

Chapter 15

Inspection, Search, Seizure and Arrest

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Statutory Provisions

<p>67. Power of inspection, search and seizure</p> <p>(1) <i>Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that –</i></p> <p>(a) <i>a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or rules made thereunder to evade tax under this Act; or</i></p> <p>(b) <i>any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,</i></p> <p><i>he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of</i></p>
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transporting goods or the owner or the operator of warehouse or godown or any other place.

- (2) *Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents, books or things:*

Provided that where it is not practicable to seize any such goods, the proper officer, or any office authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

- (3) *The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.*
- (4) *The officer authorized under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.*
- (5) *The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorized officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.*
- (6) *The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.*
- (7) *Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:*

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months

- (8) *The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.*
- (9) *Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorized by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.*
- (10) *The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.*
- (11) *Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.*
- (12) *The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.*

Extract of the CGST Rules, 2017

139. Inspection, Search and Seizure

- (1) *Where the proper officer not below the rank of a Joint Commissioner has reasons to believe that a place of business or any other place is to be visited for the purposes of inspection or search or, as the case may be, seizure in accordance with the provisions of section 67, he shall issue an authorisation in FORM GST INS-01 authorising any other officer subordinate to him to conduct the inspection or search or, as the case may be, seizure of goods, documents, books or things liable to confiscation.*

<p>(2) Where any goods, documents, books or things are liable for seizure under sub-section (2) of section 67, the proper officer or an authorised officer shall make an order of seizure in FORM GST INS-02.</p> <p>(3) The proper officer or an authorised officer may entrust upon the the owner or the custodian of goods, from whose custody such goods or things are seized, the custody of such goods or things for safe upkeep and the said person shall not remove, part with, or otherwise deal with the goods or things except with the previous permission of such officer.</p> <p>(4) Where it is not practicable to seize any such goods, the proper officer or the authorised officer may serve on the owner or the custodian of the goods, an order of prohibition in FORM GST INS-03 that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.</p> <p>(5) The officer seizing the goods, documents, books or things shall prepare an inventory of such goods or documents or books or things containing, inter alia, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.</p>
<p>140. Bond and security for release of seized goods</p> <p>(1) The seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in FORM GST INS-04 and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.</p> <p><i>Explanation.- For the purposes of the rules under the provisions of this Chapter, the “applicable tax” shall include central tax and State tax or central tax and the Union territory tax, as the case may be and the cess, if any, payable under the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017).</i></p> <p>(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.</p>
<p>141. Procedure in respect of seized goods</p> <p>(1) Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in FORM GST INS-05, on proof of payment.</p> <p>(2) Where the taxable person fails to pay the amount referred to in sub-rule (1) in respect of the said goods or things, the Commissioner may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.</p>

FORM	Rules	Description
GST INS-01	139(1)	Authorisation for inspection or search
GST INS-02	139(2)	Order of seizure
GST INS-03	139(4)	Order of prohibition
GST INS-04	140(1)	Bond for release of goods seized
GST INS-05	141(1)	Order of release of goods/ things of perishable or hazardous nature

Relevant Notification

Notification No 27/2018-Central Tax dated 13.06.2018 has specified 17 categories of goods or class of goods which may be disposed off by the proper officer after its seizure.

Related provisions of the Statute

Section or Rule	Description
Section 2(107)	Definition of Taxable person
Section 16	Eligibility and conditions for taking input tax credit
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.
Section 130	Confiscation of goods or conveyances and levy of penalty
Section 31	Tax invoice
Section 35	Accounts and records

67.1 Analysis

- (i) **Inspection:** A proper officer *not below* the rank of Joint Commissioner, may issue an authorisation to any other officer subordinate to him to carry out an inspection, if such proper officer 'has reasons to believe' that:
- (a) the taxable person:
 - (i) has suppressed any transaction of supply of goods or services or both; or
 - (ii) has suppressed information relating to stock in hand; or
 - (iii) has claimed input tax credit in excess of his entitlement; or
 - (iv) has contravened any of the provisions of the GST law, with an intent to evade taxes;

- (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place:
- (i) Is keeping goods which have escaped payment of tax; or
 - (ii) has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under the GST law
- (ii) **Understanding of Reasons to Believe:** The phrase 'reasons to believe' has been interpreted by various courts distinguishing it from 'reason to suspect'.
- In the case of *Crompton Greaves Ltd. vs. State of Gujarat*, 120 STC 510 the Court observed that, *"these words suggest that belief must be that of honest and reasonable person based upon reasonable grounds, and that the Commissioner may act under this section on direct or circumstantial evidence not on mere suspicion, gossip or rumor.*
- The powers under the present section are wide but not plenary; the words of the section are 'reason to believe' and not 'reason to suspect'.*" The word "believe" is a much stronger word than "suspect"
- (iii) **Search and seizure:** A proper officer not below the rank of Joint Commissioner, may issue an authorisation (in form GST INS-01) to any other officer subordinate to him to (or may himself) search and seize any goods / documents / books / things which in his opinion would be useful for / relevant to proceedings under the GST Law, when he has reason to believe that:
- (a) Any goods liable to confiscation are secreted in any place. In this regard, it may be noted that where it is not practicable to seize such goods, an order (In form GST INS-03) may be served on the person / custodian of the goods that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of the officer.
 - (b) Any documents or books or things are secreted in any place. In this regard, it may be noted that the seized documents / books / things are to be retained only for such period as is necessary for their examination / inquiry / proceedings, but shall be returned within 30 days of issue of notice if the same have not been relied upon for the issue of notice.
 - (c) the person has evaded or is attempting to evade the taxes – Please note that in such a case, the officer can even seize accounts, registers or documents of the said person on recording the reasons in writing and granting a receipt of such seizure to such person. In this regard, it may be noted that the seized accounts / registers / documents can be retained for any period in respect of any proceedings for prosecution.
- (iv) The following are important to note in respect of goods or documents or books or things which have been seized by the officer:

- (a) **Retention:** The said officer
- (a) shall retain the documents or books or things so seized (which he relied upon) so long as may be necessary for their examination and for any inquiry or proceedings under this Act
 - (b) shall return the documents, books or things seized or produced by a taxable or any other person on which no reliance has been placed for issuing notice, within a period of 30 days from the issue of notice.
- (b) **Power to Seal/Break the Door of Premises (where access is denied):** Proper officer for the process of inspection, search and seizure shall have the power to:
- (a) To seal, break or open the door of any premises or
 - (b) To break open any almirah, electronic devices, box, receptacle in which:
 - (i) any goods, accounts, registers or
 - (ii) documents of the personare suspected to be concealed.
- (c) **Copies of Documents Seized:**
- (a) The person from whose custody documents are seized is entitled to take:
 - (i) photocopy or
 - (ii) extract of such documentsin the presence of an authorized GST officer at the place and time as indicated by the officer.
 - (b) Copies or extracts may be denied if the officer believes that such an act will prejudicially affect the investigation.
- (d) **Provisional Release of Seized Goods:** The goods so seized shall be released on a provisional basis, upon
- (a) execution of Bond in Form GST INS -04 for the value of the goods and
 - (b) furnishing of security in form of Bank Guarantee equal to amount of applicable tax (incl. SGST / UTGST / IGST / Cess) + interest + penalty.

Once the goods are provisionally released and where the person 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 liabilities in respect of such goods.

An important point to note here is that provisional release of goods has to be mandatorily taken by the concerned person within one month of executing the bond. In case of failure to do so, the proper officer has the power to dispose off the said goods as per Notification No. 27/2018-Central Tax dated 13.06.2018.

- (e) **Return of Seized Goods:** If no notice has been issued within 6 months (or an extended period of another 6 months by the proper officer, on the basis of sufficient grounds), the seized goods/exhibits ought to be returned to the person from whom the goods were seized.
- (f) **Perishable/Hazardous Goods:** The Government may, by way of a notification, authorize the proper officer to dispose of the goods and shall also maintain an inventory of the goods in the prescribed manner, as soon as the same have been seized where:
- (a) the goods are of perishable nature; or
 - (b) the goods are of hazardous nature; or
 - (c) the goods would depreciate in value by passage of time or
 - (d) there are constraints of storage space or
 - (e) any other relevant considerations as may be prescribed.

