

Inspection Search Seizure under GST

Webinar conducted by:

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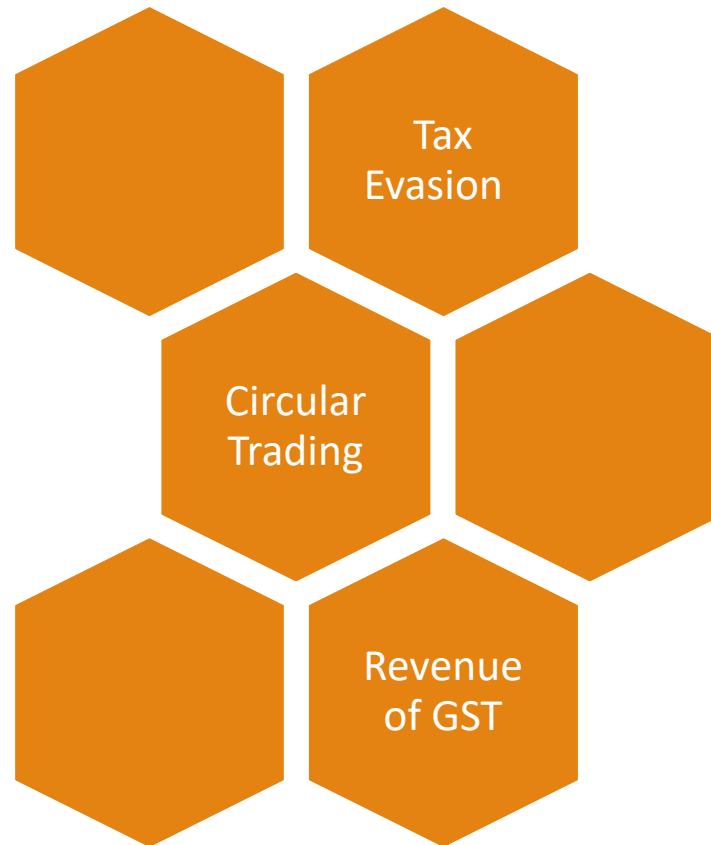
Points covered in webinar dated 25.07.2020

❖ Section 67 to Section 71

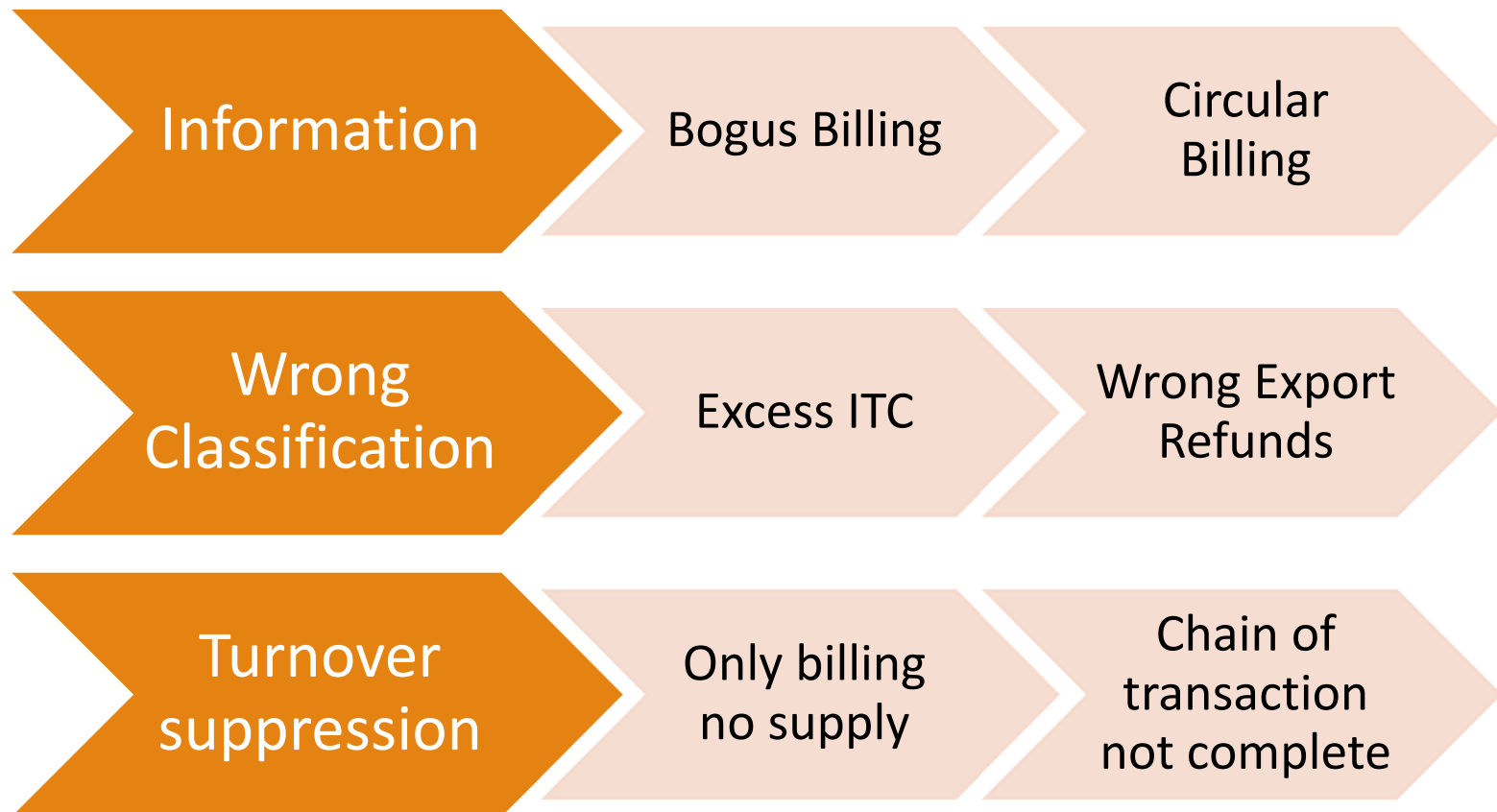
❖ Rule 132,134,135,138,139,140,141 and 159

