stated above for verification, and the said person shall be liable to produce the same and also allow the 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. Wherever a facility exists to verify the EWB 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 <EWB_NO>** to the mobile number **77382 99899** (For example, EWBVER 120100231897).

The Commissioner shall get RFID readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the EWB has been mapped with the said device.

Physical verification of conveyances- Rule 138B(3)

The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf.

However, on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

Inspection and verification of goods- Rule 138C

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**. In addition, the proper officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in **FORM GST MOV-02**, 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 twenty four hours of the aforementioned issuance of **FORM GST MOV-02**, prepare a summary report in **Part A of FORM GST EWB-03** and upload the same on the common portal.

Within a period of three days from the date of issue of the order in **FORM GST MOV-02**, the proper officer shall conclude the inspection proceedings, either by himself or through

any other proper officer authorised in this behalf. Where circumstances warrant such time to be extended, he shall obtain a written permission in **FORM GST MOV-03** from the Commissioner or an officer authorized by him, for extension of time by another three days and a copy of the order of extension shall be served on the person in charge of the conveyance. The period of twenty four hours/three days shall be counted from the midnight of the date on which the vehicle was intercepted.

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 three 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 order in **FORM GST MOV-05** 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 in **FORM GST MOV-06** and a notice in **FORM GST MOV-07** in accordance with the provisions of section 129 (3) of the CGST Act, specifying the penalty payable. The said notice shall be served on the person in charge of the conveyance. For a detailed discussion on detention, seizure and release of goods and conveyance in transit under section 129 and confiscation of goods or conveyances under section 130, please refer the relevant chapters.

It has been clarified by way of an illustration in *Circular No. 49/23/2018 dt. 21.06.2018* that only such goods/conveyances shall be detained/confiscated in respect of which there is a violation of the provisions of the GST Acts or the rules made thereunder.

Further, CBIC vide *Circular No. 122/41/2019-GST dated 5th November, 2019* clarified the implementation of the electronic generation of Document Identification Number (DIN) for all communications sent by its offices to taxpayers. Therefore, no inspection notices or order shall be made without a computer-generated **Document Identification Number** duly quoted prominently in the body of such communication, on or after 8th November, 2019.

Illustration: Where a conveyance carrying twenty-five consignments is intercepted and the person-in-charge of such conveyance produces valid e-way bills and/or other relevant documents in respect of twenty consignments, but is unable to produce the same with respect to the remaining five consignments, detention/confiscation can be made only with respect to the five consignments and the conveyance in respect of which the violation of the Act or the rules made thereunder has been established by the proper officer.

Where EWB and Invoice or Delivery challan is found to be (a) missing or (b) incomplete or (c) inaccurate or (d) patently erroneous, then 'detention-seizure-release' are the prescribed steps on the condition that [200% of tax as penalty is paid (2% of value in case of exempted goods with a minimum of Rs.25,000 is prescribed), where the owner comes forward. Where the owner does not come forward, then 50% of value of goods or 200% of tax payable on such goods, whichever is higher, is to be collected (5% of value or Rs. 25000, whichever is less, in case of exempted goods)]. Where security is furnished to the extent of amount to be deposited (as above), the goods are required to be released.

An order is required to be passed directing the amount and tax (CGST-SGST or IGST) to be deposited. Please note that the amount so paid (as above) are deemed to be final (section 129(5)) but it is important to note that such payment can be made 'under protest' though there is no express provision to do so. No collection of amounts can be made without recourse of review or appeal. Issue that arises is whether officer intercepting the conveyance is authorized to make a detailed 'assessment' of the tax applicable? If not, will not the determination made be inaccurate and even arbitrary as it would not be as per provisions dealing with determination of tax. It would be trite in law to consider that the amount determined is a deposit and subject to review and appeal where the aggrieved party is free to go into all aspects of detention but after securing release of the detained goods. Care must be taken to ensure completeness of the documentation during transit. Larger the dealer, greater the responsibility and lesser the tolerance for compliance failure which may be contrary to popular belief that minor errors are expected in large scale operations.

