



## AN ANALYSIS OF PROCEDURAL GUIDELINES FOR INCEPTION, INSPECTION, DETENTION, RELEASE AND CONFISCATION OF GOODS IN MOVEMENT AND CONVEYANCES

**CMA SUSANTA KUMAR SAHA**  
GST Consultant

**C**entral Board of Indirect Taxes and Customs vide Circular No. 41/15/2018 – GST dated 13th April, 2018 has laid down procedures in relation to inception, inspection, detention, release, confiscation of goods and the conveyances.

The Central Government, on the recommendations of the Council, is empowered to formulate procedures to be followed by certain classes of registered persons, under section 68 of the CGST Act, 2017 (corresponding SGST or UGST Act, 2017).

Based on the power conferred under this section, Government has notified EWB rules, viz, Rule 138 to 138A.

The procedures laid down in the said circular are to be read together with corresponding applicable provisions of the Act and Rules. The following table tries to corroborate different actions and correlate them sequentially:

Sub-section (1) of section 68 of the CGST Act, 2017 inter alia stipulates	DOCUMENT	Sub-rule (1) of Rule 138A of the CGST Rules, 2017 inter alia stipulates	ACTION	Section 129 of the CGST Act, 2017	FURTHER ACTION	Section 130 of the CGST Act, 2017
The Government may require the <b>person in charge of a conveyance</b> to carry with him: # such documents, and # such devices, as may be prescribed.	➔	Person in charge of a conveyance shall carry # invoice, or # bill of supply, or # delivery challan.	➔	Detention, seizure and release of goods and conveyances in transit.	➔	Confiscation of goods or conveyances and levy of penalty.
<b>Sub-section (2) of section 68 of the CGST Act, 2017 inter alia stipulates</b>						
Details of <b>documents required</b> to be carried under sub-section (1) shall be validated.						
<b>Sub-section (3) of section 68 of the CGST Act, 2017 inter alia stipulates</b>						
<u>Conveyance</u> when <u>intercepted</u> by Proper Officer (PO), <u>person in charge</u> of the <u>conveyance</u> is <u>liable</u> to <u>produce</u> <u>documents</u> and <u>devices</u> .						

In order to ensure uniformity in the implementation of the provisions of the CGST Act, 2017 across all field formations, the Board, in exercise of the powers conferred under sub-section (1) of section 168 of the CGST Act, 2017 which inter alia includes power given to Board to issue orders, instructions or directions, has issued instructions, which are discussed herein below:

Para No	Instruction	Remarks
(a)	(i). Jurisdictional Commissioner or an Officer authorised by him, shall by an order, designate an Officer / Officers as Proper Officer / Officers (PO),  (ii). PO to conduct interception and inspection of conveyances and goods in the jurisdictional area specified in the order.	PO is authorised to exercise his authority within the jurisdictional area.  Sub-rule (3) of Rule 138B of the CGST Rules, 2017 may be referred for authorisation of Commissioner.

Para No	Instruction	Remarks
(b)	(i) PO, being empowered to intercept a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods.	PO is empowered under sub-section (3) of section 68 of the CGST Act, 2017, to be read with sub-rule (1) of rule 138B of the CGST Rules, 2017.
	(ii) The person in charge of the conveyance shall produce the documents related to the goods and the conveyance to the PO.	Person in charge of the conveyance is bound by law to comply.
	(iii) An e-way bill number <b>may</b> be available with the person in charge of the conveyance, or in the form of print out, sms, or it may be written on the invoice. All forms of e-way bill have been given validity.	(a) sub-rule (1) of Rule 138A stipulates the person in charge of a conveyance <b>shall</b> carry: a copy of e-way bill in physical form.....
	<b>Note:</b> Sub-rule (1) of Rule 138B of the CGST Rules, 2017 inter alia covers the scope to verify the e-way bill or the e-way bill number in physical form during movement of goods by the PO. e - way bill no written on the invoice, can be construed as, 'e-way bill no in physical form' which has been given validity.	
	(iv) Where a facility exists, e-way bill can be verified electronically in either one of the followings: - logging on to <a href="http://mis.ewaybillgst.gov.in">http://mis.ewaybillgst.gov.in</a> - the Mobile App, - through sms by sending EWBVER < EWB_No> to the mobile number 7738299899.	Sub-rule (1) of Rule 138A stipulates, the person in charge of a conveyance, shall carry copy of e-way bill number, in electronic form, or mapped to a Radio Frequency Identification Device Number embedded to a conveyance.
Conveyance shall be allowed to move further when, prima facie, no discrepancies are found in the documents.	Rule 138D of the CGST Rules, 2017 stipulates that if a conveyance is intercepted and detained <b>beyond 30 minutes</b> , the transporter can upload such information in <b>FORM GST EWB-04</b> .	