❖ Forms GST INS 1 – GST INS 5

Why these Section and Rules



Reasons which can instigate these actions



Section 67(1): Power of Inspection

Where a Proper Officer, **not below the Jt. Comm** when, has **the *reasons to believe***,

That a **taxable person**, has ***suppressed*** any transaction relating to:

- a) supply of goods and services or
- b) stock in hand or
- c) has claimed ITC in excess of his entitlement or
- d) has indulged in contravention of any of the provisions of the Act or the Rules,

to evade payment of tax; or

Section 67(1): Power of Inspection

Any person:-

- a) in the business of transporting goods; or
- b) owner or operator of godown or warehouse or any other place is keeping the goods which have escaped the payment of tax; or
- c) has kept his accounts or goods as is likely to cause evasion of tax payable,

he may **authorise in writing** any officer of the Central Tax to carry inspection **at place of business or any other place of such persons.**

Issue authorisation in (Form GST INS 1)

Difference between Inspection and Search

Search means and involves an attempt to *find something* unknown or concealed or discover some evidence of crime.

Inspection on the other hand is an act of *examining something* probably known or partly verified.

Search Includes inspection

An inspection may be verification on surficial level whereas Search is in depth and identifying the unknown

Section 67(2): Search and Seizure

Either pursuant to inspection u/s 67(1) or otherwise,

The proper officer, not below the Jt. Comm. has ***reasons to believe*** that,

a) any goods liable to confiscation or

b) documents or books or things are secreted in any place,

he shall make an order of seizure in writing (**Form INS-02**) and

seize such goods, documents, books or things. He himself can also carry out this operation.

In matters where Directorate General of GST Intelligence (DGGI) carries out investigation then, officer of the rank of Jt. Director or above may authorise in writing any other officer of DGGI to inspect, search or seize under the above provisions.

Refer Notification 14/2017 dated 01.07.2017 officers of DGGI given all India jurisdiction

Section 67(3) & (4) : Search and Seizure

The proper officer or an authorised officer may entrust upon 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.

As per sub-section (4) officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises, any almirah, electronic devices, box or any receptacle, **where access to the above is denied.**

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

Section 67(6) & (10) : Search and Seizure

Sec 67(6): The goods seized shall be released on a provisional basis upon:

- a) Execution of Bond, and
- b) Furnishing of security in the manner and quantum prescribed

{Rule 140}

Bond will be for the value of goods in **(Form INS-04)** whereas security is to be in form of bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.

Sec 67(10): The provisions of CrPC, 1973 relating to search and seizure shall so far as may be, apply to search and seizure under this Section. Sec 165 of CrPC will apply the only modification that for the word 'Magistrate' used in sub-sec (5) thereof, the word 'Commissioner' was substituted.

