



## **E-Way Bill System under GST: A Critical Analysis of Legal Issues, Enforcement Challenges and Reform Measures**

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### **Abstract**

The introduction of the E-Way Bill system under the GST regime has been an important step towards making the movement of goods across India more transparent, accountable and technology-driven. Introduced in 2018, the system was intended to track the movement of goods, improve tax compliance and curb tax evasion. It has, to a considerable extent, improved monitoring and coordination between States and reduced delays at border check-posts. At the same time, its implementation has raised several legal, technological and practical concerns for taxpayers and businesses.

This paper examines the functioning of the E-Way Bill system and the challenges that have emerged in its implementation. Technical problems such as portal failures, poor internet connectivity, OTP delays and difficulties in generating or updating E-Way Bills can sometimes lead to detention of goods and imposition of penalties even where there is no intention to evade tax. These difficulties are particularly significant for MSME businesses operating in rural and semi-urban areas.

The paper also focuses on the excessive consequences that may follow from minor clerical or procedural errors. Courts have repeatedly emphasized the need to distinguish between genuine mistakes and deliberate tax evasion. However, inconsistent enforcement practices, excessive discretion, jurisdictional difficulties and the exercise of both enforcement and adjudicatory functions by the same authority continue to create difficulties for taxpayers.

Drawing upon relevant judicial decisions, the paper examines the need to balance effective tax enforcement with procedural fairness and taxpayer rights. It proposes technological improvements, clear administrative guidelines, better training of enforcement authorities, separation of enforcement and adjudicatory functions, and greater integration of the E-Way Bill with other GST-related systems.

The paper argues that the effectiveness of the E-Way Bill system ultimately depends on achieving a fair balance between preventing tax evasion and ensuring ease of compliance and doing business.

**Key Words:** E-way Bill, GST, Tax Compliance, Enforcement Challenges, Taxpayer Rights.

## 1. INTRODUCTION

The movement of goods is one of the areas in which a value-added tax system can become vulnerable to evasion. Goods may move through several intermediaries, across State borders and through different modes of transport. Before the introduction of GST, the existence of multiple State-level tax systems and border formalities created for businesses both compliance costs and opportunities for tax evasion. GST attempted to replace that fragmented structure with a common indirect tax framework. The E-Way Bill was introduced as one of the important digital compliance mechanisms within that framework.

The basic idea behind the E-Way Bill is simple. Where the law requires it, information about a consignment and its movement is entered electronically before or during transportation. The resulting document or number can then be verified by enforcement authorities. Rule 138 of the CGST Rules generally requires an E-Way Bill for the movement of goods of a consignment value exceeding Rs 50,000/- in specified circumstances<sup>1</sup>. Section 68 of the CGST Act provides the statutory foundation for requiring documents and devices to be carried by the person in charge of a conveyance.<sup>2</sup>

In policy terms, the system seeks to achieve two objectives that are not necessarily in conflict but can become difficult to balance. The first is revenue protection: the State wants to know whether goods that are moving through the supply chain correspond to genuine taxable transactions. The second is facilitation: legitimate businesses should be able to move goods without unnecessary interruption, uncertainty or fear of disproportionate penalties. A compliance system that focuses only on the first objective can undermine the second.

The problem becomes particularly visible when there is an error in an E-Way Bill. A wrong digit in a vehicle number, a typographical error in a PIN code, a mismatch in an address or a temporary failure of the portal may have no relationship with tax evasion. However, upon detention of goods and demand of substantial penalty, the monetary effects for a taxpayer can be serious<sup>3</sup>. Delivery of goods gets deferred, performance of contracts gets affected, working capital gets blocked and litigation arises in a jurisdiction distant from the taxpayer's place of business.

The legal question is not whether E-Way Bill system is required or not. It is whether its enforcement is done in coherence with the objective of the statute, natural justice and the practical realities of the businesses.

This paper proceeds from the proposal that the E-Way Bill is not just a tax form. It is a regulatory mechanism through which the State exercises coercive power over the movement of goods. Because that power can affect property, business operations and access to justice, the system must operate within clear legal limits.

