CHAPTER 21

OFFENCES AND PENALTIES AND ETHICAL ASPECTS UNDER GST



The section numbers referred to in the chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2026.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- understand and explain what will constitute the offence and the quantum of penalty for different types of offences in different circumstances.
- identify and appreciate general disciplines to be followed for imposing penalty.
- analyse and apply the circumstances in which penalty may be waived
- examine the circumstances in which detention, seizure and release of goods and conveyances in transit may be initiated.
- comprehend the circumstances in which confiscation of goods or conveyances and levy of penalty may be initiated.
- list offences for enforcing prosecution provisions.
- categorize the offences within cognizable and non-bailable and non-cognizable and bailable offences.
- understand and describe the meaning of 'culpable mental state' and its significance in enforcing prosecution provisions.
- identify the person who is liable in case of offences by companies, firm/LLP/HUF/trust and association of individuals.
- analyse and apply the offences that may be compounded and provisions relating thereto.
- discuss the ethical aspects under GST law.

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1. INTRODUCTION



What is penalty and prosecution?

Penal provisions are important aspects of any legal framework to ensure efficient enforcement of laws and to motivate the genuine taxpayers to make the required compliances. The word **"penalty"** has not been defined in the CGST Act, but judicial pronouncements and principles of jurisprudence have laid down the nature of a penalty as:



- a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence;
- a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do.

'Offence' in general means a violation/breach of law that is punishable under law by way of penalties, fines, imprisonment, or other legal actions based on the severity of the violation.

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Generally, the quantum of penalty to be levied depends upon the intention of person committing the offence. A person with a fraudulent intention to evade payment of taxes will be subjected to higher amount of penalty whereas a relatively less amount of penalty will be levied for non-fraudulent offences. It is important to note that in certain specified cases of levy of penalty, the presence of *mens rea* is a pre-requisite. The term ***"mens rea"*** is a Latin legal phrase that means "guilty mind" or culpable mental state. "Mens" means "mind," and "rea" means "guilty" or "crime". It refers to a mental state, intention, or knowledge of a person when he commits an offence. While committing an act, a **"culpable mental state"** is a state of mind wherein-



- ❑ the act is intentional;
- ❑ the act and its implications are understood and controllable;
- ❑ the person committing the act was not coerced and even overcomes hurdles to the act committed;
- ❑ the person believes or has reasons to believe that the act is contrary to law



'Prosecution' is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. It is the institution and carrying on of the legal proceedings against a person.

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Further, to institute the prosecution, offences are classified into cognizable (serious category of offences) and non-cognizable offences (relatively less serious category of offences). Cognizable offences are non-bailable offences and non-cognizable offences are bailable offences.



Chapter XIX – Offences and Penalties [Sections 122 to 138 of the CGST Act] contains the provisions relating to offences and penalties, detention, seizure and confiscation of goods and compounding of offences. State GST laws also prescribe identical provisions in relation to offences and penalties. In this chapter, we would first discuss the offences and penalties prescribed under GST law. Thereafter, ethical aspects to be considered by a Chartered Accountant while undertaking compliance functions, advisory functions and furnishing certifications/reports, under GST law have been discussed in detail followed by few case studies which give the small scenarios explaining the significance of ethics under GST law.

Provisions of offences and penalties under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Further, in cases where the penalty is leviable under the CGST Act and the SGST Act/ UTGST Act, the penalty leviable under the IGST Act shall be the sum total of the said penalties.

It may be noted that the penalties payable by a registered person for the specified offences are with reference to the CGST Act only. An equal amount of penalty would be payable by such person under the respective SGST/ UTGST Act as well.

However, before proceeding to understand the provisions, let us first go through few relevant definitions.

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2. RELEVANT DEFINITIONS

- **Conveyance** includes a vessel, an aircraft and a vehicle; [Section 2(34)].
- **Person** includes —

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a firm;

(e) a Limited Liability Partnership;

(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;

(h) any body corporate incorporated by or under the laws of a country outside India;

(i) a co-operative society registered under any law relating to co-operative societies;

(j) a local authority;

(k) Central Government or a State Government;

(l) society as defined under the Societies Registration Act, 1860;

(m) trust; and

(n) every artificial juridical person, not falling within any of the above;

[Section 2(84)]

- **Registered Person** means a person who is registered under section 25 but does not include a person having a Unique Identity Number. [Section 2(94)]

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- **Taxable person** means a person who is registered or liable to be registered under section 22 or section 24 [Section 2(107)];
- **Regulations** means the regulations made by the Board under this Act on the recommendations of the Council [Section 2(95)].
- **Proper Officer** in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board [Section 2(91)].