Para No	Instruction	Remarks
(c)	Proper Officer under rule 138B of the CGST Rules 2017 shall be the Officer who has been assigned the functions under sub-section (3) of section 68 of the CGST Act, 2017.	Proper Officer shall be the officers as defined in Circular No. 3/3/2017 – GST, dated 05.07.2017.

Para No	Instruction	Remarks
(d)	Person in charge of the conveyance	Statement of the 'Person in charge' of the conveyance is recorded by the PO in <b>FORM GST MOV – 01</b> .
	either <b>fails to produce</b> any prescribed documents, Or <b>PO intends to undertake inspection</b> of goods	PO shall issue an order for physical verification / inspection of goods, conveyance and documents in <b>FORM GST MOV – 02</b> .
	PO within 24 hours of issuance of FORM GST MOV – 02, prepare a report in <b>PART A of GST EWB – 03</b> and upload the same on the common portal	Sub-rule (1) of rule 138C of the CGST Rules, 2017 stipulates Proper Officer to upload the inspection report.
		<b>FORM GST MOV – 01</b> Statement of the owner/driver/person in charge of the goods and conveyance: i) Personal declaration; ii) Details of the transporter; iii) Particulars of goods as per documents in the form of an Annexure attached to the FORM.  i) Order for physical verification / inspection of the conveyance and documents, ii) Reasons for issuance of such order. iii) Directs owner / driver / person-in-charge:  to station the conveyance at <b>own risk and responsibility</b> .  to allow and assists in physical verification and inspection of the goods in movement and related documents.  not to move the goods or conveyance from the place where it is stationed or not to part with goods until further order.

Para No	Instruction	Remarks
(e)	PO shall conclude the inspection proceedings, either by himself or through any 'other Proper Officer' authorised in this behalf. In case an <b>extension is required</b> , PO shall obtain a written permission from the Commissioner or an Officer authorised by him in <b>FORM GST MOV – 03</b> .	Time period to conclude inspection proceedings is three <b>working days</b> .
		The word ' <b>working</b> ' has been added additionally here.
		Circular is silent about who shall authorise a person or the manner of authorisation 'Additional Proper Officer'.
	<b>Note:</b> 1. 'Board' has issued instruction under sub-section (1) of section 168 of the CGST Act, 2017 wherein the word 'working' has been inserted. The Central Government, based on the power conferred under section 68 of the CGST Act, 2017, (corresponding SGST or UGST Act, 2017) has notified EWB rules. Can 'Board' amend rule under section 168(1) of the CGST Act, 2017? 2. The additional word ' <b>working</b> ' by all means shall extend the travel time which is in contradiction with one of the objectives of e-way bill. 3. <b>Ultravires Rule 138C</b> of the CGST Rules 2017, as provision for extension has not been mentioned in the said rules. 4. PO appears to be the sole deciding authority for seeking extension of time. 5. No FORM has been specified to seek extension of time and the rationale behind it. 6. The circular is silent on maximum period of extension of time.	

Para No	Instruction	Remarks
(f)	On completion of physical verification / inspection of the conveyance and goods in movement, PO shall prepare a report of physical verification in <b>FORM GST MOV – 04</b> , person in charge of the goods and conveyance will be served a copy. Final report in <b>Part B of FORM GST EWB – 03</b> within <b>three days</b> of such physical verification.	i) FORM GST MOV – 04 is a physical verification report in relation to FORM GST MOV – 02, ii) 'Person in charge' or 'owner' acknowledges the receipt of the report by putting his signature.