No further physical verification of goods

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. It has been clarified vide *Circular No. 49/23/2018 dt. 21.06.2018* that since requisite forms are not available on the common portal currently, the hard copies of the notices/orders issued in the specified FORMS by a tax authority may be shown as proof of initiation of action by a tax authority by the transporter/registered person to another tax authority as and when required.

(xviii) Conclusion

EWBs contain information in two parts and **Part B** is required to render the EWB 'complete'. All movement of goods, unless specifically exempted will need to be accompanied by EWB:

- a) Whether inter-State or intra-State

b) Whether by way of supply or not

There is time-distance formula for issuance and acceptance. Unless cancelled, EWB generated will be admitted as valid and create a trail for further reporting and verification by tax authorities. EWB complete in both Parts is required. It is to be appreciated that very limited information is required in EWB and once EWB is reported on the portal, an ERN is generated. Transporter is required to provide ERN to the authorities for inspection. Invoice or delivery challan generated need not be carried by the transporter in physical form. Interception during the-transit is based on very limited 'touch points' like Invoice or DC and EWB. Very limited discretion is allowed for entering into detailed inquiry. Familiarity with this high-tech system will take some time. EWBs are expected to bring transparency and reliability for stakeholders.

- E-way bill user manual (updated upto 21.07.2021) has been issued by National Informatics Centre New Delhi, detailing out the manner in which e-way bill shall be generated and used for movement of goods (source: https://docs.ewaybillgst.gov.in/documents/usermanual_ewb.pdf)
- Vide *Circular No. 41/15/2018 – GST dated 13.04.2018*, the Board has clarified and also prescribed the procedure to be followed for inspection and detention of goods during their movement. It is also to be noted that the circular also details out the forms and its formats to be used for the purpose of inspection and detention.

68.3. Issues and Concerns:

1. There is no provision for amendment of particulars in the EWB. It is believed that such a facility has not been provided so as to ensure that EWBs are not mis-utilised. Where any incorrect details have been furnished in the EWB, only two options are available: (i) Request the consignee to reject the EWB (within 72 hours / before delivery); or (ii) Cancel the EWB within 24 hours / before delivery / before interception by an officer; and generate a new EWB with the correct details. If such EWB cannot be rejected / cancelled within the said timelines, nothing can be done. It is therefore suggested that the person generating the EWB should keep a record of all the discrepancies, in order to furnish the reconciliation if and when sought by the proper officer. Where such records are not maintained, it may be possible for the proper officer to treat the difference as a supply effected without issuance of invoice or treat the difference as a non-compliance with Rule 138 related to the EWB provisions.
2. In the case of *Rajeev Traders [2022 (66) GSTL 15 (Kar.)]*, the Hon'ble Karnataka High Court observed that "As stated above, the goods were accompanied by a tax invoice, which indicated payment of tax but an E-way bill had not been generated. Thus, the proper officer **could have only imposed a penalty of ten thousand rupees or the amount equivalent to the tax evaded**... Thus, if the proper officer, had reason to believe that the applicable tax has not been paid either by mistake or by reason of fraud, such as

undervaluation of the goods, it would be open for him to initiate proceedings under Section 73 and Section 74 of the Act. The proper officer, at the time of detention of the goods, cannot obviously convert the power to detain the goods and proceed to exercise of his power to confiscate, especially, when the proper officer has been conferred the power to determine the tax in a specified manner under Sections 73 and 74 of the Act. In other words, the proper officer cannot transform the detention proceedings into a confiscatory proceeding.”

Statutory provisions

69. Power to arrest

- (1) *Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of the central tax to arrest such person.*
- (2) *Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.*
- (3) *Subject to the provisions of the Code of Criminal Procedure, 1973(2 of 1974)—*
 - (a) *where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;*
 - (b) *in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.*

Related provisions of the Statute

Section or Rule	Description
Section 132	Punishment for certain offences

69.1. Introduction

This section deals with power of arrest when one commits any of the offences which is punishable under clause (i) or (ii) of sub-section (1), or under sub-section (2) of section 132 of the CGST Act.