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<sup>1</sup>Central Goods and Services Tax Rules 2017

<sup>2</sup>Central Goods and Services Tax Act 2017.

<sup>3</sup> Section 129 and section 130 of CGST Act 2017



## **2. THE EVOLUTION AND PURPOSE OF THE E-WAY BILL**

The E-Way Bill must be understood against the broader background of GST. One of the central promises of GST was to create a common national market by replacing multiple indirect taxes with a more integrated system. The movement of goods was expected to become easier, but the removal of physical State borders also created a need for a technology-based mechanism through which the tax administration could monitor transactions without restoring the old system of routine border checks.

The national E-Way Bill system became operational in 2018. It was conceived as a digital alternative to multiple transit documents and as a tool for real-time or near-real-time information about the movement of goods. The official E-Way Bill FAQ describes it as a document required under section 68 of the GST law read with rule 138, generated through the common portal before movement in prescribed cases.<sup>4</sup>

The significance of the system lies in the information it brings together. Depending on the transaction, the electronic record in E-way Bill can contain details of the supplier & recipient such as name, address & GST No., details of goods such as description, HSN, quantity, unit price, taxable value and invoice value, details of transporter & its GST No and vehicle No.<sup>5</sup> EWB-01 may also contain details such as place of dispatch, 'place of delivery as well. This creates an information trail that can be compared with invoices, GST returns and other compliance data.

From the administration's perspective, this is valuable because evasion may otherwise be difficult to detect at the point of movement. However, from the perspective of taxpayer, the same information system poses a compliance burden. A minor mistake in entering information in E-way Bill can easily become noticeable to an enforcement officer. The more the system becomes data-driven, difference between errors having substantive tax implications and errors that are merely due to human or technological imperfection becomes more imperative to find.

The system, hence, signifies a drastic change in the tax administration. Traditionally, tax enforcement depends on physical records and assessment after the transaction takes place. However, E-Way Bill permits interception while the goods are in movement. This administratively gives more power to intercepting officers as interception can happen before the goods reach their destination. It becomes legally imperative for the taxpayers to defend the transaction while the goods are detained and become physically immobilised.

## **3. STATUTORY FRAMEWORK**

### **3.1 Section 68 of the CGST Act, 2017**

Section 68 of the CGST Act, 2017 requires the person in charge of a conveyance carrying goods above a prescribed value to carry invoice and E-way Bill. Rule 138 operationalises section 68 and

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<sup>4</sup><https://ewaybillgst.gov.in/Staticpages/faq.aspx>

<sup>5</sup>FORM GST EWB-01, available at [https://docs.ewaybillgst.gov.in/documents/GST\\_EWB\\_01.pdf](https://docs.ewaybillgst.gov.in/documents/GST_EWB_01.pdf)

prescribes the circumstances where E-Way Bill must be generated and requisite information must be furnished electronically therein.

The Act, thereby, establishes the power and the Rules specify the mechanism for compliance. Notifications and circulars provide guidance to field formations in handling E-way Bill Issues. This structure traces the origin of enforcement power from a statutory or regulatory requirement.

### **3.2 Rule 138 of the CGST Rules, 2017**

Rule 138<sup>6</sup> prescribes conditions and mechanism for generation of E-Way Bill. It generally applies where a registered person causes movement of goods of a consignment value exceeding Rs 50,000/- in relation to a supply, for reasons other than supply, or due to inward supply from an unregistered person. The rule also contains specific exceptions and special provisions.

The rule requires the relevant information to be furnished electronically before commencement of movement. Depending on the mode of transportation and the parties involved, the consignor or consignee or transporter may be responsible for generating or completing the E-Way Bill. The system also provides for updating conveyance details when goods are transferred from one vehicle to another<sup>7</sup>.

The rule is, therefore, not simply a requirement to possess a piece of paper. It is a chain of digital compliance obligations. That distinction matters because an enforcement officer may be dealing with a document that is technically valid, partly incomplete, outdated, or affected by a subsequent change in the movement.

