

Chapter 20

Offences and Penalties

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Statutory Provision

<p>122. Penalty for certain offences</p> <p>(1) <i>Where a taxable person who-</i></p> <p style="padding-left: 2em;">(i) <i>supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;</i></p>
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- (ii) *issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;*
- (iii) *collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*
- (iv) *collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*
- (v) *fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;*
- (vi) *fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;*
- (vii) *takes or utilizes input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;*
- (viii) *fraudulently obtains refund of tax under this Act;*
- (ix) *takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;*
- (x) *falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;*
- (xi) *is liable to be registered under this Act but fails to obtain registration;*
- (xii) *furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;*
- (xiii) *obstructs or prevents any officer in discharge of his duties under this Act;*
- (xiv) *transports any taxable goods without the cover of documents as may be specified in this behalf;*
- (xv) *suppresses his turnover leading to evasion of tax under this Act;*
- (xvi) *fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;*
- (xvii) *fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;*

(xviii) supplies, transports or stores any goods which he has reason to believe are liable to confiscation under this Act;

(xix) issues any invoice or document by using the registration number of another registered person;

(xx) tampers with, or destroys any material evidence or document;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act;

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

¹[(1A) Any Person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed or passed on.]

²[(1B) Any electronic commerce operator who—

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.]

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized, -

(a) for any reason, other than the reason of fraud or any wilful misstatement or

¹ Inserted vide The Finance Act, 2020 vide Notf No. 92/2020-CT dt. 22.12.2020 applicable w.e.f. 01.01.2021

² Inserted vide The Finance Act, 2023. Applicable w.e.f. a date to be notified.

	<i>suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;</i>
	<i>(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.</i>
(3)	<i>Any person who-</i>
	<i>(a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);</i>
	<i>(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;</i>
	<i>(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;</i>
	<i>(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;</i>
	<i>(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account,</i>
	<i>shall be liable to a penalty which may extend to twenty-five thousand rupees.</i>

Related provisions of the Statute

Section or Rule	Description
Section 2(107)	Definition of Taxable Person
Section 31	Tax invoice
Section 35	Accounts and Records
Section 51	Tax deducted at source (TDS)
Section 52	Collection of tax at source (TCS)
Sections 16 to 21 and 41	Eligibility and conditions for claim of Input Tax Credit (ITC), Apportionment of Credit and Blocked Credit and Availment of ITC
Section 22 to 30	Registration
Section 54 to 58	Refunds

122.1 Introduction

For effective implementation of any tax-law and to do justice to tax abiding society, certain provisions to take strict action against offenders are required. The penal provisions in many cases act as a deterrent while some provisions attract the wrath of the penal provisions even for a breach, although such an infraction of law could be a minor offence and not a venial breach of law. It is for this reason that the law maker in his wisdom has laid down general disciplines relating to penalty so as to enable the person vested with such powers does not overshoot those powers that are inherently vested in him. While Courts have consistently laid down several guiding principles for the purpose of levy of penalties, it has been observed that the statutes are so drafted that several punitive penalties have now become mandatory. The discussion in the following paragraphs deal with the punitive provisions of GST law.

122.2 Analysis

At the outset, the section declares the offences that attract penalty as a consequence, apart from the requirement to pay the tax and applicable interest. Some of the offences listed under this section may also attract prosecution under section 132 but that depends on the gravity of the offence defined in that section.

Some aspects to consider before discussing this section are:

- Admitting liability to pay tax does not amount to admission of wrongdoing that can attract penalty in all cases. That is, proceedings are independent of tax demand. It is possible that proceedings may be jointly initiated such that the non-payment of tax may prove the circumstances to impose penalty. But accepting to pay tax cannot *ipso facto* result in penalty. For eg., RCM liability may be accepted (SCN issued but not under section 74) since continuing to dispute this liability may be revenue neutral. Accepting to pay RCM does not satisfy the ingredients to impose penalty. The benefit of resisting RCM liability may be academic when credit is available and output is also taxable. Refer various authorities under section 276 of Income-tax Act for guidance on jurisprudence applicable in the context of penalty;
- Government appears to be taking away discretion in imposing penalty but the grounds to impose penalty require some key ingredients, which are discussed in the later part of this chapter. Removing discretion is important but mechanical application of penalty provisions is not welcome. Especially in the first few years of GST, *bona fide* view on non-taxability is good ground to waive penalty particularly when demand for tax is accepted along with interest. *Bona fide* view means a case where two (adjudicating, appellate or AAR) authorities have taken contradictory views. Taxpayer cannot be expected to adopt the most farsighted interpretation that eventually prevails in a decision by a higher Court;
- Provisions in section 73(5) and 74(5) as well as section 73(9) and 74(8) indicate the general tendency to reduce penalty prescribed under section 122 if mitigating

circumstances are brought out during the course of adjudication or appeal. Study of section 126 provides much needed insight into the considerations relevant for imposing penalty under section 122. Penalty is expected to be an area where the law will develop significantly to encourage voluntary compliance.

The section is divided into four sub-sections:

- (i) The first sub-section prescribes 21 types of offences, any one of which, if committed, can attract penalty of ten thousand rupees or equal to the amount of tax involved, whichever is higher.
- (ii) Sub-section (1A) prescribes that penalty can be levied in case of specified offences, on such persons satisfying both the following conditions:
 - a. the said person is the instance for conduct of the transaction, and
 - b. and also retains the benefit from occurrence of the said transaction.
- (iii) The second sub-section deals with two situations, firstly, where certain offences committed are not due to either fraud or wilful misstatement or suppression of facts. In such a case, penalty will get reduced to 10% of tax involved, subject to a minimum of ten thousand rupees. Secondly, where the offence committed is due to either fraud or any wilful misstatement or suppression of facts to evade tax will result in a penalty equal to tax involved subject to a minimum of ten thousand rupees.
- (iv) The third sub-section deals with offences where the person is not directly involved in any evasion but may aid or abet or may be a party to evasion or if he does not attend summons or produce documents. Penalty in such a case would be up to twenty-five thousand rupees.
- (v) While this section describes the offence and prescribes the penalty applicable, the procedure for adjudicating the imposition of this penalty is under section 73 and section 74 in which there is no express reference to this section.

Persons found to have committed the offences listed in this section are liable to payment of penalty as follows:

- A. Penalty equivalent to tax or Rupees 10,000/- whichever is higher in cases where - tax is evaded; tax is not deducted; or short deducted or deducted but not paid to the Government; or tax is not collected (or short collected) or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly or fraudulent claim of refund, in the following cases:
 1. Supplies any goods and/ or services:
 - (a) Without issue of any invoice, or
 - (b) Issues an incorrect/ false invoice in respect of such supply

Comment:

Raising of an invoice before or at the time of removal of goods is mandatory under law whereas the time limit for issue in case of services is one month. However, there can be a situation that a supplier could have supplied either goods or services or both, without issuing an invoice for any reason or for reasons that may be *bona fide*. All such cases would constitute an offence attracting the penal provisions. For instance, a supplier could have supplied the goods against a contract without an invoice accompanying the goods (since the price for such supply may not have been agreed upon) even such cases would attract the penal provisions stipulated by this section

Incorrect invoice would take into its sweep and ambit any misclassification of goods which on the face of it is incorrect. For instance, an incorrect invoice could be a case where an invoice is issued for supply of “automobile spare” as a supply of “machinery spare”.

A false invoice is one which on the face of it is patently false. False in the normal course means “untrue” but in this instance the word false means something more than “untrue”. For instance, supply of unit quantity 100 for ` 10,000/- could be invoiced as unit quantity 10 for ` 1,000/-.

If the transaction is ‘inferred’ to be a supply, that is not a case of supplying goods without issuing an invoice although the result of such ‘inference’ is that goods have been supplied unmindful of the definition of supply and therefore invoice is not issued. For eg., delay in tracking goods sent on-approval is a case where after the time limit specified in section 31(7) is ‘deemed’ to be a supply which is the result of such delay. But that does not necessarily attract imposition of penalty under this clause (i).

In each of clauses to section 122(1), such ingredients must be inquired to sustain or defend demand for penalty.

2. Issues an invoice (or bill of supply) without supply of goods or services or both in violation of the provisions of the Act/ Rules.

Comment: In business parlance, these are termed as “bogus invoices/ bills”.

3. Collects any amount as tax but fails to deposit the same with the Government beyond a period of three months from due date.

Comment: Collection of taxes could either be passive or active collection. This section covers both such situations. It must be understood that the GST Law presupposes that tax is deemed to have been passed even in cases where tax has not been collected unless it is proved to the contrary (refer section 49(9)). Composition taxpayers (or even unregistered persons) selling MRP-goods also can come within the mischief of this prohibition. However, please note collection of ‘input tax credit lost’ (liable to be reverse under section 17(2) of CGST Act) due to any exemption of output to a recipient may not

amount to 'collection of tax'. Reference may be had to a decision of Tribunal in the context of Central Excise where section 11D of that Act was analysed in *Unison Metals Limited vs. CCE, Ahd-I (2006) 204 ELT 323 (LB)*.

4. Collects any tax in contravention of law but fails to deposit the same with the Government beyond a period of three months from due date.

Comment: One must ensure that any collection of taxes cannot be retained by the registered person. Collection of taxes in contravention of law would also mean where a registered person collects 18% as taxes but the actual tax rate is 12%. In this scenario, the difference of 6% cannot be retained by the registered person.

