

Refresher Course on GST

Organised By: GST & Indirect Taxes Committee of
ICAI

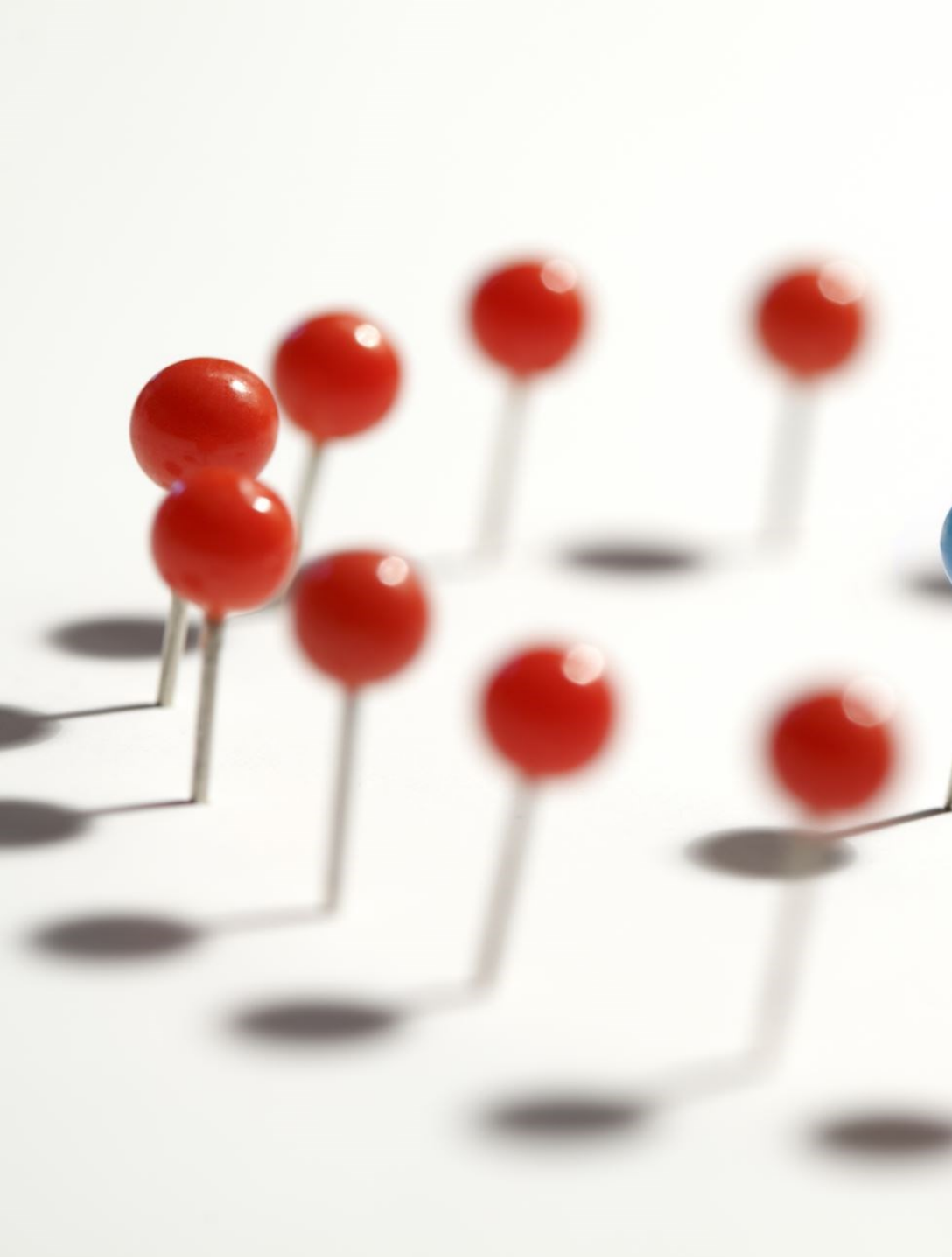
Topic:

Interception of vehicle in transit and
Procedural aspects and legal issues
related to E-way Bill including Penal
Provisions

Hosted by: Tinsukia Branch of EIRC of
ICAI

Speaker: CA. (Dr.) Gaurav Gupta

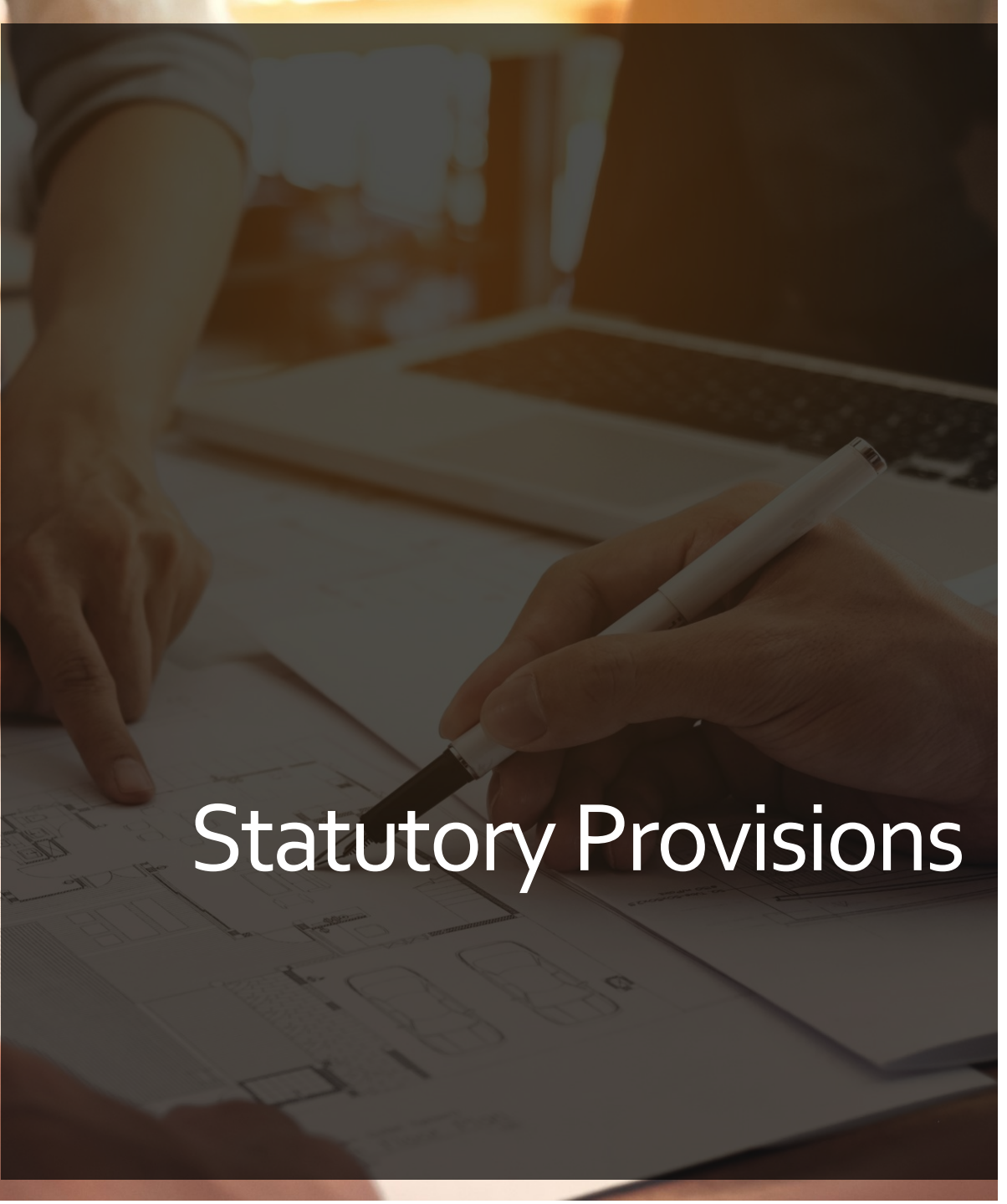
Date: 09.10.2020



Agenda

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- Movement of Goods – Legal Provisions
- Interception of Goods – Procedure
- Penalties and other consequences
- Some importance cases