The CBIC, vide its Notification No 27/2018-Central Tax dated 13.06.2018 has specified 17 categories of goods / class of goods which shall, be disposed off by the proper officer after its seizure having regard to the perishable or hazardous nature, depreciation in value with the passage of time, constraints of storage space or any other relevant considerations of the said goods.

The said schedule of goods / class of goods is as under:

1. Salt and hygroscopic substances
2. Raw (wet and salted) hides and skins
3. Newspapers and periodicals
4. Menthol, Camphor, Saffron
5. Re-fills for ball-point pens
6. Lighter fuel, including lighters with gas, not having arrangement for refilling
7. Cells, batteries and rechargeable batteries
8. Petroleum Products
9. Dangerous drugs and psychotropic substances
10. Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
11. Pharmaceutical products falling within Chapter 30 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
12. Fireworks
13. Red Sander
14. Sandalwood

15. All taxable goods falling within Chapters 1 to 24 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
16. All unclaimed/abandoned goods which are liable to rapid depreciation in value on account of fast change in technology or new models etc.
17. Any goods seized by the proper officer under section 67 of the said Act, which are to be provisionally released under sub-section (6) of section 67 of the said Act, but provisional release has not been taken by the concerned person within a period of one month from the date of execution of the bond for provisional release.

(g) Applicability of Code of Criminal Procedure, 1973 : The provisions of Code of Criminal Procedure, 1973 relating to search and seizure shall be applicable to the GST Laws and in section 165(5) of the code of criminal procedure, the word 'Magistrate' should be read as 'Commissioner'.

(h) Surprise Check: The Commissioner or an officer authorized by him can further authorize any other person to purchase any goods and / or services in order to check the manner of issuance of tax invoices / bills of supply And:

- (a) The tax paid thereon shall be refundable by the taxable person when the goods so purchased are returned (no time limit prescribed in this regard) and
- (b) The taxable person shall cancel the tax invoice or any bills of supply issued earlier in this regard.

Then the Proper Officer can:

Inspect: any place of business of the taxable person who has evaded the tax or is attempting to evade the tax or of the transporter who transported such tax evading goods or godown/warehouse operator in which such tax evading goods or accounts relating thereto has been stored

Search & seize: the goods or any documents or books or things which are liable for confiscation and which will be instrumental in the proceedings under this act during the enquiry period.

Seal or Break: open the door of any premises, storage, box or receptacle where goods, books of accounts etc. are suspected to be concealed and when access to the same is denied to the said officer.

Electronic device

Please consider the comparative understanding of seizure and confiscation (in terms of section 130) to appreciate the areas of similarity and difference:

Criteria	Seizure	Confiscation
Applicability	Any goods, documents, books or things	Only offending goods
Manner	Actual custody or constructive custody	Actual custody
Authority	Held in trust, no change of ownership	Held in trust, no change of ownership unless adjudication completed
Duration of holding	Until required for examination / inquiry / proceedings. If no notice issued, 6 months (and a further period of 6 months if extended by proper officer)	Until issue of notice for adjudication and opportunity to pay penalty-in-lieu of confiscation
Conclusion	Return articles that are not 'offending articles'	Title to pass and vest with Central Government as per order of adjudication

67.2. Comparative review

- (i) Similar powers relating to inspection, search and seizure is present in all the erstwhile indirect tax laws viz., Finance Act, 1994 (Service Tax), Central Excise Act (CE Act), 1944 and in most of the State VAT laws.
- (ii) Interestingly, under the CE Act, provision has been made to safeguard the interest of the taxable person against harassment by way of irregular search and seizure by the tax officers. Section 22 of the CE Act prescribes fine upto Rs 2,000/- on an officer who conducts vexatious search, inspection etc. This provision is conspicuously absent in the CGST Act.

67.3. Issues and concerns:

1. While the law provides for seizure of goods liable to confiscation, documents, books and things **where the proper officer has reasons to believe** that the same have been secreted in a place, the law does not impose the proper officer to explain to the person from whom the same are seized, as to why the proper officer believes so. This may cause undue hardship to the taxable persons. Further, the Law is also silent on whether the reason to believe are to be in writing prior to the search.
2. It may be noted that the provision for checking of issuance of tax invoice / bill of supply merely provides for return of goods, and the question of return of service does not arise. Therefore, the tax paid on any services received for test-checks cannot be refunded and shall be a cost to the Revenue.

67.4. FAQs

- Q1. Under what circumstances there can be inspection, search or seizure operations?

Ans. Initiation of action under this section is when the proper officer not below rank of Joint Commissioner 'has reason to believe' that

- (a) the taxable person has suppressed any transaction of supply of goods or services or stock in hand or claimed excess input tax credit or has contravened any of the statutory provisions.
- (b) any person engaged in the business of transportation of goods or an owner or operator of a warehouse or godown or any other place where goods are stored, which have escaped tax payment or has kept his accounts or goods in a manner likely to cause tax evasion.

Q2. What is the meaning of the phrase 'reason to believe'?

Ans. The phrase 'reason to believe' has been interpreted by various courts distinguishing it from 'reason to suspect'. In the case of *Crompton Greaves Ltd. vs. State of Gujarat*, 120 STC 510 the Court observed that, "these words suggest that belief must be that of honest and reasonable person based upon reasonable grounds, and that the Commissioner may act under this section on direct or circumstantial evidence not on mere suspicion, gossip or rumor. The powers under the present section are wide but not plenary; the words of the section are 'reason to believe' and not 'reason to suspect'."

Q3. Whether goods so seized can be released on provisional basis?

Ans. The goods so seized can be released on provisional basis if bond and security as may be prescribed is furnished or upon payment of applicable tax, interest and penalty.

Q4. How long can the goods as well as other documents, books and things that are relied upon for issuance of notice can be retained by the proper officer?

Ans. Documents, Books and other Things – No specific time period. Can be retained only for so long as may be necessary for their examination and for any inquiry or proceedings. Goods: To be retained until provisionally released by the concerned person by furnishing a bond and security.

Q5. What goods / class of goods can be disposed off by the proper officer, having regard to the perishable or hazardous nature of any goods, etc.?

Ans. The list of goods / class of goods as specified in Notification No. 27/2018-Central Tax dated 13.06.2018.

67.4. MCQs

Q1. Initiation of action under this section is by proper officer not below the rank of

- (a) Superintendent
- (b) Inspector
- (c) Joint Commissioner
- (d) Commissioner

Ans. (c) Joint Commissioner

Q2. In how many days, the officer shall return the seized goods / documents which are not relied upon while issuing notice?

- (a) 15 days
- (b) 30 days
- (c) 60 days
- (d) 90 days

Ans. (b) 30 days

Statutory provisions

68. Inspection of goods in movement

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

Extracts of the CGST Rules, 2017

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

- (1) *Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—*
 - (i) *in relation to a supply; or*
 - (ii) *for reasons other than supply; or*
 - (iii) *due to inward supply from an 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:

Provided that the transporter, on an authorization received from the registered person, 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:

Provided further that where the goods to be transported are supplied through an e-commerce operator or a courier agency, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal:

Provided also that 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, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Provided also that 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, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation 1.- For the purposes of this rule, the expression "handicraft goods" has the meaning as assigned to it in the Government of India, Ministry of Finance, notification No. 56/2018-Central Tax dated the 23rd October, 2018 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1056 (E) dated the 23rd October, 2018 as amended from time to time.

Explanation 2.- For the purposes of this rule, 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, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

(2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, 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.

(2A) Where the goods are transported by railways or by air or 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:

Provided that where the goods are transported by railways, the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery.

- (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:*

Provided that 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:

Provided further that 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-01 on the common portal in the manner specified in this rule:

Provided also 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 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-01.

Explanation 1. – For the purposes of this sub-rule, where the 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 2. - The e-way bill shall not be valid for movement of goods by road unless the information in Part-B of FORM GST EWB-01 has been furnished except in the case of movements covered under the third proviso to sub-rule (3) and the proviso to sub-rule (5).