5. Fails to -

- (a) Deduct tax/ deduct appropriate tax, as per section 51 (Section 51 is applicable to certain specific persons. The said section requires such specified persons to deduct tax at the rate of one per cent out of the payment to the supplier if the value of supply under a contract exceeds two lakh and fifty thousand rupees) or
- (b) deposit the tax deducted with the appropriate Government

Comment: The provisions of tax deducted at source under section 51 have come into force with effect from 1-Oct-2018.

6. Fails to -

- (a) collect tax/ collect appropriate tax as per provisions of section 52 (Section 52 is applicable to electronic commerce operator who collects tax from the supplier of goods at the time of payment to such supplier at the rate of one per cent (CGST+SGST))
- (b) deposit the tax collected with the appropriate Government

Comment: The provisions of collection of tax at source under section 52 have come into force with effect from 1-Oct-2018.

7. Takes or utilizes input tax credit without actual receipt of goods or services either fully or partially in contravention of provisions of Act/ Rules.

Comment: This situation covers a case where the goods or services have not been received but the invoice has been received in advance. In such a situation the registered person cannot avail the credit in terms of section 16 of the CGST Act. If he does so, the penal provisions under this clause will stand attracted.

8. Fraudulently obtains refund of tax.

Comment: In the normal course, refunds can be claimed by a registered person in case of inverted duty structure or exports or supplies to SEZ (Zero rated supplies). One must be very careful at the time of claiming such refunds including furnishing of documentation etc. Any false or incorrect claim will get covered under this section.

9. Takes or distributes input tax credit in contravention of section 20, or the rules made thereunder (Section 20 prescribes manner of distribution of credit by input service distributor).

Comment: This clause covers cases relating to ISD who either avails or distributes the available credits contravening the provisions of section 20.

10. With an intention to evade payment of tax-
- (a) falsifies or substitutes financial records, or
 - (b) produces fake accounts or documents, or
 - (c) furnishes any false information or return

Comment: The above three situations need no further elaboration. It covers all cases of misrepresentation.

11. Fails to obtain registration.

Comment: This clause would typically cover - for example a situation where a person is required to register since his turnovers have exceeded the threshold limits but has failed to register; or a person who is required to take compulsory registration as per section 24 but fails to obtain registration.

12. Furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently.

Comment: For example, furnishing false information with regard to address of a business premise or not declaring a warehouse that existed etc.

13. Obstructs or prevents any officer in discharge of his duties.

Comment: A Government servant cannot be obstructed in the performance of his duties. For instance, a registered person does not allow an Officer to enter a godown.

14. Transports any taxable goods without the cover of specified documents.

Comment: For example, taxable goods are to be transported under cover of a tax invoice and in certain cases along with an e-way bill/ delivery challan etc.

15. Suppresses his turnover leading to evasion of tax.

Comment: Suppression and evasion are normally used or understood interchangeably. But suppression means "failure to disclose" which essentially leads to evasion of tax.

16. Fails to keep, maintain or retain books of account and other documents as specified in law.

17. Fails to furnish information or documents called for by an officer or furnishes false information or documents during any proceedings.

18. Supplies, transports or stores any goods which he has reason to believe are liable to confiscation.

19. Issues any invoice or document by using the registration number of another taxable person.

Comment: This is a clear case of evasion. Typically, it would also cover a case of misrepresentation of registration number of another registered person.

20. Tamper with or destroys any material evidence or document.
21. Disposes off or tampers with any goods that have been detained, seized, or attached under this Act.

- B. Penalty equivalent to amount of tax evaded or ITC availed or passed on will be levied on a person committing any of the following offences. This provision will apply if such person is a beneficiary and happening of such a transaction is on his request,

- Goods / services / both are supplied without issue of invoices / issue of incorrect or false invoice
- Issue of invoice / bill without supply of goods / services / both
- Takes / utilises input tax credit without actual receipt of goods / services
- Takes / distributes Input tax credit in contravention to provisions of Section 20 of CGST Act, 2017.

- C. Registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ` 10,000/- or 10% of the tax due from such person, whichever is higher.

Registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ` 10,000/- or tax due from such person, whichever is higher.

- D. Penalty up to ` 25,000/- where **any person**:

1. aids or abets any of the offences specified in clause A above;

Comment: Aiding or abetting normally means collusion with another person or to encourage or assist another person to commit an offence. It may be noted that almost all offences committed under clause A would require assistance/ collusion/ connivance.

2. acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation;

3. receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;
4. fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry.

Comment: Before levy of penalty under this section the question of *mala-fide* intent or resistance would also need to be considered.

5. fails to issue invoice in accordance with the provisions of this Act or rules made thereunder, or fails to account for an invoice in his books of account

122.4 FAQs

Q1. Whether penalty becomes automatically leviable without any adjudication?

Ans. Though not specifically mentioned in section 122 relating to penalties, in the light of section 126 dealing with general disciplines related to penalty and in view of principles of natural justice, penalties cannot be imposed without affording him an adequate opportunity of being heard.

Q2. Can there be any liability even if a person is not a taxable person?

Ans. Yes, penalty under sub-section (3) of section 122 can be levied on any person even if he is not a taxable person. Under sub-section (1A) of section 122, penalty can also be levied against a beneficiary on whose instance transaction has been conducted.

122.5 MCQs

Q1. If a person has failed to obtain the registration the penalty is equivalent to:

- (a) amount of tax
- (b) 10% of tax
- (c) upto ` 10,000
- (d) the amount of tax or ` 10,000, whichever is higher

Ans. (d) the amount of tax or ` 10,000, whichever is higher

Q2. If a person fails to appear before GST officer, the maximum penalty that can be levied is:

- (a) amount of tax
- (b) 10% of tax
- (c) upto ` 10,000
- (d) none of the above

Ans. (d) none of the above

Q3. Penalty of 10% of the tax can be levied if:

- (a) a person repeatedly had not appeared before GST officer for 3 times
- (b) the taxable person has not filed returns for 6 consecutive months or more
- (c) a taxable person has been served with show cause notice for 3 times repeatedly
- (d) registered person has not paid tax under *bona fide* belief

Ans. (d) registered person has not paid tax under *bona fide* belief.

Q4. There is no penalty for not carrying specified documents during transportation of goods

- (i) True
- (ii) False

Ans. (ii) False

Statutory provisions

123. Penalty for failure to furnish information return

If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues:

Provided that the penalty imposed under this section shall not exceed five thousand rupees.

Related provisions of the Statute:

Section	Description
Section 150	Obligation to furnish information return

123.1 Introduction

This section would be relevant where the information return as prescribed under section 150 is not filed. Section 150 requires certain class of persons to maintain records and furnish information return within the prescribed time.

123.2 Analysis

If the person who is required to file an 'information return' as prescribed under section 150 has not filed the return within the stipulated period of 30 days or such further period (please see section 150(2) and 150(3)) from the date of issue of show cause notice, a penalty of ` 100/- per day shall be levied for each day for which the failure continues but not exceeding five thousand rupees.

123.3 FAQs

Q1. What would be the penalty for not filing the information return?

Ans. Penalty of Rs.100 per day would be applicable for each day for which the failure continues subject to maximum of ` 5,000/-.

Q2. Would penalty under this section be payable for defective returns?

Ans. No, the penalty for defective information returns would not be payable under this section. But the information return will be treated as not filed if the defective returns are not rectified and in such case the penalty will be leviable.

Q3. Is there any maximum ceiling on penalty payable for failure to furnish information return u/s. 150?

Ans. Yes. There is maximum ceiling of ` 5,000/- for failure to furnish information return u/s. 150.

Statutory provisions**124. Fine for failure to furnish statistics**

If any person required to furnish any information or return under section 151, —

(a) without reasonable cause fails to furnish such information or return as may be required under that section, or

(b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty-five thousand rupees.

Related provisions of the Statute:

Section	Description
Section 151	[Power to call for information] ³

124.1 Introduction

This section provides for penal consequences for failure to furnish information or return as required under section 151 regarding collection of information.

³ Substituted for 'Power to collect statistics' vide Notf. No. 39/2021-CT dt. 21.12.2021

124.2 Analysis

The section specifies penalty for failure to provide information or return in two circumstances viz.

- (a) fails to furnish information or return without reasonable cause; and
- (b) furnishing false information wilfully.

The penalty specified is of up to ` 10,000/- and where the offence is continuing a further fine of up to ` 100/- per day subject to maximum of ` 25,000/- under the respective Act.

Statutory provision**125. General Penalty**

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

Related provisions of the Statute:

Section	Description
Section 2(84)	Definition of 'Person'
Section 2(107)	Definition of 'Taxable Person'
Section 126	General disciplines related to penalty

125.1 Introduction

The duty of the State is not only to recover all lawful dues from a defaulter, but to do justice towards the law-abiding populace to impose a penalty – *jus in rem*. To this end, offences are listed in section 122 along with penalty specifically applicable to each. Any offence that does not have a specific penalty prescribed cannot be let off without penal consequences. Section 125 is a general penalty provision under the GST law for cases where no separate penalty is prescribed under the Act or rules.

125.2 Analysis

Penalty upto ` 25,000/- is imposable where any person contravenes:

- (a) any of the provisions of the Act; or
- (b) rules made thereunder.

for which no penalty is separately prescribed under the Act.

