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RELEVANT SECTIONS/RULES

SECTIONS

- ❖ Section 68 – Inspection of goods in movement
- ❖ Section 122 – Penalty for Certain offences
- ❖ Section 129 – Detention, Seizure and release of goods and conveyances in transit
- ❖ Section 130 - Confiscation of goods or conveyances and levy of penalty

RULES

- ❖ Rule 138 – Information to be furnished prior to commencement of movement of goods and generation of e-way bill.
- ❖ Rule 138A– Documents and devices to be carried by a person-in-charge of a conveyance
- ❖ Rule 138B– Verification of documents and conveyances.
- ❖ Rule 138C- Inspection and verification of goods
- ❖ Rule 138D - Facility for uploading information regarding detention of vehicle
- ❖ Rule 138E - Restriction on furnishing of information in PART A of FORM GST EWB-01



SECTION 68 - Inspection of Goods in Movement

❖ Section 68 (1) – Carrying an EWAY Bill

*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 – Prescribed under Rule 138A***

Person in charge means the person in charge of the conveyance through which movement of consignment is taking place.

❖ Section 68 (2) – Verification of E way Bill

*The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed. – **Rule 138 B***

❖ Section 68 (3) – Production of Documents and Inspection

(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.

Rule 138

Information to be furnished prior to commencement of movement of goods and generation of e-way bill.

- It constitutes 14 sub - rules



Rule 138 (1) – Who shall issue an E way Bill – Part A of GST EWB -01

Every registered person who causes movement of goods of consignment value exceeding 'Fifty Thousand Rupees,

In relation to a supply, or

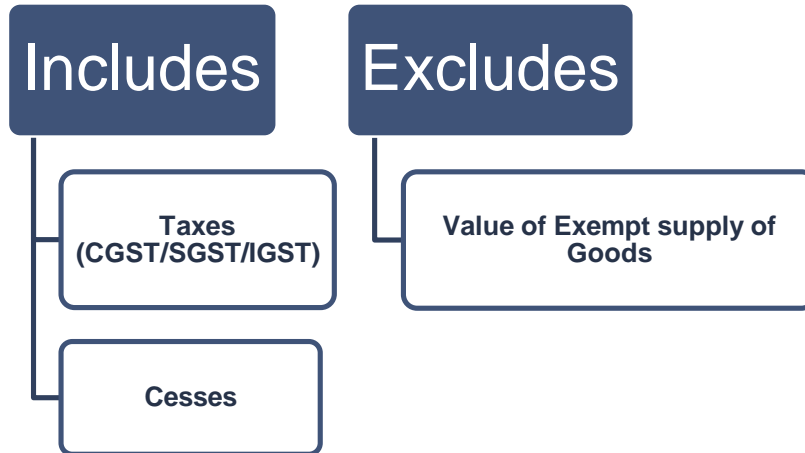
For reasons other than supply, or

Due to inward supply from 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:

Consignment Value - Explanation 2 to Rule 138(1)

the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan





Rule 138 (1) – Proviso 1 & 2

The transporter, on authorization from registered person

The E Commerce Operator or a courier agency, on authorization from consigner

may furnish information 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:



Where E Way Bill shall be issued irrespective of consignment value – Proviso 3 & 4 to Rule 138 (1)

where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory

where handicraft goods are transported from one State or Union territory to another State or Union territory by a person **who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24**

Who are exempted from obtaining registration under Section 24?

- ✓ In terms of **Notification No 32/2017 - CT dated 15.09.2017**, casual taxable person supplying handicraft goods
- ✓ In terms of **Notification No 8/2017-IGST dated 14.09.2017**, persons making inter state supplies of handicraft goods

Handicraft Goods – defined vide Notification No 32/2017 - CT dated 15.09.2017

The products mentioned below when made by craftsman predominantly by hand even though some machinery may also be used in the process.