69.2. Analysis

The Commissioner is vested with the power to authorise, by an order, any Officer of the central tax to arrest a person, where he has reasons to believe that such person has fulfilled the conditions as specified in section 132 (1) and (2):

A. Offence under Section 132:

- (1) [Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences]⁴¹, namely:-
- (a) Supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
 - (b) Issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
 - (c) [Avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill]⁴²
 - (d) Collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due.

B. Punishment under Section 132(1)(i) or (ii) or section 132(2) as follows:

Under section 132(1) – In cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken:

- Exceeds Rs. 500 Lakhs: the offender shall be punishable with imprisonment for a term which may extend to 5 years alongwith fine - section 132(1)(i); or
- Exceeds Rs 250 Lakhs but does not exceed Rs 500 Lakhs: the offender shall be punishable with imprisonment for a term which may extend to 3 years alongwith fine - section 132(1)(ii); OR

Under section 132(2) – where any person convicted under section 132 is again convicted, then the offender shall be punishable with imprisonment for a term which may extend to 5 years alongwith fine for every subsequent conviction.

If an offence involves an amount exceeding Rs. 500 lakhs and as such punishable for a term

⁴¹ Substituted vide Finance Act, 2020 dated 27-03-2020 through Nottf No. 92/2022-CT dt. 22.12.2020. Earlier it read as: "Whoever commits any of the following offences". Brought into force w.e.f. 01st January, 2021.

⁴² Substituted vide Finance Act, 2020 dated 27-03-2020 through Nottf No. 92/2022-CT dt. 22.12.2020. Earlier it read as: "(c) avails input tax credit using such invoice or bill referred to in clause (b);" Brought into force w.e.f. 01st January, 2021

which may extend to 5 years along with fine under section 132(1)(i), then such an offence shall be cognizable and non-bailable under section 132(5). The officer arresting such person is required to inform him of the grounds of arrest and produce him before the Magistrate within 24 hours. All other offences under GST law shall be non-cognizable and bailable under section 132(4). In case of such offences, subject to the provisions of the Code of Criminal Procedure, 1973, the arrested person shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate. The Assistant/Deputy Commissioner can grant the bail and is conferred powers of an officer-in-charge of a police station.

All arrests should be made as per the provisions of Code of Criminal Procedure, 1973. Please note that relief of section 24 to 30 of Evidence Act may be availed in respect of statements made by the accused.

Recently, the Apex Court in the case of *Siddharth vs State of UP [2022 (64) GSTL 34 (SC)]* observed as below:

- *"We may note that personal liberty is an important aspect of our constitutional mandate.*
- *The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond.*
- *Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. [Joginder Kumar v. State of U.P. & Ors. - (1994) 4 SCC 260].*
- *If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout co-operated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."*

CBIC vide *Instruction No. 02/2022-23 [GST-Investigation]* dated 17.08.2022, issued guidelines for arrest and bail in relation to offences punishable under the CGST Act, 2017. The same is reproduced as follows:

Hon'ble Supreme Court of India in its judgment, dated 16th August, 2021 in Criminal Appeal No. 838 of 2021, arising out of SLP (Crl.) No. 5442/2021, has observed as follows:

"We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a

person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout co-operated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

