

Discussion on
Detention of Goods and
Vehicle during transit
under GST

(Section 129 and 130 of CGST Act, 2017)

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At “ICAI Bhawan”

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Amendments in section - 129 Detention, seizure and release of goods and conveyances in transit*

Old Provision	After Amendment
<p>(1) <u>Notwithstanding anything contained in this Act</u>, 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 and after detention or seizure, shall be released,--</p> <p>(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;</p> <p>(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;</p> <p>(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:</p>	<p>(1) <u>Notwithstanding anything contained in this Act</u>, 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 and after detention or seizure, shall be released, --</p> <p>(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;</p> <p>(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;</p> <p>(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:</p>

<p>Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.</p>	<p>Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.</p>
<p>(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.</p>	<p><u>Omitted vide the Finance Act, 2021, effective from a 01.01.2022 by Central Government</u></p>
<p>(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).</p>	<p>(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, <u>pass an order within a period of seven days from the date of service of such notice,</u> for payment of penalty under clause (a) or clause (b) of sub-section (1)</p>
<p>(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.</p>	<p>(4) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.</p>
<p>(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.</p>	<p>(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.</p>
<p>(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:</p> <p>Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.</p>	<p>(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):</p> <p><u>Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less;</u></p>

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

**Emphasis applied*

Amendments in Section 129(1), related to Payment of Penalty at glance, relating to Detention, Seizure and release of goods & conveyance in transit:

Scenario	Goods and Conveyance would be release subject to the below payment		
	Nature of Goods	Existing Provisions	Amendment by the Finance Bill 2021
If the owner comes forward	Taxable Goods	Applicable tax and 100% Penalty	Penalty equal to 200% of tax payable on such goods
	Exempted Goods	2% of the value of goods or Rs. 25000, whichever is lower	2% of the value of goods or Rs. 25000, whichever is lower
If the owner doesn't come forward	Taxable Goods	Applicable tax and penalty equal to 50% of the value of goods	Penalty equal to 50% of the value of such goods or 200% of the tax payable on such goods whichever is higher
	Exempted Goods	5% of the value of goods or Rs. 25000, whichever is lower	5% of the value of goods or Rs. 25000, whichever is lower

Amendments in section - 130 Confiscation of goods or conveyances and levy of penalty*

Old Provision	After Amendment
<p>(1) Notwithstanding anything contained in this Act, if any person—</p> <p>(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or</p> <p>(ii) does not account for any goods on which he is liable to pay tax under this Act; or</p> <p>(iii) supplies any goods liable to tax under this Act without having applied for registration; or</p> <p>(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or</p> <p>(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,</p> <p>then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.</p>	<p>(1) Where any person –</p> <p>(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or</p> <p>(ii) does not account for any goods on which he is liable to pay tax under this Act; or</p> <p>(iii) supplies any goods liable to tax under this Act without having applied for registration; or</p> <p>(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or</p> <p>(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,</p> <p>then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.</p>

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods **an option to pay in lieu of confiscation, such fine as the said officer thinks fit:**

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods **an option to pay in lieu of confiscation, such fine as the said officer thinks fit:**

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable **shall not be less than the penalty equal to hundred per cent. of the tax payable on such goods;**

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

Omitted vide the Finance Act, 2021, effective from 1-1-2022.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7)The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding **three months** to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding **three months** to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

**Emphasis applied*

Observation of Hon'able Gujarat High Court in case of Synergy Fertichem Pvt. Ltd vs State Of Gujarat on 23 December, 2019 (C/SCA/4730/2019)

In the above case in Para 102 & 103 Hon'able Gujarat High Court observed as follows