- (4) *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.*
- (5) *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.

- (5A) *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.

- (6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, 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-02 may be generated by him on the said common portal prior to the movement of goods.
- (7) Where the consignor or the consignee has not generated the e-way bill in FORM GST EWB-01 and the aggregate of the consignment value of goods carried in the conveyance is more than fifty thousand rupees, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods:

Provided that 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-01 may be furnished by such e-commerce operator or courier agency.

- (8) 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.

- (9) 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.

- (10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance, within the country, the goods have to be transported, as mentioned in column (2) of the said Table:-

Table

Sl. No.	Distance	Validity period
(1)	(2)	(3)
1.	Upto 100 km.	One day in cases other than Over Dimensional Cargo
2.	For every 100 km. or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo
3.	Upto 20 km	One day in case of Over Dimensional Cargo
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo:

Provided that the 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:

Provided further that 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.

Explanation 1.—For the purposes of this rule, 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.

Explanation 2.— For the purposes of this rule, the expression “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).

- (11) The details of the e-way bill generated under this rule shall be made available to the-
- (a) supplier, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the recipient or the transporter; or
 - (b) recipient, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the supplier or the transporter,
- on the common portal, and the supplier or the recipient, as the case may be, shall

communicate his acceptance or rejection of the consignment covered by the e-way bill.

- (12) *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.*
- (13) *The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State or Union territory shall be valid in every State and Union territory.*
- (14) *Notwithstanding anything contained in this rule, no e-way bill is required to be generated—*
- (a) *where the goods being transported are specified in Annexure;*
 - (b) *where the goods are being transported by a non-motorised conveyance;*
 - (c) *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;*
 - (d) *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;*
 - (e) *where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to notification No. 2/2017- Central tax (Rate) dated the 28th June, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 674 (E) dated the 28th June, 2017 as amended from time to time;*
 - (f) *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;*
 - (g) *where the supply of goods being transported is treated as no supply under Schedule III of the Act;*
 - (h) *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;*

- (i) *where the goods being transported are transit cargo from or to Nepal or Bhutan;*
- (j) *where the goods being transported are exempt from tax under notification No. 7/2017-Central Tax (Rate), dated 28th June 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 679(E) dated the 28th June, 2017 as amended from time to time and notification No. 26/2017-Central Tax (Rate), dated the 21st September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1181(E) dated the 21st September, 2017 as amended from time to time;*
- (k) *any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;*
- (l) *where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;*
- (m) *where empty cargo containers are being transported; and*
- (n) *where the goods are being transported upto a distance of twenty kilometers 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.*
- (o) *where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.*

Explanation. The facility of generation, cancellation, updation and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be.

ANNEXURE

[(See rule 138 (14)]

S. No.	Description of Goods
(1)	(2)
1.	<i>Liquefied petroleum gas for supply to household and non-domestic exempted category (NDEC) customers</i>
2.	<i>Kerosene oil sold under PDS</i>
3.	<i>Postal baggage transported by Department of Posts</i>

4.	<i>Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)</i>
5.	<i>Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)</i>
6.	<i>Currency</i>
7.	<i>Used personal and household effects</i>
8.	<i>Coral, unworked (0508) and worked coral (9601)</i>

138A. Documents and devices to be carried by a person-in-charge of a conveyance

- (1) *The person in charge of a conveyance shall carry—*
- (a) *the invoice or bill of supply or delivery challan, as the case may be; and*
 - (b) *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 embedded on to the conveyance in such manner as may be notified by the Commissioner:*
- Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel:*
- Provided further that in case of imported goods, the person in charge of a conveyance shall also carry 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.*
- (2) *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.*
 - (3) *Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.*
 - (4) *The Commissioner may, by notification, require a class of transporters to obtain a unique Radio Frequency Identification Device 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.*
 - (5) *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.”

138B. Verification of documents and conveyances

- (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.

138C. Inspection and verification of goods

- (1) A summary report of every inspection of goods in transit shall be recorded online by the proper officer 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.
Provided that 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.
Explanation. - 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.
- (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.

138D. 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.]

138E. Restriction on furnishing of information in PART A of FORM GST EWB-01.-

Notwithstanding anything contained in sub-rule (1) of rule 138, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who,—

- a. being a person paying tax under section 10, has not furnished the returns for two consecutive tax periods; or
- b. being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months:

Provided that the Commissioner may, on sufficient cause being shown and for reasons to be recorded in writing, by order, allow furnishing of the said information in PART A of FORM GST EWB 01, subject to such conditions and restrictions as may be specified by him:

Provided further that no order rejecting the request of such person to furnish the information in PART A of FORM GST EWB-01 under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard:

Provided also that the permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

Explanation: – For the purposes of this rule, the expression “Commissioner” shall mean the jurisdictional Commissioner in respect of the persons specified in clauses (a) and (b).

Explanation. - For the purposes of this Chapter, the expressions ‘transported by railways’, ‘transportation of goods by railways’, ‘transport of goods by rail’ and ‘movement of goods by rail’ does not include cases where leasing of parcel space by Railways takes place.

Relevant Circulars, Notifications and Clarifications

1. Notification No. 02/2017-Central Tax, dated 19.06.2017 notifying the jurisdiction of Central Tax Officers;
2. Notification No. 14/2017-Central Tax, dated 01.07.2017 issued to assign the jurisdiction and powers of various directorates;
3. Notification No. 39/2017-Central Tax, dated 13.10.2017 read with Notification No. 10/2018-Central Tax, dated 23.01.2018 issued to cross-empower State Tax officers for processing and granting of refunds;
4. Notification No. 12/2018-Central Tax, dated 07.03.2018, substituting the entire Rule 138, 138A, 138B, 138C and 138D.
5. Notification No. 26/2018-Central Tax, dated 13.06.2018, inserting clause (o) in Sub-rule 14 of Rule 138.
6. Notification No. 27/2018-Central Tax, dated 13.06.2018, specifies goods which may be disposed off by the proper officer after its seizure.

7. Notification No. 28/2018 – Central Tax dated 19.06.2018, inserting proviso after sub rule (1) in rule 138C to extend time limit for recording final report further by not exceeding 3 days.
8. Notification No. 39/2018 – Central Tax dated 04.09.2018, inserting 2nd proviso in sub rule (1) of rule 138A(1)(b), mandating person in charge of conveyance, to also carry a bill of entry filed by importer of such goods.
9. Notification No. 74/2018 – Central Tax dated 31.12.2018, substituting Explanation 1 to Rule 138 defining the term “handicraft goods”.
10. Circular No. 41/2018 dated 13.04.2018 clarifying the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.
11. Circular No. 38/2017 dated 26.03.2018 issued for clarifications regarding job work
12. Circular No.22/2017 dated 22.11.2017 issued to clarify on Inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes]
13. Circular No. 9/9/2017 dated 18.10.2017 issued regarding the officer authorized for enrollment of GST Practitioners.
14. Circular No. 3/3/2017 dated 05.07.2017 read with Circular No. 31/05/2018 dated 09.02.2018 issued to clarify the functions of the Proper officers;
15. Circular No. 47/21/2018-GST dated 08.06.2018 – Clarifications of certain issues under GST – relating to Goods transiting to another state while moving from one area to another in same state and goods moving from a DTA to SEZ unit in same state.
16. Circular No. 49/2018 dated 21.06.2018 clarifying the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances
17. Circular No 61/35/2018-GST dated 04.09.2018 – Clarification on E way bill in case of storing of goods in godown of transporter.
18. Circular No.64/2018 dated 14.09.2018 Modification of the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances, as clarified in Circular Nos. 41/15/2018-GST dated 13.04.2018 and 49/23/2018-GST dated 21.06.2018 - regarding

Related provisions of the Statute

Section or Rule	Description
Section 31	Tax invoice
Rules 46 – 55A	Form and manner of documents prescribed in Section 31
Section 15	Value of supply

Section 2(68)	Definition of Job worker
Section 2(52)	Definition of Goods
Section 2(67)	Definition of inward supply
Section 2(45)	Definition of e-commerce operator
Section 7	Supply
Section 10 (IGST)	Place of supply of goods other than goods imported into or exported from India

68.1. Introduction

Section 68 requires that the transporter (person in charge of a conveyance) must carry with himself and produce information required by the authorities and Rule 138 prescribes the kind of information that authorities can require from the transporter. That makes e-way bill a remarkable document and when there is any document-deficiency then consequences laid out in section 129 will immediately follow. This note provides some information to help in better understanding about **Procedural and Practical Aspects of E-Way Bill under GST** and provide a walk-through the various steps involved in preparation, issuance and use of e-way bills.

