

The background of the slide shows a close-up of several people's hands and arms working at a desk. One person is holding a red pen over a document with handwritten notes. Another person's hand is visible holding a yellow pen. In the foreground, a laptop keyboard is partially visible. The scene is lit with soft, natural light, suggesting an office or meeting environment. A large blue diagonal shape is overlaid on the left side of the image, containing the text.

WIRC – Refresher Course on GST

Issues in ISD, Cross Charge & Eway bill

CA Vasant K. Bhat

08.07.2020

Scope – ISD & Cross Charge

Issues ISD & Cross Charge:

- What is ISD? What is cross charge?
- Comparison
- Consequences of non compliances
- Whether ISD / cross charge is mandatory or optional?
- Whether ISD can substitute cross charge & vice-versa?

Scope – ISD

ISD: Sec 2(61)

“Input Service Distributor” means

- an office of the supplier of goods or services or both
- which receives tax invoices issued under section 31 towards the receipt of input services and
- issues a prescribed document for the purposes of distributing the credit of CT/ST/UT/IGST paid
- having the same Permanent Account Number as that of the said office;

Scope – ISD

Why ISD?

- Office of the supplier may not provide any outward supply
- Undue accumulation of ITC at office

How to distribute?

Sec 20:

1. To be distributed against the prescribed document
2. The credit distributed shall not exceed the amount available for distribution

Scope – ISD

3. Any credit attributable to a recipient shall be distributed only to that recipient.
4. Any credit attributable to more than one recipients, the same shall be distributed to those recipients on the basis of TO in the State.
5. Credit attributable to all the recipients should be distributed to all the recipient on pro rata basis of their TO in the State.

Scope – ISD

Other points: (Rule 39)

- Credit taken shall be distributed in the same month.
- Shall separately distribute the ineligible credit including restricted u/s 17(5).
- Credit shall be distributed even if the recipient is engaged in exempt supplies or un-registered for any reason

Relevant Period:

- Preceding FY where the recipient has TO in PY.
- TO of the last quarter where there was no TO in the PY.

Scope – Cross Charge

- The term Cross Charge has not been defined.
- It denotes the tax on supply made to distinct persons
- As per Schedule I, any supply of goods or service to a distinct person in the course or furtherance of business even without the consideration is also supply liable for payment of tax.

Value of Supply: Rule 28

- Open Market Value (OMV)
- If OMV is not available value of supply of the goods or services of like **kind and quality**

Scope – Cross Charge

- 110% of **cost** of production/manufacture/acquisition of such goods or the cost of provision of such service.
- Where recipient is eligible for **full ITC** the value declared in the invoice shall be deemed to be OMV.

Cross charge – a tool to transfer the credit?

Comparision

ISD	Cross Charge
Distribution of the credit	Tax payable on supply
Applicable only for services	Applicable on supply of goods or service
Separate registration is required	Separate registration is not required
Based on TO, ISD is to be distributed	Value of supply is to be determined as per Valuation Rules
Applicable where recipient is engaged in exempt supplies	Tax is not to be paid on exempt supplies

Consequences of non-compliance

ISD:

- No specific penal provision for non-distribution, for excess distribution-section 21
- General penalty?
- Credit to be disallowed?

Cross Charge:

- Amounts to supply without payment of tax, recovery proceedings shall apply
- Sec 132 - supply without issue of any invoice
- Sec 132 – Issue of invoice without supply

Mandatory or Optional?

ISD:

Section 20: "Manner of distribution of credit by ISD"

...ISD "shall" distribute

Cummins India Ltd. [2019] 103 taxmann.com 126 (AAR - MAHA)

"If they want to distribute such credit than they will be an Input Service Distributor. Once an ISD, then it follows that they must compulsorily obtain separate registration as an ISD."

Mandatory or Optional?

ALD Automotive Pvt. Ltd. (2019) 13 SCC 225

“Whether particular provision is mandatory or directory has to be determined on the basis of object of particular provision and design of the statute”

SKH Sheet Metals Components 2020-TIOL-1031-HC-DEL-GST

“Since the consequences for non-consequence are not indicated, the provision has to be seen as directory.”

Mandatory or Optional?