- 1. Leather articles
- 2. Carved wood products
- 3. Wood turning and lacquer ware
- 4. Bamboo products
- 5. Grass, leaf and reed and fibre products
- 6. Paper made articles
- 7. Textile , Textiles hand printing & embroidery
- 8. Zari thread
- 9. Carpet, rugs and durries
- 10. Theatre costumes
- 11. Coir products
- 12. Leather footwear
- 13. Carved stone products
- 14. Stones inlay work
- 15. Pottery and clay products
- 16. Metal statues & kitchen ware
- 17. Musical instruments
- 18. Horn and bone products
- 19. Conch shell crafts
- 20. Bamboo, cane/Rattan furniture
- 21. Dolls and toys
- 22. Folk paintings, Mahbubani etc.



Who shall fill Part B of E way Bill - Rule 138 (2) & (2A)

Transportation by Road

By registered person (either by supplier or recipient) in his own conveyance or public conveyance or hired one

The said person shall generate the e-way bill in **FORM GST EWB-01** electronically on the common portal after furnishing information in **Part B of FORM GST EWB-01**.

Transportation by Railways/Air/Vessel

the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in **Part B of FORM GST EWB-01**:

the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery.



Where E way Bill is not generated under sub rule (2) & (2A) - Rule 138 (3)

Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road



the registered person shall furnish the information relating to the transporter on the common portal and



the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST EWB-01

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Provisos to Rule 138 (3)

the registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees – First Proviso

*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, the supplier or the recipient, or as the case may be, the transporter may not furnish the details of conveyance in Part B of Form GST EWB -1 – **Proviso 3***

where the movement is caused by an unregistered person** either in his own conveyance or a hired one or through a transporter, he or the transporter **may, at their option**, generate the e-way bill in Form GST EWB -1 on the common portal in the manner specified in this rule: - **Proviso 2

Contd.



Provisos to Rule 138 (3)

- *However, for the purpose of this sub-rule only, where goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods. **Explanation to Rule 138 (3)***
- As per **FAQS dated December 2018**, there could be three possibilities in case of supply by an unregistered person

Situation	Movement caused by	Impact
Recipient is unknown	Unregistered Person	E-way bill not required; However, the supplier has an option to generate e-way bill under “citizen” option on the e-way bill portal
Recipient is known and is unregistered	Unregistered Person	E-way bill not required; However, the supplier has an option to generate e-way bill under “citizen” option on the e-way bill portal
Recipient is known and is registered	Deemed to be caused by registered recipient	Recipient to generate e-way bill

- ❑ *Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal. – **Rule 138 (4)***



Rule 138 (5) - Transfer of Goods from one conveyance to another conveyance

Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in Part A of the FORM GST EWB-01, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in Part B of FORM GST EWB-01:

Provided that 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 transporter finally to the place of business of the consignee, the details of the conveyance may not be updated in the e-way bill. – Part B is not compulsory

Thus, Part B is not compulsory in two cases -

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 – Proviso to sub-rule 3

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 transporter finally to the place of business of the consignee – Proviso to sub-rule 5



Rule 138 (5A) – Assigning the E Way Bill Number to another

The consignor or the recipient, who has furnished the information in Part A of FORM GST EWB-01, or the transporter, may assign the e-way bill number to another registered or enrolled transporter for updating the information in Part B of FORM GST EWB-01 for further movement of the consignment:

Provided that after the details of the conveyance have been updated by the transporter in Part B of FORM GST EWB-01, the consignor or recipient, as the case may be, who has furnished the information in Part A of FORM GST EWB-01 shall not be allowed to assign the e-way bill number to another transporter.



