

PART-I

ERRONEOUS INVOCATION OF SECTION 129 OF CGST ACT, 2017

The trigger for this article is few case laws decided by High Courts on detention/seizure of goods during recent past which are happening almost in several states despite clear departmental clarifications. The main reason for such happenings is due to lack of required minimum understanding of the exact legal position as goods with high value are transported by the driver who may not be aware of GST provisions and the officer intercepting the vehicle is also instructed to do so.

As the valuable time of the High Courts, learned legal professionals which could otherwise focus on much complicated provisions of CGST Law is simply wasted on a minor issue due to lack of clarity at both ends, this article intends to create awareness on this topic.

Section 129 reads as 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 thereunder, all such goods and conveyance used as a means of transport for carrying the said goods shall be liable for detention or seizure.

While the section is on detention or seizure of goods, vehicle as well as documents, where there is a contravention of provisions of this Act, it is happening in many cases without establishing that there is contravention.

It is really unfortunate situation that CBIC had to issue three Circulars on this subject which are discussed in the following paragraphs. It is suggested that all the three circulars may be downloaded from CBIC website itself and always carried by the respective drivers to enable them to furnish the same to the officer who intercepts the vehicle. It helps in two ways.

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The officer, even when aware of the circulars is forced to take decision based on the circular and the supplier or receiver who is actually transporting the goods may strengthen the case by furnishing such circulars to the concerned officer

The first Circular was issued on 13/04/2018 against **reference number 41/15/2018-GST**. This circular sets out detailed procedures to be followed while invoking detention/seizure. This circular was amended vide **circular number 49/23/2018-GST on 21/06/2018**. The purpose of the amendment was mainly to avoid detention of entire consignment, where there is a defect only in respect of part of the said consignment.

However, even after these two circulars, desired results were not forthcoming and the CBIC was required to issue one more **circular vide reference number 64/38/2018-GST dated 14/09/2018**. This is the most important circular and the same is analysed below.

The extent to which the CBIC was forced to come down and explain not to detain or seize goods on minor procedural irregularities as explained in para 5 of the above circular is really a matter of concern. This is a good step in order to avoid such detention in undesirable cases. However, the danger is that the field formations may allow only to the extent of examples quoted, without appreciating the fact that this circular is a guideline to avoid unnecessary litigation.

Para	Narration	HIDDEN MESSAGE to field formation
a	Spelling mistake in the name of consignor or consignee but GSTIN wherever applicable is correct	Interpret narrowly and detain in all other cases
b	Error in pin code but addresses are correct except when such pin code increases the validity period of	Detain even if there is a comma, full stop or spelling mistake

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	e way bill	elsewhere
c	Error in address of consignee but location and other details of consignee are correct	Interpret narrowly
d	Error in one or two digits of the document	Maximum two digits
e	Error in 4 or 6 digits level of HSN where first two digits are correct and rate is same	Interpret narrowly
f	Error in one or two digits/characters of vehicle number	Maximum two only permitted

To avoid the possibility of interpretation based on hidden message as above, field formation may be instructed to be liberal wherever there was no intention to evade the payment of GST as it would not be possible while giving examples so exhaustively by covering all possible errors. The officers have liberty to levy penalty as per law and as explained in the Circular.

It was held by Allahabad High Court that when substantial compliance of the provision is disclosed and when the physical inspection tallies with goods declared in the e way bill, and no intent of tax evasion is made out, proceedings under section 129 is diminished. *M/s. Monotech Systems Limited Vs State of U P and two others, - 2025 (1) TMI 207 - ALLAHABAD HIGH COURT*

In a very peculiar case, which was decided by the Allahabad High Court on 17/02/2025, it is observed that all other documents were produced except e invoice. Even physical invoice was shown as e invoice could not be generated due to technical glitch. The officers went to the extent of detention, even without establishing that there was an intention to evade payment of GST.

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Tax payers who transport goods are required to take certain precautions to ensure that goods are not detained or seized during the course of transportation. Senior officials of the GST department may also instruct the officer who inspects the documents to pass orders based on the facts and circumstances of the cases and to resort detention or seizure, only when the intention to evade payment of GST is established.

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PART-II

FREQUENTLY ASKED QUESTIONS

General Understanding

1. **What is the main reason for frequent detention/seizure of goods under GST?**
 - The main reason is the lack of understanding of legal provisions by transporters. Drivers, in particular, may not be aware of GST rules, which can lead to unintentional contraventions.
2. **Under which section of GST law are goods detained or seized?**
 - Section 129 of the CGST Act empowers officers to detain or seize goods, conveyance, and documents if transported in contravention of GST provisions.
3. **What are the key conditions for detention under Section 129?**
 - Goods can be detained only if they are transported in violation of GST provisions or rules. There must be an established contravention; otherwise, detention is not justified.