2. Board has examined the above mentioned judgment and has felt the need to issue guidelines with respect to arrest under CGST Act, 2017. Even, under legacy laws *i.e.* Central Excise Act, 1944 (1 of 1944) and Chapter V of the Finance Act, 1994 (32 of 1994), the instructions regarding exercise of power to arrest had been issued.
3. Conditions precedent to arrest:
 - 3.1 Sub-section (1) of Section 132 of CGST Act, 2017 deals with the punishment for offences specified therein. Sub-section (1) of Section 69 gives the power to the Commissioner to arrest a person where he has reason to believe that the alleged offender has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of Section 132 which is punishable under clause (i) or clause (ii) of subsection (1), or sub-section (2) of the Section 132 of CGST Act, 2017. Therefore, before placing a person under arrest, the legal requirements must be fulfilled. The reasons to believe to arrive at a decision to place an alleged offender under arrest must be unambiguous and amply clear. The reasons to believe must be based on credible material.
 - 3.2 Since arrest impinges on the personal liberty of an individual, the power to arrest must be exercised carefully. The arrest should not be made in routine and mechanical manner. Even if all the legal conditions precedent to arrest mentioned in Section 132 of the CGST Act, 2017 are fulfilled, that will not, *ipso facto*, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is in the affirmative:
 - 3.2.1 Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?
 - 3.2.2 Whether arrest is necessary to ensure proper investigation of the offence?
 - 3.2.3 Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?
 - 3.2.4 Whether person is mastermind or key operator effecting proxy/benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc.?
 - 3.2.5 As unless such person is arrested, his presence before investigating officer cannot be ensured.

- 3.3 Approval to arrest should be granted only where the intent to evade tax or commit acts leading to availment or utilization of wrongful Input Tax Credit or fraudulent refund of tax or failure to pay amount collected as tax as specified in sub-section (1) of Section 132 of the CGST Act 2017, is evident and element of *mens rea*/guilty mind is palpable.
- 3.4 Thus, the relevant factors before deciding to arrest a person, apart from fulfillment of the legal requirements, must be that the need to ensure proper investigation and prevent the possibility of tampering with evidence or intimidating or influencing witnesses exists.
- 3.5 Arrest should, however, not be resorted to in cases of technical nature *i.e.* where the demand of tax is based on a difference of opinion regarding interpretation of Law. The prevalent practice of assessment could also be one of the determining factors while ascribing intention to evade tax to the alleged offender. Other factors influencing the decision to arrest could be if the alleged offender is co-operating in the investigation, *viz.* compliance to summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax etc.
4. Procedure for arrest
- 4.1 Pr. Commissioner/Commissioner shall record on file that after considering the nature of offence, the role of person involved and evidence available, he has reason to believe that the person has committed an offence as mentioned in Section 132 and may authorize an officer of central tax to arrest the concerned person(s). The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), read with section 69(3) of CGST Act relating to arrest and the procedure thereof, must be adhered to. It is, therefore, advised that the Pr. Commissioner/Commissioner should ensure that all officers are fully familiar with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).
- 4.2 The arrest memo must be in compliance with the directions of Hon'ble Supreme Court in the case of *D.K Basu vs State of West Bengal* reported in 1997(1) SCC 416 (see paragraph 35). Format of arrest memo has been prescribed under Board's Circular No. 128/47/2019-GST, dated 23rd December, 2019. The arrest memo should indicate relevant section (s) of the CGST Act, 2017 or other laws attracted to the case and to the arrested person and inapplicable provisions should be struck off. In addition,
- 4.2.1 The grounds of arrest must be explained to the arrested person and this fact must be noted in the arrest memo;
- 4.2.2 A nominated or authorized person (as per the details provided by arrested person) of the arrested person should be informed immediately and this fact shall be mentioned in the arrest memo;
- 4.2.3 The date and time of arrest shall be mentioned in the arrest memo and the arrest memo should be given to the person arrested under proper acknowledgment.