Cross Charge

- Supply to a distinct person
- Levy under section 9
- Recovery under section 73 / 74
- Punishment under section 132

Mandatory or Optional?

Columbia Asia Hospitals Pvt. Ltd. 2019 (20) GSTL (App. AAR-GST)

Employee of entity in one State is not the employee of the same entity in other State???

ISD or Cross Charge?

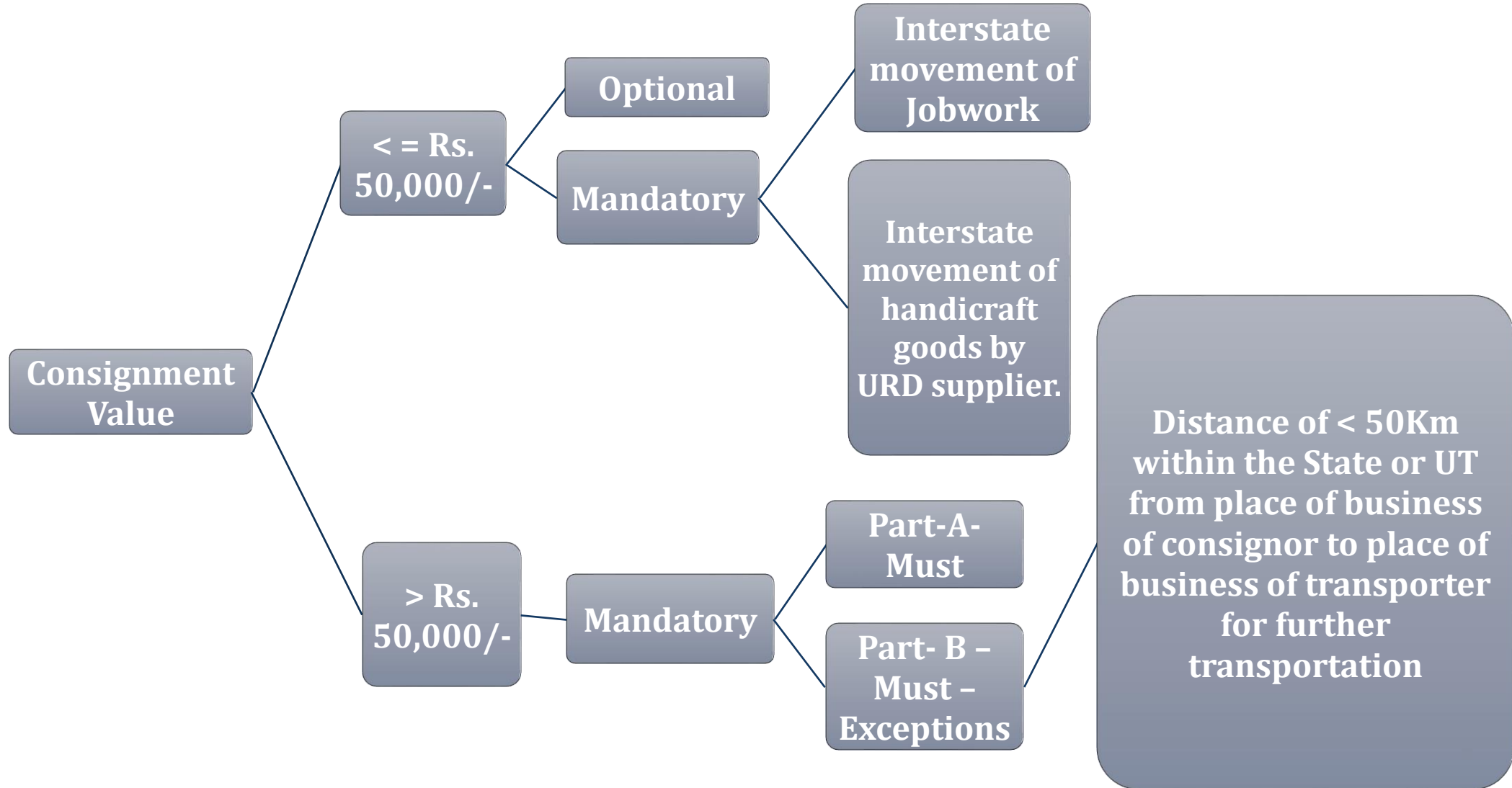
- ISD is not a levy, cross charge is levy.
- ISD is not applicable to goods, Cross charge is for supply of goods or service or both.
- ISD is to be distributed based on TO, cross charge involves valuation.
- ISD requires separate registration, cross charge does not.
- ISD is to be reported in GSTR-6, Cross charge is included in GSTR 1 /3B
- Cross charge is mandatory

Issues in E-Way bill

Why Eway bill?

