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DETENTION, INSPECTION, SEIZURE AND CONFISCATION OF GOODS IN TRANSIT UNDER GST LAWS

1. Introduction

GST is a trust based taxation regime where the registered taxable person is required to assess his tax liability himself without any intervention by the tax official, file return and pay tax. A tax regime that relies on self-assessment has to put in place certain checks and balances such as prescribing the maintenance of certain books of accounts, audit of these books of accounts, assessment of the returns filed by the tax payers, scrutiny and inspection of documents and search of business premises and seizure of business premises etc.

The GST Department performs these functions on a selective basis. The main objective is to protect the interest of genuine tax payers so that it acts as a deterrent for tax evasion. The tax evaders, by evading the tax, get an unfair advantage over the genuine tax payers. These provisions are also required to safeguard Government's legitimate dues.

This article attempts to explain the obligations of the registered taxable person for carrying of certain documents while transporting goods from one place to another (whether during the course of supply or otherwise), powers of the GST officials to detain the conveyance transporting goods, inspect goods in movement, to ensure that the person in charge of the vehicle carry with him, the prescribed documents. The article also covers the consequences by way of the recovery of tax and penalty, confiscation of goods in case of violation of the relevant provisions of GST laws and the remedies available to the person in-charge of the conveyance, owner of goods and of the transport vehicle.

2. Powers of the Proper Officer to inspect goods in movement:

Section 68 (1) of the CGST Act, 2013, empowers the Government to 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.

3. Documents to be carried by the person in-charge of the transport vehicle:

As per Rule 138-A, the person in charge of the conveyance has to carry the following documents:

- i. The invoice or bill of supply or delivery challan, as the case may be;
- ii. 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 (RFID) embedded on to the conveyance in such manner as may be notified by the Commissioner;
- iii. 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.
- iv. In case, e-invoice has been 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.
- v. The Commissioner may, by notification, require a class of transporters to obtain a unique RFID and get the said device embedded on the conveyance and map the e-way bill to the RFID prior to the movement of goods.

The above-mentioned documents are however not required in case of movement of goods by rail or by air or vessel.

4. Interception of vehicle and validation of documents:

Where any conveyance referred to in paragraph 2 above, is intercepted by the proper officer at any place, he may require the person in charge of the conveyance to produce these documents and/or devices for verification.

5. Obligations of the person in-charge of conveyance and powers of proper officer:

The person in charge of the conveyance shall be liable to produce the documents and devices and also allow the inspection of goods. The Proper Officer, or any other authorised officer, may inspect and verify the goods. If so, the proper officer shall record online summary report of inspection of goods 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. 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.

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.

- 6. Detention, seizure and release of goods in transit:** Section 129 of the CGST Act provides for detention, seizure and release of goods and conveyances in transit while section 130 of the CGST Act provides for the confiscation of goods or conveyances and imposition of penalty.

Procedure to be followed in case of interception of conveyances for inspection of goods in movement and detention, seizure and release and confiscation of such goods and conveyances

- 6.1 Detention, seizure and release of goods and conveyances in transit:** (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released on payment of applicable tax and penalty depending upon whether the owner of goods comes forward for payment of such tax and penalty or not.

6.1.1 Where the owner of goods comes forward for payment of tax and penalty: In case the owner of goods comes forward the goods shall be released on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or **twenty-five thousand rupees**, whichever is less.

6.1.2 Where the owner of goods does not come forward for payment of tax and penalty: Where the owner of goods does not come forward for payment of applicable tax and penalty, the goods shall be released on payment of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty-five thousand rupees, whichever is less.

6.2 On execution of bond and furnishing of security: The goods can also be released upon furnishing a security equivalent to the amount payable as per 6.1.1 or 6.1.2 above, in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

6.3 Powers of the proper officer for inspection of goods: Where the person in charge of the conveyance fails to produce the prescribed document (any of the documents such as invoice, bill of supply delivery challan and in case the value of goods exceeds Rs.50,000, e-way bill) 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 MOV01. 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 issuance of FORM GST MOV-02, prepare a report in Part A of FORM GST EWB-03 and upload the same on the common portal.

6.4 Time limit for completion of inspection: The proper officer shall conclude inspection within a period of three days from the date of issue of the order in FORM GST MOV-02, 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 beyond three working days and a copy of the order of extension shall be served on the person in charge of the conveyance.

6.5 Issue of notice, specifying the tax and penalty payable: The proper officer detaining or seizing goods or conveyances shall issue a notice, specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty specified in paragraphs 6.1.1 and 6.1.2 above. No tax, interest or penalty shall be determined without giving the person concerned an opportunity of being heard.

6.6 Conclusion of proceedings on payment of tax: On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

7. Consequences for failure to pay tax and penalty:

Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in paragraph 6.6 above, within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130. In case where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fourteen days may be reduced by the proper officer.

7.1 Confiscation of goods or conveyances and levy of penalty: If any person commits any of the following contraventions then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122:

- (i) Supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- (ii) Does not account for any goods on which he is liable to pay tax under this Act; or
- (iii) Supplies any goods liable to tax under this Act without having applied for registration; or
- (iv) Contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- (v) Uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

7.2 Option to the owner of goods to pay tax and penalty in lieu of confiscation: Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit. However, such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon. This is also subject to the fact that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129.

7.3 Option to the owner of conveyance to pay tax and penalty in lieu of confiscation Where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported on such conveyance.

Where any fine in lieu of confiscation of goods or conveyance is imposed as mentioned in paragraph 7.2 and 7.3 above, the owner of such goods or conveyance, shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

7.4 On confiscation, the title of goods or conveyance to vest in Government: Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall on confiscation vest in the Government. The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

7.5 Disposal of confiscated goods and deposit of proceeds with Government: The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in

lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

7.6 Confiscation or penalty not to interfere with other punishments: Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

8. Options available to person in-charge of vehicle:

8.1 Uploading of information for detention of conveyance exceeding 30 minutes: Rule 138D of the CGST Rule, 2017 provides 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.

8.2 Physical verification once undertaken shall not normally be repeated: As per Rule 138 (C)(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.

9. Conclusion: The provisions of Sections 68, 129 and 130 and the rules framed thereunder are very stringent as these involve payment of tax and heavy penalty and even confiscation of goods and conveyance used for movement of goods. Therefore the taxable persons must take utmost care to ensure that there is no violation of any of the provisions of these sections and the rules made under this sections.