The validity of an E-Way Bill is linked to the distance to be travelled, subject to the rules and subsequent amendments. The basic regulatory objective is understandable: an E-Way Bill should correspond to a particular movement and should not remain indefinitely usable. At the same time, transportation is not always predictable. Accidents, road blockage, weather, vehicle breakdowns, route restrictions, strikes and logistic changes can delay the journey and affect the validity of E-way Bill.

This creates a gap between legally permissible time limits and practicality. The question for enforcement officers to decide should be whether the expired or incorrect E-way Bill indicates genuine operational difficulty or an attempt to evade tax. The law and its enforcement must retain enough flexibility to handle with both the possibilities.

### **3.3 Section 129 and detention of goods**

Section 129 provides for detention, seizure and release of goods and conveyances in transit where they are transported in contravention of the Act or Rules.<sup>8</sup> It is central to the enforcement problem because this provision operates at the point of movement and it gives enforcement authorities considerable practical power.

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<sup>6</sup>CGST Rules, 2017.

<sup>7</sup> Rule 138(5) of CGST Rules 2017.

<sup>8</sup> Section 129 of CGST Act 2017.



Detention is not economically neutral. A consignment may consist of perishable goods, time-sensitive industrial inputs or goods needed to fulfil contractual commitments. A vehicle may belong to a third party. A delay can generate demurrage and other commercial losses even before the tax dispute is finally resolved.

The enforcement model must, therefore, be designed around proportionality. If the violation is a missing E-Way Bill in circumstances strongly indicating an attempt to conceal a taxable transaction, detention may be justified. If the E-Way Bill exists and the error is a single digit in the vehicle number, the legal and policy justification for immobilising the entire consignment is much weaker.

### **3.4 Section 126 and principles governing penalties**

Section 126 of the CGST Act lays down general penalties when any transaction is not covered under any other provision for imposition of penalties. It reveals a significant legislative idea that penalties should not be imposed mechanically in all circumstances. The provision is relevant to E-Way Bill matters also as it covers the minor breaches, the absence of fraud or gross negligence and other similar circumstances.

This does not indicate that every procedural requirement can be overlooked. Obligation as to compliance remains legally binding. However, it is equally important that the law should not treat a genuine typographical error and a deliberate scheme of evasion equally.

## **4. THE CENTRAL TENSION: COMPLIANCE VERSUS FAIRNESS**

The strongest defense for the E-Way Bill mechanism is the requirement to get reliable information by the tax administration as to the movement of goods. However, a digital compliance mechanism may become unjust when its formal requirements does not match with the purpose for which it was created.

For example, the goods are consigned with a valid Tax invoice and E-Way Bill, both the supplier and recipient are genuine registered persons, the goods are also corresponding with the Tax invoice, the tax has also been accounted for, however, vehicle No. is entered wrongly with regard to one or two digits. If this results into detention proposing penalty equivalent to GST involved in the transaction, the action by the enforcement officer does not support the object of prevention of tax evasion since the transaction was very much within the knowledge of the tax administration beforehand.

This is why the proportionality of penalty becomes relevant. Where the tax evasion is obvious, penalty imposition is justified. Where absence of tax evasion is obvious, it is harder to justify stringent coercive measures. For example, where the E-Way Bill is not available, the invoice seems suspicious, the recipient of goods is not traceable and the physical goods do not match with the goods declared in the documents, higher penalty imposition can be justified.

Therefore, the more balanced enforcement approach should be on risk-based model, not error-based. The error in the documents may cause verification, however, the severity of action should depend upon whether the error was accidental or the intentional.

#### **4.1 TECHNOLOGICAL CHALLENGES**

Effectiveness of the E-Way Bill system depends upon proper functioning of digital infrastructure. This requires a robust E-way Bill infrastructure so that a taxpayer can comply with the requirements electronically. However, the Assessee has time and again reported various problems such as server failures, portal downtime, delay in receiving OTP, connectivity issues and problems in updation of information.

A technological failure should not be dealt at par with the taxpayer's failure to comply. If a taxpayer's attempt to generate/ update an E-Way Bill fails due to unavailability of the portal, it will be unjust to penalise the taxpayer without probing the digital evidence.