Release of seized goods

As per Rule 141 of the CGST Rules 2017, in case

if the goods seized are of perishable or hazardous in nature

the said goods can be released,

if the owner of the goods 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.

On submission of proof of payment, the concerned officer *may* order the release of the said goods through **(FORM GST INS-05)**

Section 69: Power to Arrest

Where the Commissioner has reasons to believe that a person has committed any

offence under clause (a) or (b) or (c) or (d) of Section 132(1):

o which is punishable;

o under clause (i) or (ii) of sub-section (1); or

o sub-section (2) of Section 132;

he may, by order, authorise any officer of central tax to arrest such person

Section 69: Power to Arrest Offence under clause (a) or (b) or (c) or (d) of Section 132(1):

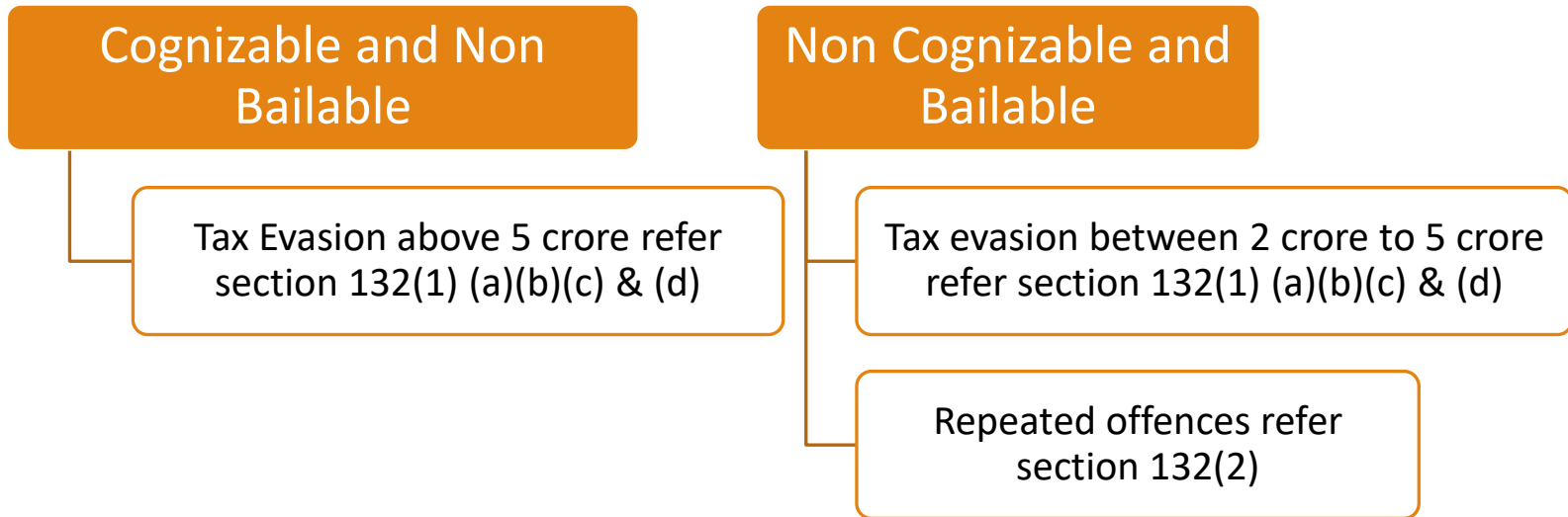
(a) Supply
without
Invoice

(b) Issue of
fake Invoices

(c) Wrongful
avail ITC

(d) Collect tax
and not pay
>3 months

Section 69: Arrest type of punishment



Section 69: Arrest and type of punishment

Offences	Punishment
Tax evasion 5crore and above	5 years imprisonment and fine
Tax evasion 2 crore to 5 crore	3 years imprisonment and fine
Tax evasion 1 crore to 2 crore	1 years imprisonment and fine
Offence u/s 132(1) (f)(g)(j)	6 months imprisonment or fine or both
Minimum imprisonment for offences u/s. 132(1) and 132(2)	Not less then 6 months
Repeated Offence	5 years imprisonment and fine

Section 70: Summons

Any person who is summoned is legally bound to attend either in person or through an Authorised Representative as directed by the officer.

Such inquiry shall be deemed to be judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code.

Exemption under section 132, 133 of the Civil Procedure, 1908 will apply for requisitions for attending under CGST/SGST.

Section 132: Exempts women who according to customs who cannot be compelled to appear in public shall be exempt from personal appearance.