- 4.3 A separate arrest memo has to be made and provided to each individual/arrested person. This should particularly be kept in mind in the event when there are several arrests in a single case.
- 4.4 Attention is also invited to Board's Circular No. 122/41/2019-GST, dated 5th November, 2019 which makes generation and quoting of Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation. Any lapse in this regard will be viewed seriously.
- 4.5 Further there are certain modalities which should be complied with at the time of arrest and pursuant to an arrest, which include the following:
- 4.5.1 A woman should be arrested only by a woman officer in accordance with section 46 of Code of Criminal Procedure, 1973.
- 4.5.2 Medical examination of an arrested person should be conducted by a medical officer in the service of Central or State Government and in case the medical officer is not available, by a registered medical practitioner, soon after the arrest is made. If an arrested person is a female, then such an examination shall be made only by or under supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.
- 4.5.3 It shall be the duty of the person having the custody of an arrested person to take reasonable care of the health and safety of the arrested person.
- 4.5.4 Arrest should be made with minimal use of force and publicity, and without violence. The person arrested should be subjected to reasonable restraint to prevent escape.
5. Post arrest formalities
- 5.1 The procedure is separately outlined for the different categories of offences, as listed in sub-sections (4) and (5) of Section 132 of the CGST Act, 2017, as amended:
- 5.1.1.1 In cases, where a person is arrested under sub-section (1) of Section 69 of the CGST Act, 2017, for an offence specified under sub-section (4) of Section 132 of the CGST Act, 2017, the Assistant Commissioner or Deputy Commissioner is bound to release a person on bail against a bail bond. The bail conditions should be informed in writing to the arrested person and also on telephone to the nominated person of the person (s) arrested. The arrested person should also be allowed to talk to the nominated person.
- 5.1.1.2 The conditions will relate to, inter alia, execution of a personal bail bond and one surety of like amount given by a local person of repute, appearance before the investigating officer when required and not leaving the country without informing the officer. The amount to be indicated in the personal bail bond and surety will depend upon the facts and circumstances of each case, inter-alia, on the amount of tax involved. It has to be ensured that the amount of Bail bond /Surety should not be

excessive and should be commensurate with the financial status of the arrested person.

- 5.1.1.3 If the conditions of the bail are fulfilled by the arrested person, he shall be released by the officer concerned on bail forthwith. However, only in cases where the conditions for granting bail are not fulfilled, the arrested person shall be produced before the appropriate Magistrate without unnecessary delay and within twenty-four hours of arrest. If necessary, the arrested person may be handed over¹ to the nearest police station for his safe custody, during the night under a challan, before he is produced before the Court.
- 5.1.2 In cases, where a person is arrested under sub-section (1) of Section 69 of the CGST Act, 2017, for an offence specified under sub-section (5) of Section 132 of the CGST Act, 2017, the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours. However, in the event of circumstances preventing the production of the arrested person before a Magistrate, if necessary, the arrested person may be handed over to nearest Police Station for his safe custody under a proper challan and produced before the Magistrate on the next day, and the nominated person of the arrested person may also be informed accordingly. In any case, it must be ensured that the arrested person should be produced before the appropriate Magistrate within twenty four hours of arrest, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.
- 5.2 Formats of the relevant documentation *i.e.* Bail Bond in the Code of Criminal Procedure, 1973 (2 of 1974) and the Challan for handing over to the police should be followed.
- 5.3 After arrest of the accused, efforts should be made to file prosecution complaint under Section 132 of the Act, before the competent court at the earliest, preferably within sixty days of arrest, where no bail is granted. In all other cases of arrest also, prosecution complaint should be filed within a definite time frame.
- 5.4 Every Commissionerate/Directorate should maintain a Bail Register containing the details of the case, arrested person, bail amount, surety amount etc. The money/Instruments/documents received as surety should be kept in safe custody of a single nominated officer who shall ensure that these instruments/ documents received as surety are kept valid till the bail is discharged.
6. Reports to be sent
 - 6.1 Pr. Director-General (DGGI)/ Pr. Chief Commissioner(s)/Chief Commissioner(s) shall send a report on every arrest to Member (Compliance Management) as well as to the Zonal Member within 24 hours of the arrest giving details as has been prescribed in **Annexure-I**. To maintain an all India record of arrests made in CGST, from September, 2022 onwards, a monthly report of all persons arrested in the Zone shall be sent by the Principal Chief Commissioner(s)/Chief Commissioner(s) to the Directorate General of GST Intelligence,

Headquarters, New Delhi in the format, hereby prescribed in **Annexure-II**, by the 5th of the succeeding month. The monthly reports received from the formations shall be compiled by DGGI, Hqrs. and a compiled Zone wise report shall be sent to Commissioner (GST-Investigation), CBIC by 10th of every month.