Para No	Instruction	Remarks
(g)	Proper Officer completes inspection of goods and conveyance:	<b>FORM GST MOV – 06</b> contains reasons for issuing order of detention, further the order corroborates the reasons for issuing order for physical verification / inspection of the conveyance, goods and documents in <b>FORM GST MOV – 02</b> , and physical verification and inspection of goods report in <b>FORM GST MOV – 04</b> .  Order of detention further directs driver/person in charge to station the conveyance at his own risk and responsibility and not to part with any goods till release order in <b>FORM GST MOV – 05</b> is issued.
	No discrepancy is found during inspection	PO shall issue forthwith a release order in <b>FORM GST MOV - 05</b> and allow the conveyance to move forward.  When a notice in <b>FORM GST MOV – 07</b> is issued, the notice shall be served on the Person in charge of the conveyance although a provision in FORM GST MOV – 07 has been made to issue the notice to Driver / Person in charge.
	PO is of the opinion that the goods and conveyance need to be <u>detained</u> under section 129 of the CGST Act, 2017	<b>Note:</b> Does it mean that the notice shall be served on the Driver, in case 'Person in charge' of the conveyance is not available?  Computation of tax & penalty in <b>FORM GST MOV – 07</b> : Clause (a) of sub-section (1) of section 129 of the CGST Act, 2017 stipulates in case of taxable goods: applicable tax plus 100% of tax amount as penalty, and in case of exempted goods: lower of amount equal to two per cent of the value of goods or rupees twenty five thousand, when owner of the goods come forward. Clause (b) of sub-section (1) of section 129 of the CGST Act, 2017 stipulates- in case of taxable goods: applicable tax reduced by the amount of tax paid plus 50% as penalty, and

			in case of exempted goods: lower of amount equal to five per cent of the value of goods or rupees twenty five thousand, where the owner of the goods doesn't come forward.
			The recipient is directed to show cause, within seven (07) days from the receipt of this notice as to why the tax and penalty mentioned supra should not be payable by him.
			Recipient of notice if fails to reply to the show cause, further proceedings under the GST law shall be initiated.
			Recipient of notice is directed to appear before the 'Proper Officer' at a given date and time.
			In case the recipient fails to appear on the given date and time, the matter will be decided <b>ex-parte</b> on the basis of available records and on merits.
			<b>Point of observation:</b> FORM GST MOV – 07 doesn't provide for giving another opportunity to appear before PO which needs reconsideration for the sake of principles of natural justice.

Para No	Instruction	Remarks
(h)	On payment of tax and penalty, release the goods and conveyance by an order in FORM GST NOV – 05, and the order in <b>FORM GST MOV – 09</b> shall be uploaded on the common portal, and the demand accruing from the proceedings shall be added in the electronic liability ledger, payment shall be credited to the electronic liability ledger by debiting electronic credit ledger or electronic cash ledger.	Payment of tax and penalty shall be made in accordance with the provisions of section 49 of the CGST Act, 2017:  Electronic credit ledger shall be debited for making payment of tax subject to availability of balance, In case of inadequate balance in electronic credit ledger, electronic cash ledger shall be debited for payment of tax, Payment of penalty shall be made by debiting electronic cash ledger only.

Para No	Instruction	Remarks
(i)	Clause (c) of sub-section (1) of section 129 of the CGST Act, 2017 stipulates furnishing a security equivalent to the amount payable under clause (a) or (b) of sub-section (1) of section 129 of the CGST Act, 2017, discussed in para no (g) Supra.	Owner of the goods, or the person authorized by him, or any person other than the owner of the goods comes forward to get the goods and the conveyance released. Person may furnish a bond in FORM GST MOV – 08 along with a security in the form of bank guarantee equal to the amount of tax and penalty. The finalisation of the proceedings under section 129 of the CGST Act shall be taken up on priority by the officer concerned and the demand may be adjusted from the security provided.
<b>Note:</b> Maximum time period to complete adjudication has not been prescribed in the circular.		

Para No	Instruction	Remarks
(j)	When objections are filed against the proposed tax and penalty payable, the PO shall consider such objections, and thereafter pass a <b>speaking order</b> in <b>FORM GST MOV – 09</b> , quantifying the tax and penalty payable.	Payment is to be made within seven (07) days from the date of issue of the order of detention in FORM GST MOV – 06.
	On payment of tax and penalty, goods and conveyance shall be released forthwith by an order FORM GST MOV – 05.	In case of <b>failure</b> to pay within the stipulated period as directed in the notice, <b>action under section 130</b> of the Central/State Goods and Services Tax Act /section 21 of the Union Territory Goods and Services Tax Act or section 20 of the Integrated Goods and Services Act shall be initiated.
	The order in FORM GST MOV – 09 shall be uploaded on the common portal, Mechanism of tax and penalty accruing, payment thereof, shall follow same mechanism as discussed in para (h) supra.	
<b>Note:</b> No specified procedure has been mentioned to file objection.		

Para No	Instruction	Remarks
(k)	In case proposed tax and penalty are not paid within seven days from the date of issue of the order of detention in FORM GST NOV – 06,	A notice shall be served in <b>FORM GST – MOV 10</b> for initiating action under section 130 of the CGST Act, proposing confiscation of goods and the conveyance and imposition of penalty. <b>Note:</b> PO doesn't invoke section 130 directly in this case.