- Effective tool to track the movement of Goods.
- Will prevent evasion of tax and ensure hassle free movement of goods across India.
- Increase in Government Revenue.
- Beneficial to logistic Industry - Improve turnaround time of vehicles and help increasing the average distances travelled, reducing the travel time as well as costs.
- It will brings transparency and convenience to comply EWB procedures.
- Abolition of check posts - Huge relief for truckers who would earlier have to wait in queue for hours to clear the check posts.

Issues in E-Way bill

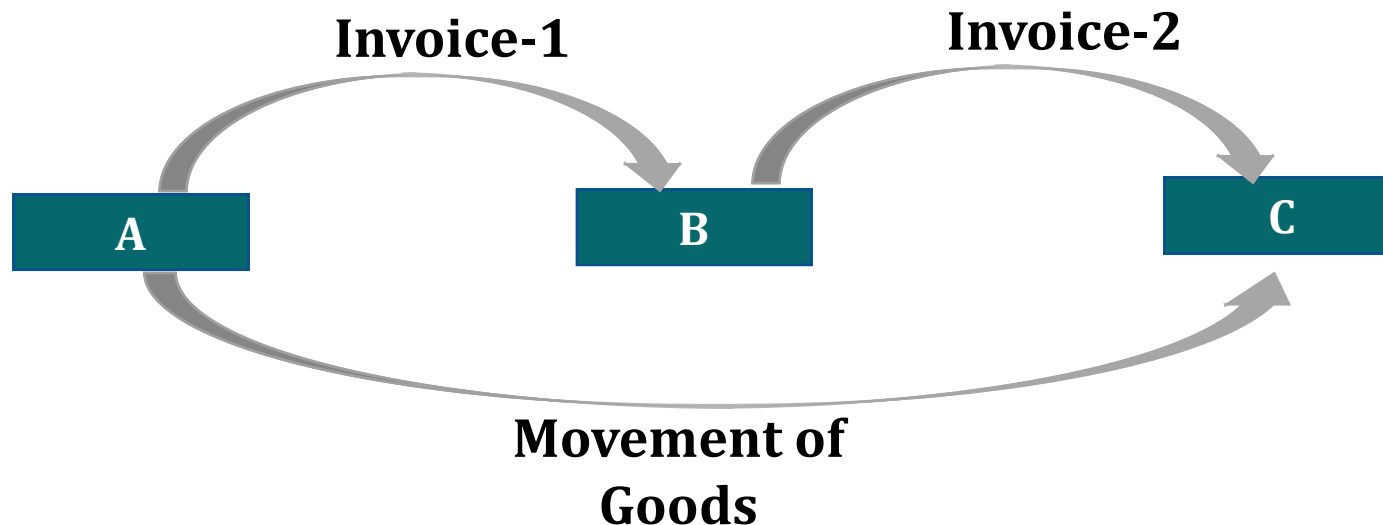


Issues in E-Way bill

State	Relaxation
Bihar	EWB required, only if value exceeds Rs. 1L
Chattisgarh	EWB not required for 15 specified goods
Delhi	EWB required, only if value exceeds Rs. 1L
Goa	EWB required only for specified 22 articles
Gujarat	No EWB for intra city movement. Only for 19 specified articles.
Himachal Pradesh	EWB not required for 17 specified goods
Kerala	Exemption for some items within 25km
Madhya Pradesh	EWB required only for 11 items
Maharashtra	EWB not required if value is less than Rs. 1L
Rajasthan	EWB not required for Job work
Tamilnadu	EWB not required if value is less than Rs. 1L and not required for 100 specified items
West Bengal	EWB not required if value is less than Rs. 1L Job work- No EWB

BILL TO- SHIP TO

- ❑ Bill to and Ship to – Same GSTIN – Principal POB and Addl POB within the same state
 - ❑ Only 1 EWB
- ❑ Bill to and Ship to- Different GSTIN
 - ❑ Only 1 EWB
 - ❑ If A is generating EWB, then details of Invoice-1 to be given.
 - ❑ If B is generating EWB, then details of Invoice -2 to be given.
 - ❑ Bill From, Dispatch From, Bill To and Dispatch To, facilities provided must be used.