- 6.2 Further, all such reports shall be sent only by e-mail and the practice of sending hard copies to the Board should be stopped with immediate effect.
7. The field formations are hereby directed to circulate these guidelines/instructions to all the formations under their charge for strict compliance. Difficulties, if any, in implementation of the aforesaid guidelines/instructions may be brought to the notice of the Board.
8. Receipt of this Instruction may please be acknowledged.

The format of the Annexure-I and II can be found in the Instruction.

69.3. Issues and Concerns

1. While the law provides a threshold limit exceeding which the offence would be considered to be an offence by which a person may be arrested, the law does not specify any time-period in respect of the same. Therefore, consider a case where the Commissioner has reasons to believe that a person has failed to issue tax invoices in respect of supplies effected during a period of 3 years, wherein the tax evaded exceeds Rs. 250 lakhs. Even in such a case, it appears that the proper officer has the powers to arrest such person.
2. There is no indication as to whether the reference is made to a taxable person / registered person (GSTIN) / or any person in the language employed in Section 132(1) that specifies the offences, being “whoever commits any of the following offences, namely...”.
3. It is pertinent to note that the onus to prove that the allegations for arrest, levelled by the Commissioner or any officer authorised by him, is false and baseless is totally on the accused person. The officer merely needs to have a reason to believe. For instance: the officer may allege that the taxable person has availed Input Tax Credit fraudulently on the basis of an invoice without actual supply of goods (that is without actually receiving the goods). Here, a mere statement / record showing GRN details may not suffice and actual movement of goods and vehicles may be required to be justified by the accused by way of toll receipts and camera footage at the factory gate for instance in order to establish that there was no evasion.

69.5. FAQs

Q1. Power of arrest could be exercised by whom?

Ans. The Commissioner can authorise (by an order) any officer to arrest a person, who has committed specified offences. The Commissioner should have reasons to believe that such person has committed the specified offences.

Q2. Who can be arrested?

Ans. The person committing an offence (tax evasion) as specified in –

Section 132(1) clause (i) tax evasion above Rs. 500 Lakhs attracting imprisonment for a term extending upto 5 years and fine, or clause (ii) tax evasion above Rs. 250 Lakhs but up to Rs. 500 lakhs, attracting imprisonment extending up to 3 years and fine for an offence under Section 132(1) (a) to (d), or offence under section 132(2) [repeated offence – second and subsequent offence attracting imprisonment extending up to 5 years with fine] can be arrested by authorised officer.

Q3. What is the procedure to be followed for arrest?

- Ans. (i) The person arrested should be informed about the grounds of arrest and be produced before the Magistrate within 24 hours in case of cognizable and non-bailable offences.
- (ii) In case of non-cognizable and bailable offences, the Assistant/ Deputy Commissioner can grant the bail and is conferred powers of an officer-in-charge of a police station subject to the provisions of Code of Criminal Procedure, 1973.
- (iii) All arrests should be made as per the provisions of Code of Criminal Procedure, 1973.

69.6. MCQ

Q1. All arrests should be made as per the provisions of _____

- (a) Code of Criminal Procedure, 1973
 (b) Civil Procedure Code
 (c) Foreign Exchange Management Act
 (d) Indian Penal Code

Ans. (a) Code of Criminal Procedure, 1973

Statutory provisions

70. Power to summon persons to give evidence and produce documents

- (1) *The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.*
- (2) *Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code.*

70.1. Introduction

This provision deals with exercise of powers to issue summons for giving evidence and for production of documents or any other thing.

70.2. Analysis

In any inquiry which proper officer is making for any of the purposes of this Act, he shall have the power to summon:

- any person, whose attendance is considered necessary
- either to give evidence or to produce a document or any other thing
- in any inquiry in the same manner
- as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908

Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceeding” within the meaning of section 193 and section 228 of the Indian Penal Code.