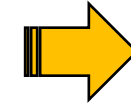


Statutory Provisions

Statutory Provisions

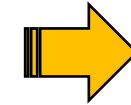
- What is Movement of Goods?
- Section 68 – Inspection of Goods in Movement

68. (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.



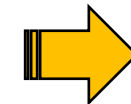
Rules 138 and 138A

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



Rules 138B

(3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

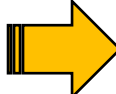
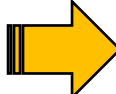
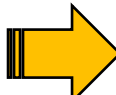


Rules 55A, 138A, 138B, 138C and 138D and Form GST INV-1 and GST MOV 1 to GST MOV 11

Statutory Provisions

Rule 138 and 138 A

- *Every registered person who **causes** movement of goods of consignment value exceeding fifty thousand rupees—*
 - (i) in relation to a supply;*
 - (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:
 - Movement between principal and job worker, irrespective of the value of the consignment
 - Supply from unregistered supplier to a recipient who is registered: Presumed to be caused by registered person if the recipient is known at the time of commencement of the movement of goods.
-  Consignment Value?
-  Causes such movement
-  Furnish information – mere intimation to department

Statutory Provisions

Cancellation of E way bill:

- Where goods are either not transported or are not transported, the e-way bill may be cancelled electronically within 24 hours of its generation – What if we missed to do so?
- e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

Deemed Acceptance

- Where the person (supplier or recipient) 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, it shall be deemed that he has accepted the said details.

Statutory Provisions

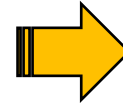
Exceptions: No E way Bill required:

- 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**,
- where the goods being transported are specified in **Annexure**;
- where the goods are being transported **by a non-motorised conveyance**;
- where the goods are being transported **from the port, airport, air cargo complex and land customs station to an inland container depot** or a container freight station for clearance by Customs;
- in respect of movement of goods **within such areas as are notified** under clause (d) of sub-rule (14) of rule 138 of the Central Goods and Services Tax Rules of the concerned State;

Statutory Provisions

Exceptions: No E way Bill required:

- 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 as amended from time to time;
- 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; and
- where the goods being transported are treated as no supply under Schedule III of the Act.



Exemption
notification

Statutory Provisions

Exceptions: No E way Bill required:

- Annexure
 - *Liquefied petroleum gas for supply to household and non-domestic exempted category (NDEC) customers*
 - *Kerosene oil sold under PDS*
 - *Postal baggage transported by Department of Posts*
 - *Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)*
 - *Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)*
 - *Currency*
 - *Used personal and household effects*
 - *Coral, unworked (0508) and worked coral (9601).'*

Statutory Provisions

Documents to be carried during movement:

- the invoice or bill of supply or delivery challan, as the case may be; and
- 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:
- In case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry

Base documents for E way bill:

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



Interception of Goods in movement

Interception of Goods in movement

- Section 68(3) read with Rule 138C
- Authorized officer may intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-State and intra-State movement of goods
- Procedure - Circular No.41/15/2018-GST [CBEC-2016/03/2017-GST], dated 13-4-2018 as amended by Circular no. 49/23/2018-GST [F.NO. CBEC/20/16/03/2017-GST], dated 21-6-2018, Circular No. 88/07/2019-GST [F. NO. CBEC-20/16/04/2018 - GST], dated 1-2-2019