Section 133: Exempts President of India, Vice President etc from appearing in Court in person.

Section 71: Access to business premises

Authorised person can have access to premises and can inspect:

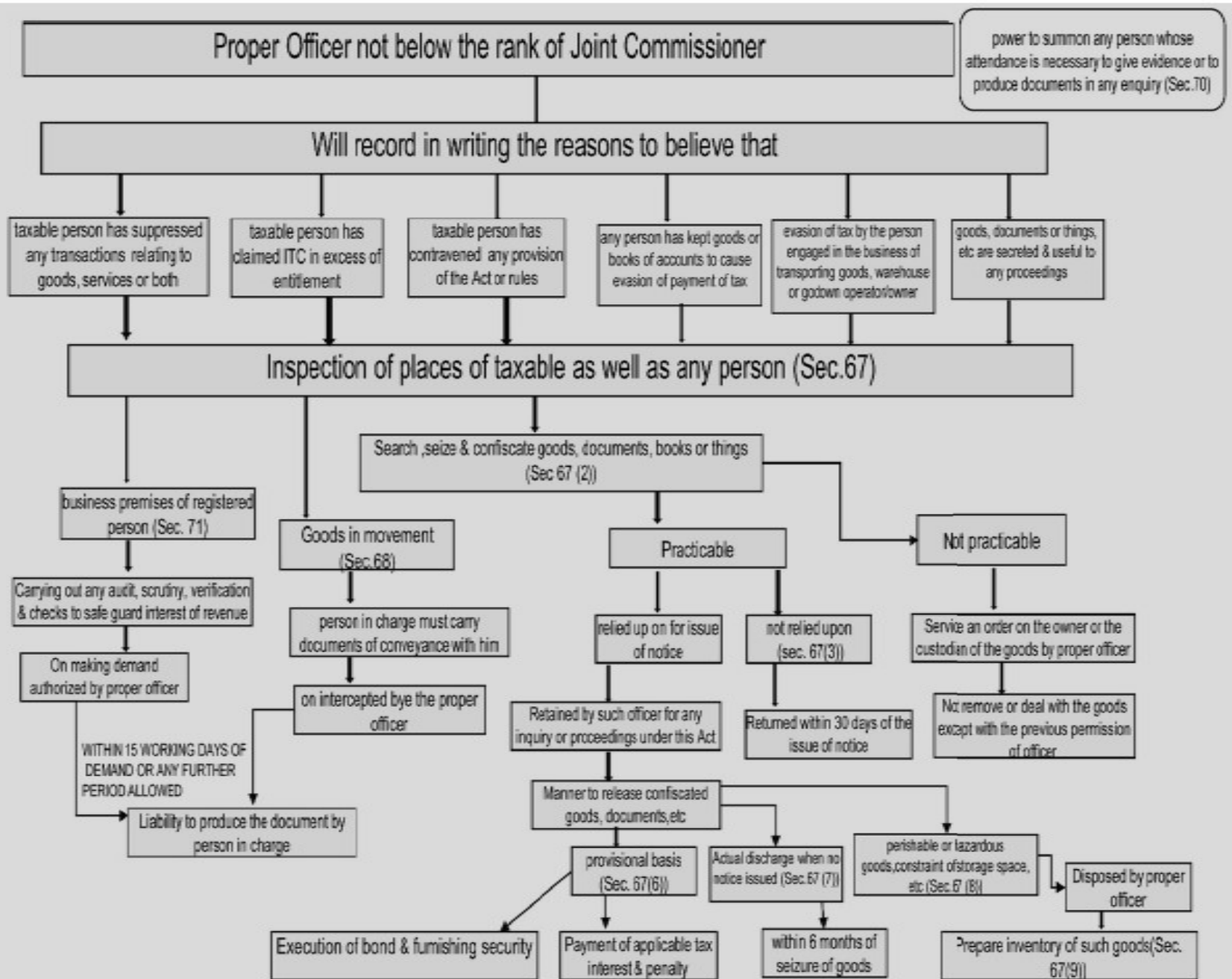
- Books of Accounts
- Documents
- Computers
- Computer programs and software whether installed or otherwise
- Other things as he may require and are available at such place

Carry on verification or audit for the benefit of the revenue

Section 71: Access to business premises

Person in charge of the visited premises must make available any of the following if called for:

- Records maintained by the person
- Trial Balance
- Statement of annual affairs duly audited wherever required
- Cost audit report if any under section 148 of the Companies Act 2013
- Income Tax Audit Report under section 44AB of the Act 1961
- Any other relevant record