CBIC Circulars on Detention

4. **How many CBIC circulars have been issued regarding detention/seizure under GST?**
 - CBIC has issued three key circulars:
 - Circular No. 41/15/2018-GST (13/04/2018)
 - Circular No. 49/23/2018-GST (21/06/2018)
 - Circular No. 64/38/2018-GST (14/09/2018)
5. **What was the purpose of Circular No. 49/23/2018-GST?**
 - It clarified that the entire consignment should not be detained if only part of the consignment has an issue.
6. **What is the significance of Circular No. 64/38/2018-GST?**
 - This circular instructs officers not to detain/seize goods for minor procedural errors unless tax evasion intent is evident.

7. What precaution should transporters take regarding these circulars?

- Transporters should carry copies of these CBIC circulars and show them to officers if their goods are detained unnecessarily.

Common Errors and Their Interpretation

8. What types of minor errors should not lead to detention/seizure?

- Minor errors such as:
 - Spelling mistakes in consignee/consignor names (if GSTIN is correct).
 - Incorrect PIN code (if address is correct and does not impact e-way bill validity).
 - Minor mistakes in vehicle number (up to two characters).

9. What is the risk of hidden messages in circulars?

- Officers may interpret the examples in the circulars too narrowly, leading to unnecessary detention.

10. How should officers interpret procedural errors in documentation?

- They should be liberal and penalize only when intent to evade tax is evident, rather than detaining goods for trivial errors.

Key Court Judgments on GST Detention

11. What was the ruling in Monotech Systems Limited Vs State of U.P.?

- The Allahabad High Court ruled that if all GST documents match the physical inspection and there is no intent to evade tax, detention under Section 129 is not valid.

12. What happened in Agarwal Steels Vs Additional Commissioner (Grade 2)?

- The transporter provided all documents except the e-invoice, which couldn't be generated due to a technical glitch. The court found that detention was unjustified.

13.What was the decision in S.P. Fabriccreators Vs State of U.P.?

- The court gave a ruling similar to the Monotech Systems case, favoring the taxpayer when there was substantial compliance.

14.What was the ruling in Vishnu Singh Vs State of U.P.?

- The High Court ruled that penalties were wrongly imposed when an e-way bill error was due to SAP-generated system numbers instead of the actual e-invoice number.

15.What do these court cases indicate?

- Courts are consistently ruling against arbitrary detentions and emphasizing that only genuine tax evasion cases should face penalties.

Precautions for Taxpayers and Transporters

16.What steps should transporters take to avoid detention?

- Ensure all required documents are accurate and available, including:
 - E-way bill
 - E-invoice (if applicable)
 - GST invoice
 - Proper vehicle number in documentation

17.What should transporters do if their goods are detained unjustly?

- Show CBIC circulars and request a written reason for detention. If not resolved, escalate the matter legally.

18.Can an e-way bill error alone justify detention?

- No, as per High Court rulings, minor errors in e-way bills without intent to evade tax should not lead to detention.

19.How should businesses ensure compliance?

- Regular training for logistics teams, periodic checks on documentation, and awareness of GST provisions.

20.Can a driver's ignorance of GST rules be a reason for detention?

- No, detentions should be based on actual contraventions, not lack of knowledge by drivers.

Role of Senior GST Officials

21.What should senior GST officials do to reduce unnecessary detentions?

- Instruct field officers to act based on facts and avoid detaining goods for minor errors unless tax evasion is suspected.

22.What is the penalty for procedural errors?

- The penalty depends on the severity of the error. However, minor errors should not lead to harsh penalties or detention.

23.Can businesses appeal against wrongful detention?

- Yes, businesses can appeal in appropriate forums, including High Courts, for relief.

24.Why is there inconsistency in detention practices across states?

- Different interpretations of GST provisions by officers lead to variations in enforcement.

25.What is the ultimate solution to this issue?

- Awareness among transporters, proper training of GST officers, and strict implementation of CBIC circulars without unnecessary detentions.

PART-III

RELATED CIRCULAR/NOTIFICATIONS/CASE LAWS

M/S SHAMHU SARAN AGARWAL AND COMPANY

VS.