Rule 138 (6) – Multiple Consignments in one conveyance

After e-way bill has been generated in accordance with the provisions of sub-rule (1)




where consignments intended to be transported in one conveyance multiple are to be in one




the transporter may indicate the serial number of e-way bills generated in respect of each such consignment Electronically on the common portal and a consolidated e-way bill in Form GST EWB-2 may be generated by him on the said common portal prior to the movement of goods



Rule 138 (6) – Generating consolidated E Way Bill

Consolidated EWB 


- > Generate New 
- > Generate Bulk
- > Re-Generate
- > Print Consolidated EWB


Consolidated E-Way Bill Form

Mode: Road Rail Air Ship

From State: KARNATAKA

E-Way Bill No
(Press tab after entering
eway bill no to populate
bill details)

E-Way Bill No	E-Way Bill Date	Generated By	Inv. No. and Date	Inv. Amount	Source	Valid Until	Delete
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	





Multiple Consignments against one single invoice

In terms of Rule 55, where the goods are being transported in a semi knocked down or completely knocked down condition or in batches or lots -

- (a) the supplier shall issue the complete invoice before dispatch of the first consignment;*
- (b) the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;*
- (c) each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and*
- (d) the original copy of the invoice shall be sent along with the last consignment.*

In such a case, number of way bills shall be against each and every delivery challan



Rule 138 (7) – Responsibility of Transporter to generate an E way Bill

Where the consignor or the consignee has not generated the e-way bill and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees

the transporter, in respect of inter-State supply, shall generate the e-way bill in Form GST EWB 1 on the basis of invoice or bill of supply or delivery challan or may also generate consolidated E way Bill in Form GST EWB 2

Excluding the cases, where transportation of goods is by railways, air and vessel

where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of Form GST EWB 1 may be furnished by such e-commerce operator or courier agency



Rule 138 (8) – Information furnished in EWB 1 linked with GSTR 1

The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in **FORM GSTR-1**:

Provided that when the information has been furnished by an unregistered supplier or an unregistered recipient in FORM GST EWB-01, he shall be informed electronically, if the mobile number or the e-mail is available.



Rule 138 (9) – Cancellation of E Way Bill

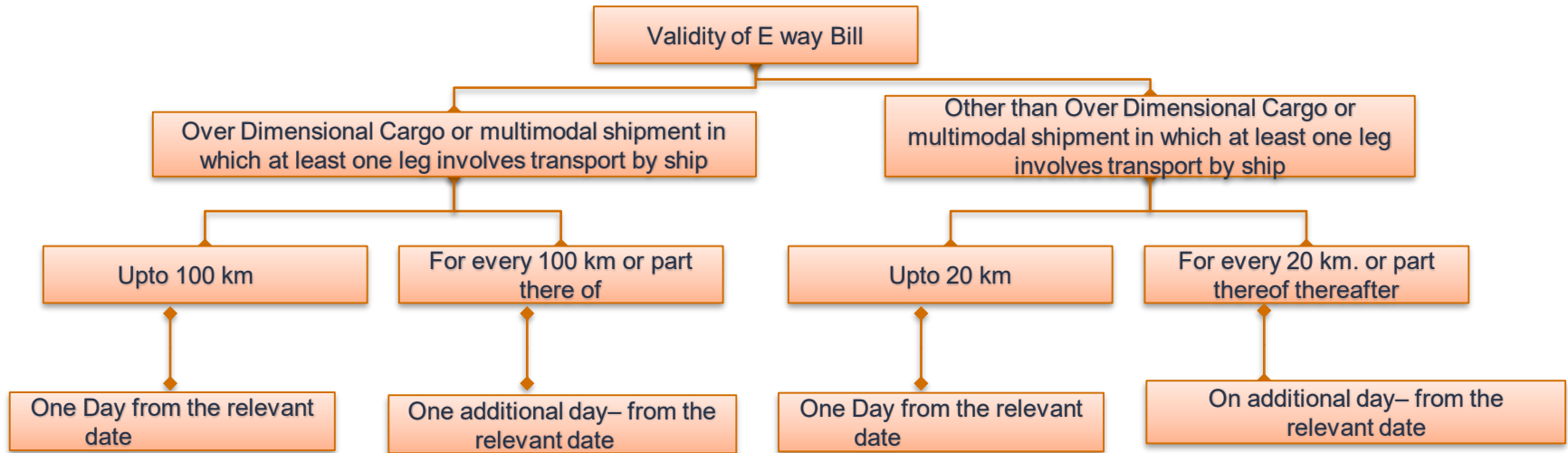
Where an e-way bill has been generated under this rule, but **goods are either not transported or are not transported as per the details furnished in the e-way bill**, the e-way bill may be cancelled electronically on the common portal within **twenty four hours of generation of the e-way bill**:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B:

Provided further that the unique number generated under sub-rule (1) shall be valid for a period of fifteen days for updation of Part B of FORM GST EWB-01.