The issue is principally significant because E-Way Bills, E-invoicing, GST returns, and other digital platforms such as ICEGATE for refunds are interconnected and exchange information with each other, thereby, ensure tracking of GST compliance to a large extent. Integration of all such platforms, on one side, can reduce repetitive data entry, but it can also have severe consequences in case of a single technical problem as consequences of such problem can have implications across several compliance portals.

Therefore, preservation of transactions logs becomes imperative for a just decision. Transaction logs showing attempts by a taxpayer for generation of an E-Way Bill at a particular time which could not be accomplished due to system failure has great legal significance. This would lessen the Tax Officer's as well as assessee's burden in proving the genuineness of the transaction.

Such a solution will make digitalisation legally balancing. Systems providing error alerts, permitting correction of minor errors, retaining audit trails etc. can create a transparent and business-friendly mechanism at times when the portal is not working properly.

#### **4.2 MINOR CLERICAL ERRORS AND JUDICIAL RESPONSE**

One of the most developed areas of E-Way Bill litigation concerns minor errors. Courts across India have repeatedly had to consider whether a procedural discrepancy justified detention and penalty.

CBIC Circular No 64/38/2018-GST dated 14 September 2018 was issued precisely to address certain situations involving minor errors. It identifies circumstances such as spelling mistakes where the GSTIN is correct, an incorrect PIN code where the addresses are otherwise correct, limited errors in document numbers, certain HSN discrepancies and one or two incorrect digits or characters in the vehicle number. The circular states that in such situations section 129 should not ordinarily be invoked and prescribes a nominal penalty of CGST and SGST of Rs. 500/- each or IGST penalty of Rs. 1000/- under section 125.<sup>9</sup>

The circular is significant for two reasons. First, it acknowledges that not every error is evidence of evasion. Second, it attempts to create national consistency. Without such guidance, the same error could potentially produce different outcomes in different States or before different officers.

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<sup>9</sup> Circular No 64/38/2018-GST dated 14 September 2018.



Judicial decisions have reinforced this distinction. In *Tirthamoyee Aluminium Products v State of Tripura*<sup>10</sup>, the High Court considered an E-Way Bill problem arising from an incorrect distance mentioned as 470 Kms instead of 1470 Kms due to a clerical error (distance from Howrah to Agartala). GST Law allows one day of validity every 100 Kms. of distance require to be travelled<sup>11</sup>, due to which validity period of 5 days was allowed in E-way Bill instead of 15 days and Bill got expired by the time goods were intercepted. The court treated the error as a minor clerical oversight in circumstances where the goods were duty-paid and the underlying transaction was not in dispute.

Similarly, courts have intervened where the available documents demonstrated a genuine transaction and the alleged breach was essentially technical. Recent decisions continue to show the importance of this distinction. In *M/s Panchhi Traders v State of Gujarat*<sup>12</sup>, the Gujarat High Court considered the distinction between detention, seizure and confiscation and referred to minor errors identified in the CBIC framework. The decision is important in the sense that it recognises that minor discrepancy is not equivalent to tax evasion and does not automatically justify detention of goods. Enforcement powers must be exercised cautiously.

The judiciary has time and again distinguished between accidental defects and intentional evasion of Tax. This doesn't mean that every E-Way Bill error is risk-free and revenue neutral. Where the defects are related to description of the goods, place of dispatch/receipt of goods, quantity of goods, taxable value or other material particulars of the transaction, enforcement action may be warranted. The true nature of the transaction is facts based and contextual where the authority have to look at the nature of the error and the evidence thereof.

#### **4.3 DETENTION, PENALTY AND PROPORTIONALITY**

The financial implications of detention is far more than the amount of the penalty levied by the statute itself. A detained vehicle cannot reach its destination that will result into delayed delivery, resultantly, increased demurrage charges. A supplier may have resultant breach of a delivery contract and invite consequences thereof. The recipient may have to bear production losses. Perishable goods may perish or goods may lose its quality. Assessee may have to hire advocate and pay for the legal fee as well. Assessee may have to get goods released on payment of penalty, thereby, working capital may get blocked.