Para No	Instruction	Remarks
(l)	Where PO is of the opinion that such movement of goods has been effected to evade payment of tax,	PO may directly invoke section 130 of the CGST Act, 2017, issuing notice in <b>FORM GST – MOV 10</b> , proposing confiscation of goods and conveyance. Where conveyance is used for the carriage of goods or passengers for hire, the owner of the conveyance shall also be issued a notice under the third proviso to sub-section (2) of section 130 of the CGST Act, proposing to impose a fine equal to the tax payable on the goods being transported in lieu of confiscation of the conveyance.

Para No	Instruction	Remarks
(m)	The person shall be given an opportunity of being heard before confiscation of goods or conveyance, or imposition of penalty.	An opportunity of being heard ensures principle of natural justice.

Para No	Instruction	Remarks
(n)	<ul style="list-style-type: none"> <li>i) Order of confiscation shall be passed, after due consideration of objections <u>filed</u> by the person, in <b>FORM GST MOV – 11</b> and the order shall be served on the concerned person,</li> <li>ii) Upon passing the aforesaid order, title of the goods stands transferred to the Central Government,</li> <li>iii) The person gets a maximum three months time to make payment and get the goods released.</li> <li>iv) The order in <b>FORM GST MOV – 11</b> shall be uploaded on the common portal, subsequent procedure to add demand and payment thereof is similar to that of discussed in para no (h) supra.</li> </ul>	<p>The manner and procedure of filing objection by the person has not been defined.</p> <p>Further <b>FORM GST MOV – 11</b> (order of confiscation) <u>doesn't give any scope to record the objection</u> whereas it stipulates PO to give reasons of rejection of such objection.</p> <p>Once <b>FORM GST MOV – 11</b> is issued, <b>FORM GST MOV – 9</b> stands as withdrawn.</p>

Para No	Instruction	Remarks
(o)	Procedure for issuing order for confiscation of conveyance in FORM GST MOV – 11 and subsequent all similar course of actions.	Similar observation as stated in para no (n) supra.

Para No	Instruction	Remarks
(p)	Orders referred in para no (n) and (o), stated above, may be passed as a common order in <b>FORM GST MOV – 11</b> .	For the ease of procedural activities.

Para No	Instruction	Remarks
(q)	In case neither owner nor any person other than owner comes forward to make the payment as stipulated in FORM GST MOV – 11, PO shall auction the goods and/or conveyance by public auction system, and the sale proceeds shall be remitted to the account of the Central Government.	Auction by public auction system is allowed. Thus there is no scope for private auction.

Para No	Instruction	Remarks
(r)	In case of perishable or hazardous goods, suitable <u>modifications in the time</u> allowed for service of notice or order for auction or disposal shall be done.	Authority for modification in the allowable time has been vested with the PO.

Para No	Instruction	Remarks
(s)	Whenever an order has been passed by PO under the CGST Act 2017, corresponding order or proceedings shall be passed by respective State / Union Territory GST Act and under GST (Compensations to States) Act, 2017, if applicable.	

Para No	Instruction	Remarks
(t)	The above narrated procedure shall apply <i>mutatis mutandis</i> for an order or proceedings under the IGST Act, 2017.	

Para No	Instruction	Remarks
(u)	In case of an unregistered person, A temporary ID shall be created for making the payment, procedure being same as discussed in para (h) supra.	

Para No	Instruction	Remarks
(v)	A summary of every order in <b>FORM GST MOV-09</b> and <b>FORM GST MOV-11</b> shall be uploaded electronically in <b>FORM GST-DRC-07</b> on the common portal.	

The format of **FORMS GST MOV-01** to **GST MOV-11** are annexed to the Circular No. 41/15/2018 – GST.

**Section 164** of the CGST Act, 2017 empowers the Central Government, on the recommendation of the Central Council, **to make rules** for carrying out provisions of the Act.

**Section 165** of the CGST Act, 2017 empowers the 'Board', by notification, **make regulations**, consistent with this Act and the rules made there under to carry out the provisions of this Act.

**Section 168** of the CGST Act, 2017 empowers the 'Board' to issue such orders, instructions or directions to the Central tax officers, for the sake of uniformity in implementation of this Act.

'Board' has inserted 'FORMS' with Circular No. 41/15/2018 – GST dated 13th April, 2018. **Point to ponder whether 'Board' can insert 'FORMS' in Rules while issuing instructions through a circular?**