ADDITIONAL COMMISSIONER GRADE-2 AND 2 OTHERS

WRIT TAX NO. 33 OF 2022

(ALLAHABAD HIGH COURT) JANUARY 31, 2024

Background & Issue

The petitioner, M/S Shamhu Saran Agarwal & Co., filed a writ petition under Article 226 of the Constitution of India, challenging the imposition of a penalty under Section 129 of the Uttar Pradesh Goods and Services Tax (UPGST) Act, 2017.

The dispute arose when Commercial Tax Officer, Mobile Squad-6, Agra, detained goods being transported by the petitioner, alleging that the valuation of goods was lower than the market rate.

The officer issued a penalty order on December 20, 2020, citing under-valuation as the reason. The petitioner appealed to the ***Additional Commissioner Grade-II (Appeal)-II, State Tax, Agra***, who upheld the penalty order on September 17, 2021.

The petitioner contended that mere under-valuation is not a valid reason for detention under GST laws and that the appropriate legal remedy for valuation disputes lies under Sections 73 and 74 of the UPGST Act, 2017, which deal with demand and recovery of tax.

Court's Observations & Decision

- **Improper Detention & Lack of Authority**

The Court noted that the GST officer detained goods solely on the basis of under-valuation, which is not a valid ground for detention under the UPGST Act, 2017.

A circular issued by the Commissioner of Commercial Tax, Uttar Pradesh (***dated May 9, 2018***) explicitly states that goods should not be detained solely on valuation disputes. Instead, the assessing officer must handle such matters as per prescribed legal procedures.

- **Reference to Kerala High Court Judgment**

The petitioner relied on the case of *Hindustan Coca-Cola Pvt. Ltd. vs. Assistant State Tax Officer, 2020 WP(C).No.5384 of 2020(W)*, where the Kerala High Court held that an officer can intercept goods for documentation purposes but cannot detain them solely based on valuation disputes.

The Allahabad High Court agreed with this view, stating that if tax officers are allowed to detain goods arbitrarily on valuation grounds, it would lead to nuisance and create an environment of uncertainty in trade.

- **Sections 73 & 74 Must be Followed for Under-Valuation Cases**

If an officer suspects that goods are under-valued, the proper procedure under Sections 73 and 74 of the UPGST Act should be followed.

Section 73 applies when there is no fraud, suppression, or willful misstatement, while Section 74 applies when tax evasion is intentional.

The penalty under Section 129 (detention of goods) is meant for cases of transport violations (e.g., missing e-way bills), not valuation disputes.

- **Quashing of the Penalty & Refund Ordered**

The Court ruled that the penalty order was arbitrary and against the principles of natural justice.

The detention of goods was illegal, and the Court quashed the penalty orders dated December 20, 2020, and September 17, 2021.

The Court directed that any amount deposited by the petitioner must be refunded within four weeks.

Key Takeaways & Significance of the Judgment

GST officers cannot detain goods merely on the suspicion of under-valuation.

Proper assessment procedures under Sections 73 & 74 must be followed instead of arbitrary penalties under Section 129.

Ensures that businesses are not harassed by excessive tax penalties without legal basis. Strengthens the principle that tax authorities must act within their legal limits and follow due process

This judgment is significant for businesses as it protects them from arbitrary actions by tax officers and reinforces the importance of fair procedures in taxation matters.

ALFA GROUP

VS.

THE ASSISTANT STATE TAX OFFICER & ORS.

W.P.(C) NO. 30798 OF 2019(Y) KERALA HIGH COURT -NOVEMBER 18, 2019

Issue:

The petitioner, **Alfa Group**, challenged the detention of their goods by the Assistant State Tax Officer on the grounds that:

The invoice value was lower than the Maximum Retail Price (MRP) of the goods. The HSN code was incorrectly entered in the invoice. The petitioner argued that these reasons were not valid grounds for detention under Section 129 or Section 130 of the GST Act, and sought the release of the detained goods.

Held:

The Kerala High Court ruled in favor of the petitioner, holding that:

There is no legal provision under the GST Act prohibiting the sale of goods below MRP. Detaining goods on this basis is unjustified. Incorrect HSN code entry alone does not justify detention, unless it results in a difference in the applicable tax rate. GST law facilitates the free movement of goods after self-assessment by taxpayers. Arbitrary detention undermines public confidence in the tax system. The Court **quashed the detention order (Ext.P2)** and directed the immediate release of the petitioner's goods. Additionally, the Kerala State Tax Department was instructed to issue guidelines to prevent such unwarranted detentions in the future.

Thanks and Regards

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