Payment of a substantial amount for pursuing a legal challenge poses a serious dilemma where taxpayer believes that the demand is legally wrong but he still has to pay the demand. Reason being that the cost incurred for keeping the goods detained is much more than the disputed amount.

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<sup>10</sup>[2021] 127 taxmann.com 680 (TRIPURA)

<sup>11</sup>Rule 138(10) of CGST Rules 2017.

<sup>12</sup>Special Civil Application No 9250 of 2020

If a taxpayer has to pay 100% demand first and litigate thereafter, taxpayer's working capital gets blocked and the remedy becomes less effective in terms of financial implications of enforcement pressures. This raises a serious concern as to Rule of Law as well.

In most of the cases, there is no requirement to pay any amount at the stage of adjudication or prior to that. The assessee only needs to pay a lesser percentage of confirmed demand, that too, as pre-deposit to contest the demand before the appellate authorities. While in case of E-way Bill Matters, assessee has to deposit the proposed demand before the stage of adjudication to save itself from the cost of detention of goods. These consequences necessitate evaluation of proportionality of implications.

This also raises a serious policy question as to release mechanisms and appeal requirements which should be practically accessible for the assesseees.

#### **4.4 JURISDICTIONAL DIFFICULTIES**

A major important issue is with regard to jurisdiction. Normally, the assessee is subject to the jurisdiction of the Authority where his Place of business is located. In case of goods moving through several States, the enforcement officer may detain the goods at a location far from the taxpayer's registered place. The taxpayer, in such circumstances, have to contact the officer, reply to notices, deposit proposed demand, and pursue remedies in an alien jurisdiction.

There are instances where the taxpayer has to apply for temporary GST registrations in the State where goods are detained, have to face language barriers, follow local procedural rules in connection with proceedings. Every State has developed its own mechanism of penalty payment in E-way Bill matters. Many states allow penalty payment against the existing GST No. of the assessee while other States require the GST registered person to take Fresh Temporary GST Registration No., pay penalty against that GST No. Such kind of different sets of Rules/mechanism indicates a clear lack of coordination among States posing difficulties for the taxpayers.

Getting GST No. just for the purpose of penalty payment in a different state has its implication in the form of payment of SGST & SGST instead of IGST which is required in case of Inter-state transactions. This, in itself, goes against the broader GST mechanism and needs to be addressed. GST mechanism was invented as a cooperative federal tax system which seems missing from Enforcement perspective.

One possible solution is that the mechanism for applying for separate GST No. in the intercepting State should be abolished and secondly, the proceedings should be digitally transferred to the taxpayer's jurisdictional authority in the State of Assessee's Place of Business. The Intercepting State may retain the power to act where there is a genuine risk of evasion or disappearance of goods, however, subject to transferring the proceedings to taxpayer's jurisdictional authority subsequently.

Such a system would prevent tax evasion while reducing assessee harassment.

#### **4.5 ENFORCEMENT AND ADJUDICATION IN ONE HAND**

The most serious institutional issue identified in the research is the possibility that the same authority acts as investigator, detaining officer and adjudicator.

The concern is not that an officer will necessarily act improperly. Though, in majority of cases, Officer will adjudicate reiterating the content of the notice itself. The concern is structural as well. A system is more credible when the person who makes an initial enforcement decision is different from the person responsible for finally determining the taxpayer's liability.

The principle of natural justice includes the broader idea that a person should not be a judge in his or her own cause<sup>13</sup>. In administrative law, institutional safeguards are particularly important where the decision involves substantial financial consequences.