125.3 FAQs

Q1. Which are the cases where general penalty can be levied?

Ans. The instances where there is no specific penalty prescribed under any other section or rule made thereunder general penalty will be attracted.

Q2. What is the amount of general penalty leviable under the Act?

Ans. An amount upto ` 25,000/-.

125.5 MCQs

Q1. General penalty can be levied in addition to the specific penalties prescribed under the law

- (i) Yes, general penalty is levied in addition to the specific penalties
- (ii) No, when no specific penalty is prescribed, then only the general penalty applies.

Ans. (ii) No, when no specific penalty is prescribed, then only the general penalty applies.

Q2. If the assessee discovers any default on his own, he must pay penalty along under this section?

- (i) Yes
- (ii) No

Ans. (ii) No.

Statutory provisions

126. General disciplines related to penalty

(1) *No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.*

Explanation. For the purpose of this sub-section –

- (a) *a breach shall be considered a 'minor breach' if the amount of tax involved is less than five thousand rupees.*
- (b) *an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.*

(2) *The penalty imposed under this act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.*

(3) *No penalty shall be imposed on any person without giving him an opportunity of being heard.*

(4) *The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the*

applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

- (5) *When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.*
- (6) *The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.*

Related provisions of the Statute:

Section/ Rule	Description
Section 122	Penalty for certain offences
Section 123	Penalty for failure to furnish information return
Section 125	General penalty

126.1. Introduction

While penalties are not new in tax laws, this section lays down certain guiding principles to ensure tax administration can be held accountable to the tax paying citizen. It is salutary that such well-reasoned 'general disciplines' relating to penalty are provided in the Act.

126.2. Analysis

Guideline for imposing penalty is one of the highlights of this progressive tax legislation. Courts have, for long, addressed the presence of circumstances surrounding the instance of – non-payment of tax now admitted – for the imposition of penalty. Now, a section providing guidance on 'how' and 'when' – to impose or refrain from imposing penalty – is salutary.

The following guiding disciplines in certain circumstances apply to substantial penalties:

- (a) No penalty can be imposed where the tax involved is less than ` 5,000/- (minor breach) or in case of documentation errors apparent on the face of record which is easily rectifiable and made without fraudulent intent or gross negligence.
- (b) When penalty is still liable to be imposed, the next safety as laid down is to inquire into the degree and severity of the breach to proceed with imposition of penalty. In these cases, if the facts do not demand imposition of penalty, restraint is advised. However, no such discretion is provided in the section while providing for amount of penalty.
- (c) Person liable to penalty must be given an opportunity of being heard. Further, a speaking order should be passed for imposing such penalty. The officer must provide explanation for levy of penalty and the basis on which penalty is quantified.

- (d) Voluntary disclosure by a person to an officer (not merely in his own books and records) about the circumstances of the breach prior to the discovery of the breach by the officer may be considered as a mitigating factor for quantifying of penalty.
- (e) Cases involving fixed sum or fixed percentage of penalty are excluded.

General notes

The nature of penalty and the principles governing imposition of penalties as held by the Courts would be a guiding factor. There are no infallible tests in law which would guide the provisions relating to levy of penalties. Penalties can or may be levied depending on the facts and circumstances of each case. The guiding principles laid down by Courts can be summarised as follows:

1. Provisions of penalty must be strictly construed and within the term and language of the statute.
2. Penalty provision should be interpreted as it stands and, in case of a doubt it should be in a manner favourable to the taxpayer. If the language of a taxing provision is ambiguous or capable of having more than one meaning, one has to adopt the interpretation favouring the assessee. (*CIT Vs Vegetable Products Ltd.*, (88 ITR 192 (SC)).
3. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the person either acted deliberately in defiance of law or was guilty of conduct, dishonest or acted in conscious disregard of his obligations. Penalty need not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judiciously and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act, or where the breach flows from the belief that the offender is not liable to act in the manner prescribed by the statute. (*Hindustan Steel Ltd., vs State of Orissa* 25 STC 210).
4. Penalty proceedings are apart and separate from assessment proceedings. A person is entitled to adduce any evidence, which he had adduced or not in the assessment proceedings and such evidence has to be duly considered by the authorities. The assessee is also entitled in the penalty proceedings to take up new pleas, which he had not taken up in the course of assessment proceedings.
5. No confiscation can be done unless Tax & Penalty is quantified [*Shree Enterprises Vs CTO reported in 2019-TIOL-1185-HCKAR-GST*].

Doctrine of mens rea

Non-compliance of law under a genuine belief or without a guilty mind should not generally invoke penalties. This view is by and large accepted by the Courts. For instance, in the case of *Modi Spinning and Weaving Mills (16 STC 310)* the Supreme Court held that "as the assessee *bona fide* thought that the lift purchased by them would be included in category (b) as well as category (c) of the certificate of registration and as neither the Assessing Officer nor the Appellate Assistant Commissioner had given any finding that the assessee did not or could not have entertained any *bona fide* doubt and therefore the offence committed, would not attract any penalties.

There is a clear distinction between a representation, which is negligent, and one, which is fraudulent. Normally a section requires that the representation must have been made falsely i.e., without any belief in its truth. A representation, however, negligent is not necessarily fraudulent. Although establishment of mens-rea is not a requirement but its absence is unmistakable and its existence cannot be presumed. Some reference to provisions such as section 7 and 8 of Indian Evidence Act may be examined along with definition of 'evidence', 'fact', 'facts in issue', 'proved', 'disproved', 'not proved', etc, may be perused to understand the extent any of the allegations stand proved in each case.

126.4 Issues and Concerns

The applicability of general disciplines relating to levy of penalties prescribed under this section has limited field of operation since sub-section (6) of section 126 clearly specifies that the general disciplines are not applicable wherever the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

126.5 FAQs

- Q1. What are the discretionary powers of the officers to waive the penalties?
- Ans. Section 126(2) prescribes that penalty shall be levied depending on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.
- Q2. What is regarded as "minor breach"?
- Ans. A breach shall be considered a 'minor breach' if the amount of tax involved is less than ₹ 5,000/-.
- Q3. What shall be considered as "mistake easily rectifiable"?
- Ans. An omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

126.6 MCQ

- Q1. For minor breaches of tax regulations or procedural requirements, the tax authority shall-
- (a) not impose substantial penalties

- (b) impose nominal penalty
- (c) not impose any penalty
- (d) none of the above

Ans. (c) not impose any penalty

Statutory provisions

127. Power to impose penalty in certain cases

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceeding under sections 62, or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

Related provisions of the Statute

Section or Rule	Description
Section 2(84)	Definition of 'Person'
Section 2(107)	Definition of 'Taxable Person'
Section 62	Assessment of non-filers of returns
Section 63	Assessment of unregistered persons
Section 64	Summary of assessment in certain special cases
Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful misstatement or suppression of facts
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts
Section 129	Detention, seizure and release of goods and conveyances in transit
Section 130	Confiscation of goods or conveyances and levy of penalty

127.1 Introduction

This section empowers the proper officer to initiate separate penalty proceedings if penalty is not leviable under any the provisions of section 62, 63, 64, 73, 74, 129 or 130.

127.2 Analysis

Penalty proceedings can be initiated under this section even if the same are not covered under the following sections:

- Section 62: Assessment of non-filers of returns
- Section 63: Assessment of unregistered persons
- Section 64: Summary assessment in certain special cases
- Section 73: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful misstatement or suppression of facts
- Section 74: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts
- Section 129: Detention, seizure and release of goods and conveyances in transit
- Section 130: Confiscation of goods or conveyances and levy of penalty

In other words, penalties can be imposed by proper officer after giving due opportunity even in cases where there are no proceedings open with regard to assessment, adjudication, detention or confiscation. The proper officer may issue a penalty order after giving opportunity of being heard to such person.

Statutory provision

128. Power to waive penalty or fee or both

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

Related provisions of the Statute:

Section or Rule	Description
Section 47	Levy of late fee
Section 122	Penalty for certain offences
Section 123	Penalty for failure to furnish information return
Section 125	General Penalty

128.1 Introduction

This section empowers the Government to waive penalty for certain class of taxpayers or under certain circumstances.

128.2 Analysis

- (i) This section provides for waiver of penalty leviable under section 122 or section 123 or section 125 or late fee payable under section 47 to those classes of taxpayers or under such mitigating factors as notified by the Government.

- (ii) A series of notifications have been issued for reduction of late fee with regard to filing of FORM GSTR 3B, GSTR-1, GSTR-5, GSTR-5A, and GSTR-6.

Statutory provision

<p>129. Detention, seizure and release of goods and conveyances in transit</p> <p>(1) <i>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, -</i></p> <p>(a) <i>on payment of penalty equal to two hundred per cent. of the tax payable on such goods and in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;</i>⁴</p> <p>(b) <i>on payment of penalty equal to fifty per cent. of the value of the goods or two hundred percent of the tax payable on such goods, whichever is higher, and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;</i>⁵</p> <p>(c) <i>upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:</i></p> <p><i>Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.</i></p> <p>[(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.]⁶</p>
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⁴ Substituted for "(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty" vide Finance Act, 2021 through Notf. No. 39/2021-CT dt. 21.12.2021 applicable w.e.f. 01.01.2022.

