

To,

State Sales Tax Officer,

State - [Pin Code],

India

Subject: Release of under-transit Consignment seized by your Department.

Ref: Show Cause Notice #[Number] Dated [DD.MM.YYYY]

Respected Departmental Officer,

1. We acknowledge receipt of the Detention Notice in Form GST MOV-06 and the Show Cause Notice in Form GST MOV-07 issued by your good office on [date/time]. These notices pertain to goods transported under a valid tax invoice and e-way bill, which have been detained on the allegation of undervaluation.
2. The consignor, **M/s [Consignor Name]**, is a taxpayer that has duly registered under the Central Goods and Services Tax Act, 2017 (CGST Act) and carries on business activities, functioning under GSTIN _____.
3. The goods (**Describe Goods**) were supplied under a valid tax invoice dated _____, bearing a taxable value of Rs. _____ along with applicable CGST/SGST/IGST. The movement of the subject goods was undertaken through **M/s [Transport Company Name]**. The consignment was transported via **[Vehicle Model and Make]** bearing Regn No. _____, supported by LR No. _____.
4. The goods were intercepted during their movement from **[place of origin]** to **[destination]**, and a detention notice was issued on the sole ground that the invoice value was allegedly lower than the "market value". This allegation does not constitute a contravention of the CGST Act or Rules warranting detention under Section 129.
5. At the outset, it is submitted that Section 129(3) of the CGST Act, 2017 mandates that the proper officer must issue a speaking order in Form GST MOV-09 within seven days of detention. Any delay renders the proceedings unsustainable.
6. In the present case, the speaking order in Form GST MOV-09 was issued only on **[DD.MM.YYYY]**, i.e., **after 28 days** from the date of detention, which is far beyond the statutory limit of seven days prescribed under Section 129(3). Such a delay has been consistently held by courts to render the proceedings unsustainable, as the authority cannot continue to detain goods without issuing a timely and valid adjudication order. Accordingly, the belated issuance of Form GST MOV-09 vitiates the entire proceedings.

7. Further, detention under Section 129 is permissible only when goods are transported in contravention of the statutory provisions pertaining to documents required during movement - namely, the tax invoice and the e-way bill. In the present case, both documents were duly available and valid; hence initiation of proceedings under Section 129 is legally untenable. The relevant extract of Section 129 of the CGST Act, 2017 is given below for your reference .

Section 129 - Detention, seizure and release of goods and conveyances in transit

(1) 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 and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,---

8. Furthermore, Rule 138A of the CGST Rules, 2017 is to be examined in terms of the present case. The transporter herein was carrying the tax invoice as well as the duly generated e-way bill during the movement of goods. Since Rule 138A mandates only these documents to be carried in transit, and both were unquestionably available, there was no procedural or documentary lapse that could justify detention under Section 129.

The allegation of undervaluation has no relevance to Rule 138A, which deals solely with documents accompanying the goods, not with the valuation adopted by the supplier. The relevant extract of Rule 138A of the CGST Rules has been reproduced below for your ready reference:

Rule 138A. Documents and devices to be carried by a person-in-charge of a conveyance. -

(1) The person in charge of a conveyance shall carry-

(a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) a copy of the e-waybill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be Notified by the Commissioner:

Provided that nothing contained in clause (b) of this sub-rule shall apply in case of movement of goods by rail or by air or vessel:

[Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of FORM GST EWB-01.]

9. As per the above-mentioned provision of the CGST Act 2017, the registered person needs to furnish E-way bill along with Tax Invoice only for the movement of the goods, which is in fact available with the transporter. It is submitted that goods can be detained only if both conditions are not satisfied as per the procedural aspect of the Act,
10. It is further submitted that goods cannot be legally detained solely on the basis of allegations of under-valuation. Below mentioned are relevant rulings by the jurisdictional courts in India pertaining to the subject:

In **Alfa Group Vs. The Assistant State Tax Officer & Ors. (2019 TAXSCAN (HC) 114)**, the Kerala High Court categorically stated that:

“There is no provision under the GST Act which mandates that the goods shall not be sold at prices below the MRP declared thereon. Further, there is nothing in Ext.P2 order that shows that, on account of the alleged wrong classification of the goods there was any difference in the rate of tax that was adopted by the assessee. In my view when the statutory scheme of the GST Act is such as to facilitate a free movement of goods, after self-assessment by the assessee concerned, the respondents cannot resort to an arbitrary and statutorily unwarranted detention of goods in the course of transportation”.

11. Your goodself may also reference the contents of the Chhattisgarh High Court ruling in **K.P. Sugandh Ltd Vs State of Chhattisgarh & Ors. (2020 TAXSCAN (HC) 283)**:

“14. Given the said facts and circumstances of the case, this Court is of the opinion that under valuation of a good in the invoice cannot be a ground for detention of the goods and vehicle for a proceeding to be drawn under Section 129 of the Central Goods and Service Tax Act, 2017 read with Rule 138 of the Central Goods and Service Tax Rules, 2017. In view of the aforesaid the impugned order Annexure P/1 i.e. the order passed under Section 129 and the order of demand of tax and penalty both being unsustainable deserves to be and is accordingly set-aside/quashed. The respondents are forthwith directed to release the goods belonging to the petitioners based on the invoice bill as well as the e-way bill.”

12. Your attention is kindly directed to **Circular No. 06/2022** dated 06.04.2022 issued by the Office Of The Commissioner of State Goods And Services Tax Department, Government Of Kerala, Tax Towers - Thiruvananthapuram

Circular No. 06/2022, issued pursuant to the decision of the Kerala High Court in **Alfa Group Vs. The Assistant State Tax Officer & Ors. (supra)** clarified that goods in transit or stored in parcel agencies must not be detained or subjected to show cause notices solely on the ground that their invoice value is lower than the Maximum Retail Price (MRP).

The Kerala SGST Department further instructed all concerned intelligence squads to refrain from arbitrary detentions based on undervaluation compared to the MRP.

Paragraph 4 of the Circular additionally reads:

“If any undervaluation cases are suspected in such cases, the officers are directed to upload the details of such invoices using the option provided in the Mobile App and send a report to the jurisdictional Officer, marking a copy to the jurisdictional district Joint Commissioner. Further, the intelligence squads shall gather evidence to establish the case by collecting documents about the actual value of the supply. The jurisdictional officer concerned shall verify the same with the help of the report and the uploaded details. Thereafter, the jurisdictional officer of the taxpayer vertical or the Intelligence formation can take further action as provided in the law.”

13. In light of the above-mentioned statutory provisions and the judicial pronouncements cited herein, it is evident that any alleged undervaluation does not amount to a “contravention of the provisions” for the purpose of Section 129. The scope of contravention under Section 129 must be read strictly with the transit-document requirements under the Act and Rules, namely the tax invoice and the e-way bill, both of which were duly available and valid in the present case.
14. Further, the belated issuance of Form GST MOV-09, far beyond the mandatory seven-day period, renders the proceedings unsustainable and vitiates the detention action in its entirety.
15. It is a well-settled principle that detention proceedings must strictly comply with the time-bound framework of Section 129, failing which the continuation of detention becomes arbitrary and without authority of law.
16. Accordingly, it is humbly requested that the proceedings initiated vide the Show Cause Notice in Form GST MOV-07 be dropped, and that the detained goods and conveyance be released forthwith, without insisting on any tax or penalty under Section 129.
17. We remain completely cooperative towards the procedures and are willing to furnish any information required by the jurisdictional assessing authority for concluding this adjudication.

Yours faithfully,

Authorized Representative

[Designation]

[Contact Details]