3. PENALTY FOR CERTAIN OFFENCES [SECTION 122 OF CGST ACT]

STATUTORY PROVISIONS

Section 122	*Penalty for certain offences*	
Sub-section	*Particulars*	
(1)	*Where a taxable person who -*	
	(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;*
	(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;*

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	(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 utilises 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;*

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	(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 reasons 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	
(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*	

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	of an amount equivalent to the tax evaded or input tax credit availed of or passed on.	
(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 utilised, —*	
	(a)	*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 ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;*
	(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.*

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(3)	*Any person who -*	
	(a)	*aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);*
	(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;*
	(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 reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;*
	(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;*
	(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,*
	shall be liable to a penalty which may extend to twenty five thousand rupees.	



ANALYSIS

Section 122 levies penalty on following persons:

Section	**Penalty leviable on**
Section 122(1)	Taxable Person
Section 122(1A)	Any Person

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Section 122(1B)	Electronic Commerce Operator
Section 122(2)	Registered Person
Section 122(3)	Any Person

(i) Penalty under section 122(1)

Penalty under section 122(1) is leviable on a taxable person. Taxable person means a person who is registered or liable to take registration. Registered Person means the person who is registered in the GST law.

Section 122(1) illustrates **21 offences** which are punishable under law. First, we would analyse the quantum of penalty and then will analyse the offences –

(A) Quantum of Penalty

CGST/SGST/UTGST law	IGST law
(i) ₹ 10,000/-; or (ii) Amount equivalent to, any of the following (applicable as the case may be): ❑ Tax evaded; or ❑ 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;	(iii) ₹ 20,000/-; or (iv) Amount equivalent to, any of the following (applicable as the case may be): ❑ Tax evaded; or ❑ 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;

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or ❑ Refund claimed fraudulently whichever is higher.	or ❑ Refund claimed fraudulently whichever is higher.



It may be noted that the penalty payable under section 122 is with reference to only the CGST Act. An equal amount of penalty is payable under the respective SGST/UTGST Act as well.

Similarly, under IGST Act, penalty payable will be sum of penalty payable under the CGST Act and penalty payable under SGST/UTGST Act.

(B) Specified Offences

Section 122(1) gives the list of 21 different offences which can be divided in the following broad categories to have the better understanding –

(A) Offences related to invoice

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

(B) Offences related to tax evasion / relating to TCS / TDS

(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;*

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(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;*
(xv)	*suppresses his turnover leading to evasion of tax under this Act;*

(C) Offences related to ITC

(vii)	*takes or utilises 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;*
(ix)	*takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;*

(D) Offence related to refund

(viii)	*fraudulently obtains refund of tax under this Act;*

(E) Offences related to records, documents, books of accounts etc.

(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;*
(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;*

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(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;*

(F) Offences related to registration

(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;*

(G) Offence related to transportation and storage

(xiv)	*transports any taxable goods without the cover of documents as may be specified in this behalf;*
(xviii)	*supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;*

(H) Other offences

(xiii)	*obstructs or prevents any officer in discharge of his duties under this Act;*
(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,*

(ii) Penalty under section 122(1A)

Section 122(1A) enables the levy of penalty on a taxable person as well as any other person who retains the benefit arising out of the following offences or at whose instance such offences are conducted:

- ❑ Supply of goods or services without invoice or incorrect/false invoice

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- Invoice with supply of goods or services
- ITC taken or utilised without receipt of goods or services, fully or partially
- Irregular distribution of credit by ISD

Therefore, it makes the beneficiary of the above transactions to penalty, similar to penalty leviable on the taxable person who commits such offences under sub-section (1).

It is important to note that the Commissioner may provisionally attached any property, including bank account, belonging to the beneficiary of the transactions specified above in accordance with section 83. *The provisions relating to provisional attachment under section 83 are discussed in detail in Chapter 19 – Demands and Recovery in this Module of the Study Material.*

Quantum of Penalty

Penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

(iii) Penalty under section 122(1B)

This sub-section makes an E-commerce operator (ECO), who is liable to collect tax at source under section 52, liable to penalty if it permits the supply through it by an unregistered person (other than notified persons, making supply through ECO, exempted from registration), allows inter-State supply through it by a person not so eligible or fails to furnish the correct details in Form GSTR-8 with respect to any outward supply of goods through it by a person exempted from registration under CGST Act.