Penalties and other
consequences

Defaults and Penalties

Section 129

- Where any person transports any goods in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance **shall be liable to detention or seizure and after detention or seizure**, shall be released,—
 - where the owner of the goods comes forward for payment of such tax and penalty;
 - on payment of the applicable tax and penalty equal to 100 % of the tax payable on such goods and,
 - in case of exempted goods, on payment of an amount equal to 2% of the value of goods or twenty five thousand rupees, whichever is less,
 - where the owner of the goods does not come forward for payment of such tax and penalty;
 - on payment of the applicable tax and penalty equal to the 50% per cent of the value of the goods reduced by the tax amount paid thereon and
 - in case of exempted goods, on payment of an amount equal to 5% of the value of goods or twenty five thousand rupees, whichever is less,
 - upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

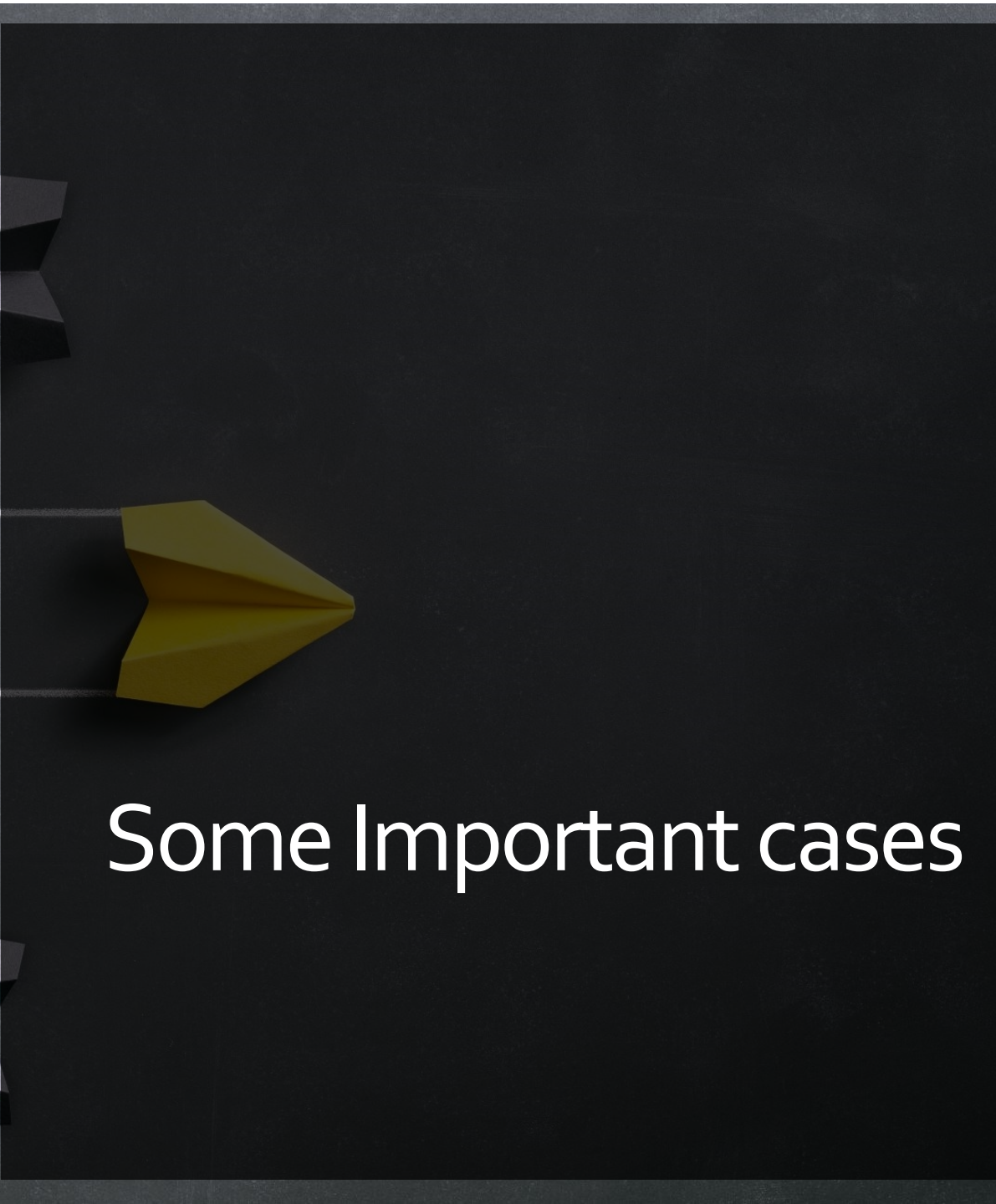
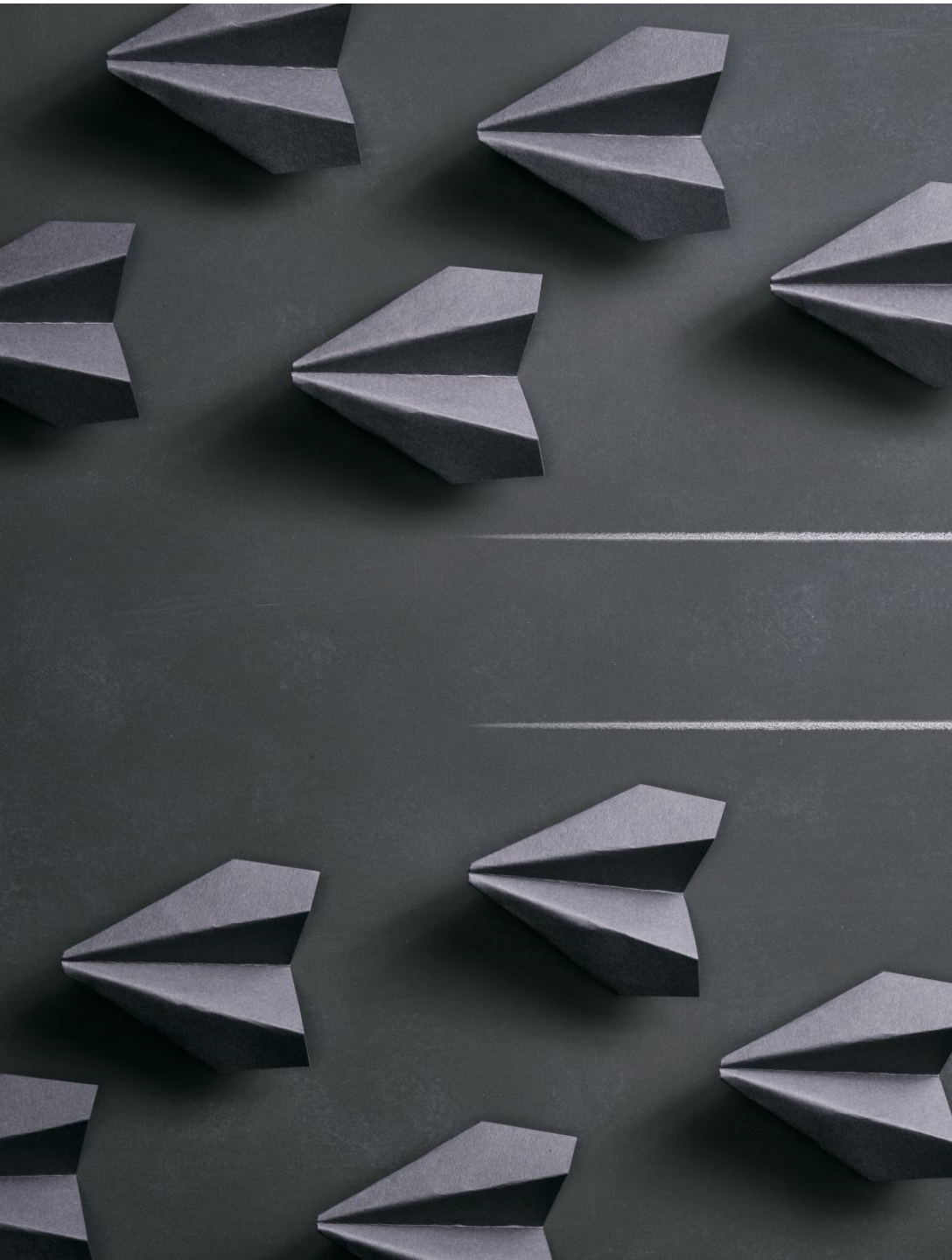
Defaults and Penalties