Rule 138 (10) – Validity of E way Bill



The e-way bill generated under rule 138 of any State or Union territory shall be valid in every State and Union territory. – Rule 138 (13)

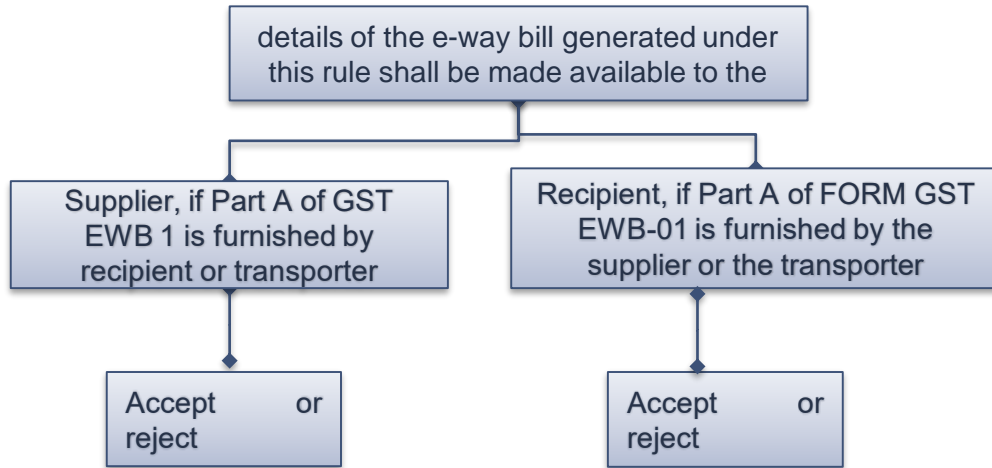


Rule 138 (10) – Validity of E way Bill – Important Points

- ✓ **Over Dimensional Cargo** shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988 (59 of 1988).
- ✓ the **“relevant date”** shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of e-way bill.
- ✓ Commissioner may, on the recommendations of the Council, by notification, extend **the validity period of an e-way bill for certain categories of goods as may be specified therein:**
- ✓ where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in Part B of FORM GST EWB-01, if required. – **Validity may be extended within eight hours from the time of its expiry**

Government In terms of **notification No. 35/2020- Central Tax, dated 03.04.2020, provides that** where the validity of an e-way bill generated under rule expires during the period 20th day of March, 2020 to 15th day of April, 2020, the validity period of such e-way bill has been extended till the 30th day of April, 2020.

Rule 138 (11) & (12) – Acceptance or rejection of E way Bill



Where the person 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, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details. – Rule 138 (12)



Rule 138 (14) - No E way Bill is required to be generated

- 1) Where the goods being transported are enumerated as under:
 - ✓ Liquefied petroleum gas for supply to household and non domestic exempted category (NDEC) customers
 - ✓ Kerosene oil sold under PDS (Public Distribution System)
 - ✓ 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



Rule 138 (14) - No E way Bill is required to be generated

- ✓ Used personal and household effects – **KUN MOTOR CO. PVT. LTD. AND VISHNU MOHAN VERSUS THE ASST. STATE TAX OFFICER, SQUAD NO. III, KERALA STATE GST DEPARTMENT AND STATE OF KERALA, (2018 (12) TMI 531 - KERALA HIGH COURT) dated 06.12.2018** In the said case, buyer *takes the possession of the vehicles in the state where dealer is located and further request transportation wing of the same company (which is separately registered under GST) to deliver the goods to its premises for a separate consideration. Considering the same as “used personal and household effect”, Hon’ble High Court has held that said movement did not take place for reasons of supply, thus, no E way bill is required in such a case.*
 - ✓ Coral, unworked (0508) and worked coral (9601)
- 2) Where the goods are being transported by a non-motorised conveyance.
 - 3) Where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs.