Quantum of Penalty

CGST/SGST/UTGST law	IGST law
(i) ₹ 10,000/-; or **(ii)** Amount equivalent to, amount of tax involved had such supply been made by a registered person other than composition supplier whichever is higher.	**(i)** ₹ 20,000/-; or **(ii)** Amount equivalent to, amount of tax involved had such supply been made by a registered person other than composition supplier whichever is higher.

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(iv) Penalty under section 122(2)

Section 122(2) levies penalty on a registered person person –

(i) who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or

(ii) where the input tax credit has been wrongly availed or utilised,

Quantum of Penalty

		CGST/SGST/UTGST law	**IGST law**
(a)	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 for an amount equal to– ₹ 10,000/-; or 10% of the tax due from such person **whichever is higher**	Shall be liable to a penalty for an amount equal to– ₹ 20,000/-; or 10% of the tax due from such person **whichever is higher**
(b)	For reason of fraud or any wilful misstatement or suppression of facts to evade tax	Shall be liable to a penalty for an amount equal to– ₹ 10,000/-; or Tax due from such person **whichever is higher**	Shall be liable to a penalty for an amount equal to– ₹ 20,000/-; or Tax due from such person **whichever is higher**

(v) Penalty under section 122(3)

Section 122(3) levies penalty on any person who commits any of the below mentioned offences. Thus, a person is liable to penalty under this sub-section if he:

1. aids or abets any of the 21 offences specified in section 122(1);

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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 reasons to believe are liable to confiscation under this Act or the rules made thereunder;

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 reasons 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;

5. 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.

Quantum of Penalty

Penalty is leviable for an amount which may extend to ₹ 25,000/- (each under CGST and SGST/UTGST) or ₹ 50,000 (under IGST).

Monetary limits prescribed for issuance of SCNs and passing of orders under section 122

Board has assigned the officers mentioned in table below, the functions as the proper officers in relation to issue of SCNs and passing orders under section 122 of the CGST Act and section 20 of the IGST Act (read with section 122 of the CGST Act), up to the prescribed monetary limits of the amount of penalty in relation to the tax (CGST/IGST/CGST & IGST) for issuance of SCNs involving only penalty and passing of orders:

CGST Officer	*Monetary limit of CGST*	*Monetary limit of IGST*	*Monetary limit of CGST and IGST*
Superintendent of Central Tax	***Not exceeding ₹ 10 lakh***	***Not exceeding ₹ 20 lakh***	***Not exceeding ₹ 20 lakh***

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Deputy or Assistant Commissioner of Central Tax	*Above ₹10 lakh and not exceeding ₹ 1 crore*	*Above ₹ 20 lakh and not exceeding ₹ 2 crores*	*Above ₹ 20 lakh and not exceeding ₹ 2 crores*
Additional or Joint Commissioner of Central Tax	*Above ₹ 1 crore without any limit*	*Above ₹ 2 crores without any limit*	*Above ₹ 2 crores without any limit*

It is also clarified that where a show cause notice issued under section 122 involves demand of penalty in relation to both CGST and IGST, the proper officer shall be determined on the basis of the combined amount of penalty in relation to both CGST and IGST mentioned in Column 4 of above Table, irrespective of the individual amounts of penalty which may exceed the prescribed monetary limit.

[Circular No. 254/11/2025-GST dated 27.10.2025]

4. PENALTY FOR FAILURE TO COMPLY WITH TRACK AND TRACE MECHANISM [SECTION 122B OF CGST ACT]

STATUTORY PROVISIONS

Section 122B	*Penalty for failure to comply with track and trace mechanism*
Sub-section	*Particulars*
	Notwithstanding anything contained in this Act, where any person referred to in clause (b) of sub-section (1) of section 148A acts in contravention of the provisions of the said section, he shall, in addition to any penalty under Chapter XV or the provisions of this Chapter, be liable to pay a penalty equal to an amount of one lakh rupees or ten per cent. of the tax payable on such goods, whichever is higher.

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5. PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN [SECTION 123]

The provisions relating to information return and penalty for failure to furnish information return have already been discussed in Chapter 13 – Returns in Module 2 of this Study Material.