It would be helpful to read and be familiar with the exact nature of responsibility of acceptance of service of summons and of making statements in response to a summon. Reference may be had to Chapter X and XI of Indian Penal Code. At the same time, Article 20(3) of our Constitution prohibits a person being made to witness against himself. Therefore, avoidance of service of summons is unlawful but abstinence from making statements is not. Understanding the legality of these matters will assume significance in attending to such matters of inquiry before a judicial officer.

Recently, the Apex Court in the case of *Siddharth vs State of UP [2022 (64) GSTL 34 (SC)]* observed that “*If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout co-operated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.*”

Scope of the word “summon” under section 70 is for “any inquiry”. Authorised Officer is not empowered under Section 70 to retain the documents for which summon were issued. It has been held in *T.T.V Dinkaran v. Enforcement Officer, 1995 (80) E.L.T. 745* that where summon did not mention the nature of investigation therein, it will be valid since mentioning the details about investigation may alert the person concerned to manipulate his record.

It may be helpful to read sections 24 to 30 of Indian Evidence Act, 1872 and note the jurisprudence available in this manner of gathering evidence. Person making the statement needs to establish that such statement was made under certain circumstances and that it is NOT to be relied upon in further proceedings. Statements made that are considered NOT reliable by the person making it, must lead evidence to support the assertion. It is permissible to presume statements are reliable unless withdrawn at the earliest opportunity in the remainder of the proceedings. Statements recorded under section 70 alone cannot form reliable evidence to support demand for tax in a show cause notice.

Further, it is pertinent to mention that the Supreme Court in a recent judgment of *Paramvir Singh Saini v. Baljit Singh & Ors., AIR 2021 SC 64* has directed that CCTV cameras should be installed

at the premises of all the investigation authorities and also where interrogation takes place, to safeguard human rights of the person making the statement.

In a particular case [*Rohit Sakhuja 2017 (349) ELT 204 (SC)*], the Apex Court observed that “However, as far as these writ petitions are concerned, we allow the same and direct that the petitioner’s advocate should be allowed to be present during the interrogation of the petitioner’s but he should be made to sit at a distance **within visible range**, but **beyond hearing range** and the advocate must be prepared to be present whenever the petitioner is called upon to attend such interrogation.”

Experts also hold the view that since Proper Officer will NOT file a Police Report (also called ‘charge sheet’) under 173 of Cr.PC but only a complaint under section 190(1)(a) of Cr.PC, the proceedings WILL NOT enjoy the benefit of section 24 to 30 of Evidence Act, 1872. Reference may be had to *Illias v. Collector of Customs*, AIR 1970 SC 1065 contrasted with *Ramesh Chandra Mehta v. State of WB*, AIR 1970 SC 940.

After recording statement, the person making the statement cannot be implicated as it is contrary to the Constitutional guarantee in Article 20(3) without the possibility being made known him. Reference may be had to applicability of Cr.PC in the absence of procedure on conducting trial in *Adani Enterprises Ltd. & Ors. v. Uol & Ors.*, 2019-TIOL-2408-HC-MUM-CUS.

The GST-Investigation wing has issued guidelines on issuance of summons under section 70 through *Instruction No. 03/2022-23 dt. 17.08.2022*.

70.3. FAQ

Q1. Who can issue summons and for what purpose?

Ans. Proper officer under this Act can issue summon to any person whose attendance is considered necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of the GST Law.

Statutory provisions

71. Access to business premises

- (1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
- (2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under

section 66—

- (i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;*
- (ii) trial balance or its equivalent;*
- (iii) statements of annual financial accounts, duly audited, wherever required;*
- (iv) cost audit report, if any, under section 148 of the Companies Act, 2013;*
- (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and*
- (vi) any other relevant record,*

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

Related provisions of the Statute:

Section or Rule	Description
Section 67	Power of inspection, search and seizure
Rule 139	Inspection, search and seizure
Section 66	Special audit
Section 35	Accounts and records
Section 36	Period of retention of accounts
Section 144	Presumption as to documents in certain cases

71.1. Introduction

This provision empowers any officer authorised by the officer not below the rank of Joint Commissioner to have access to any place of business of a registered person to inspect books of account, documents, computers, computer programmes, computer software and such other things as may be required, and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

71.2. Analysis

To access the business premises, the officer should be authorized by the proper officer **not below** the rank of Joint Commissioner. Experts are apprehensive of far-reaching consequences of this section which is potentially capable of misuse. Strong understanding of the legal remedies available will equip in attending to these inspections.