68.2. Analysis

(i) Applicability

E-way Bill ("EWB") is not required for all transactions undertaken by a taxable person. EWB is required for all transactions involving movement of goods whether by way of supply on not. Supply has been discussed extensively, but it must be noted that EWB is not only required whenever there is a 'supply' of goods, but also every time there is a 'movement' of goods. This in turn means that EWB is required for transactions involving movement of goods although the transactions are otherwise, deemed to be a supply of services, such as leasing of goods, or supply of food& beverages, etc. In other words, every time there is movement of goods, whether by way of supply of goods or supply of services, EWB will be required. Goods supplied and goods involved in supply of services will require EWB as it involves movement of goods. But goods consumed in supply of services do not involve movement and hence, do not require EWB. Being able to identify exactly 'when' EWB is required or is not required, will be keep to our understanding.

The CGST Act prescribes EWB which will apply to all inter-State movement of goods. And amended provisions in SGST Acts will apply to intra-State movement of goods

(ii) Transport

Transport or movement of goods must be distinguished from 'delivery' of goods. Transport and delivery seem synonymous, but they are not. Movement or journey is a

part of transportation and it can be said that transportation has commenced as soon as the Consignor hands over the goods with clear and irrevocable instructions to a Carrier to put them on its journey to a specified destination and hand them over to a specified (or altered) Consignee (or his Order). At this point, the actual journey or movement has not even begun but transportation has already begun. After the journey commences, it can be interrupted or continuous, but transportation continues to remain in-progress. Likewise, journey may end but transportation would still be in progress. Now, transportation will conclude only when the instructions of the Consignor have been satisfactorily discharged by the Carrier on handing over the goods to the Consignee (or his Order). EWB is required 'before' commencement of transportation regardless of commencement of journey. Delivery is that legal responsibility where title is transferred, as section 10(1) (a) *inter alia* provides that, "movement terminates for delivery.....". Delivery assumes legal significance which must carefully be observed in each transaction.

(iii) Place of Delivery

Form GST EWB 01 requires 'place of delivery' to be specified. Please note that this term is not to be misconstrued to be 'place of supply'. EWB is intended to create contemporaneous trail of physical movement of the goods. It is not meant to address the legalistic concept of 'place of supply' which can vastly differ from 'place of delivery'. Though physical movement of the goods may be from one location to another, in the eyes of law, 'place of supply' could very well be the location of the recipient. So, it is not conceivable for EWB to require information about 'place of supply' but very simply, the 'place of delivery' or 'destination of journey'. In fact, it can be seen that, when GSTIN of Recipient is incorporated, the Place of Delivery will auto-populate.

One who effects supply is the Supplier and Consignor in one who causes movement of the goods. Very often Supplier and Consignor may be the same person but not always. Supplier may be the mind behind the supply, but warehouse keeper is still the Consignor. Similarly, recipient is defined in section 2(93) to be the one who pays consideration, but such person may not always be the Consignor.

(iv) Consignment Value

Transaction Value is understood from Section 15, whereas the value referred to in the EWB provisions happens to be 'Consignment Value' – i.e., where the consignment value exceeds threshold limit, an EWB becomes mandatory. This 'Consignment value' is computed so as to be the transaction value inclusive of applicable GST, but excluding the value of any exempt supplies (in case of a tax-invoice-cum-bill-of-supply). It must be noted that EWB itself requires both these values to be specified – transaction value as well as GST amount. In this regard, it is relevant to note that the Consignment value must answer the measure of value of section 15 in all cases. This means, supplies where the consideration is in non-monetary terms would also require the issuance of

EWB. Please refer to the discussions in Chapter IV of this BGM to better understand the valuation principles in respect of supplies not having a consideration in wholly monetary terms. E.g. An equipment costing Rs.100 lacs moved inter-State under a monthly lease of Rs.5 lacs would require the EWB to be carried. In such case, the author is of the view that to curb practical difficulties in-transit, a challan for value of goods of Rs. 100 be prepared and the same value EWB be generated value to be declared would be the equipment value of Rs.100 Lakhs.

In the following cases, a EWB shall be required to be issued regardless of the consignment value:

- ✓ Where goods are sent by a principal located in one State / UT to a job worker located in any other State / UT – the e-way bill shall be generated either by the principal or the job worker [third proviso to Rule 138 (1) of the CGST Rules];
- ✓ Where handicraft goods are transported from one State / UT to another by a person who has been exempted from the requirement of obtaining registration under Section 24(i) and (ii) [fourth proviso to Rule 138 (1) of the CGST Rules].

(v) Non-EWB Goods

No EWB is required to be generated in respect of exempt goods and situations under Rule 138(14). It may be noted that movement of goods exempted under notification 2/2017-Central Tax (Rate) dated June 28.2017 except de-oiled cake do not required EWB pursuant to Rule 138(14)(e) of CGST Rules. Moreover, movement of goods listed in Rule 138(14) of State/UT GST Rules will also be excluded under the Central GST Rules. This also acknowledges that State/UT GST Rules stand alone on the requirement of EWB in respect of intra-State movement and the Central GST Rules are limited only in respect of inter-State movement. EWB is not required even when there is supply without any movement of goods (see, section 10(1)(c) of the IGST Act, 2017). Such exclusion from EWB is allowed to all goods, if the value is upto Rs.50,000 or the threshold prescribed (refer “Threshold - State EWB” heading in this Chapter) in case of intra-State Supplies.

Care should be taken not to misapply the threshold limit prescribed by States for use of EWB to inter-State movement. This discretion enjoyed by States in prescribing exceptions (to the CGST Rules) is limited to intra-State movement.

Summary of ‘no EWB’

NO EWB REQUIRED	Short Notes
(a) where the goods being transported are specified in Annexure;	8-items listed in Annexure
(b) where the goods are being transported by a non-motorised conveyance;	Non-motorized conveyance

(c) 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;	Port-to-Port transfers (for customs clearance)
(d) 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;	State-list of EWB exemption
(e) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to notification No. 2/2017- Central tax (Rate) dated the 28 th June, 2017;	Goods exempt from GST also exempt from EWB
(f) 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;	6-items of non-GST goods
(g) where the supply of goods being transported is treated as no supply under Schedule III of the Act;	Schedule III items
(h) 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;	Transport under Customs control
(i) where the goods being transported are transit cargo from or to Nepal or Bhutan;	Transit cargo (Nepal/Bhutan)
(j) 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 21 st September, 2017;	Transport between CSD Canteens and Nuclear Power Corporation
(k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee;	Transport under MoD control/formation
(l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail;	Rail-transport 'by' Government or LA
(m) where empty cargo containers are being transported; and	Empty cargo containers
(n) where the goods are being transported upto a distance of twenty kilometers from the place of the business of the consignor to a weighbridge for weighment or from the weighbridge back to	Weighment and back (less than 20 kms)

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.	
(o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.	Empty LPG cylinders (other than supply)

(vi) EWBs effect on Place of Supply

Inter-State movement or inter-State supply are two distinct terms to be recognized. By the fiction in section 7 of IGST Act, several transactions are considered to be inter-State supplies but, for the limited purposes of EWB, their actual movement alone determines whether it is inter-State movement (attracting Central EWB) or intra-State movement (attracting State/UT EWB). Here, we may notice that various States/UTs have synchronized their movement to ensure ease of movement whether inter-State or intra-State. EWB is required whether the movement of goods is pursuant to supply or not and pursuant to supply of goods or of services or inward supply from an unregistered person.