The GST framework, though, contains hearing and appellate mechanisms. However, a detained taxpayer experiences the first enforcement stage as the decisive one because goods are physically blocked, commercial losses accumulate rapidly and goods get released only upon payment of 200% penalty, if owner comes forward or payment of 50% of value of goods, if owner does not come forward<sup>14</sup>. In case of appeal, there are various hurdles faced by the taxpayers: 1. Unawareness as to the designation of appellate Authority, its office address, 2. The communication with the appellate authority due to language barriers, 3. No maximum time limit for adjudication of E-way Bill matters. The appeal matters remain pending before Appellate Authority even after the expiry of time limit prescribed in Act. This results into blockage of disputed amount for indefinite period. The Enforcement model in E-way Bill matters involve three stages:

1. Interception/detention/confiscation of goods;
2. Adjudication and imposition of penalty liability; and
3. Appellate review.

The first stage should be evidence-based. The second stage should address the taxpayer's explanation and pass a reasoned order. The adjudication Order must also provide the designation and address of the Appellate Authority. The third stage should be accessible to taxpayers and matters should be decided within a minimum prescribed time limit. This would strengthen enforcement with the credibility thereof.

#### **4.6 NON-SPEAKING ORDERS AND NATURAL JUSTICE**

The taxpayer who is facing detention should know the exact allegation on the basis of which goods are detained. Merely stating that “documents defective” is inadequate and does not provided reasonable opportunity of being heard to taxpayer as he cannot himself identify which document is defective, nature of defect and its legal implication, thereby, violates rule of Natural Justice.

A speaking order is not a mere formality. It performs threefold functions. First, the order speaks about the findings and reasons thereof that (i) allows the taxpayer to understand what is against

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<sup>13</sup> A. K. Kraipak vs. Union of India, AIR 1970 SC 150.

<sup>14</sup> Section 129(1) of CGST Act 2017.

him, (ii) it requires the authority to provide reasons, thereby disciplines them, (iii) it enables the appellate authority to determine whether the decision was legally justifiable.

There are plethora of judgments that address this concern. In *M S Steel and Pipes vs Assistant State tax officer*<sup>15</sup>, the goods were detained on the ground that the details of tax payment were not mentioned in the E-way Bill. The court examined that the mentioning tax payment details in E-way Bill is not warranted by law and detention is not justified.

#### **4.7 E-WAY BILL DATA AND DATA-DRIVEN ENFORCEMENT**

One of the biggest challenge in the E-Way Bill system is the huge amount of transactional data that it produces. That data can easily be compared with vehicle information available on E-vahan<sup>16</sup>, E-invoices, record available on GST Returns, i.e., GSTR-1, GSTR-3B and other records and misused too for intercepting vehicle having minor mistakes in E-way Bills.

This data is available with GST authorities at all point of time. If this data is used judiciously, physical interception can be reduced to a large extent. Before, intercepting any vehicle, high-risk patterns can be easily identified. Multiple E-Way Bills against one invoice can be easily traced. Recurrent cancellation of E-way Bills and re-generation of E-way Bills, unusual differences between invoice value and E-Way Bill value or movement from suspicious entities can be easily traced and identified.

This can help making enforcement more selective focusing on risk-prone transactions. Genuine assesseees with past compliance records will face lesser physical interventions while high risk transactions can be closely and meaningfully scrutinised.

While analysing data, automation coupled with human judgment can help in better enforcement. A digital mismatch can be a starting point of inquiry and can help in easy detection of real tax evasion.

#### **4.8 RESOURCE GAP FOR MSME**

MSME businesses have limited resources while compliance of E-Way Bill is required by all equally. Large business houses usually have dedicated teams and professional advisors to handle tax matters. ERP systems are also in place to maintain proper records while a small trader depends on a part-time accountant, single employee or the transporter to generate/ update the documents. Since the compliance mechanism is not evenly distributed for an MSME, detention can have a disproportionate effect. Enforcement action for minor mistakes can result in the immediate loss of working capital, effect on salary payments, suppliers' payments and the ability to fulfil new orders. To ease the doing of business, working on portal should be easy. Few of the features should be mobile-friendly, auto-population/ easy addition of data, correction mechanism for minor errors and warning system before submission.

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<sup>15</sup> CA 5121/2021

<sup>16</sup> <https://vahan.parivahan.gov.in/>.



Public awareness and training is also important. Concerned persons should be aware of the fields are legally important and which needs to be checked and corrected to avoid severe consequences.