Rule 138 (14) - No E way Bill is required to be generated

- 4) In respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the State or Union territory Goods and Services Tax Rules in that particular State or Union territory; - Question arises is whether E way Bill is required where goods move from a DTA unit to a SEZ unit or vice versa located in the same State. In this regard, it has been clarified in Circular No 47/21/2018 – GST dated 08.06.2018, Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State, there is no requirement to generate an e-way bill, if the same has been exempted under rule 138(14)(d) of the CGST Rules.

In exercise of the above stated powers, delhi Government **vide its notification no 03/2018 dated 15.06.2018**, notified that no eway bill in respect of the intra state supply of goods shall be required if the consignment value does not exceed 100000/- Further, any movement of goods from registered person to unregistered shall be exempted from requirement of eway bill for intra state movement irrespective of the value of the goods.

- 5) Where the goods being transported, are specified in the Schedule appended to Notn 2 /2017 dated 28.06.2017(Exempted) other than de oiled cake.
- 6) 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.
- 7) Where the supply of goods being transported is treated as no supply under Schedule III of the Act.



Rule 138 (14) - No E way Bill is required to be generated

- 8) Where the goods are being transported-
 - (I) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or
 - (II) under customs supervision or under customs seal.
- 9) Where the goods being transported **are transit cargo** from or to Nepal or Bhutan.
- 10) Where the goods being transported are exempt from tax under [notification No. 7/2017-Central Tax \(Rate\), dated 28th June 2017](#) and [notification No. 26/2017 Central Tax \(Rate\), dated the 21st September, 2017](#)
 - ✓ **Notification No 26/2017** - intra state supply of heavy water and nuclear fuels falling in Chapter 28 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) by the Department of Atomic Energy to the Nuclear Power Corporation of India Ltd
 - ✓ **Notification No 7/2017** - Supply of goods by CSD (Canteen Stores Department) to Unit Run Canteens or to authorized customers – supply of goods from URC to authorized customers
- 11) Any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee.



Rule 138 (14) - No E way Bill is required to be generated

- 12) Where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail.
- 13) where **empty cargo containers** are being transported.
- 14) where the goods are being transported up to a distance of twenty kilometres from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with [rule 55](#).
- 15) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.

Rule 138A

Documents and devices to be carried by a person-in-charge of a conveyance



Rule 138A

The person in charge of the conveyance shall carry following documents

Invoice, or bill of supply or delivery challan, as the case may be

a copy of the e-way bill in physical form or the e-way bill number in electronic form

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 GST EWB -1 (in case of imports)

Copy of E Way Bill is not required in case of movement of goods by air, railways or vessel - However as per proviso to Rule 138 (2A), the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery – The same is also clarified under **Circular No 47/21/2018-GST dated 08.06.2018**

In case invoice is not available, A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in FORM GST INV-1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading. – sub rule (2) – not implemented



Rule 138A (4) & (5) – Devices to be carried

- ✓ *The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device (RFID) and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.*

RFIDs are Radio Frequency Identification Device used for identification. The Commissioner may require RFIDs to be embedded on to the conveyance in such manner as may be notified.. – FAQs dated December 2018
It is optional for transporters as of now. UP had made it mandatory for all the transporters to carry RFID devices from 01.11.2018. Maharashtra is also progressing in testing this system.