- ✓ **Illustration 1:** Goods imported from China arrive at Mumbai port. These goods are transported from Mumbai port to factory in Pune. This is an inter-State supply from China to Pune, but it is an intra-State movement from Mumbai to Pune – Requirement of EWB to be determined under the State GST Law.
- ✓ **Illustration 2:** Goods are sold from Lucknow by Supplier to Customer in Delhi with instructions for these goods to be delivered to job-worker in Noida. This is an inter-State supply from Lucknow to Delhi but an intra-State movement within UP – Requirement of EWB to be determined under the State GST Law.
- ✓ **Illustration 3:** Generator installed in basement of building being sold to Landlord on termination of lease agreement. EWB will NOT BE REQUIRED as there is 'no movement' in this supply.
- ✓ **Illustration 4:** Contractor carrying portable crane to customer site, both located in same State, is intra-State movement. EWB will NOT BE REQUIRED for this movement .
- ✓ **Illustration 5:** Laptop carried by an employee of a Company in Delhi, having no other branches, to client-location in Bangalore on business. This movement is not supply but is incidental to 'services of employee to employer' under schedule III. EWB will NOT BE REQUIRED for this movement. Contract-staff carrying company-laptop not excluded from EWB requirement.
- ✓ **Illustration 6:** LPG cylinders transported from dealership to bottling plant of Oil Company, is 'excluded' from requirement. EWB will NOT BE REQUIRED for this movement. But EWB will be required for movement of cylinders supplied by fabricator to Oil Company.

(vii) Portal Registration

Registration on www.ewaybillgst.gov.in (Notification No. 9/2018-CT dated 23.01.2018) is not to be understood as a registration under Section 22 of the CGST Act. It may also be noted that a registration under Section 22 does not automatically create a registration on this portal. Persons who are already registered under section 22 are required to register on this portal. Registration on the portal merely refers to creation of user login for use of the features on this portal.

Even a transporter who is not registered under section 22 is welcome to register on this portal for the limited purposes of updating information in Part B of EWB and is called 'enrolment'. Such transporters are issued TRANSIN registration. Considering that TRANSIN is required only for purposes of updating EWB information, a Consignor or Consignee are also permitted to obtain TRANSIN.

It is advisable for every GSTIN-holder to obtain an enrolment with a TRANSIN ID. This will help in modifying information in Part B of the EWB if and when required, to obtain extension of validity in case of *bona fide* delay, and most importantly, reporting detention.

(viii) Reasons for Transportation

Reasons for transportation must be one of the following:

Supply | Export or Import | Job Work | SKD or CKD | Recipient not known |
Line Sales | Sales Return | Exhibition or fairs | For own use | Others

One must exercise caution while selecting the appropriate reason, since this information is expected to be linked with the returns filed by the registered person in order to correctly differentiate a mere movement of goods from a supply thereof, as it creates a contemporaneous trail of the movement. Use of EWB limits any possibility of fictitious transactions being recorded or included after lapse of time.

(ix) Person Responsible

Person causing movement is required to prepare EWB. As a corollary, one who prepared EWB could be implied to be the one who caused movement of the goods. Considering the ingredients applicable in each clause under 10(1) to determine 'place of supply', it is important that EWB is not causally undertaken but mindfully of the effect it could have on the place of supply declared. If EWB is wrongly prepared or prepared by the wrong distinct-person, this may impact the person who is to report the supply or the nature of the supply.

(x) 'Bill-to-Ship-to' Transactions

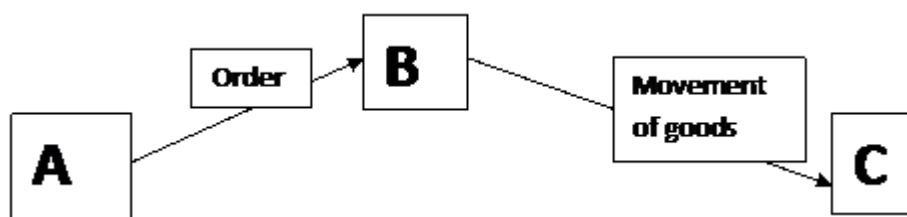
Although bill-to-ship-to transactions could sometimes result in twin-supply transactions, they require a single EWB since the movement is singular. In the e-way bill form, there are two portions under the 'TO' section.

- ✓ In the left-hand-side: 'Billing To' GSTIN and trade name is entered; and
- ✓ In the right-hand-side: 'Ship to' address of the destination of the movement is entered.
- ✓ The other details are entered as per the invoice.

In case ship-to State is different from the Bill-to State, the tax components are entered as per the details of the bill-to person (Bill-to State). i.e., if the Bill-to location is inter-State for the supplier, IGST is entered and if the Bill-to person is located in the same State as the supplier, then SGST and CGST are entered irrespective of the place of delivery (whether within the State or outside the State).

In a typical "Bill To Ship To" model of supply, there are three persons involved in a transaction, namely:

- 'A' is the person who has ordered 'B' to send goods directly to 'C'.
- 'B' is the person who is sending goods directly to 'C' on behalf of 'A'.
- 'C' is the recipient of goods.



In this complete scenario two supplies are involved and accordingly two tax invoices are required to be issued:

- Invoice -1, which would be issued by 'B' to 'A'.
- Invoice -2 which would be issued by 'A' to 'C'.

It is clarified that as per the CGST Rules, 2017 either 'A' or 'B' can generate the e-Way Bill but it may be noted that only one e-Way Bill is required to be generated as per the following procedure:

Case -1: Where e-Way Bill is generated by 'B', the following fields shall be filled in Part A of GST FORM EWB-01:

1.	Bill From:	In this field details of 'B' are supposed to be filled.
2.	Dispatch From:	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of 'B'.
3.	Bill To:	In this field details of 'A' are supposed to be filled.
4.	Ship to:	In this field address of 'C' is supposed to be filled.
5.	Invoice Details:	Details of Invoice-1 are supposed to be filled

Case -2: Where e-Way Bill is generated by 'A', the following fields shall be filled in Part A of GST FORM EWB-01:

1.	Bill From:	In this field details of 'A' are supposed to be filled.
2.	Dispatch From:	This is the place from where goods are actually dispatched. It may be the principal or additional place of business of 'B'.
3.	Bill To:	In this field details of 'C' are supposed to be filled.
4.	Ship to:	In this field address of 'C' is supposed to be filled.
5.	Invoice Details:	Details of Invoice-2 are supposed to be filled

(xi) 'Bill from-Ship from' Transactions

Such a situation arises where the supplier prepares the bill from his business premises to the consignee, but moves the consignment from some other premises to the consignee, based on business requirements. In alignment with procedure specified in the preceding paragraph, the system provides a mechanism for this situation as well. In the e-way bill form, there are two portions under 'FROM' section:

- ✓ In the left-hand-side: 'Bill From' supplier's GSTIN and trade name are entered; and
- ✓ In the right-hand-side: 'Dispatch From', address of the dispatching place is entered.
- ✓ The other details are entered as per the invoice.

Illustration 7: Goods supplied from Baroda to intermediate in Chennai but directly delivered to Kolkata. EWB to be generated 'before' commencement of movement with 'bill to Chennai' and 'ship to Kolkata' and the GSTIN of original supplier (Baroda) and intermediate (Chennai). Care should be taken to avoid leading the intermediate supplier to be held as casual taxable person in West Bengal.

Illustration 9: Car sold by Dealer in Bangalore to Bank in Mumbai but delivered to Lessee in Bangalore. EWB to be issued 'before' commencement of movement with 'bill to Mumbai' and 'ship to Bangalore'.

Illustration 10: Water cans supplied by Dealer in Road no.1 to Caterer registered in Road no.2 and delivered to central Kitchen in Road no.10 and then carried to marriage hall in Road no.12. EWB to be issued 'before' commencement of movement with 'bill to Road no.2' and 'ship to Road no.10'. Since there is an interval of time after delivery of water cans from Dealer to central Kitchen, this is not a transaction that is inter-linked in two movements. Subsequent movement of entire catering articles involves another EWB independent of the earlier EWB.