#### **4.9 THE ROLE OF CBIC CIRCULARS**

A sustainable framework codifies Rules for most important principles to supplement the Act. Notifications & Circulars are also issued time to time to explain the Act and Rules.

Such circulars play a crucial role in promoting proper implementation of statutory powers, though such circulars cannot be used as substitutes for clear legislation or to expand officer's powers. Circular 64/38/2018-GST is principally noteworthy as it provides a list of examples of minor errors where interception is not required and tells field formation how to respond to such circumstances. Circulars have a binding effect on the Enforcement Officers and should clearly provide:

- circumstances when detention is usually justified;
- circumstances when minor error should be considered;
- circumstances when a taxpayer should be allowed to correct mistake;
- circumstances when technical failure should be considered;
- the evidence required to prove or disprove an intention to evade tax; and
- time frame for adjudication and consequent release of goods.

Proper codification would reduce individual interpretation, thereby, reduce personal biases and abuse of power and create consistency across Field formations.

#### **4.10 GST AND DIGITAL GOVERNANCE**

The E-Way Bill system is rapidly becoming part of digital governance. Digital Governance is rapidly being used by tax authorities to track real time activities and for data matching. Digital Governance seems an objective technology to bridge the gap between commercial activity, tax reporting and legal accountability.

It is assumed that a computer system acts neutral. However, in practice, a digital system is created by the choices made by legislators, administrators and software Engineers. Digital systems created for tax administration is created by the choices as to which information is to be collected, which error should prompt an alert and which generate a risk score.

Transparency in digitalised tax system plays a very important role. Taxpayers should be allowed to explain the discrepancy when automated system flags it. In the age of growing use of data analytics, an unexplained discrepancy should not be treated equal to proof of evasion.

A feedback mechanism should always be in place through periodic review of detention data. Through data analytics, recurrence of types of discrepancy and its accidental or intentional nature should be analysed to help determining whether purpose of enforcement is properly achieved or not.

This approach can also help in creating a cooperative federalism structure where both central and State tax authorities can adopt uniform principles enabling operational efficiency with genuine assessee's convenience.

#### **4.11 GST MODEL OF PENALTY-FIRST**

Current tax regime is focusing on Penalty-First model which enables enforcement officer to levy penalty as & when any vehicle is detained. Under this approach, officer's duty is to ascertain the statutory consequence whenever any error is discovered. Levy of 200% penalty for release of goods is clear example of Penalty-First model.

While under a compliance-first Model, the officer first needs to ascertain if the transaction is genuine or not, whether tax is at risk or not and whether the error is accidental or intentional and can be corrected without compromising with government revenue. Such a model is nowhere a leniency. It is rather an intelligent way of enforcement, saving a lot of effort, time and energy of enforcement officer & utilization of the same for apprehension of intentional tax evaders

### **5. SUGGESTIONS**

#### **5.1 Technology resilience**

The E-Way Bill portal should have such an architecture that detects any outage automatically. Whenever a technical failure occurs, the portal should automatically record the failure, its period and nature. Taxpayers should not be required to prove something that can be proved by the relevant servers.

#### **5.2 Automated validation**

The portal should be so advances that any inconsistency can be flagged before the finalization of an E-Way Bill. For example, if vehicle number is incorrect and doesn't match with the vehicle registered on E-vahan portal, the error should be flagged then and there. Similarly, if PIN code not correspond with the location mentioned in E-way Bill, system should flag the error so that the user correct any unintentional error/mistake.

#### **5.3 Correction window**

For non-material/minor errors, a correction window should be available for the genuine assesseees. The online mechanism should be designed to distinguish between typographical discrepancy and discrepancy indicating the tax evasion.

#### **5.4 Training of Enforcement officers**

Enforcement officers should be sensitized as to the fact that every discrepancy should not lead to detention of goods. They should be made aware that revenue biases should not be the criteria of detention and the detention should not be beyond the legal premises. The Officers should also be suitably trained as to GST laws so that unwarranted documents beyond the legal requirements should not be asked from assesseees to produce for release of goods. Where an order is challenged successfully because the officer ignored clear departmental guidance, the administration should use the decision for institutional learning.

