

<b>From</b>	<b>Karvy Data Management Services Ltd.</b>
<b>Date</b>	<b>May 14, 2018</b>
<b>Subject</b>	<b>E-WAY BILL CASE LAWS</b>
<b>Category</b>	<b>GENERAL MAILER</b>
<b>Series</b>	<b>Karvy/GST/71</b>

E-way bill generation is compulsory for inter-state movement of goods throughout the nation w.e.f 1<sup>st</sup> April 2018. E way bill requirement for intra state movement will be rolled out in phased manner. As of now following states have introduced e-way bill for intra state movement of goods-

State	Effective Date
Andhra Pradesh, Gujarat, Kerala, Telangana and Uttar Pradesh	15th April 2018
Bihar, Haryana, Himachal Pradesh, Jharkhand, Tripura and Uttarakhand	20th April 2018
Arunachal Pradesh, Madhya Pradesh, Meghalaya, Puducherry and Sikkim	25th April 2018
Nagaland	1st May 2018

Below are some of the major case laws relating to e-way bill:

Problem in downloading the e-way bill		
SL.NO	CASE LAW	DETAILS OF THE CASE
1	<b>Vikram Solar Private Limited V. Union of India' – 2018 (4) TMI 1139 - ALLAHABAD HIGH COURT</b>  (decided on 04.01.2018)	<p>The petitioner has challenged the seizure order dated 16.12.2017 passed under section 129(1) of UPGST Act.</p> <p>A show cause notice was issued in this regard under section 129(3) of the Act. The goods have been carried from West Bengal to Ghaziabad.</p> <p>The ground for seizure is that the E-way bill had not been downloaded. It has come on record that before seizure there was some problem in downloading the E-way Bill.</p> <p>The High Court directed to release the vehicles and goods subject to deposit of bank guarantee, equal to the value of the tax on goods.</p>
2	<b>Abicor and Binzel Technoweld Pvt. Ltd. Versus The Union of India and Another' - 2018 (2) TMI 766 - BOMBAY HIGH COURT</b>	<p>The petitioner says that the Electronic Way Bills Rules have yet to come into force. Therefore, without access to the online profile, the petitioner cannot generate E-way bills.</p> <p>Without such E-way bills, the petitioner will not be allowed to move the goods anywhere and that will paralyze its business. Lack of access would mean that the petitioner is unable to file return or pay tax or undertake any other compliance required by the statute.</p> <p>The High Court held that the special sessions of Parliament or special or extraordinary meetings of Council would mean nothing to the assessee unless they obtain easy access to the website and portals.</p> <p>The regime is not tax friendly. The High Court hoped and trusted that those in charge of implementation and administration of this law will at least now wake up and put in place the requisite mechanism.</p>
Alterative remedy		
3	<b>Poonam Grahnrman (P) Limited V. Assistant State Tax Officer' – 2018 (4) TMI 204 - KERALA HIGH COURT</b>	<p>The goods belonging to the writ petition have been detained by the first respondent invoking the power under section 129 of CGST Act read with Kerala SGST Act.</p> <p>The reason for detention is that the goods have been transported by the petitioner without records. The petitioner contended that the driver of the vehicle in which the goods were</p>

	(decided on 26.03.2018)	<p>carried omitted to hand over the documents when the goods were intercepted and the same were though furnished later, the detaining authority did not accept the same.</p> <p>The High Court held that relief prayed by the petitioner cannot be granted under Article 226 of the Constitution of India. The High Court directed the first respondent to complete the adjudication provided for under section 129 after affording the petitioner an opportunity of hearing, within a week from the date of receipt of the order.</p>
<b>Seizure before effective date</b>		
4	<p><b>Modern Traders V. State of UP' – 2018 (4) TMI 1076 - ALLAHABAD HIGH COURT</b></p> <p>(decided on 03.04.2018)</p>	<p>The goods were transported from Bhulandshahr to Delhi. There was no e-way bill during the movement of goods, while the vehicle was crossing Ghaziabad.</p> <p>The vehicle was intercepted and detained at Ghaziabad by the Assistant Commissioner, Mobile Squad on 24.03.2018. The vehicle was seized on the ground that there was no e-way bill.</p> <p>A show cause notice dated 28.03.2018 was issued under section 129(3) of the Act, The petitioner was directed to appear on 04.04.2018 and explain as to why the tax @ 18% and equivalent amount of penalty may not be imposed. The petitioner, therefore, approached the High Court invoking writ jurisdiction.</p> <p><b>The petitioner, in this writ petition contended that-</b></p> <p>There is no requirement to carry the e-way bill during the Inter-State movement of the goods, therefore, the same has not been handed over to the transporter at the time of delivery of the goods;</p> <p>The entire seizure proceedings are not only illegal but clearly are abuse of process of law as well as misuse of power ;</p> <p>Since the respondent No. 3 was insisting the petitioner has downloaded e-way bill – 02 and produced the same to him within 15 minutes from the time of detention ; Despite the E-way bill 02 has been produced the respondent no. 3 has passed the seizure order after a gap of four days; It is a clear violation of UTGST Rules;</p> <p>The High Court observed that Rule 138 provides that till such e-way bill system is developed and approved by the Council, the Government by notification may specify the documents which are to be carried with the consignment of goods. It is not in dispute that the condition of accompanying the e-way bill with respect to inter-State transaction is mandatory with effect from 01.04.2018, whereas in the present case the transaction is much before the aforesaid date. The High Court directed respondent No. 3 to release the goods and vehicle.</p>
5	<p><b>'M/s Bhumika Enterprises V. State of U.P. And 3 Others' - 2018 (4) TMI 530 - ALLAHABAD HIGH COURT</b></p>	<p>From perusal of the record the High Court have noticed that the vehicle has been detained and the goods/vehicle was seized by the respondent no.4 on 27.3.2018 whereas the time has been granted for submission of reply and appearance of the person concerned before the respondent no.4 on the later date.</p> <p>There is no dispute with regard to quality and quantity of the goods and further that the invoice issued clearly indicates of charge of C.G.S.T. and S.G.S.T by the petitioner.</p> <p>The High Court further noticed that there is no dispute with regard to registration of the seller (the petitioner) and the purchaser as also that the goods were being transported from Varanasi to Fatehpur which are detained in between the aforesaid two places.</p> <p>The High Court further noticed that the E-way bill-02 has been downloaded/issued in favour of the petitioner on 26.3.2018 at 11.50 a.m. and admittedly seizure order has been passed on 27.3.2018 at 6 p.m. before which the E-way bill-02 has been produced by the petitioner.</p>

