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Welcome amendments in Section 129 and 130 of the CGST Act

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THE author has highlighted various practical difficulties in implementation of the provisions of Section 129 and 130 of the CGST Act, in an earlier article "[The Ghost of virtual check-post](#)".

We are happy to note that certain crucial amendments have been sought to be made in the above provisions vide Finance Bill, 2021 and which will, to some extent obviate the difficulties.

Under the erstwhile provisions, whenever any goods and conveyances are detained / seized, the "concerned" persons have to pay tax, interest and penalty, to secure release of the goods. Very often, detentions are made for various procedural infractions, even though the goods are accompanied by valid tax invoices, which lead to payment of duty twice, once to secure the release of goods and conveyance and again at the time of filing returns and uploading the invoices in GSTR-1. Now, the requirement of payment of duty and interest, to secure release of the detained goods has been taken away and it is sufficient if the penalty is paid or proper security is furnished for the penalty amount.

But, lo and behold the quantum penalty has been substantially increased.

Situation	Quantum of penalty prior to amendment	Quantum of penalty after amendment
Where the owner comes forward for payment	Equal to 100% of the tax payable. In case of exempted goods equal to 2% of the value or Rs.25,000 whichever is less	Equal to 200% of the tax payable. In case of exempted goods equal to 2% of the value or Rs.25,000 whichever is less
Where the owner of the goods is not coming forward for payment	Equal to 50% of the value of goods reduced by the tax paid thereon. In case of exempted goods, 5% of the value or Rs.25,000 whichever is less.	Equal to 50% of the value of goods or 200% of the tax payable, whichever is less. In case of exempted goods 5% of the value or Rs.25,000 whichever is less.

As per the proposed amendment (substitution of new sub section (3) in Section 129), the proper officer shall issue a notice within 7 days of detention and seizure for imposing penalty and also pass an order within further 7 days.

It may be noted that the taxpayer has the option of paying such penalties or furnishing securities and obtain release of the goods. But if the taxpayer does not pay the penalties within fifteen days from the date of order imposing the penalty, the officer can proceed to dispose of the seized goods and conveyance to recover the penalty. But, if the transporter wishes to seek release of his conveyance, the same can be allowed on payment of penalty by the transporter or Rs.1 lakh, whichever is less.

Section 107 is also proposed to be amended that in case of filing of any appeal against the penalty imposed under Section 129(3), 25% of the penalty shall be paid as pre-deposit.

Section 130 deals with confiscation of goods or conveyances, involved in various offences mentioned in the said section, levy of redemption fine in lieu of confiscation and imposition of penalty under Section 122.

As per the proposed amendment, the aggregate of the fine in lieu of confiscation (redemption fine) and the penalty shall not be less than penalty equal to 100 % of the tax payable on such goods (There seems to be some drafting gaffe).

Still the provisions of Section 129 are not completely free from doubt.

- Is the penalty levied under Section 129(3) over and above the penalties prescribed under Section 122? Is Section 129 a substantial provision for imposing penalty or only an enabling provision to secure release of detained / seized goods and conveyances?

- If the penalty under Section 129(3) is not paid within 15 days from the date of order, the officer can proceed to dispose of the detained goods and conveyance. But the taxpayer has got three months' time to file appeal against the said order under Section 107.

- Even though Section 129 allows release of detained / seized goods and conveyance against furnishing of security, in practice, it is hardly allowed.

[The views expressed are strictly personal.]

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