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NO TAX & PENALTY U/S 129 OF GST FOR
NON-GENERATION OF E-WAY BILL

Whether non generation / non carrying of E-way bill 01 is contravention of the GST Act or Rules?

In pursuance of such non carrying of E-way bill, goods and conveyance are liable to be detained only on account of contravention of the rule but not resulting into imposition of tax and penalty U/s 129.

Provisions of GST in this respect are to be read and understood first.

Sec. 68 of CGST Act, 2017 requires a person in charge of a conveyance to carry document and devices with the goods, carrying any consignment of goods in transit.

Sec. 68(1) The Govt. may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may specified to carry with him such documents and such devices as may be prescribed.

While rule 138 and 138(A) are prescribed for carrying out the provisions of Sec. 68. As the informations are to be furnished in generation of E-way bill-01 before commencement of movement of goods.

138(1) Every registered person who causes movement of goods of consignments 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 movements furnish information relating to 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.

138(A) – 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 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.

“Document” is a deed, writing or inscription by which any fact is proved as such while as per sec. 2(41) **‘document’ – includes written or printed because of any sort in electronic record as defined in clause (t) of sec. 2 of Information Technology Act, 2000 (21 of 2000)** as clause (t) of sec. 2 of I.T. Act, 2000 i.e. **electronic record** is provided as – **“electronic record” means data record, or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated**

micro fiche; उपर्युक्त से स्पष्ट है कि ई-वे बिल अभिलेख के अन्तर्गत नहीं आता है। as such document is a Tax invoice or bill of supply or delivery challans which are issued by which the fact of sale (Supply) is proved along with seller's and purchases identity Expl. 2 of rule 130(1) also confirm the fact of being document such as tax invoice or bill of supply or delivery challan. Which is confirmed by Expl. 2 as reproduced below.

Expl. 2 – For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of sec. 15, declared in **an Invoice**, a bill of supply or a delivery challan, as per 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.

From above it is concluded that tax invoice or bill of supply are documents while e-way bill is not a 'electronic record' as generated on a common portal to carry with the goods in transit after having furnished informations before movement of the goods. But a form as per clause (b) or rule 2 of GST rule 2017.

While as electronic record is not defined in G.S.T. as per above definition of electronic record in GST, '**electronic record**' would be **electronic cash ledger**, the Cl, (43) of sec. 2, electronic credit ledger Cl. 46 of sec. 2 etc. which are kept and maintained by the supplier, in due course of business but not the e-way bill – 01

which is generated electronically to be carried with the goods in physical form. In spite of it e-way bill is a transitory device or form which consist of a scheme, or a plan to be produced before officer in transit only, containing information relating to the said goods during inspection for verification as per rule 138 and 138(A).

In view of the above whether non carrying or non generation of e-way bill will result into contravention of the Act or rules as per sec. 129 of the GST Act which is reproduced as –

129(1) notwithstanding anything contained in this Act. Where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act / or the rules made there under, all such goods and conveyances 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 and after detention or seizure, shall be released –

(a) on **payment of the applicable tax** and penalty equal to one hundred percent of the tax payable on such goods and from above it has to be seen the **what is contravention of the Act and rules ?**

Here it is pertinent to note that as discussed above e-way bill – 01 is not a document but a form which consists of a plan or scheme in transit. As such carrying of a “**document**” i.e. Tax invoices or bill of supply are said to be carried with goods as per sec. 68. Then 138A is to be complied but absence of a copy of e-way bill i.e. (form) in physical form certainly invite or attract the contravention of the rule U/s 138A(b) **but not the contravention of the Act**. As carrying of a

document i.e. tax invoice or bill of supply complies the GST Act's requirement but seizure on account of it, made U/s 129 of CGST Act would be quite illegal and void ab inito.

As it is confirmed that as per sec. 129 the person who transports the goods or stores in transit in contravention of the act i.e. carrying of a goods without tax invoice or bill of supply would be detained or seized only then the goods and conveyance would be liable to be detained as such applicable tax and penalty as per clause (a) (b) could be realize u/sub sec. 3 of sec. 129.

But e-way bill-01 is a form to be filled up, the informations regarding the sale transaction before commencement of the movement of the goods. As its non-generation of the e-way bill would not be contravention or the Act but **imitation i.e. no follow up such rule**, as imitation is an act to follow such rule. If e-way bill is not accompanied with goods in transit then it can not be said that rule is contravened as contravention is an to act opposite to obligation to act or follow up in prescribed way. As e-way bill is enacted by rule 138 / 138A which is implemented by the Govt. by issuing a notification which requires information to be furnished before commencement of the movement of goods by generating e-way bill as such non generation of e-way bill would be a technical negligence or mistake which may be resulted into contravention of the rule 138.