#### **5.5 Separation of functions**

The officer who is to adjudicate the detention/ confiscation notice should be different from the officer responsible for detention/ confiscation of goods. This will also ensure the fundamental rule of Natural Justice that a person cannot be judge in his own case.

### **5.6 Time-bound adjudication**

Proceedings involving detained goods should have strict timelines. Delay defeats the purpose of an efficient tax system and can turn a minor dispute into a major commercial loss. Time Limit should be fixed for decision at the Appellate level as well. Appellate Authority gets less interested in adjudicating E-way Bill appeals as there is no benefit to Revenue Authorities in adjudicating such matters due to the fact that 200% penalty has already been paid by the Assessee. In large no. of cases, it is found that the decision of the Assessing Officer is reversed in appeals.

### **5.7 Jurisdictional coordination**

Interception States and the taxpayer's jurisdiction should share information electronically. Routine cases involving identifiable registered taxpayers should be transferred to the jurisdictional authority after immediate verification.

### **5.8 Integrated GST ecosystem**

E-Way Bills should be increasingly integrated with e-invoicing, GST returns, vehicle and transport data and other lawful databases. The goal should be “one-time data entry, multiple compliance uses”.

### **5.9 Accessible remedies**

A taxpayer should have a practical mechanism to challenge detention without being forced into prolonged and expensive litigation. Digital hearings, online document submission and clear appeal timelines can significantly reduce the burden.

### **5.10 Proportionality of penalty**

When a compliance tool becomes a punitive device for every discrepancy, the system becomes problematic. The legal purpose of the E-Way Bill is to streamline the process of movement of goods, verify it and prevent any tax evasion. If the underlying transaction is genuine, any accidental data entry error should be addressed accordingly.

Penalty should be imposed in proportion to the error. If the error is minor one, penalty should not be imposed or nominal penalty may be imposed. If it is one with intention to evade taxes, penalty must be imposed accordingly and proportionally.

Therefore, the right approach should be to punish the intentional not the accidental.

### **5.11 Speaking Order & Natural Justice**

The orders passed by the Adjudicating officer should be passed after giving a proper opportunity of being heard and considering the submissions of the taxpayer and the order should be speaking order. The Order should not be mechanical based on the grounds of notice.

### **5.12 Compliance-First” Model**

The current mechanism prevalent is Penalty First Model wherein the taxpayer has to deposit 200% penalty for the release of the goods. After that only, he can get the goods released and appeal before the appellate Authority. Instead of Penalty First Model, compliance First model should be adopted.



## **6. CONCLUSION**

The rationality behind introduction of E-Way Bill system was to monitor the movement of goods, detect suspicious movements, ensure tax compliance and reduce tax evasion. On the Business point of view, taxpayers need predictable, technologically dependable and easy to use system.

The challenge central to system is of balance.

An E-Way Bill should be such wherein genuine taxpayer does not lose access to goods due to an accidental error or portal failure or other minor discrepancy that is not resulting in tax evasion. Simultaneously, the tax evaders should also not be allowed to take advantage of digital system.

The statutory amendments, CBIC circulars and judicial precedents point towards this middle path. Courts have repetitively quashed orders where authorities had imposed penalties for minor procedural mistakes, also upholding orders where tax evasions were existing.

The next stage of reforms related to E-way Bill should be risk- based, not error based. A correction mechanism should be in place to correct minor errors. Enforcement officers should have clear guidelines to differentiate between genuine and evasive transactions. Adjudication should be independent from enforcement and based on Natural Justice. Appeals should be time-bound and practically accessible.

Ultimately, the credibility of the E-Way Bill system depends on balance between how conveniently it prevented tax evasion and how fairly it treated genuine taxpayers. A modern tax administration should be viewed with the lens of digital governance to ensure easier compliance for the honest taxpayer and making it harder for intentional tax evasion. The E-Way Bill can become more than a monitoring device by balancing between accidental and intentional transaction.

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