MULTI MODAL SYSTEM

- ❑ Single Invoice- Multiple Vehicles from starting point to the destination
 - ❑ EWB for every vehicle
 - ❑ Original copy of invoice to be raised before dispatch of first consignment, but to be sent with last consignment.
 - ❑ Delivery challan giving ref. to original invoice to be raised for every consignment.

- ❑ X Ltd transporting goods in a Wagon, then shifted to 10 Containers. How to generate EWB in such a cases
 - ❑ This is the case of Multimodal transport.
 - ❑ Update Part- B

ALLOWED ERRORS - CIR NO.64/14.09.2018

- Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;
- Error in pin-code but address of consignor and consignee mentioned is correct, subject to condition that error in PIN code should not have effect of increasing validity period of EWB;
- Error in address of consignee to extent that locality and other details of consignee are correct;
- Error in one or two digits of document number mentioned in EWB;
- Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;
- Error in one or two digits/characters of the vehicle number;
- Penalty of Rs.1000/- may be levied in above cases

LATEST DECISIONS ON E-WAY BILL

- ❑ Goods cannot be released only based on bond. Bank guarantee equal to tax and penalty is must - Kerala Gujarat Cargo Express [2018] 94 taxmann.com 216 (Kerala) dated 15-05-2018
- ❑ Reasons mentioned in detention order sufficient to justify the interception - Vardh Paper Products (P.) Ltd[2018] 93 taxmann.com 341 (SC) 21-05-2018
- ❑ Vehicle number not mentioned is a valid reason to detain goods - Kairali Granites [2018] 94 taxmann.com 198 (Kerala) 15-05-2018
- ❑ No penalty if EWB issued after interception but before seizure due to technical glitch - Bhumika Enterprises [2018] 92 taxmann.com 343 (Allahabad) 03-04-2018

LATEST DECISIONS ON E-WAY BILL

- ❑ Wrong GSTIN mentioned. Held penalty not payable when not intentional. Authorities should have checked with dealer whom it was addressed - Bhumika Enterprises [2018] 92 taxmann.com 343 (Allahabad) 03-04-2018
- ❑ Goods sent for job work cannot be detained merely for non furnishing of EWB as it not towards supply - Age Industries (P.) Ltd. Versus Assistant State Tax Officer 2018 (1) TMI 1116 - Kerala High Court
- ❑ EWB not downloaded due to technical glitch. Penalty not levied but subject to furnishing of Bank Guarantee - M/S. VIKRAM SOLAR PVT. LTD (2018) 02 CCHGST 0021 AllHC 04-01-2018

Various issues faced by taxpayers in E-way bill leading to detention of goods

Driver opted for different route other than that taken by other transporters under similar E-Way Bills.

Goods not offloaded at designated place but taken further

Wrong vehicle number being mentioned

Fresh E-way Bill generated in continuance of earlier one already expired

Due to Expiry of E-way bill.

Issuing of Incomplete E-way bill

Failure to generate Part-B of E-Way Bill due to some technical problem

Various issues faced by taxpayers in E-way bill leading to detention of goods

Due to Incorrect value of goods on E-way bill.

Failure to produce tax invoice and E-way Bill at the time of inspection as driver mistakenly left it behind

Wrong mentioning of date of tax invoice or invoice number on the E-way bill

Goods transported without valid documents

Inspecting officer detaining goods on the ground of misclassification of goods resulting payment of lesser tax

For vehicle number being hand written on E-way bill

Deficiency therein with respect to distance/destination between two concerned States - Wrong mentioning of distance between Kerala and Uttarakhand as 280 kms. instead of 2800 kms.

Petitioner's vehicle broke down and was ready only after expiry of E-way bill.

THANK YOU

