

GST Alert 02/2018-19

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Important Clarifications on E-way Bill related issues

Government of India has vide circular no. 41/15/2018-GST dated 13.04.2018 issued some very important clarifications in relation to E-way bill related issues like interception and detention of goods. Following is a gist of these clarifications.

1. If a Conveyance/Truck is intercepted, the person in charge of the truck (hereinafter referred to as the Driver) shall produce the documents related to the goods. The officer shall verify such documents and where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further.
2. **An e-way bill number may be available with the driver of the truck 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. Wherever a facility exists to verify the e-way bill electronically, the same shall be so verified, either by logging on to <http://mis.ewaybillgst.gov.in> or the Mobile App or through SMS by sending EWBVER to the mobile number 77382 99899 (For e.g. EWBVER 120100231897).**
3. Where the driver of the truck fails to produce any prescribed document or where the officer intends to undertake an inspection, he shall record a statement of the driver or any other person in charge of the conveyance in FORM GST MOV01. In addition, the officer shall issue an order for physical verification/inspection of the conveyance, goods and documents in FORM GST MOV-02, requiring the driver of the truck to station the truck at the place mentioned in such order and allow the inspection of the goods. The officer shall, within 24 hours of the aforementioned issuance of FORM GST MOV-02, prepare a report in Part A of FORM GST EWB-03 and upload the same on the EWB portal.
4. Within a period of 3 working days from the date of issue of the order in FORM GST MOV-02, the officer shall conclude the inspection proceedings. If required, Commissioner can extend this time beyond 3 working days and a copy of the order of extension shall be served on the person in charge of the truck.

5. On completion of the verification, officer shall prepare a report and give a copy of it to the driver of the truck and also upload it on the portal
6. Where no discrepancies are found after the inspection of the goods and conveyance, the officer shall issue a release order in FORM GST MOV-05 and allow the truck to move further.
7. Where the officer wants to detain the goods and truck 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 specifying the tax and penalty payable. The said notice shall be served to the driver.
8. Goods once detained can be released in either of the following 2 ways:
 - a. By paying the tax and penalty demanded through Challan, or
 - b. By giving security bond in the form of Bank guarantee equaling to the amount of tax and penalty demanded.
9. Security bond to be given must be as per the format mandated under form GST MOV-08 along with a security in the form of bank guarantee equal to the amount payable. The finalisation of the proceedings u/s 129 of the CGST Act shall be taken up on priority by the officer concerned and the security provided may be adjusted against the demand arising from such proceedings.
10. Where any objections are filed against the proposed amount of tax and penalty payable, the officer shall consider such objections and thereafter, pass a speaking order in FORM GST MOV-09, quantifying the tax and penalty payable. On payment of such tax and penalty, the goods and conveyance shall be released forthwith by an order in FORM GST MOV-05.
11. In case the proposed tax and penalty are not paid within 7 days from the date of the issue of the order of detention in FORM GST MOV-06, action under section 130 shall be initiated for proposing confiscation of the goods and conveyance and imposition of penalty.
12. Where the officer is of the opinion that such movement of goods is being affected to evade payment of tax, he may directly issue a notice proposing to confiscate the goods and

conveyance in FORM GST MOV-10. In the said notice, the quantum of tax, penalty and fine in lieu of confiscation shall be specified.

13. Where the conveyance is used for the carriage of goods or passengers for hire, the owner of the conveyance shall also be issued a notice, proposing to impose a fine equal to the tax payable on the goods being transported in lieu of confiscation of the conveyance.
14. No order for confiscation of goods or conveyance, or for imposition of penalty, shall be issued without giving the person an opportunity of being heard.
15. An order of confiscation of goods and / or conveyance shall be passed in FORM GST MOV-11, after taking into consideration the objections filed by the person in charge of the goods (owner or his representative), and the same shall be served on the person concerned. Once the order of confiscation is passed, the title of such goods shall stand transferred to the Central Government. In the said order, a suitable time not exceeding three months shall be offered to make the payment of tax, penalty and fine imposed in lieu of confiscation and get the goods released.
16. Once an order of confiscation of goods is passed in FORM GST MOV-11, the order in FORM GST MOV-09 passed earlier with respect to the said goods shall be withdrawn.
17. The order referred to in point no. 15 above may be passed as a common order in the said FORM GST MOV-11.
18. In case no one comes forward to make the payment of tax, penalty and fine imposed and get the goods or conveyance released within the time specified, the officer shall auction the goods and/or conveyance by a public auction and remit the sale proceeds to the account of the Central Government.
19. Suitable modifications in the time allowed for the service of notice or order for auction or disposal shall be done in case of perishable and/or hazardous goods.
20. Whenever an order or proceedings under the CGST Act is passed by the officer, a corresponding order or proceedings shall be passed by him under the respective State or Union Territory GST Act and if applicable, under the Goods and Services Tax (Compensations

to States) Act, 2017. The procedure narrated above shall be applicable as it is for an order or proceeding under the IGST Act, 2017.

21. In case of an unregistered person, a temporary ID shall be created by the officer on GSTN and the liability shall be created therein. He shall also credit the payments made towards such demands of tax, penalty or fine and other charges by debiting the electronic cash ledger of the concerned person.
22. Format of all forms are appended to the circular issued in this regards.

In our view these clarifications are issued in good faith and will go a long way in helping people understand the nuances of what happens in case goods are inspected during their movement.

Having said so this clarification leaves a lot of ambiguity as it doesn't prescribe any remedial measures in cases where the detention order is patently wrong. It professes a "Pay up or goods will get confiscated" policy, it could become a major bottleneck for the economy. GST came with a promise that check-posts will be abolished. With Intra State E-Way bills set to be implemented from 15th April in some states, every post will become a check-post.

Equity must be a cornerstone of every law and related procedures, sadly that's missing.

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