Such an authorized officer shall have access to any place of business of registered person to inspect:

- books of account,
- documents,
- computers,
- computer programs,
- computer software (whether installed in a computer or otherwise)
- and such other things as he may require and which may be available at such place.

The object is to carry out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

The person in charge of the premises should make available the following:

1. records prepared or maintained by the registered person and declared to proper officer;
2. trial balance or its equivalent;
3. audited financial statements, wherever required;
4. cost audit report, if any;
5. income tax audit report, if any; and
6. other relevant records.

The documents/records should be made available within 15 working days, or such extended period as may be allowed.

The documents/records can be called for by the authorised officer or audit party under section 65 or Chartered Accountant or Cost Accountant nominated by the department under section 66.

71.3. FAQs

Q1. What are the documents or records that a person in charge of a place of business shall make available in terms of provisions of section 71?

Ans. The person in charge of a place of business shall, on demand, make available:

- records prepared or maintained by the registered person and declared to proper officer;
- trial balance or its equivalent;
- audited financial statements wherever required;
- cost audit report, if any;

- income tax audit report, if any
- other relevant records

Q2. Who are the persons empowered to call for documents/records for audit, verification, checks and scrutiny?

Ans. Authorised officer or the audit party under section 65 or a Chartered Accountant or a Cost Accountant nominated u/s 66 by the department for conducting the audit are the persons empowered to call for documents/records for audit, verification, checks and scrutiny.

71.4. MCQs

Q1. The documents called for should be provided within _____

- (a) 20 working days
- (b) 15 working days
- (c) 60 days
- (d) 30 days

Ans. (b) 15 working days

Q2. Who is liable to furnish information to empowered officers?

- (a) Director
- (b) Accountant
- (c) CEO
- (d) Person in charge of Place of Business

Ans. (d) Person in charge of Place of Business

Q3. What empowered officers can do with the information furnished to them?

- (a) Audit
- (b) Scrutiny
- (c) Verification and Checks
- (d) All of the above

Ans. (d) All of the Above

Statutory provisions

72. Officers to assist Proper Officers

- (1) *All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.*

(2) *The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.*

72.1. Introduction

The provision requires all officers of Police, Railways, Customs and those officers engaged in the collection of land revenue including village officers, officers of state and union territory tax to assist the proper officers in the implementation of this Act.

72.2. Analysis

Below mentioned officers are empowered and required when called upon, to assist the proper officer in execution of this Act:

- All officers of
 - Police
 - Railways
 - Customs
- Officer of State & Union Territory tax
- Officers engaged in the collection of land revenue including village officers

The Government may even issue notification empowering and requiring any other class of officer to assist the proper officers, if required by the Commissioner.

72.3. FAQs

Q1. Which officers are under an obligation to assist the CGST officers in the implementation of the Act?

Ans. All officers of Police, Railway, Custom, State/Central officer engaged in collection of GST and Land Revenue, Village officers, are empowered and are required to assist the proper officers to carry out the provisions of the Act.

Q2. Can the Commissioner call upon any other officer for assistance?

Ans. In terms of section 72(2) of the Act, the Government may issue notification empowering or requiring any other class of officer to assist the proper officers under this Act, if required by the Commissioner.

72.5. MCQs

Q1. The _____ officer is empowered to assist the proper officer.

- (a) Registrar of Companies
- (b) Health

- (c) CBI
- (d) Railway

Ans. (d) Railway

Q2. _____ Officer is not empowered to assist the proper officer u/s 72(1) of the Act.

- (a) Police
- (b) Custom
- (c) State Excise
- (d) Railway

Ans. (c) State Excise