

File No. CT/6738/2021-C9



Office of the Commissioner of State Goods and Services Tax Department
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Dated : 07/03/2022

Circular No. : 03/2022

Sub : Kerala State Goods & Services Tax Act, 2017 –Acceptance of Bank Guarantee for release of consignment detained under Section 129 of the SGST Act - clarification and instructions issued-reg:

Ref: Circular No. 1/2020 dated 19/01/2020 of the Commissioner, State Taxes

I. Clarification has been sought from the field formations regarding the acceptance of Bank Guarantee for the release of consignment detained under Section 129 of the SGST Act, where the demand was created by issuing MOV 09. Section 129 of the SGST Act, 2017 mandates that the goods and conveyance detained or seized can be released up on furnishing a security equivalent to the amount payable under section 129 (a) or (b) as the case may be. Hence, if they prefer so, the taxpayer shall be allowed to furnish a Bank guarantee for the release of goods and conveyance even after the issuance of MOV 09.

Further, many representations have been received from the taxpayers and the trade organizations against the action of proper officers immediately encashing the Bank Guarantee without giving them sufficient time to file an appeal against the orders. Section 107 of the KSGST Act, 2017, provides three months to file a statutory appeal. If no appeals have been filed under section 107, the Bank Guarantees shall be forwarded to the respective Bank for encashment only after the lapse of the statutory appeal time. In case where an appeal has been filed under section 107, the Bank Guarantee shall only be forwarded to the respective Bank for encashment based on the outcome of the said appeal.

The proper officers are instructed to enter the details of receipt of the Bank Guarantees in the Register for Bank Guarantees maintained at the offices and periodically update the details of further processing, if any made. The controlling

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officers shall regularly verify the above register and ensure that the actions in Bank Guarantees are appropriately taken.

II. Instructions had been issued vide Circular No. 1/2020 dated 19.01.2020, regarding the detention of goods transported in parcel/transporting/courier agencies that the consignments with defective documents shall be detained in the premises of the respective parcel/ transporting/ courier agencies having GST registration.

Detailed examination of the facts and relevant statute found that, Section 129 of the SGST Act, 2017 mandates joint and Several liabilities on the Consignee, Consignor, Transporter and the Person in Charge of the Vehicle to carry the requisite documents as per the Act. The word used is “ **where any person transport the goods**”.

As per Section 129(1) of the KSGST Act, 2017, all such goods and conveyance used as a means of transport for carrying the said goods are liable for detention and seizure. The liability to pay tax and penalty lies on the person transporting any goods or on the owner of the goods. Failure on the part of the Transporter or the owner of the goods to pay the amount of penalty as provided u/s 129(1) within fourteen days will entail initiation of further proceedings in accordance with the provision of Section 130. Section 130 of the Act provides for confiscating the conveyance and disposal of the same and depositing the sale proceeds thereof to Govt.

Further, under section 68, the enabling provision for e-way bill, the words used are “**the person in charge of the vehicle**”. So the transporter’s liability is ingrained explicitly in the KSGST Act. The Hon’ble High Court of Kerala has reiterated the above position on various occasions, including in W.A. No. 253 of 2019 made in M/s Daily Express Vs. Asst. State Tax Officer . In the circumstances, it is instructed that, in the event of detention of any defective consignment transported in parcel/transporting/courier agencies, the proper officer may permit the removal of the accompanying consignments that are found to be not defective on any such verification.

III. The instructions issued vide Circular No. 1/2020 dated 19/01/2020 hereby stands rescinded.


COMMISSIONER OF STATE TAX

To

All concerned.