No proceedings in following cases:

- Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;
- Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;
- Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;
- Error in one or two digits of the document number mentioned in the e-way bill;
- Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;
- Error in one or two digits/characters of the vehicle number.

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.

- Circular No.64/38/2018-GST [CBEC/20/16/03/2017-GST], dated 14-9-2018



Some Important cases

Some important cases

- Synergy Fertichem (P.) Ltd. v State of Gujarat

The attention of the court was invited to the impugned show cause notice dated 1.3.2019, to submit that the same seeks to impose penalty, redemption fine and confiscation under section 130 of the Act without initiating any proceedings under section 129 of the Act, which is not permissible in law.

- Ram Charitra Ram Harihar Prasad v/s State of Bihar

the entire exercise is de hors the provisions of amended Rule 138 as notified in the gazette dated 07.03.2018 which enables a consignor of goods to validate his E-WAY BILL and which was done by the petitioner on 26.4.2019 i.e. before the order of detention could be passed under Section 129 on 27.4.2019.

- M/s K.B Enterprises Vs Asst. Commissioner State Taxes & Excise

The minor mistakes in Part-B of the e-way bill, inter-alia “error in one or two digits/characters of the vehicle number” will not invite detention order

- Hindon Machinery Tools Vs State of U.P.

Incorrect and inadvertent mistake in tax invoice number - Prima facie, there seems no discrepancy in E-way Bill attracting seizure of goods.

Some important cases

- K.P. Sugandh Limited v. Commissioner, SGST
The under valuation of goods in the invoice could not be a ground for the detention of the goods and vehicle u/s129 of the CGST Act. r/w Rule 138 of CGST Rules. Accordingly, the order is quashed, and Authorities were directed to release the goods.
- Hindustan Coca Cola Private Limited v. Assistant State Tax Officer, SGST
Dispute in classification of goods.
- Commercial Steel Company v. Assistant Commissioner of State Tax
Different route of vehicle does not establish evasion or contravention of provisions
- Sitaram Roadways v State of Gujarat
Transportation without invoice and e-way bill but order was passed without giving reasonable opportunity. Violation of principles of natural justice.
- M/s. Jeyyam Global Foods (P) Ltd. Vs Union of India
Commissioner of Commercial Taxes, Chennai was directed to issue a circular to all the inspecting squad officers in Tamil Nadu not to detain goods or vehicles where there is a bonafide dispute as regards the exigibility of tax or rate of tax.


Some important cases

- State of UP v Kay Pan Fragrance (P.) Ltd


11. There is no reason why any other indulgence need be shown to the assessee, who happen to be the owners of the seized goods. They must take recourse to the mechanism already provided for in the Act and the Rules for release, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum (even upto the total value of goods involved), respectively, as may be prescribed or on payment of applicable taxes, interest and penalty payable, as the case may be, as predicated in Section 67 (6) of the Act. In the interim orders passed by the High Court which are subject-matter of assail before this Court, the High Court has erroneously extricated the assessee concerned from paying the applicable tax amount in cash, which is contrary to the said provision.

12. In our opinion, therefore, the orders passed by the High Court which are contrary to the stated provisions shall not be given effect to by the authorities. Instead, the authorities shall process the claims of the concerned assessee afresh as per the express stipulations in Section 67 of the Act read with the relevant rules in that regard. In terms of this order, the competent authority shall call upon every assessee to complete the formality strictly as per the requirements of the stated provisions disregarding the order passed by the High Court in his case, if the same deviates from the statutory compliances. That be done within four weeks without any exception.

THANK YOU

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