⁵ Substituted for "(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty" vide Finance Act, 2021 through Notf. No. 39/2021-CT dt. 21.12.2021.

⁶ Omitted vide Finance Act, 2021 through Notf. No. 39/2021-CT dt. 21.12.2021 applicable w.e.f. 01.01.2022

- (3) The proper officer detaining or seizing goods or conveyances shall issue a notice within seven days of such detention or seizure, specifying the penalty payable and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).⁷
- (4) No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.⁸
- (5) On payment of the amount referred to in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.
- (6) [Where the person transporting any goods or the owner of the goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3).
 Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less.
 Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.]⁹

Related provisions of the Statute:

Section/ Rule	Description
Section 67	Power of inspection, search and seizure
Section 68	Inspection of goods in movement
Section 130	Confiscation of goods or conveyances and levy of penalty

⁷ Substituted for "(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c)" vide Finance Act, 2021 through Notf. No. 39/2021-CT dt. 21.12.2021 applicable w.e.f. 01.01.2022.

⁸ Substituted for "(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard" vide Finance Act, 2021 through Notf. No. 39/2021-CT dt. 21.12.2021 applicable w.e.f. 01.01.2022.

⁹ Substituted for "(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within [fourteen days]¹⁰¹ of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130.

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of [fourteen days] may be reduced by the proper officer" vide Finance Act, 2021. through Notf. No. 39/2021-CT dt. 21.12.2021 applicable w.e.f. 01.01.2022.

129.1 Introduction

This section provides for the basis relating to detention of goods or conveyances or both in case of certain defaults under the law. A common man would understand the meanings of the three terms detention, confiscation and seizure as follows:

- ✓ Detention means keeping or holding back either by force or otherwise;
- ✓ Confiscation means to appropriate to the Government account;
- ✓ Seizure means to take forcible possession of.

129.2 Analysis

- (a) If a person contravenes any provision of the Act or Rules while transporting or storing goods during transit, then such goods and the conveyance in which such goods are carried and all the documents relating to such goods and conveyance can be detained or seized. The proper officer detaining and seizing the goods and/ or conveyance has to provide proper opportunity to the transporter or such other person to explain his case by issuing a show cause notice to him. After hearing the transporter, the officer shall pass an appropriate order.
- (b) In case of default, where the owner of the goods **comes forward for the payment of** penalty, then penalty levied will be equal to 200% of the amount of tax and in case of exempted goods 2% of the value of goods or ` 25,000/- whichever is less. The sub-section has two limbs to it-
- i. When the goods are **taxable** and the owner comes forward to pay the penalty – then the amount payable would be equal to:
- Penalty equal to 200% of tax.
- For example, if the taxable goods valued at ` 100,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods comes forward to pay penalty, the amount payable would be equal to Penalty = ` 24,000/-.
- ii. When the goods are **exempt** and the owner comes forward to pay the penalty – then the amount payable would be equal to:
- Penalty at 2% of value of goods or ` 25,000/-, whichever is lower.
- For example, if the exempt goods valued at ` 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods comes forward to pay the penalty the amount payable would be equal to: ` 2,000/- or ` 25,000/- whichever is lower, in this case it is ` 2,000/-.

- (c) In case where owner of the goods **does not come forward for payment of penalty**, then an order shall be passed for payment of amount of penalty equal to higher of **50% of the value of goods** or 200% of the tax payable on such goods and in case of exempted goods, 5% of the value of goods or ` 25,000/- whichever is less. The sub-section has two limbs to it:
1. **When the goods are taxable, and the owner does not come forward to pay the penalty** – then the amount payable would be equal to:
Penalty equal to 50% of the value of goods or 200% of the tax payable on such goods.
For example, if the taxable goods valued at ` 1,00,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay tax and penalty the amount payable would be equal to: Tax Penalty is higher of [` 50,000/- [i.e., 50% of value of goods (` 1,00,000/- *50%) or 200% of tax payable which is Rs 24000 (i.e., 200% of 12000)] in all = ` 50,000/-..
 2. **When the goods are exempt, and the owner does not come forward to pay the penalty** – then the amount payable would be equal to:
Penalty at 5% of value of goods or ` 25,000/-, whichever is lower.
For example, if the exempt goods valued at ` 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay the penalty the amount payable would be equal to: ` 5,000/- or ` 25,000/- whichever is lower, in this case it is ` 5,000/-.
- (d) The proper officer shall release the goods upon the payment amount of penalty in the above manner or upon furnishing a security equivalent of the amount payable and all the proceedings under this particular section shall be deemed to be concluded. However, if the person (either owner of the goods or any other person) fails to discharge the amount of penalty under this section within 15 days, then the goods and/or conveyance shall be liable for confiscation. The period of 15 days can be reduced by proper officer if goods are of perishable or hazardous nature.
- (e) Penalty under section 129 is an 'penalty in action', that is, this penalty cannot be imposed after completion of movement in case goods are NOT intercepted during movement and found to be deficient on the prescribed documents. If subsequent evidence is collected that clearly proves that goods have been moved without issuing EWB, even then penalty under section 129 CANNOT be imposed if such investigation is conducted after movement has ended. Decision of Patna HC in the case of *Ram Charitra Ram Harihar Prasad vs State of Bihar (CWP 11221 of 2019)* where the HC held that if EWB generated had expired but another EWB was generated just before

vehicle was intercepted which was produced to the inspecting officer. HC held that intercepting officer cannot be questioned if a valid EWB was produced even though, from the facts, the vehicle can be understood to have travelled without a valid EWB but not intercepted. Offence cannot be reconstructed 'in theory'. Penalty under section 129 will arise only when offence is 'in progress'. And vide Finance Act, 2021 w.e.f. 1.1.2022, the time period to issue notice and passing of order specifying the penalty has been clarified. The notice should be issued within 7 days of such detention or seizure, and thereafter an order should be passed within 7 days of service of such notice.

129.3 FAQs

Q1. Under what circumstances a conveyance can be detained?

Ans. A conveyance can be detained when the conveyance is used for –

- Transportation of any goods or
- Storage of such goods while they are in transit

in violation of the GST Act or rules made thereunder.

Q2. What is the quantum of penalties in case of detention/ seizure of goods and/ or conveyance?

Ans. The quantum of penalties in case of detention/ seizure of goods and/ or conveyance are: -

- In case owner comes forward– the quantum of penalty would be equivalent to the 200% of amount of tax in case of taxable goods and in case of exempted goods, 2% of the value of the goods or Rs.25000/- whichever is less.
- In case, the owner does not come forward, penalty shall be 50% of the value of the goods or 200% of amount of tax whichever is higher in case of taxable goods and in case of exempted goods, 5% of the value of goods or ` 25,000/- whichever is less.

129.4 MCQs

Q1. The detained goods shall be released only after payment of –

- (a) Applicable [~~tax and~~ penalty];¹⁰
- (b) Furnishing a security;
- (c) Tax and Interest;
- (d) Either (a) or (b).

Ans. (d) Either (a) or (b)

¹⁰ As per the provision amended by Finance Act, 2021 through Noff. No. 39/2021-CT dt. 21.12.2021.

Q2. Number of days within which the amount of tax and penalty on seized goods should be paid-

- (a) 3
- (b) 14
- (c) 7
- (d) 15

Ans. (d) 15

Statutory provisions

130. Confiscation of goods or conveyances and levy of penalty

- (1) ~~[Notwithstanding anything contained in this Act, if Where]~~¹¹ any person –
- (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
 - (ii) does not account for any goods on which he is liable to pay tax under this Act; or
 - (iii) supplies any goods liable to tax under this Act without having applied for registration; or
 - (iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
 - (v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

- (2) *Whenever confiscation of any goods or conveyance is authorized by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:*

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

¹¹ In sub-section (1), for the words “Notwithstanding anything contained in this Act, if ” the word “Where” has been substituted vide Finance Act, 2021 through Notf. No. 39/2021-CT dt. 21.12.2021.

Provided further that the aggregate of such fine and penalty leviable shall not be less than the [amount of penalty leviable under sub-section (1) of section 129 penalty equal to hundred percent of the tax payable on such goods]¹².

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

~~[(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.]¹³~~

(4) *No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.*

(5) *Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.*

(6) *The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.*

(7) *The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyances and deposit the sale proceeds thereof with the Government.*

Related provisions of the Statute:

Section / Rule	Description
Section 122	Penalty for certain offences
Section 126	General discipline related to penalty
Section 129	Detention, seizure and release of goods and conveyances in transit

¹² Substituted vide Finance Act, 2021 through Notf. No. 39/2021-CT dt. 21.12.2021 applicable w.e.f. 01.01.2022.

¹³ Omitted vide Finance Act, 2021 through Notf. No. 39/2021-CT dt. 21.12.2021 applicable w.e.f. 01.01.2022.

130.1 Introduction

This section provides for specific situations or causes leading to confiscation of goods/ conveyances. The nature of authorization to confiscate and providing an opportunity to show cause and release goods/ conveyances liable for such confiscation are detailed in this section.

