

## Important Clarifications on E-way Bill related issues

Government of India had vide circular no. 41/15/2018-GST dated 13.04.2018 issued some important clarifications on issues in relation to E-way bill like interception and detention of goods and vehicles (detailed note given in our Alert 02/2018-19).

E-way bill was implemented in India Phase wise starting from 1.04.2018 and many issues started cropping up from all over India where movement of goods was stopped by officers due to minor errors and heavy penalties were being imposed irrespective of the fact whether the mistake was resulting into evasion of tax or not.

Government has come out with circular no 64/38/2018 dated 14.09.2018 to clarify certain issues and also prescribe certain situations where proceedings under section 129 of the GST laws may not be initiated and goods would be released on payment of token penalty of Rs. 1000/- only.

### **Gist of the clarifications:**

1. GST law and its allied rules requires that the person in charge of a conveyance carrying any goods of value exceeding Rs 50,000/- should carry copy of documents as under
  - a. Tax invoice or Bill of supply or Delivery challan or Bill of entry and
  - b. A valid E-way bill in physical or electronic form for verification.

In case such person does not carry the mentioned documents, proceedings under section 129 for payment of tax and penalties will be invoked.

2. While generating a valid E-Way bill one is required to fill up 2 parts, Part A which contains the details of the goods being moved, supplier and recipient whereas in Part B one is to fill up details of transport vehicle. Non-furnishing of information in **Part B** of **FORM GST EWB-01** means that EWB has not been generated which makes the e-way bill invalid document for the movement of goods by road as per rules, except in the case where the goods are transported

for a distance of upto fifty kilometres within the State or Union territory to or from the place of business of the transporter to the place of business of the consignor or the consignee, as the case may be.

**Hence, it is mandatory to fill up both Part A and Part B of the GST form EWB-01 for generation of a valid E-way bill and if details in Part B are missing then penalties will have to be paid.**

3. In case a consignment of goods is accompanied by an invoice or any other specified document **and not an e-way bill**, proceedings under section 129 of the CGST Act may be initiated.
4. In case a consignment of goods is accompanied with an invoice or any other specified document **and also an e-way bill**, proceedings under section 129 of the CGST Act **may not be initiated**, 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 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;
  - 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.

### Conclusion

In our view these clarifications are issued in good faith and will go a long way in helping people get relief in case of human errors. However, we believe that this circular should have gone ahead and also removed levy of penalty in cases where it is clear that the mistake was committed without an intent to evade taxes. Supreme Court in many cases have clearly held that penalties cannot be imposed mechanically under indirect tax laws, they may be levied only in cases where intent to evade payment of taxes was established.

We also believe that GST was introduced with a promise to remove physical barriers that existed in the form of check post in the earlier regime, hence the entire premise of having E-way bills goes against the promise of GST.

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