Judgements

Akhil Krishan Maggu Vs Dy. Director DGGI 2020 (32) GSTL 516 (P&H)

Power of Arrest when to be exercised - Sections 69 and 132

Power of arrest should not be exercised at the whims and caprices of any officer or for the sake of recovery or terrorising any businessman or create an atmosphere of fear, whereas it should be exercised in exceptional circumstances during investigation, which illustratively may be:

- (i) a person is involved in evasion of huge amount of tax and is **having no permanent place of business**,
- (ii) a person is not appearing in spite of repeated summons and invasion of tax is huge,
- (iii) a person is a habitual offender and he has been prosecuted or convicted on earlier occasion,
- (iv) a person is likely to flee from country,
- (v) a person is originator of fake invoices, i.e., invoices without payment of tax, and
- (vi) when **direct documentary or otherwise concrete evidence is available** on file/record of active involvement of a person in tax evasion.

The Court also laid down factors and parameters for grant of anticipatory bail.

Judgements

Jayachandran Alloys (P) Ltd. Vs Suptd. 2019 (25) GSTL 331 (Mad) dated 04.04.2019

Power to punish set out in Section 132 to stand is triggered only once it is established that assessee **'committed'** offence that needs to be necessarily be **post-determination** of demand due from assessee, that itself has to necessarily follow process of assessment - Offences set out under Clauses (a) to (l) of Section 132(1) refer to items, that constitute matters of assessment and would form part of order of assessment, **to be passed after process of adjudication is complete** and taking into account submissions of assessee and careful weighing of evidence found and explanations offered by assessee - Manner of recovery of credit in cases of excess distribution of same set out in Section 21 of Central Goods and Services Tax Act, 2017 and 'determination' of excess credit by way of procedure set out in Section 73 or 74 *ibid*, pre-requisite for recovery thereof - When recovery made subject to 'determination' in assessment, department's arguments of **punishment for offence alleged can be imposed even prior to such assessment, clearly incorrect** -

Only in cases where assessee, **habitual offender** that authorities might be justified in proceedings to pre-empt assessment and initiate action against assessee in terms of Section 132, for reasons to be recorded in writing - No allegation, either oral or in writing that petitioner is habitual offender - Department intended to intimidate petitioner with possibility of punishment under Section 132 and action contrary to scheme of Act - While activities of assessee contrary to scheme of Act liable to be addressed swiftly and effectively by Department, officials cannot be seen to be acting in excess of authority vested under statute - Issue answered in favour of assessee.

Court followed Delhi HC judgment in Make My Trip (India) P. Ltd Vs UOI 2016 (44) STR 481

(Del) which was confirmed by SC 2019 (22) GSTL J-59.

Judgements

Vimal Yashwant Giri Goswami vs. State of Gujarat: dated 07.08.2019

Anticipatory Bail granted.

Remarks: The powers of arrest under Section 69 of the Act, 2017 are to be exercised with lot of care and circumspection. Prosecution should normally be launched only after the adjudication is completed. To put it in other words, **there must be in the first place a determination that a person is “liable to a penalty”**. Till that point of time, then entire case proceeds on the basis that there must be an apprehended evasion of tax by the assessee. In the decision referred to above, emphasis has been laid on the safeguards as enshrined under the Constitution of India and in particular Article 22 which pertains to arrest and Article 21 which mandates that no person shall be deprived of his life and liberty for the authority of law. The High Court has extensively relied upon the decision of the **Supreme Court in the case of D. K. Basu vs. State of West Bengal reported in 1997(1) SCC 416**. In the meantime, **no coercive steps of arrest shall be taken against the writ applicant.**

Judgements

Mohammed Yunus v/s. State of Rajasthan [2020] 114taxmann.com 159 (Rajasthan)

ORDER DATED 16.12.2019 BY HON'BLE RAJASTHAN HIGH COURT:

Held that: Case still under investigation and the quantum of evasion is large and also since fake invoices have been issued the **bail is rejected**

Paridhi Jain v/s. State [2020] 114 taxmann.com 401(Rajasthan) by order dated 20.01.2020 (HIGH COURT OF RAJASTHAN)

Assessee , a practicing Chartered Accountant was in custody u/s. 132(1)(i) offence. **Bail was granted** on the undertaking provided by the assessee for full co-operation with the investigation agency.