130.2 Analysis

There are five precise causes for confiscation of goods and/ or conveyances specified in this section and they are:

Action	Consequence
Supply or receive goods in contravention of the provisions of this Act or rules made thereunder	Resulting in actual evasion of tax
Not accounting for goods	Carrying a liability for payment of tax
Supply of goods liable to tax	Without applying for registration
Contravention of the provisions of Act or rules made thereunder	With intent to evade payment of tax
Use of conveyance as a means of transport for carriage of goods	In contravention of the Act or rules made thereunder

- In all the above cases, goods or conveyance shall be liable for confiscation. However, the conveyance shall not be confiscated where the owner of the conveyance proves that it is without the connivance of owner himself, his agent or person in charge of the conveyance. Further, the person shall be liable to pay penalty under section 122 of the Act.
- If the goods or conveyance are liable to be confiscated under the provisions of this Act, the proper officer shall give the owner of the goods an option to pay fine in lieu of confiscation.
- The amount of fine shall not exceed the market value of goods as reduced by the amount of tax payable thereon. However, at the same time aggregate of fine and penalty leviable shall not be less than the amount of penalty equal to hundred percent of the tax payable on such goods.
- Where the conveyance is used for transportation of goods or passengers on hire, the owner of the conveyance shall be given an option to pay in lieu of confiscation of the conveyance a fine equal to amount of tax payable on the goods transported on his conveyance.

- The order for confiscation cannot be issued without giving the person an opportunity of being heard.
- The title of the confiscated goods or conveyance shall be vested upon the Government.
- The proper officer ordering confiscation shall take and hold possession of the things confiscated on behalf of the Government and every officer of police shall assist in taking such hold and possession.
- If the proper officer is satisfied that the confiscated goods/ conveyance are not required for any other proceedings under the Act, then he shall after giving reasonable time not exceeding 3 months to pay fine in lieu of confiscation, dispose the goods and deposit the sale proceeds with the Government.

130.4 FAQs

Q1. Are all cases of contraventions of any of the provisions of the Act or Rules liable for confiscation?

Ans. No, only if the contravention of the provisions results in evasion of taxes or there lies an intent to evade the payment of tax, confiscation of goods/ conveyance is permissible.

Q2. What is the maximum amount of fine in lieu of confiscation that can be levied?

Ans. The maximum amount of fine in lieu of confiscation shall not exceed the market price of the goods confiscated, less the tax chargeable thereon.

Q3. Can the option to pay redemption fine in lieu of confiscation of goods be given to any person other than the owner of the goods?

Ans. No, in terms of section 130(2) of CGST Act, the officer adjudging confiscation of any goods shall give to the owner of the goods an option to pay in lieu of confiscation such fine as thinks fit.

Q4. Can the option to pay fine in lieu of confiscation be exercised anytime?

Ans. The option to pay fine in lieu of confiscation shall be exercised within 3 months of confiscation.

Q5. What is the minimum amount of fine and penalty in lieu of confiscation that can be levied?

Ans: The minimum amount of fine and penalty shall be at least penalty equal to 100% of the tax payable on such goods.

Statutory provisions**131. Confiscation or penalty not to interfere with other punishments**

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973 (2 of 1974), no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

131.1 Introduction

This is an administrative provision which empowers the Government to initiate other proceedings, as relevant, in addition to confiscation of goods or imposition or penalty.

131.2 Analysis

Normally, the inference is that where the goods are confiscated or where any penalty is imposed, no other proceedings which are punitive in nature should be initiated.

This section provides that in addition to confiscation of goods or penalty already imposed, all/ any other proceedings may also be initiated or continued under the GST law or any other law, as applicable. This could be prosecution, arrest, cancellation of registration etc., as applicable and provided for the relevant non-compliance. Therefore, for the same offence both penalty and punishment can be levied.

Statutory provisions**132. Punishment for certain offences**

- (1) ¹⁴*[Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences], namely: -*
- (a) *supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;*
 - (b) *issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;*
 - (c) ¹⁵*[avails input tax credit using such invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill];*

¹⁴ Substituted vide The Finance Act, 2020 w.e.f. 01.01.2021 through Notf. No. 92/2020-CT dt. 22.12.2020.

¹⁵ Substituted vide The Finance Act, 2020 w.e.f. 01.01.2021 through Notf. No. 92/2020-CT dt. 22.12.2020.

- (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- (e) evades tax, ¹⁶~~fraudulently avails input tax credit~~ or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- ¹⁷[(g) obstructs or prevents any officer in the discharge of his duties under this Act;]
- (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- ¹⁷ [(j) tampers with or destroys any material evidence or documents;]
- ¹⁷[(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information;] or
- (l) attempts to commit, or abets the commission of any of the offences mentioned in ¹⁸[clauses (a) to (k)] of this section,
- shall be punishable –
- (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;
- (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two

¹⁶ Omitted vide The Finance Act, 2020 w.e.f. 01.01.2021 through Notf. No. 92/2020-CT dt. 22.12.2020.

¹⁷ Omitted vide The Finance Act, 2023. Applicable w.e.f. a date to be notified.

¹⁸ Substituted with "clauses (a) to (f) and clauses (h) and (i)" vide Finance Act, 2023. Applicable w.e.f. a date to be notified.

hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

- (iii) *in the case of ¹⁹[any other offence] where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;*
- (iv) *in cases where he commits or abets the commission of an offence specified in clause (f) or ²⁰[clause (g) or clause (j)], he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.*
- (2) *Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.*
- (3) *The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.*
- (4) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.*
- (5) *The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.*
- (6) *A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.*

Explanation. — For the purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

132.1 Introduction

¹⁹ Substituted with “any other offence” vide The Finance Act, 2023. Applicable w.e.f. a date to be notified.

²⁰ Omitted vide The Finance Act, 2023. Applicable w.e.f. a date to be notified.

This section talks about cases of tax evasion and penal actions applicable on specific events subject to amount of tax sought to be evaded. This provision provides for prosecution of offenders and the punishment initiated on them. In the normal course, prosecution is the institution or commencement of criminal proceeding, the process of exhibiting formal charges against an offender before a legal tribunal and pursuing them to final judgement on behalf of the State or Government or by indictment or information.

132.2 Analysis

A. In this section the law makers have identified situations whereby, there can be a leakage of Government revenue and have thus, penned down 12 such situations of *mala fide* intent which are as follows:

- (a) Supply of goods or services or both without the cover of invoice with an intent to evade tax;
- (b) If any person issues any invoice or bill without actual supply of goods or services or both leading to wrongful input tax credit or refund of tax;
- (c) Any person who avails input tax credit using invoice referred in point (b) above or fraudulently avails input tax credit without any invoice or bill ;
- (d) Collection of taxes without payment to the Government for a period beyond 3 months of due date;
- (e) Evasion of tax, or obtaining refund with intent of fraud where such offence is not covered in clause (a) to (d) above;
- (f) Falsifying financial records or production of false records/ accounts/ documents/ information with an intent to evade tax;
- (g) Obstructs or prevents any officer from doing his duties under this Act;
- (h) Acquires or transports or in any other manner deals with any goods which he knows or has reasons to believe are liable for confiscation under this Act or rules made thereunder;
- (i) Receives or in any way, deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this law;
- (j) Tampers with or destroys any material evidence or documents;
- (k) Fails to supply any information which he is required to supply under this law or supply false information;
- (l) Attempts or abets the commission of any of the offences mentioned above.

This section enables institution of prosecution proceedings both against the offenders and also against those persons who are institutional to committing such offence. Such persons who are aiding the commitment of offence punishable only if they retain the benefits arising from committing the offence.

The period of imprisonment and quantum of fine varies depending on the amount of tax evaded or seriousness of the offence as listed below.

Amount of Tax evaded/ erroneous refund/ wrong ITC availed or utilized	Fine	Imprisonment
Exceeding ` 5 Crores	Yes	Upto 5 years
` 2 Crores – `5 Crores	Yes	Upto 3 years
` 1 Crores – `2 Crores	Yes	Upto 1 year

- B. If any person commits any offence specified in clause (f), (g) or (j) above, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.
- C. In case of repetitive offences without any specific/ special reason which is recorded in the judgment of the Court will entail an imprisonment term of not less than 6 months and which could extend to 5 years plus with a fine.
- D. All offences mentioned in this section are non-cognizable and bailable except the following cases:
- Where the amount exceeds ` 5 Crores and
 - Instances covered by (a) to (d) in Para A.
- E. Every prosecution proceeding initiated requires prior sanction of the Commissioner.
- F. The explanation to this section states that “tax” includes which are levied under CGST, SGST, UTGST, and GST Compensation Cess Act. Basically, it includes the amount of tax evaded, amount of input tax credit wrongly availed or utilized or refund wrongly taken under the Act.
- G. Reference may be had to the discussion under section 122 regarding ‘ingredients’ to impose penalty contrasted with the admission of unpaid taxes. Prosecution under section 132 proceeds as a natural consequence of establishment of the ingredients in section 122 (for the stated offences from clause (i) to (iv) in section 122(1)) and the value being above the threshold specified. Further, it is seen in *Vimal Yashwantgiri Goswami vs State of Gujarat (SCA 13679 of 2019)* where Guj. HC laid down some guidance against placing persons under arrest under section 69 in a routine manner without first establishing whether basic ingredients of offence are not established, person cannot be detained. With the Economic Offences (Inapplicability of Limitation) Act, 1974, there is no urgency to prosecute before completion of adjudication proceedings on the basic tax demand and penalty;
- H. Prosecution must be undertaken in accordance with the due process prescribed under Cr.PC before a Magistrate. Authority in *Adani Enterprises Ltd. & Ors. v. UoI & Ors. In*

2019-TIOL-2408-MUM-CUS may be referred where proceedings under any special law in the absence of a 'procedure code' must fall in Cr.PC.