Here it is pertinent to note that **sec. 164 prescribes to make rules by the Govt. for carrying out the provisions of this Act.**

As such the Govt. is empowered to make rules in this regard by Sec. 164 of CGST Act, 2017 which follows as –

(i) The Govt. may, on the recommendation of the council by notification make rules for carrying out the provision of this Act.

As rule 138 & 138A are made for carrying out the provision of this Act, i.e. Sec. 68.

(ii) Without prejudice to the generality of the provision of sub-sec. (1), the Govt. may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

While Sub-sec. (4) of sec. 164 is prescribed as – which is to be read specifically in this regard.

(4) Any rule made of sub-sec (1) or sub-sec (2) may provide that a contravention thereof shall be liable to a penalty **not exceeding ten thousand rupees.**

As rule 138 and 138A are required to be made for carrying out provision of sec. 68 of CGST Act, 2017 U/s 164(i) & (ii).

Hence it is confirmed that absence of e-way bill or non generation of e-way bill, being a technical mistake or breach may be contravention of the rule 138 & 138A as such it will result into imposition of penalty Rs. 10,000/- as prescribed in 164(4) of CGST Act specifically. As such seizure of goods or conveyance U/s 129 of CGST Act in the absence of e-way bill or on mere minor mistake in e-way bill would be unauthorized, illegal **except in the case of non-carrying of a documents i.e. Tax invoice or bill of supply.**

As such inference of Sec. 129, is that detention of a conveyance is prescribed for verification of e-way bill in transit for non-carrying of e-way bill. And seizure of goods and conveyance can be made only for goods which are carried without Tax Invoice or bill of supply.

Moreover it is held by apex court that when a specific provision exists in the Act regarding any issue or for any specific purpose. Then no any other provision of the act i.e. sec. 129 of GST would be invoked for the same. As imposition of penalty not exceeding Ten thousand only is prescribed in sub-sec. (4) of sec. 164 of GST Act for contravention of the rule i.e. 138. Which is made for carrying out provision of this Act i.e. sec. 68.

As apex court held and confirmed in Mathelam Agrawal Vs. State of M.P. 2000 STJ-218 SC as –

“The intention of the legislature in a taxation statute is to be gathered from the plain language of the provision particularly when the language is plain and unambiguous. In taxing statute it is not possible to assume what is stated in the plain language. It is not the economic results sought to be obtained by making the provisions which is relevant in interpreting a fiscal statute.

Apart from above, as per sec. 125, a general penalty is prescribed for a person who contravenes any of the provision of this Act or any rules for which no penalty is provided separately shall be liable to a penalty to be extended up to 25 thousand rupees. Which is not applicable in the case of non carrying of e-way bill with the

goods in transit being a specific provision u/sub sec. (4) of Sec. 164 of GST Act, 2017.

Moreover as sec. 130(1)(iv) also requires, contravention any of the provision of this Act or the rules made there under with intent to evade payment of tax.

Moreover as the Hon'ble S.C. held and confirmed this fact that if there is no intention to evade payment of tax exists then no penalty can be inflicted as held by Hon'ble S.C. in Jain Shudh Vanaspati Ltd. Vs. State of U.P. 1983 UPTC-1981.

“The power to retain the goods and levy penalty in respect thereof can not be exercised merely for the reason that the said goods were not accompanied by the requisite document or the document accompany them were false. This power can be exercised if there is material before the detaining authority to indicate that goods are being imported in an attempt to evade assessment or payment of tax due or likely to be due under the Act.

As such having had tax invoice or bill of supply with goods in transit, only on account of infringement of so called technical rule i.e. non generation of e-way bill-01 goods do not require to be confiscated as well as imposition of penalty as there exists no intention to evade payment of tax as the tax has already been charged on the Tax Invoice or bill of supply carried with the goods.

Apart from above apex court also held that legislature's intention should prevail over addition or substitution by own acts or intentions by assessing authority. As held by apex court in **Assessing**

authority cum excise and taxation officer Vs. East India Cotton Manufacturing Co. (P) Ltd 1981 (48) STC-239 SC.

“A statute must be construed to its plain language and neither should anything be added nor should anything be substituted unless there are adequate grounds to justify the inference that the legislature clearly so intended”.

As such it is concluded that non carrying / non generation of e-way bill – 01 will attract only penalty for contravention of the rule 138A, not exceeding Rs 10,000/- as provided in sub-sec. 4 of sec. 164 of GST Act and Rs. 500/- or 1000/- for mere minor technical mistake in the e-way bill carried with the goods in transit as per circular dt. 64/38/2018 GST – 14/9/2018 issued by CBEC but no seizure and imposition of tax and penalty U/s 129 of CGST Act, 2017 could be made.