The Revenue contended that the transaction has been made with one unknown person therefore there were some lacuna noticed by the seizing authority.

The High Court found no substance in the submission by the Revenue. The tax invoice was raised in favour of the consignee namely M/s Ram Narsh Ramakant, Bindki, Fatehpur and the same was available with the seizing authority and the High Court saw no reason as to why the seizing authority has not made any effort to make inquiry from the said dealer/consignee whose TIN number was mentioned in the tax invoice.

The High Court saw that the seizing authority though has mentioned the GSTIN number of some dealer situated at Allahabad but no details of the said dealer has been given in the impugned seizure order nor the details of the mobile number holder.

Since the tax invoice indicating the tax charged and the same admittedly found during the course of inspection/detention and E-way bill-02 has been downloaded much before the seizure order, the High Court saw no justification in the impugned seizure order and therefore, the High Court have no option but to allow the present writ petition and to set aside the seizure order dated 27.3.2018 as well as the show cause notice issued under Section 129(3) of the Act for imposition of penalty.

#### Justification for seizure

The vehicle carrying the goods was intercepted at Kanpur on 01.04.2018 at about 9-30 a.m. by respondent no. 2 and interception/detention memo was issued on the ground that since the E-Way Bill No.01 is not available as such the physical verification of the goods loaded is to be made and fixed 02.04.2018 for physical verification and inspection at 11-00 a.m.

#### The petitioner submitted the following-

E-Way Bill No.01 was generated on 01.04.2018 at about 09-57 a.m. and produced before the respondent no. 2, however, seizure order under Section 129(1) of the U.P. Goods and Service Tax Act, 2017 has been passed on 02.04.2018 at about 8-55 a.m. much before the time fixed for physical verification and inspection of the goods.

It has wrongly been recorded in the seizure order passed under Section 129(1) of the GST Act, 2017 that goods were being transported unauthorized without any E-Way Bill No.01.

It does not appeal to reason and logic that when E-Way Bill No.01 was generated on 01.04.2018 at about 09-57 a.m. and the same would not be produced before the authority and the fact to the contrary has wrongly been recorded in order to justify the detention and seizure.

Even though E-Way Bill No.01 was generated and produced by the petitioner but there was no requirement for the same as the Central Government has suspended the requirement of E-Way Bill No.01 on 01.02.2018.

The Revenue has not been able to justify the impugned order in the facts and circumstances of the case. The High Court required respondent no.2-Assistant Commissioner, Commercial Tax, Mobile Squad--XI, Kanpur, U.P. to appear before the Court day after tomorrow (13.04.2018) to explain as to under which authority of law he intercepted the vehicle and passed the seizure order despite E-Way Bill No.01 was generated and produced.

#### Non mentioning of vehicle number

The detention was made on the ground that Part-B of e-way bill was incomplete. The contention of the petitioner before the authority below was that there was no intention on the part of the petitioner to evade payment of tax during the course of intra-state sale of the goods.

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**'Surendra Steel Supply Company Versus State of U.P. And Another' - 2018 (5) TMI 526 - ALLAHABAD HIGH COURT (decided on 11.04.2018)**

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**VSL Alloys (India) Pvt. Ltd. Versus State Of U.P. And Another' - 2018 (5) TMI 455 - ALLAHABAD HIGH COURT,**

	<b>(decided on 13.04.2018)</b>	<p>The High Court Held that no ill intention at the hands of the petitioner nor the petitioner was supposed to fill up Part-B giving all the details including the vehicle number before the goods are loaded in a vehicle, which is meant for transportation to the same to its end destination.</p> <p>In the present case, all the documents were accompanied the goods, details are duly mentioned which reflects from the perusal of the documents. Merely of non-mentioning of the vehicle no. in Part-B cannot be a ground for seizure of the goods. The High Court held that seizure order did not sustain. The High Court directed to release the goods with vehicles.</p>
<b>Furnishing of bank guarantee</b>		
8	<b>M/s Vinayaga Roofings V. Asst. State Tax Officer' - 2018 (5) TMI 368 - KERLA HIGH COURT (decided on 27.04.2018)</b>	<p>In 'the petitioner challenges the detention of his vehicle ordered. He says that the primary reason is that the consignment was not supported by e-way bill and though he concedes that this is a violation of the statutory rules, he offers to furnish bank guarantee for the entire amount for releasing the vehicle.</p> <p>The High Court ordered the petitioner to furnish a bank guarantee for an amount INR 1, 12,148, and on the petitioner executing a bond under Rule 140(1) of the CGST Rules. As soon as the bank guarantee is furnished and the bond is executed, the vehicle will be released to the petitioner.</p>

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In India, GST Team of KDMSL are located in following cities: Hyderabad, Mumbai, Bangalore, New Delhi, Chennai, Pune and Kolkata. For more information about KDMSL service offerings, visit [www.karvygst.com](http://www.karvygst.com)

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