- ✓ *Notwithstanding anything contained in clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill*
 - (a) *tax invoice or bill of supply or bill of entry; or*
 - (b) *a delivery challan, where the goods are transported for reasons other than by way of supply.*

Rule 138B

Verification of documents and conveyances



Rule 138B

- (1) *The Commissioner or an officer empowered by him in this behalf may authorize the proper officer to intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-State and intra-State movement of goods.*
- (2) *The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.*
- (3) *The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:*

Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

Rule 138C & D

Inspection and verification of goods, detention of vehicles



Rule 138C & D

Summary report of every inspection of goods in transit

- Shall be recorded by proper officer in Part A of GST EWB – 3 within twenty four hours* of inspection

Final report of every inspection of goods

- Shall be recorded within in Part B of GST EWB – 3 three days * of inspection -
- 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.

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.

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



Rule 138E – Restrictions on furnishing in Part A of Form GST EWB -01 – effective from 21.11.2019

- (1) *Following persons are restricted from furnishing details in Part A of GST EWB 01 :*
- ✓ *Composition tax payer who is not furnishing returns from last two consecutive periods*
 - ✓ *Other registered tax payers who did not furnish returns for two consecutive months or quarters*

Provided that the Commissioner may allow, on an application of the registered person, the said person to furnish the details in the Part A of GST EWB 01. The Commissioner shall not reject such application without giving an opportunity of being heard to the applicant.



Section 122 - Penalties

Where a taxable person who–

(i)

(ii)

(xviii) Supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;

He shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded which ever is higher

Section 129

**Detention, seizure and release
of goods and conveyances in
transit**

Notwithstanding anything contained in the 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 + documents relating to such goods + conveyance shall be liable to detention or seizure and after detention or seizure, shall be released – Section 129 (1)

where the owner of the goods comes forward for payment of such tax and penalty (Section 129 (1)(a))

In case of taxable goods, on payment of applicable tax and penalty equal to one hundred per cent. of the tax payable

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

where the owner of the goods does not come forward for payment of such tax and penalty; (Section 129(1)(b))

In case of taxable goods, on payment of applicable tax and penalty equal to fifty per cent. of the tax payable reduced by tax paid thereon

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

Alternatively, they can furnish the security equivalent to the amount payable under clause (a) or clause (b)



Section 129 (2) - Provisional release of goods

The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

✓ **Sec 67(6) read with Rule140(1) and (2)**

This Section states that the seized goods shall be provisionally released upon execution of a bond and furnishing security.

✓ **Bond and Security for Release of Seized Goods – Rule140(1)**

- 1. The seized goods must be released on a provisional basis*
- 2. Upon execution of a bond for the value of goods inform GSTINS-04 and*
- 3. Furnishing of a security in the form of a bank guarantee*
- 4. Equivalent to the amount of tax, interest and penalty payable*

✓ **Failure to produce the provisionally released goods at the appointed date and place –Rule 140 (2)**

In case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the tax, interest and penalty and fine, if any, payable in respect of such goods.



Section 129 (3) - Issuance of GST MOV - 09

129(3) : Issue Order

*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 under clause (a) or clause (b) or clause (c). – **Order in Form GST MOV -09***

129(4) : Opportunity of being Heard

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard

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. – Circular No 41/15/2018- GST dated 13.04.2018 to be read with Section 129 and 130

Proper officer can intercept any vehicle in its jurisdictional area for verification of documents

the person in charge of the conveyance shall produce the documents related to the goods and the conveyance

If Proper officer donot find any discrepancy, then it is good to go

If person in charge fails to produce all relevant documents, or proper officer finds any discrepancy

He shall record a statement of the person in charge of the conveyance in **FORM GST MOV-01**.
+
He shall issue an order for physical verification/inspection of the conveyance, goods and documents in **FORM GST MOV-02**

He shall conclude proceedings within three days and issues a report in **Form GST MOV – 04** unless time period is extended by Commissioner in **Form GST MOV - 03**

Where no discrepancies are found after the inspection

the proper officer shall issue forthwith a release order in **FORM GST MOV-05** and allow the conveyance to move further.