102. In such circumstances, referred to above, we propose to take the view that in all cases, without any application of mind and without any justifiable grounds or reasons to believe, the authorities may not be justified to straightway issue a notice of confiscation under Section 130 of the Act. For the purpose of issuing a notice of confiscation under Section 130 of the Act at the threshold, i.e., at the stage of Section 129 of the Act itself, the case has to be of such a nature that on the face of the entire transaction, the authority concerned is convinced that the contravention was with a definite intent to evade payment of tax. **We may give one simple example. The driver of the vehicle is in a position to produce all the relevant documents to the satisfaction of the authority concerned as regards payment of tax etc., but unfortunately, he is not able to produce the e-way bill, which is also one of the important documents so far as the GST Act, 2017 is concerned. The authenticity of the delivery challan is also not doubted. In such a situation, it would be too much for the authorities to straightway jump to the conclusion that the case is one of confiscation, i.e, the case is of intent to evade payment of tax.**

103. We take notice of the fact that practically in all cases, after the detention and seizure of the goods and the conveyance, straightway notice is issued under Section 130, and in the said notice, **one would find a parrot like chantation "as the goods were being transported without any valid documents, it is presumed that the goods were being transported for the purposes of evading the tax".** We have also come across notices of confiscation, wherein it has been stated that the driver of the conveyance is presumed to have contravened the provisions of the Act or the Rules with intent to evade payment of tax. This, in our opinion, is not justified. The resultant effect of such issue of confiscation notice at the very threshold, without any application of mind or without there being any foundation for the same, renders Section 129 of the Act practically otiose. We take cognizance of the fact that once the notice under Section 130 of the Act is issued, then the vehicle is not released even if the owner of the goods is ready and willing to pay the tax and the penalty that may be determined under Section 129 of the Act. Such approach leads to unnecessary detention of the goods and the conveyance for an indefinite period of time. Therefore, what we are trying to convey is that all cases of contravention of the provisions of the Act or the Rules, by itself, may not attract the consequences of such goods or the conveyance confiscated under Section 130 of the Act. Section 130 of the Act is altogether an independent provision which provides for confiscation in cases where it is found that the intention was to evade payment of tax. Confiscation of goods or vehicle is almost penal in character. In other words, it is an aggravated form of action, and the object of such aggravated form of action is to deter the dealers from evading tax.

The Observation of HONOURABLE MR. JUSTICE A.C.RAO of Gujarat High Court in case of Synergy Fertichem Pvt. Ltd vs State Of Gujarat on 23 December, 2019 (C/SCA/4730/2019) in Concluding Para 187 to 190

187. I have had the benefit of going through the final conclusion drawn by my Learned Brother Justice J.B. Pardiwala in the judgment, with which, I have concurred. However, I would like to add few words of my own on the subject.

188. From the plain reading of Sections 129 and 130 of the Act, **it is clear that the suppliers or receivers of the goods transport any goods in contravention of provisions of the Act or the Rules made there under are liable for the detention or seizure of the goods under Section 129 of the Act and under Section 130 (i)(v) of the Act for confiscation of the goods and conveyance. Thus, for the same breach and/or contravention of the provisions of the Act, there are two types of penalties provided under Section 129 and Section 130(i)(v) of the Act.**

189. In this regard, we would like to observe as held by the Supreme Court that it would be important to notice certain well settled canons of interpretation of statutes. The primary and foremost task of a Court in interpreting a statute, is to **ascertain the intention of the legislature, actual or imputed**. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactments. If two constructions are possible upon the language of the statute, the **Court must choose the one which is consistent with good sense and fairness**, and eschew the other which makes its operation unduly oppressive, unjust or unreasonable or which would lead to strange, inconsistent results or otherwise introduce an element of bewildering uncertainty and practical inconvenience in the working of the statute. For this purpose, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need not be meek and mute submissions to the plainness of the language. **To avoid patent injustice, anomaly or absurdity, the Court would well be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary.** Though normally it is not permissible to read words in a statute which are not there, but, "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words." Having regard to the context in which a provision appears and the object of statute in which the said provision is enacted, the Court should construe it in a harmonious way to make it meaningful. An attempt must always be made so as to reconcile the relevant provisions as to advance the remedy intended by the statute.

190. I am of the view that the Legislature should, once again, look into both the provisions, i.e, Sections 129 and 130 of the Act and amend the sections accordingly so as to remove certain inconsistencies in the two provisions. Let this aspect be looked into by the State Government in accordance with law.



*Thank
you*



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