- I. Care must be taken to briefly read section 436 and 438 of Cr.PC. To detain a person (before conclusion of trial) is to deprive a person of his 'right to life' under article 21. So, for a person to be set free on bail is a 'right' under the Constitution. To deny this right is permitted in special circumstances. Persons may be arrested under section 41 of Cr.PC, if the offence is bailable or non-bailable. In case of bailable offences, then after arrest immediately, the arresting officer is empowered to release the arrested person on bail. In case of non-bailable offences, the person arrested must be produced within 24 hours before a Magistrate who will set the bail.
- J. It is in the case of non-bailable offences that anticipatory bail is granted under section 438. It means that the person must be enlarged 'at the very moment' of arrest (*Naresh Kumar Yadav v. Ravindra Kumar (2008) 1 SCC 632*). Conditions imposed while granting anticipatory bail may sometimes be so onerous or restricting travel movements that it may require careful consultations with legal advisors whether the apprehension of arrest is real or not and whether anticipatory bail should or should not be sought. Some States have made amendments to the Cr.PC provisions so as to render section 438 inapplicable, for eg., in the State of UP, section 438 is omitted in its implementation;
- K. Reference may also be had to section 441 regarding 'bonds and sureties' and various types of 'remand'. Understanding some of these provisions will take away fear and anxiety and bring in clarity regarding the degree of proof required to (i) detain a person and (ii) prosecute a person. In India, being remanded to police custody or judicial custody is seen as a person would be social boycott or ostracize a person. And if it is resorted to in unmerited cases, it may do more harm than good. Section 57 of Cr.PC makes it clear that detention should not be for more than 24 hours and then section 167 takes over to protect the 'right' of the detainee which states that maximum duration of detention pending investigation cannot exceed 90 days.

Guidelines issued by CBIC for launching of prosecution under CGST Act, 2017 [Instruction No. 4/2022-23 (GST- Investigation)], dated 1-9-2022]

Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. The exact guidelines have been reproduced below for ready reference:

2. Section 132 of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) codifies the offences under the Act which warrant institution of criminal proceedings and prosecution. Whoever commits any of the offences specified under sub-section (1) and sub-section (2) of section 132 of the CGST Act, 2017, can be prosecuted.
3. Sanction of prosecution:

- 3.1 Sanction of prosecution has serious repercussions for the person involved, therefore, the nature of evidence collected during the investigation should be carefully assessed. One of the important considerations for deciding whether prosecution should be launched is the availability of adequate evidence. The standard of proof required in a criminal prosecution is higher than adjudication proceeding as the case has to be established beyond reasonable doubt. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected should be weighed so as to likely meet the above criteria for recommending prosecution. Decision should be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of tax evaded, or ITC wrongly availed, or refund wrongly taken and the nature as well as quality of evidence collected.
- 3.2. Prosecution should not be filed merely because a demand has been confirmed in the adjudication proceedings. Prosecution should not be launched in cases of technical nature, or where additional claim of tax is based on a difference of opinion regarding interpretation of law. Further, the evidence collected should be adequate to establish beyond reasonable doubt that the person had guilty mind, knowledge of the offence, or had fraudulent intention or in any manner possessed mens-rea for committing the offence. It follows, therefore, that in the case of public limited companies, prosecution should not be launched indiscriminately against all the Directors of the company but should be restricted to only persons who oversaw day-to-day operations of the company and have taken active part in committing the tax evasion etc. or had connived at it.
4. Decision on prosecution should normally be taken immediately on completion of the adjudication proceedings, except in cases of arrest where prosecution should be filed as early as possible. Hon'ble Supreme Court of India in the case of *Radheshyam Kejriwal [2011 (266) ELT 294 (SC)]* has, inter-alia, observed the following:
- (i) Adjudication proceedings and criminal proceedings can be launched simultaneously;
 - (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
 - (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
 - (iv) The findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
 - (v) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

- (vi) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

In view of the above observations of Hon'ble Supreme Court, prosecution complaint may even be filed before adjudication of the case, especially where offence involved is grave, or qualitative evidences are available, or it is apprehended that the concerned person may delay completion of adjudication proceedings. In cases where any offender is arrested under section 69 of the CGST Act, 2017, prosecution complaint may be filed even before issuance of the Show Cause Notice.

5. Monetary limits:

5.1 Monetary Limit: Prosecution should normally be launched where amount of tax evasion, or misuse of ITC, or fraudulently obtained refund in relation to offences specified under sub-section (1) of section 132 of the CGST Act, 2017 is more than Five Hundred Lakh rupees. However, in following cases, the said monetary limit shall not be applicable:

- (i) Habitual evaders: Prosecution can be launched in the case of a company/taxpayer habitually involved in tax evasion or misusing Input Tax Credit (ITC) facility or fraudulently obtained refund. A company/taxpayer would be treated as habitual evader, if it has been involved in two or more cases of confirmed demand (at the first adjudication level or above) of tax evasion/fraudulent refund or misuse of ITC involving fraud, suppression of facts etc. in past two years such that the total tax evaded and/or total ITC misused and/or fraudulently obtained refund exceeds Five Hundred Lakh rupees. DIGIT database may be used to identify such habitual evaders.
- (ii) Arrest Cases: Cases where during the course of investigation, arrests have been made under section 69 of the CGST Act.

6. Authority to sanction prosecution:

6.1 The prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of the Pr. Commissioner/Commissioner of CGST in terms of sub-section (6) of section 132 of CGST Act, 2017.

6.2 In respect of cases investigated by DGGI, the prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of Pr. Additional Director General/Additional Director General, Directorate General of GST Intelligence (DGGI) of the concerned zonal unit/ Hqrs.

7. Procedure for sanction of prosecution:
- 7.1 In cases of arrest(s) made under section 69 of the CGST Act, 2017:
- 7.1.1 Where during the course of investigation, arrest(s) have been made and no bail has been granted, all efforts should be made to file prosecution complaint in the Court within sixty (60) days of arrest. In all other cases of arrest, prosecution complaint should also be filed within a definite time frame. The proposal of filing complaint in the format of investigation report prescribed in **Annexure-I**, should be forwarded to the Pr. Commissioner/ Commissioner, within fifty (50) days of arrest. The Pr. Commissioner/ Commissioner shall examine the proposal and take decision as per section 132 of CGST Act, 2017. If prosecution sanction is accorded, he shall issue a sanction order along with an order authorizing the investigating officer (at the level of Superintendent) of the case to file the prosecution complaint in the competent court.
- 7.1.2 In cases investigated by DGGI wherever an arrest has been made, procedure as detailed in para 7.1.1 should be followed by officers of equivalent rank of DGGI.
- 7.1.3 The Additional/ Joint Commissioner or Additional / Joint Director in the case of DGGI, must ensure that all the documents/ evidence and list of witnesses are kept ready before forwarding the proposal of filing complaint to Pr. Commissioner/ Commissioner or Pr. ADG/ ADG of DGGI.
- 7.2 In case of filing of prosecution against legal person, including natural person:
- 7.2.1 Section 137 (1) of the Act provides that where an offence under this Act has been committed by a company, every person who, at the time offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Section 137 (2) of the Act provides that where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Thus, in the case of Companies, both the legal person as well as natural person are liable for prosecution under section 132 of the CGST Act. Similarly, under sub-section (3) of section 137, the provisions have been made for partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a Trust.
- 7.2.2 Where it is deemed fit to launch prosecution before adjudication of the case, the Additional/Joint Commissioner or Additional/Joint Director, DGGI, as the case may be, supervising the investigation, shall record the reason for the same and forward the

proposal to the sanctioning authority. The decision of the sanctioning authority shall be informed to the concerned adjudicating authority so that there is no need for him to examine the case again from the perspective of prosecution.

- 7.2.3 In all cases (other than those mentioned at para 7.2.2 and arrests where prosecution complaint has already been filed before adjudication), the adjudicating authority should invariably indicate at the time of passing the order itself whether it considers the case fit for prosecution, so that it can be further processed and sent to the Pr. Commissioner/ Commissioner for obtaining his sanction of prosecution.
- 7.2.4 In cases, where Show Cause Notice has been issued by DGGI, the recommendation of adjudicating authority for filing of prosecution shall be sent to the Pr. Additional Director General/Additional Director General, DGGI of the concerned zonal unit/ Hqrs.
- 7.2.5 Where at the time of passing of adjudication order, no view has been taken on prosecution by the Adjudicating Authority, the adjudication branch shall re-submit the file within 15 days from the date of issue of adjudication order to the Adjudicating Authority to take view on prosecution.
- 7.2.6 Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General of DGGI may on his own motion also, taking into consideration inter alia, the seriousness of the offence, examine whether the case is fit for sanction of prosecution irrespective of whether the adjudicating authority has recommended prosecution or not.
- 7.2.7 An investigation report for the purpose of launching prosecution should be carefully prepared in the format given in **Annexure-I**, within one month of the date of receipt of the adjudication order or receipt of recommendation of Adjudicating Authority, as the case may be. Investigation report should be signed by a Deputy/Assistant Commissioner, endorsed by the jurisdictional Additional/ Joint Commissioner, and sent to the Pr. Commissioner/ Commissioner for taking a decision on sanction for launching prosecution. In respect of cases booked by DGGI, the said report shall be prepared by the officers of DGGI, signed by the Deputy/ Assistant Director, endorsed by the supervising Additional/ Joint Director and sent to the Pr. Additional Director General/ Additional Director General of DGGI for taking a decision on sanction for launching prosecution. Thereafter, the competent authority shall follow the procedure as mentioned in para 7.1.1.
- 7.2.8 Once the sanction for prosecution has been obtained, prosecution in the court of law should be filed as early as possible, but not beyond a period of sixty days by the duly authorized officer (of the level of Superintendent). In case of delay in filing complaint beyond 60 days, the reason for the same shall be brought to the notice of the sanctioning authority *i.e.*, Pr. Commissioner/ Commissioner or Pr. Additional Director

General/ Additional Director General, by the officer authorised for filing of the complaint.