Where discrepancies are found after the inspection

the proper officer shall issue a detention order in **Form GST MOV -06** + a notice in **FORM GST MOV-07** specifying the tax and penalty payable in terms of Section 129

Tax amount has to be paid in cash or submitting a bond in **Form GST MOV -08** within 14 days from date of detention – **GST MOV -06**

If tax paid without any objections, then he shall issue a release order **Form GST MOV -05** and order in **Form GST- MOV 09** shall be uploaded on common portal

Where tax paid with objections, then he shall issue a release order **Form GST MOV -05** + pass a speaking order in **Form GST MOV -09** after considering the objections

Where the tax and penalty are not paid within 14 days, then action u/s 130 shall be initiated – Section 129 (6)

notice in **FORM GST MOV-10** shall be served, proposing confiscation of the goods and conveyance and imposition of penalty and fine as provided under Section 130 (2)

An order of confiscation of goods shall be passed in **FORM GST MOV-11**, after taking into consideration the objections filed by the person in charge, and giving him opportunity of being heard- the said order shall give the time not exceeding three months to deposit tax and penalty - **Form GST MOV -09 shall be withdrawn**

Once the order under MOV-11 is passed, title to the goods is transferred to Central Government

If the owner of the goods or any other person other than owner does not come forward to pay tax within **three months**, then Government shall sell them through **Public auction – Section 130(7)**

In terms of **Section 130 (2)**, the officer may impose penalty as it thinks fit. However, such fine shall not **exceed the market value of the goods confiscated, less the tax chargeable thereon**

Along with fine, owner is also required to pay tax and penalty and other charges as is leviable on such goods **Section 130 (3)**



Circular No 64/38/2018 dated 14.09.2018

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, inter alia, 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. – Relying on this circular, in the case of **MAHALAKSHMI PACKAGERS MANUFACTURE VERSUS ACST & E-CUM-PROPER OFFICER, PAONTA CIRCLE-II dated 14.02.2020 – (2020 (3) TMI 722 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH)** due to error in vehicle number, Honble Authority imposes only minor penalty.



Circular No 61/35/2018 dated 04.09.2018

Where the transporter takes the delivery of goods and store the same in its warehouse on behalf of recipient –

then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer. In such cases, mere declaration by the recipient taxpayer to this effect with the concurrence of the transporter in the said declaration will suffice. Where the transporter's godown has been declared as the additional place of business by the recipient taxpayer, the transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer's additional place of business). Hence, e-way bill validity in such cases will not be required to be extended.



Important Decisions

❑ **Can valuation of the Goods be the reason for detention of the vehicles ?**

K.P. SUGANDH LTD. VERSUS STATE OF CHHATTISGARH 2020 (3) TMI 890 - CHHATTISGARH HIGH COURT – dated 16.03.2020

This Court is of the opinion that under valuation of a good in the invoice cannot be a ground for detention of the goods and vehicle for a proceeding to be drawn under Section 129 of the Central Goods and Service Tax Act, 2017 read with Rule 138 of the Central Goods and Service Tax Rules, 2017

❑ **The courts have been stringent in deciding that applicant must follow procedure under Section 129 & 130 before filing a writ petition– Various judgements have been pronounced in this regard. For example:**

SYNERGY FERTICHEM PVT. LTD VERSUS STATE OF GUJARAT, 2020 (2) TMI 1159 - GUJARAT HIGH COURT DATED 19.02.2020

❑ ***M/S. NEVA PLANTATION PRIVATE LIMITED VERSUS ACSTE-CUM-PROPER OFFICER NORTH ENFORCEMENT ZONE PALAMPUR HP 2020 (2) TMI 892 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH dated 12.02.2020***

In the said case, tax payer had transported goods for repair without E way Bill. Hon'ble Authority observed that since the same does not fall under supply and it does not suffer any tax implication, thus, it was held that Penalty of Rs 10 000 shall be levied stating that the taxpayer has violated provisions of Section 122 (1) of CGST Act/HPGST Act



THANKS!