(xii) EWB to Impact Classification (BTST-BFSF)

Use of EWB can impact the classification of the goods in in-transit supplies. All though it

may seem like a rule that since the goods procured from the original Supplier and resupplied on back-to-back basis, the classification (and hence rate of tax) should remain the same. It is true but with some exceptions, namely:

- Goods procured from various Suppliers and delivered to end Customer's site for undertaking supply of services involving goods such as leasing, works contract, etc. Without questioning the nature of supply – inter-State or intra-State – carefully consider the impact on the classification of the goods. Classification of the outward supply by the intermediate Supplier to end Customer need not mirror the classification of the original Supplier. Clearly, nothing has been done as yet by the intermediate Supplier on the goods to discharge his supply obligations but from the EWB must carry the correct HSN. The intermediate Supplier may supply the goods on back-to-back basis but there may not even issue invoice on back-to-back basis as milestone-based invoice is required as per contract. So, care should be taken not to 'copy' the HSN applied by the original Supplier even though the supply to end Customer is in-transit, whether undertaken as BTBT BTST or BFSF.

Illustration 11: In case of Cement (HSN 2523) supplied by Dealer is billed to Contractor but delivered to Customer's site on 'in-transit' basis, Contractor's EWB must follow HSN 9954 and not HSN 2523.

- Goods procured from original Supplier and delivered to end Customer's site which is not a supply or has already been subject to tax such as publishing, contract manufacturing, job-work, warranty fulfilment, etc.

Illustration 12: In case of printed books being sent by Publisher to Dealer, the HSN code to be applied will be HSN 9989 and not HSN 49 applicable to printed books (relevant kind).

It is important to bear in mind that in BTST or BFSF transactions, the details in EWB may not be the same as the Tax Invoice for the supply, if any. EWB is for 'movement' and Tax Invoice is for 'supply'. Movement of goods is recognized in the EWB itself to be 'other than supply'. Hence, exact mirroring of the EWB and the Tax Invoice is not always possible. And classification too is not static and can undergo change as the other aspects in EWB.

(xiii) EWB Formula

EWBs follow a time-distance-acceptance based formula. EWB has a validity period linked to the distance the goods have to travel and finally acceptance by the Recipient. Unless accepted / rejected by within 72 hours, the EWB is deemed to be accepted. An EWB can only be cancelled within 24 hours of generation (unless the carriage has been intercepted / the goods delivered, prior to such time). Thus, EWB introduces a sense of urgency in the process of movement and promptly recording the transactions.

This requires better preparation and organizing information required to be input in EWBs so that when it is time to carry out movement of goods, the information is correct,

complete and free of errors. Booking sales in the last few days of the month may not be easy unless supported by a timely dispatch of goods along with EWB.

(xiv) Watch 'portal' Continuously

Watch portal continuously and 'accept' or 'reject'. If not, every EWB uploaded with said GSTIN, will be 'deemed as accepted'. Considering that EWBs become 'valid' from the time Part-B is entered, they will appear as soon as they EBN is generated with just Part-A information. Monitoring portal regularly is important. Creation of sub-users for this purpose maybe beneficial based on projects or SBUs where single GSTIN is used in a State. In order to monitor, POs issued must be available on-hand to be able to 'reject' any unknown or unrecognized EWBs. It is important to be bear in mind that Service-POs involving goods will also reflect on the portal against said GSTIN and must not be rejected as it would interrupt transportation. EWB process now assumes great significance, particularly service contracts involving goods.

Bar on EWB Facility for Return-default

Where composition taxable person fails to file returns for two (2) consecutive tax periods and a regular taxable person fails to file returns for two (2) consecutive two months, the facility of generating EWB will be barred (Rule 138E). Please note that bar on EWB facility will not follow any procedure of giving notice and conducting a hearing. After EWB facility is barred, an application may be made requesting to allow this facility. And this application will follow a procedure of personal hearing and acceptance or rejection.

(xv) Reporting Detention

Detention of goods is required to be reported by TRANSIN-holder if detention exceeds thirty (30) minutes. In GST EWB 04. This will report the detention to the superior office who will need to resolve the reasons for detention. The consequences are provided in section 129 wherein:

- notice (followed by order) of detention
- opportunity to pay tax and penalty as prescribed in each case (section 129(1) limits)
- furnishing bond PLUS security is involved in case of detention (section 67(6) applies)

Payment of tax and penalty 'concludes' proceedings. As such, care should be taken not to pay tax and penalty in haste as it implies admission of wrong-doing. These sweeping penalty provisions takes away discretion and does not allow elaborate opportunity to prove *bona fide*. Absence of prescribed documents implies wrong-doing attracting full extent of prescribed penalty. Transporter need to be equipped with sufficient pre-checks about the documentation and availability of EWB or ability to furnish bond and security to stop detention and continue transportation.

Identifying transporter with this knowledge and understanding is key. Earlier suggestion for Supplier or Recipient with GSTIN to additionally obtain TRANSIN or transporter id will facilitate in meeting and addressing detention issues if the transporter is unable to explain the facts. Although the powers of detention show severity, Government assures that it will be used sparingly and in sectors where there is rampant violation. Care must be taken to make an overall sensitive assessment of products / sectors involved and suitable measures to be taken so as to be free from detention concerns.

(xvi) Effective Date – Central EWB

Central GST Rules addresses only inter-State movement (not necessarily inter-State supply) and EWBs is implemented from 1st April, 2018 in case of inter-state movement. It is to be noted that EWBs must be in harmony with the tax charged in respect of the supply involved. In case of an in-transit supply, after many representations have been made to the Government, it has been clarified that one (1) EWB will suffice for the entire movement involved, though the goods may take a different (and direct) route to the final destination. Imports also require EWB but by the Consignee who causes the movement of goods from the port to the final location. Exports will require EWB but with Recipient as 'unregistered person'.

(xvii) Effective Date – State EWB

States/Union Territories have notified EWB for intra State movement of various States/ Union Territories as under:

Threshold Limit for EWB in case of Intra State Supply	State(s)	Union Territories
Consignment Value Above Rs. 100000	West Bengal; Tamil Nadu, Delhi, Bihar	
Consignment Value Above Rs. 50000	Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Kerala, Maharashtra, Madhya Pradesh, Meghalaya, Manipur, Mizoram, Nagaland, Odisha, Punjab, Rajasthan, Sikkim, Telangana, Uttarakhand, Uttar Pradesh, Puducherry	Lakshadweep, Daman and Diu, Andaman and Nicobar Islands, Dadra and Nagar Haveli, Chandigarh

However, inter-State movement must follow the threshold of Rs.50,000 prescribed under the CGST Act and registered persons in any State where a relaxation is granted cannot rely on the State threshold for inter-state movement.

Interception of Conveyance

Where EWB and Invoice or DC is found to be (a) missing or (b) incomplete or (c) inaccurate or (d) patently erroneous, then 'detention-seizure-release' are the prescribed steps on the condition that 100% tax and penalty is paid (2% of value in case of exempted goods) with a minimum of Rs.25,000 is prescribed. Where owner does not come forward, then 50% of value of goods less tax already paid is to be collected (5% of value in case of exempted goods). Where security is furnished to the extent of amount to be deposited (as above), the goods are required to be released.

An order is required to be passed directing the amount and tax (CGST-SGST or IGST) to be deposited. Please note that the amount so paid (as above) are deemed to be final (section 129(5)) but it is important to note that such payment can be made 'under protest' though there is no express provision to do so. No collection of amount can be without recourse of review or appeal. Issue that arises is whether officer intercepting the conveyance is authorized to make a detailed 'assessment' of the tax applicable. And if not, will not the determination made be inaccurate and even arbitrary as it is not as per provisions dealing with determination of tax. It would be trite in law to consider that the amount determined is a deposit and subject to review and appeal where the aggrieved party is free to go into all aspects of this entire detention but after securing release of the detained goods. Care must be taken to ensure completeness of the documentation during transit. Larger the dealer, greater the responsibility and lesser the tolerance for compliance failure which may be contrary to popular belief that minor errors are expected in large scale operations.