- 7.2.9 In the cases investigated by DGGI, except for cases pertaining to single/multiple taxpayer(s) under Central Tax administration in one Commissionerate where arrests have not been made and the prosecution is not proposed prior to issuance of show cause notice, prosecution complaints shall be filed and followed up by DGGI. In other cases, the complaint shall be filed by the officer at level of Superintendent of the jurisdictional Commissionerate, authorized by Pr. Commissioner/ Commissioner of CGST. However, in all cases investigated by DGGI, the prosecution shall continue to be sanctioned by appropriate officer of DGGI.
- 8.** Appeal against Court order in case of inadequate punishment/acquittal:
- 8.1 The Prosecution Cell in the Commissionerate shall examine the judgment of the Court and submit their recommendations to the Pr. Commissioner/ Commissioner. Where Pr. Commissioner/ Commissioner is of the view that the accused person has been let off with lighter punishment than what is envisaged in the Act or has been acquitted despite the evidence being strong, filing of appeal should be considered against the order within the stipulated time. Before filing of appeal in such cases, concurrence of Pr. CC/CC should be obtained. Sanction for appeal in such cases shall, however, be accorded by Pr. Commissioner/ Commissioner.
- 8.2 In respect of cases booked by DGGI, the Prosecution Cell in the Directorate shall examine the judgment of the court and submit their recommendations to the Pr. Additional Director General/ Additional Director General who shall take a view regarding acceptance of the order or filing of appeal. However, before filing of appeal, concurrence of DG or Pr. DG (for cases booked by HQ Unit) should be obtained.
- 9.** Procedure for withdrawal of prosecution:
- 9.1 Procedure for withdrawal of sanction-order of prosecution:
- 9.1.1 In cases where prosecution has been sanctioned but complaint has not been filed and new facts or evidence have come to light necessitating review of the sanction for prosecution, the Commissionerate should immediately bring the same to the notice of the sanctioning authority. After considering the new facts and evidence, the sanctioning authority, if satisfied, may recommend to the jurisdictional Pr. Chief Commissioner/ Chief Commissioner that the sanction for prosecution be withdrawn who shall then take a decision.
- 9.1.2 In the cases investigated by DGGI, such withdrawal of sanction order may be made with the approval of Director General of DGGI of concerned sub-national unit. In the cases booked by DGGI, Hqrs., Pr. Director General shall be competent to approve the withdrawal of sanction order.

- 9.2 Procedure for withdrawal of complaint already filed for prosecution:
- 9.2.1 Attention is invited to judgment of Hon'ble Supreme Court on the issue of relation between adjudication proceedings and prosecution in the case of Radheshyam Kejriwal, supra. Hon'ble Supreme Court in para 43 have observed as below:
- "In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court."
- The said ratio is equally applicable to GST Law. Therefore, where it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings and such order has attained finality, Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General after taking approval of Pr. Chief Commissioner/ Chief Commissioner or Pr. Director General/ Director General, as the case may be, would ensure filing of an application through Public Prosecutor in the court to allow withdrawal of prosecution in accordance with law. The withdrawal can only be affected with the approval of the court.
10. General guidelines:
- 10.1 It has been reported that delay in the Court proceedings is often due to nonavailability of the records required to be produced before the Court or due to delay in drafting of the complaint, listing of the exhibits etc. It shall be the responsibility of the officer who has been authorized to file complaint, to take charge of all documents, statements and other exhibits that would be required to be produced before a Court. The list of exhibits etc. should be finalized in consultation with the Public Prosecutor at the time of drafting of the complaint. No time should be lost in ensuring that all exhibits are kept in safe custody. Where a complaint has not been filed even after a lapse of 60 days from the receipt of sanction for prosecution, the reason for delay shall be brought to the notice of the Pr. Commissioner/ Commissioner or the Pr. Additional Director General/ Additional Director General of DGGI by the Additional/ Joint Commissioner in charge of the Commissionerate or Additional/ Joint Director of DGGI, responsible for filing of the complaint.
- 10.2 Filing of prosecution need not be kept in abeyance on the ground that the taxpayer has gone in appeal/ revision. However, to ensure that the proceeding in appeal/revision are not unduly delayed because the case records are required for the purpose of prosecution, a parallel file containing copies of essential documents relating to adjudication should be maintained.
- 10.3 The Superintendent in-charge of adjudication section should endorse copy of all adjudication orders to the prosecution section. The Superintendent in charge of

prosecution section should monitor receipt of all serially numbered adjudication orders and obtain copies of adjudication orders of missing serial numbers from the adjudication section every month. In respect of adjudication orders related to DGGI cases, Superintendent in charge of adjudication section should ensure endorsing a copy of adjudication order to DGGI. Concerned Zonal Units/ Hqrs. of DGGI shall also follow up the status of adjudication of the case from the concerned Commissionerate or adjudicating authority.

11. Publication of names of persons convicted:
 - 11.1 Section 159 of the CGST Act, 2017 grants power to the Pr. Commissioner/ Commissioner or any other officer authorised by him on his behalf to publish name and other particulars of the person convicted under the Act. It is directed that in deserving cases, the department should invoke this section in respect of all persons who are convicted under the Act.
12. Monitoring of prosecution:
 - 12.1 Prosecution, once launched, should be vigorously followed. The Pr. Commissioner/ Commissioner of CGST or Pr. Additional Director General/ Additional Director General of DGGI should monitor cases of prosecution at monthly intervals and take the corrective action wherever necessary to ensure that the progress of prosecution is satisfactory. In DGGI, an Additional/ Joint Director in each zonal unit and DGGI (Hqrs) shall supervise the prosecution related work and take stock of the pending prosecution cases. For keeping a track of prosecution cases, entries of all prosecution cases should promptly be made in DIGIT/ Investigation Module, within 48 hours of sanction of prosecution and the entries must be updated from time to time. Additional/ Joint Commissioner or Additional/ Joint Director, in-charge of supervising prosecution cases shall ensure making timely entries in the database.
13. Compounding of offence:
 - 13.1 Section 138 of the CGST Act, 2017 provides for compounding of offences by the Pr. Commissioner/ Commissioner on payment of compounding amount. The provisions regarding compounding of offence should be brought to the notice of person being prosecuted and such person be given an offer of compounding by Pr. Commissioner/ Commissioner or Pr. Additional Director General/Additional Director General of DGGI, as the case may be.
14. Transitional Provisions:
 - 14.1 All cases where sanction for prosecution is accorded after the issue of these instructions shall be dealt in accordance with the provisions of these instructions irrespective of the date of the offence. Cases where prosecution has been sanctioned but no complaint has been filed before the magistrate shall also be reviewed by the prosecution sanctioning authority considering the provisions of these instructions.
15. Inspection of prosecution work by the Directorate General of Performance Management:

- 15.1 Director General, Directorate General of Performance Management and Pr. Chief Commissioners/Chief Commissioners, who are required to inspect the Commissionerates, should specifically check whether instructions in this regard are being followed scrupulously and make a mention of the implementation of the guidelines in their inspection report apart from recording of statistical data. Similarly, exercise should also be carried out in DGGI.
16. Where a case is considered suitable for launching prosecution and where adequate evidence is forthcoming, securing conviction largely depends on the quality of investigation. It is, therefore, necessary for senior officers to take personal interest in the investigation of important cases of GST evasion and in respect of cases having money laundering angle and to provide guidance and support to the investigating officers.
17. To ensure proper training to the officers posted for prosecution work, the Pr. Director General, National Academy of Customs, Indirect Taxes and Narcotics (NACIN), Faridabad, should organize separate training courses on prosecution/arrests etc. from time to time and should incorporate a series of lectures on this issue in the courses organized for investigation. The Pr. Commissioner / Commissioner or Pr. ADG/ ADG of DGGI should judiciously sponsor officers for such courses.
18. These instructions/guidelines may be circulated to all the formations under your charge for strict compliance. Difficulties, if any, in implementation of the aforesaid instructions/guidelines may be brought to the notice of the Board.

The format of Annexure-I can be accessed in the Instruction mentioned above.

Statutory provisions

133. Liability of officers and certain other persons

- (1) *Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerization thereof or if any officer of central tax having access to information specified under sub-section (1) of section 150, or if any person engaged in connection with the provision of service on the common portal or the agent of common portal, willfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.*
- (2) *Any person*
- (a) *who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;*
- (b) *who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.*

Related provisions of the Statute:

Section or Rule	Description
Section 150	Obligation to furnish information return
Section 151	Power to call for information

133.1 Introduction

This section casts duties & obligations on the officers of the Goods and Services Tax Laws to keep the information collected by the Government or from the information furnished in the returns.