Section 68: Inspection of goods in movement (E Way Bill) read with Rule 138

As per section 68 the government may:

Specify/prescribe document required for carrying **consignment of goods**

Specify the **value** above which documents are required

When consignment is **intercepted** by the proper officer at any place, the person carrying goods should produce the prescribed documents and devices and will allow the inspection of the goods.

Food for thought (E-Way Bill)

Most circulars are issued by centre and implemented by the state officers



E-way bill is only to provide eyes to the authorities for monitoring the movement of goods only and avoid fraud



Interesting to deal with the departmental mindset implementing the E –Way bill rules across India

Who can generate E-Way Bill

Any person who causes the movement of goods is required to generate E-Way bill in EWB-01

Any Person means and includes:

- ✓ Person including un-registered Person
- ✓ Taxable Person
- ✓ Registered Person

Penalties for Non Generation of E-Way Bill

❑ Penalty of 10,000/- for non generation of E Way bill

OR

❑ Amount of Tax sought to be evaded whichever is greater

Moreover, as per Section 129(1) of CGST Act, 2017, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the Rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such ***goods and conveyance shall be liable to detention or seizure.***

Important circulars

Circular No. 41/15/2018 Dated 13-04-2018

The circular lays down the procedure for interception of conveyances for inspection of goods in movement and detention release and confiscation of such goods & conveyances.

Circular No. 49/23/2018 Dated 21-06-2018

The circular lays down the procedure for interception of conveyances for inspection of goods. It says that time of Release & says that goods once checked not to be rechecked in view of light of rule 138 C(2) & clarifies that “ only such goods or conveyances should be detained/ confiscated in respect of which there is a violation”. violation means violation of the Provisions of the GST Acts or the rules made thereunder

Important circulars

Circular No. 61/35/2018 Dated 04-09-2018

This circular lays down the E-way bill procedure in case of storing of goods in godown of Transporter.

Circular No. 64/38/2018 Dated 14-09-2018

This circular is clarificatory in nature and speaks about mistake in E-way bill which provides Relaxation on some points pertaining to penalty and further clarification about the nature of mistakes which may be ignored.

Circular No. 64/38/2018-GST, dated 14-9-2018

Proceedings under Section 129 of the CGST Act may not be initiated, inter alia, in the following situations:

- a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct
- b) Error in the pin-code but the address of the consignor and the consignee mentioned is correct,
- c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct
- d) Error in one or two digits of the document number mentioned in the e-way bill
- e) Error in 4 or 6-digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct
- f) Error in one or two digits/characters of the vehicle number

Press Release dated 23.04.2018

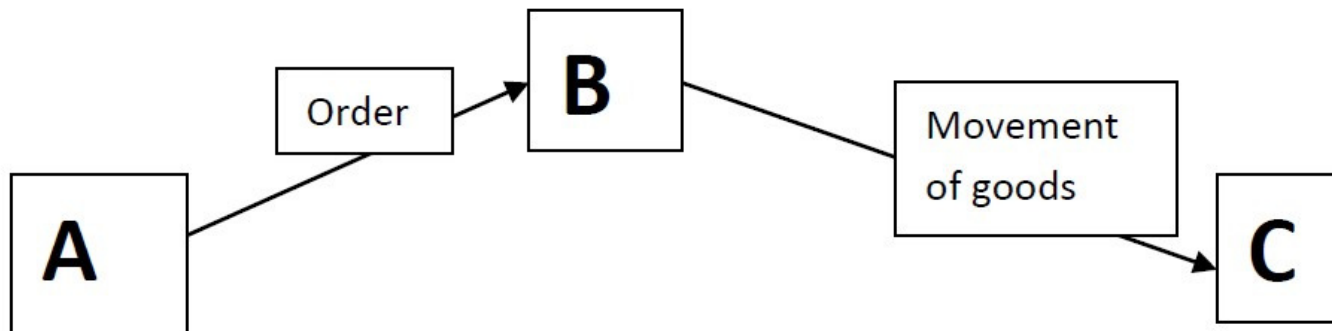
Telling us the method of Generation of EWB-1 in case of supply of goods(in cases of bill to ship to) which was always clear that only one E-Way bill is required to be issued & not more

The example given has raised more questions than answering the original question itself.

Issues regarding “Bill To Ship To” for e-Way Bill under CGST Rules, 2017

A number of representations have been received seeking clarifications in relation to requirement of e-Way Bill for “Bill To Ship To” model of supplies. 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.



2. 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'.

3. Queries have been raised as to who would generate the e-Way Bill for the movement of goods which is taking place from 'B' to 'C' on behalf of 'A'. 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.

Thank you

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