(xviii) Conclusion

EWBs contain information in two parts and **Part B** is required to render the EWB 'complete'. All movement of goods, unless specifically exempted will need to be accompanied by EWB:

- a) Whether inter-State or intra-State
- b) Whether by way of supply or not

There is time-distance formula for issuance and acceptance. Unless cancelled, EWB generated will be admitted as valid and create a trail for further reporting and verification by tax authorities. EWB complete in both Parts is required. It is to be appreciated that very limited information is required in EWB and once EWB is reported on the portal, an ERN is generated. Transporter is required to provide ERN to the authorities for inspection. Invoice or delivery challan generated need not be carried by the transporter in physical copy. Interception in-transit is based on very limited 'touch points' like Invoice or DC and EWB. Very limited discretion is allowed for entering into detailed inquiry. Familiarity with this high-tech system will take some time. EWBs are expected to bring transparency and reliability to information reported for stakeholders.

- E-way bill user manual (updated upto 26.03.2018) has been issued by National Informatics Centre New Delhi, detailing out the manner in which e-way bill shall be generated and used for movement of goods (source: https://docs.ewaybillgst.gov.in/Documents/usermanual_ewb.pdf)
- Vide Circular No. 41/15/2018 – GST dated 13.04.2018, the Board has clarified and also prescribed the procedure to be followed for inspection and detention of goods during their movement. It is also to be noted that the circular also details out the forms and its formats to be used for the purpose of inspection and detention.

68.3. Issues and concerns:

1. There is no provision for amendment of particulars in the EWB. It is believed that such a facility has not been provided so as to ensure that EWBs are not mis-utilised. Where any incorrect details have been furnished in the EWB, only two options are available: (i) Request the consignee to reject the EWB (within 72 hours / before delivery); or (ii) Cancel the EWB within 24 hours / before delivery / before interception by an officer; and generate a new EWB with the correct details. However, if such EWB cannot be rejected / cancelled within the said timelines, nothing can be done. It is therefore suggested that the person generating the EWB keeps a record of all the discrepancies, in order to furnish the reconciliation if and when sought by the proper officer. Where such records are not maintained, it may be possible for the proper officer to treat the difference as a supply effected without issuance of invoice, or treat the difference as a non-compliance with Rule 138 wherein movement is not supported by an EWB where mandated.
2. A compilation of frequently asked questions (FAQs) is available in the following links <https://docs.ewaybillgst.gov.in/html/faq.html>, <http://cbec.gov.in/resources//htdocs-cbec/gst/FAQs-on-E-way%20Bill-System.pdf>.

High court Citation concerned with above provision:

- (1) **Saji S Proprietor vs Commissioner State GST Department in the High Court of Kerala WP(C).No.35868 of 2018**

Issue:

Petitioner, a registered dealer, had purchased goods from Chennai - While transporting the goods to Kerala, the same were detained while in transit by the Assistant State Tax Officer - based on the demand made, the consignor paid tax and penalty but the remittance was made under the head 'SGST' ? - Since the remittance should have been made under the head IGST, the authorities refused to release the goods, hence this writ petition

Held:

Section 77 of the GST Act, 2017 provides for the refund of the tax paid mistakenly under one head instead of another, however, Rule 92 of the GST Refund Rules speaks of adjustment - Where the amount of refund is completely adjusted against any outstanding demand under the

Act, an order giving details of the adjustment is to be issued in Part A of FORM GST RFD-07 - Under these circumstances, High Court does not find any difficulty for the respondent officials to allow the petitioner's request and get the amount transferred from the head 'SGST' to 'IGST' – it is inequitable for the authorities to let the petitioner suffer on the count that such transfer may take some time - Second respondent directed to release the goods forthwith along with the vehicle and, then, ensure that the tax and penalty which already stood remitted under the 'SGST' is transferred to the head 'IGST' - Petition disposed of: High Court [para 9 to 11].

Statutory provisions

69. Power to arrest

- (1) *Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or under sub-section (2) of the said section, he may, by order, authorise any officer of the central tax to arrest such person.*
- (2) *Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.*
- (3) *Subject to the provisions of the Code of Criminal Procedure, 1973, —*
 - (a) *where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;*
 - (b) *in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.*

Related provisions of the Statute

Section or Rule	Description
Section 132	Punishment for certain offences

69.1. Introduction

This section deals with power of arrest when one commits any of the following offences which is punishable under clause (i) or (ii) of sub-section (1), or under sub-section (2) of sec 132 of CGST Act.

69.2. Analysis

The Commissioner is vested with the power to authorise, by an order, any Officer to arrest a person, where there is a reason to believe that such person has committed the specified offences – in (1) and (2) below:

- (1) **Offences of the kind specified in Section 132(1) (a),(b),(c) and (d):**
- (a) Supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
 - (b) Issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
 - (c) Avails input tax credit using such invoice or bill referred to in clause (b);
 - (d) Collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- AND when such offences (specified above) are punishable under Section 132(1)(i) and (ii) : In cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds Rs.250 Lakhs
- a. If above Rs 500 Lakhs, punishable with imprisonment for a term upto 5 years and fine, or
 - b. If above Rs 250 Lakhs but does not exceed Rs 500 Lakhs, punishable with imprisonment for a term upto 3 years and fine, or
- (2) A second / subsequent conviction on account of any of the offences specified under Section 132 – punishable with imprisonment for a term upto 5 years and fine:

Such person is required to be informed about the grounds of arrest and be produced before the Magistrate within 24 hours in case of cognizable and non-bailable offences and in case of non-cognizable and bailable offences the Assistant/Deputy Commissioner can grant the bail and is conferred powers of an officer-in-charge of a police station subject to the provisions of Code of Criminal Procedure, 1973.

All arrests should be made as per the provisions of Code of Criminal Procedure, 1973. Please note that relief of section 24 to 30 of Evidence Act may be availed in respect of statements made by accused. It is not clear if the Proper Officer is equivalent to a Police Officer, in as much as, whether the Proper Officer will file a Police Report under section 173 of Cr.P.C before a Magistrate (read as Commissioner as provided in section 67(10) or limited only to that section) or only a complaint is filed under 190(a) of Cr.P.C. to take cognizance.

69.3. Comparative review

Similar power of arrest of tax evaders by officer is present in most of the indirect tax legislations.

However, under the Finance Act, 1994 the power to arrest can be exercised only in cases where taxes collected and not deposited for an amount exceeding ₹ 200 lakhs.

69.4. Issues and concerns

1. While the law provides a threshold limit exceeding which the offence would be considered to be an offence by which a person may be arrested, the law does not specify any time-period in respect of the same. Therefore, consider a case where the Commissioner has reason to believe that a person has failed to issue tax invoices in respect of supplies effected during a period of 3 years, wherein the tax evaded exceeds Rs.250 lakhs. Even in such a case it appears that the Commissioner has the powers to arrest such person.
2. There is no indication as to whether the reference is made to a taxable person / registered person (GSTIN) / or any person (PAN) in the language employed in Section 132(1) that specifies the offences, being "Whoever commits any of the following offences, namely".
3. It is pertinent to note that the onus to prove that the allegations for arrest, levelled by the Commissioner or any officer authorised by him, is falsified and baseless is totally on the accused person and the officer merely needs to have a reason to believe. For instance: The officer may allege that the taxable person has availed Input Tax Credit on the basis of Invoice without actual supply of goods (that is without actually receiving the goods). Here a mere statement / record showing GRN details may not suffice and actual movement of goods and vehicles may be required to be justified by the accused by way of toll receipts and camera footage at the factory gate for instance.

69.5. FAQs

Q1. Power of arrest could be exercised by whom?

Ans. The Commissioner can authorise (by an order) any officer to arrest a person, who has committed specified offences. The Commissioner should have reason to believe that such person has committed the specified offences.

Q2. Who can be arrested?