133.2 Analysis

Since the officers of the department are dealing with sensitive information, the secrecy and security of such information is of utmost importance. The officers who are dealing with the data or data collected from the information returns, have to maintain utmost secrecy of the same.

If the officer willfully discloses such information or contents by any reason other than by reason of his duties cast upon him under the Act, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ` 25,000 or both.

Further any prosecution under this section would be carried out with the prior sanction of the Government in case of prosecution of a Government Servant and with the sanction of Commissioner in case of others.

Statutory provisions**134. Cognizance of offences**

No Court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

134.1 Introduction

This provision sets out the manner of taking cognizance of offences.

134.2 Analysis

Any offence under the Act or Rules can be tried only before a Court not lower than the Court of Judicial Magistrate of First Class. Further, previous sanction of the Commissioner is mandatory in every such case.

Statutory provisions**135. Presumption of culpable mental state**

In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation - For the purposes of this section, —^[1]_[SEP]

- (i) the expression “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;*
- (ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.*

135.1 Introduction

In this section, the framers of law have cast the responsibility upon the shoulders of the one who is alleged of culpable mental state to prove otherwise.

135.2 Analysis

Now, once the law has stated that in case of any prosecution which requires the existence of a culpable mental state, the Court would presume the existence of it.

Under the old revenue laws, the burden to prove was on the one who alleges it. The Hon'ble Supreme Court in the case of *Uniworth Textiles Limited vs. Commissioner of Central Excise, Raipur* [(2013) 31 taxmann.com 67 (SC)] stated that “Burden to prove invocation of extended period is on Department. The assessee cannot be asked to bring evidence to prove his bona fide intention. Similarly, it is a cardinal postulate of law that the burden of proving any form of mala fide intention lies on the shoulders of the one alleging it.”^[1]_[SEP]

The accused can prove that he had no such mental state in respect of a particular act for which he is charged. The expression “culpable mental state” is defined inclusively to cover “intent, motive, knowledge of fact, belief in or reason to believe”. It also covers facts which exist beyond a reasonable doubt and not based on probabilities. However, presumption does not mean assumption of mental state to commit the offence. It is only that it is a rebuttable presumption. Presumption does not mean assumption of such mental state. Reference may be had to section 4 of Evidence Act.

Statutory provisions**136. Relevancy of statements under certain circumstances**

A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall

be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, —

- (a) *when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or*
- (b) *when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.*

Related provisions of the Statute

Section or Rule	Description
Section 70	Power to summon persons to give evidence and produce documents

136.1 Introduction

This provision deals with relevancy of statements and documents recorded or deposed during investigation proceedings.

136.2 Analysis

A statement recorded during an investigation proceedings or inquiry will be relevant to prove the truthfulness of facts when:

- (a) It is made by a person who is not available in Court on account of his death, incapacity, prevention by another party or when he absconds or when presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable or
- (b) The Court consider the statement as an evidence on examination of the person as a witness.

Statutory provisions

137. Offences by Companies

- (1) *Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.*
- (2) *Notwithstanding anything contained in sub-section (1), where an offence under ¹²²~~122~~ this Act has been committed by a company and it is proved that the offence has been*

committed with the consent or connivance of, or is attributable to any negligence on the part^[122] of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable^[122] to be proceeded against and punished accordingly.

- (3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu undivided family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons.
- (4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation. —For the purposes of this section, —

- (i) “company” means a body corporate and includes a firm or other association of individuals; and^[122]
- (ii) “director”, in relation to a firm, means a partner in the firm.

Related provisions of the Statute:

Section or Rule	Description
Section 2(84)	Definition of ‘Person’

137.1 Introduction

This section comes down heavily on the persons who take shelter on the principle of separate legal status of artificial judicial persons and back out of their responsibility of payment of dues of the Government.

137.2 Analysis

This section states that where an offence is committed by companies, every person/ director/ manager/ secretary or any other officer who at the time of commitment of the offence, was in charge of and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

Where such offences are committed by the person being Partnership Firm, LLP, HUF or trust, then the Partner or Karta or Managing Trustee (as the case may be) shall be deemed to be guilty and liable to be proceeded against and punished.

Further, if the accused person proves that he was in no way related to the offence being committed or he had exercised all possible measures to prevent commission of such offences, then he is not punishable under this section.

Statutory provisions**138. Compounding of offences**

- (1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to—

²¹[(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;]

²²[(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;]

²³[(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;]

(d) a person who has been convicted for an offence under this Act by a court;

²⁴[(e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132;] and

(f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

²¹ Substituted with "a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132". Applicable w.e.f. a date to be notified.

²² Omitted vide The Finance Act, 2023. Applicable w.e.f. a date to be notified.

²³ Substituted with "a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132" vide The Finance Act, 2023. Applicable w.e.f. a date to be notified.

²⁴ Omitted vide The Finance Act, 2023. Applicable w.e.f. a date to be notified.

- (2) *The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ²⁵[ten thousand rupees or fifty per cent of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher].*
- (3) *On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.*

Extract of the CGST Rules, 2017**162. Procedure for compounding of offences**

- 1) *An applicant may, either before or after the institution of prosecution, make an application under sub-section (1) of section 138 in FORM GST CPD-01 to the Commissioner for compounding of an offence.*
- 2) *On receipt of the application, the Commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, or any other information, which may be considered relevant for the examination of such application.*
- 3) *The Commissioner, after taking into account the contents of the said application, may, by order in FORM GST CPD-02, on being satisfied that the applicant has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application.*
- 4) *The application shall not be decided under sub-rule (3) without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.*
- 5) *The application shall not be allowed unless the tax, interest and penalty liable to be paid have been paid in the case for which the application has been made.*
- 6) *The applicant shall, within a period of thirty days from the date of the receipt of the order under sub-rule (3), pay the compounding amount as ordered by the Commissioner and shall furnish the proof of such payment to him.*

²⁵ Substituted with "twenty-five cent of the tax involved and the maximum amount not being more than one hundred per cent of the tax involved" vide The Finance Act, 2023. Applicable w.e.f. a date to be notified.

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| <p>7) <i>In case the applicant fails to pay the compounding amount within the time specified in sub-rule (6), the order made under sub-rule (3) shall be vitiated and be void.</i></p> <p>8) <i>Immunity granted to a person under sub-rule (3) may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence. Thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provisions the Act shall apply as if no such immunity had been granted.</i></p> |
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Related provisions of the Statute:

Section or Rule	Description
Section 132	Punishment for certain offences

138.1 Introduction

This provision deals with compounding of offences by payment of the prescribed compounding fees. In common parlance, compounding means a condonation for a sum of money. Compounding of an offence is understood to be, the action of taking a reward for forbearing to prosecute. It could also mean an agreement with the offender not to prosecute him.

138.2 Analysis

- (a) Compounding of an offence means payment of a sum of money in monetary terms instead of undergoing prosecution. Application for compounding of an offence can be either before or after institution of the prosecution proceedings.
- (b) Compounding of an offence is understood as a comparison between the offender and the tax department and is not an agreement or contract.
- (c) Specified offences can be compounded only once.
- (d) As per rule 162 of the CGST Rules, the application of compounding shall be filed in FORM GST-CPD-01.
- (e) On receipt of the application, the commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application or any other relevant information for the examination of such application.

After providing opportunity of being heard to the applicant and taking into account the contents of the application, if satisfied that the applicant has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case. Commissioner may by order in FORM GST-CPD-02 may either allow the application indicating the compounding amount and grant him immunity from

prosecution or reject such application within 90 days of the receipt of the application stating the grounds of rejection.

However, the application shall not be allowed unless the tax, interest and penalty liable to be paid, has been paid in case for which the application has been made.

- (f) Immunity granted to applicant may, at any time be withdrawn by Commissioner, if he is satisfied that such person had, in the course of compounding proceedings, concealed any material particulars or had given false evidence. Thereupon such person may be tried of the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provision of the Act shall apply as if no such immunity has been granted.
- (g) The applicant, within a period of 30 days from the date of receipt of order allowing compounding, shall pay the compounding amount as ordered by the Commissioner and shall furnish the proof of such payment to him. However, if the applicant fails to pay the compounding amount within the time specified then the order of Commissioner shall be vitiated and be void.
- (h) On payment, the proceedings indicated will abate and no criminal proceedings can be launched.
- (i) The amount of compounding of offences under this section shall be such as may be prescribed, subject to
- The minimum amount not being less than ` 10,000 or 50% of tax, whichever is higher and
 - The maximum amount not being less than ` 30,000 or 150%, of tax whichever is higher.
- (j) Compounding of offences is not permissible to the following offences:
- (i) A person who has compounded once in respect of supply value exceeding ` One Crore.
- (ii) A person who is convicted by a Court under this Act.
- (iii) A person permitted to compound offences once in respect of offences specified in clauses (a) to (f) of section 132(1) and offences specified in clause (l) which are relatable to offences specified in (a) to (f).
- (iv) A person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force.
- (v) A person who has been accused of committing an offence in section 132(1)(g) or 132(1)(j) or 132(1)(k)
- (vi) Prescribed class of persons.