Ans. The person committing an offence (tax evasion) as specified in –

Section 132(1) clause (i) tax evasion above Rs 500 Lakhs attracting imprisonment for a term upto 5 years and fine, or clause (ii) tax evasion above Rs 200 Lakhs attracting imprisonment upto 3 years and fine for an offence under Section 132(1) (a) to (d), or offence under section 132(2) [repeated offence – second and subsequent offence attracting imprisonment upto 5 years with fine] can be arrested by authorised officer.

Q3. What is the procedure to be followed for arrest?

Ans. (i) The person arrested should be informed about the grounds of arrest and be produced before the Magistrate within 24 hours in case of cognizable offences

(ii) In case of non-cognizable and bailable offences the Assistant/Deputy Commissioner can grant the bail and is conferred powers of an officer-in-charge of a police station subject to the provisions of Code of Criminal Procedure, 1973.

- (iii) All arrests should be made as per the provisions of Code of Criminal Procedure, 1973.

69.6. MCQs

Q1. All arrests should be made as per the provisions of _____

- (a) Code of Criminal Procedure, 1973
- (b) Civil Procedure Code
- (c) Foreign Exchange Management Act
- (d) Indian Penal Code

Ans. (a) Code of Criminal Procedure, 1973

Statutory provisions

70. Power to summon persons to give evidence and produce documents

- (1) *The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.*
- (2) *Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code.*

70.1. Introduction

This provision deals with exercise of powers to issue summons for giving evidence and for production of documents

70.2. Analysis

In any inquiry which such officer is making for any of the purposes of this Act, the Proper officer shall have power to summon

- any person, whose attendance is considered necessary,
- either to give evidence or
- to produce a document or any other thing.
- in any inquiry in the same manner
- As provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908

Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code

It would be helpful to read and be familiar with the exact nature of responsibility of acceptance of service of summons and of making statements in response to a summons. Reference may

be had to Chapter X and XI of Indian Penal Code. At the same time, Article 20(3) of our Constitution prohibits from a person being made to witness against himself. Therefore, avoidance of service of summons is unlawful but abstinence from making statements is not. Understanding the legality of these matters will assume significance in attending to such matters of inquiry before a judicial officer.

Scope of word “Summon” under Sec 70 is for “Any Inquiry”. Authorised Officer is not empowered under Sec 70 to retain the documents for which summon were issued. It has been held by in T.T.V Dinkaran v. Enforcement Officer 1995 (80) E.L.T. 745 that where summon did not mention the nature of investigation therein, it will be valid since mentioning the details about investigation may alter the person concerned to manipulate his record.

70.3. Comparative review

Name of Statute	Central Excise Act 1944	Finance Act 1994	Custom Act 1962	State Vat Laws
Section Reference	Sec 14	Sec 14 of Central Excise Act read with Sec 83 of Finance Act 1994	Sec 108	Similar powers are conferred under the State Vat laws.

70.4. FAQs

Q1. Who can issue summons and for what purpose?

Ans. Proper officer under this Act can summon to any person whose attendance is considered necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of the GST Law.

Statutory provisions

71. Access to business premises

- (1) *Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.*
- (2) *Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—*

<p>(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;</p> <p>(ii) trial balance or its equivalent;</p> <p>(iii) statements of annual financial accounts, duly audited, wherever required;</p> <p>(iv) cost audit report, if any, under section 148 of the Companies Act, 2013;</p> <p>(v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and</p> <p>(vi) any other relevant record,</p> <p>for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.</p>

Related provisions of the Statute:

Section or Rule	Description
Section 67	Power of inspection, search and seizure
Rule 139	Inspection, search and seizure
Section 66	Special audit
Section 35	Accounts and records
Section 36	Period of retention of accounts
Section 144	Presumption as to documents in certain cases

71.1. Introduction

This provision empowers any officer authorised by the officer not below the rank of Joint Commissioner to have access to any place of business of a registered person to inspect books of account, documents, computers, computer programmes, computer software and such other things as may be required and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

71.2. Analysis

For this purpose, the officer should be authorized by the officer **not below** the rank of Joint Commissioner. Experts are apprehensive of far reaching consequences of this section which is potentially capable of misuse. Strong understanding of the legal remedies available will equip in attending to these inspections.

Such an authorized officer shall have access to any place of business of registered person to inspect

- books of account,
- documents,
- computers,
- computer programs,
- computer software (whether installed in a computer or otherwise)
- and such other things as he may require as available at such premises.

The object is to carry out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

The person in charge of the premises should make available the following:

1. Records maintained by the registered person and declared to proper officer;
2. Trial balance or its equivalent;
3. Audited financial statements wherever required;
4. Cost audit report, if any;
5. Income Tax audit report, if any;
6. Other relevant records.

The documents/records should be made available within 15 working days or such extended period as may be allowed.

The documents/records can be called for by the Audit officer or Chartered Accountant or Cost Accountant nominated by the department.

71.3. Comparative review

In the erstwhile indirect tax laws, and even in various State VAT laws similar provisions exist.

71.4. FAQs

Q1. What are the documents or records that a person in charge of a place of business shall make available in terms of Provisions of section 71?

Ans. The person in charge of a place of business shall, on demand, make available:

- Records maintained by the registered person and declared to proper officer;
- Trial balance;
- Audited financial statements wherever required;
- Cost audit report, if any;
- Income Tax audit report, if any
- Other relevant records

Q2. Who are the persons empowered to call for documents/records for audit, verification, checks and scrutiny?

Ans. Audit Party deputed by the Proper Officer or a Chartered Accountant or a Cost Accountant nominated u/s 66 by the department for conducting the audit are the persons empowered to call for documents/records for audit, verification, checks and scrutiny.

71.5. MCQs

Q1. The documents called for should be provided within _____

- (a) 20 working days
- (b) 15 working days
- (c) 60 days
- (d) 30 days

Ans. (b) 15 working days

Q2. Who is liable to furnish information to empowered officers?

- (a) Director
- (b) Accountant
- (c) CEO
- (d) Person in charge of Place of Business

Ans. (d) Person in charge of Place of Business

Q3. What empowered officers can do with the information furnished to them?

- (a) Audit
- (b) Scrutiny
- (c) Verification and Checks
- (d) All of the above

Ans. (d) All of the Above

Statutory provisions

72. Officers to assist Proper Officers

- (1) *All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.*
- (2) *The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.*

72.1. Introduction

The provision requires all officers of Police, Railways, Customs and those officers engaged in the collection of land revenue including village officers, officers of state and union territory tax to assist the proper officers in the implementation of this Act.

72.2. Analysis

Below officers are empowered and required when called upon, to assist the proper officer in execution of this act:

- All officers of
 - Police,
 - Railway Officer,
 - Customs Officer
- Officer of State & Union Territory tax.
- Officers engaged in the collection of land revenue including village officers,

Even the Government may issue notification empowering and requiring any other class of officer to assist the proper officers, if required by the Commissioner.

72.3. Comparative review

Name of Statute	Central Excise Act 1944	Finance Act 1944
Section Reference	Sec 15	Sec 14 of Central Excise Act read with Sec 83 of Finance Act 1944

72.4. FAQs

Q1. Which are the officers empowered under an obligation to assist the CGST officers in the implementation of the Act?

Ans. All officers of Police, Railway, Custom, State/Central officer engaged in collection of GST and Land Revenue, Village officers, are empowered and are required to assist the proper officers to carry out the provisions of the Act.

Q2. Can the Commissioner call upon any other officer for assistance?

Ans. In terms of section 72(2) of the Act, the Government may issue notification empowering or requiring any other class of officer to assist the proper officers under this act, if required by the Commissioner.

72.5. MCQs

Q1. The _____ officer is empowered to assist the proper officer.

- (a) Registrar of Companies
- (b) Health

- (c) CBI
- (d) Railway

Ans. (d) Railway

Q2. _____ Officer is not empowered to assist the proper officer u/s 72(1) of the Act.

- (a) Police
- (b) Custom
- (c) State Excise
- (d) Railway

Ans. (c) State Excise