6. FINE FOR FAILURE TO FURNISH STATISTICS [SECTION 124]

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

- fails to furnish such information or return as may be required under that section without reasonable cause; or
- willfully 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 ₹ 10,000.

In case of **a continuing offence**, he shall also be punishable to a further fine which may extend to:

(i) ₹ 100 for each day after the first day during which the offence continues

or

(ii) ₹ 25,000

whichever is lower.

An equal amount of fine is payable under the respective SGST/UTGST Act as well.

** Section 151 provides that the Commissioner/officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with CGST Act, in prescribed time, form, and manner.

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Provision of section 124 has been tabulated as under:

Particulars	CGST/SGST/UTGST law	IGST law
	Fine may extend to	
Offence committed first time	₹ 10,000/-	₹ 20,000/-
In case of continuing offence	(i) ₹ 100 for each day after the first day during which the offence continues or (ii) ₹ 25,000 whichever is lower	(i) ₹ 200 for each day after the first day during which the offence continues or (ii) ₹ 50,000 whichever is lower

7. GENERAL PENALTY [SECTION 125]



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 ₹ 25,000.

Penalty amount is discretionary in nature and hence it depends upon the nature of the offence and its severity. Mere contravention of any of the provision of the law will not result into the penalty of ₹ 25,000 always; the gravity of the offences should be considered. General disciplines related to penalty as given in section 126 are to be considered by the proper officer while imposing the penalty under section 125.

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8. GENERAL DISCIPLINES RELATED TO PENALTY [SECTION 126]

The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126 of the Act. According to which –

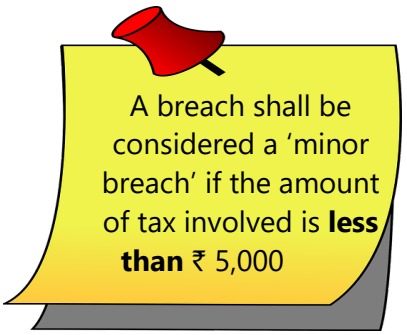
(1) No penalty shall be imposed by any officer under this Act for –

- Minor breaches of tax regulations, or
- procedural requirements of the law, or
- any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence,

As per Explanation to section 126(1),

(a) a breach shall be considered a **'minor breach'** if the amount of tax involved is less than ₹ 5,000;

(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 i.e. issue of SCN and proper hearing in the matter, affording an opportunity to the person proceeded against is must to rebut the allegations levelled against him.

(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.

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(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. For instance, penalty under section 125 is being prescribed as upto ₹ 25,000 means neither as a fixed sum nor as a fixed percentage hence general disciplines given under section 126, should be considered while imposing any penalty.

9. POWER TO IMPOSE PENALTY IN CERTAIN CASES [SECTION 127]

This section empowers the proper officer to impose penalty even if the penalty is not covered under any of the following proceedings-

(i) Assessment of non-filers of Returns, under section 62

(ii) Assessment of unregistered persons, under section 63

(iii) Summary Assessment in certain special cases under section 64

(iv) Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts under section 73

(v) Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts under section 74

(vi) Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward under section 74A.

(vii) Detention, seizure and release of goods and conveyances in transit under section 129

(viii) Confiscation of goods or conveyances and levy of penalty under section 130

If proper officer is of the view that such person is liable to a penalty, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

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10. POWER TO WAIVE PENALTY OR FEE OR BOTH [SECTION 128]

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.

11. DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT [SECTION 129]



STATUTORY PROVISIONS

Section 129	***Detention, seizure and release of goods and conveyances in transit***	
Sub-section	***Particulars***	
(1)	*Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—*	
	(a)	*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;*

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	(b)	*on payment of penalty equal to fifty per cent of the value of the goods or two hundred per cent 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;*
	(c)	*upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:*
	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.	
(3)	*The proper officer detaining or seizing goods or conveyance 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).*	
(4)	*No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*	
(5)	*On payment of amount referred 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 such 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):*	

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	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.*

ANALYSIS

Section 129 provides for detention, seizure and release of goods and conveyances in transit. The provision starts with a **non-obstante clause**. It provides as follows:

(i) Detention/seizure of goods, conveyance and/or documents [Section 129(1) and proviso to section 129(1)]

It provides that if any person transports any goods or stores any goods while they are in transit in contravention of the provisions of GST law, then:

- all such **GOODS** and
- **CONVEYANCE** used as a means of transport for carrying the said goods and
- **DOCUMENTS** relating to such goods and conveyance,



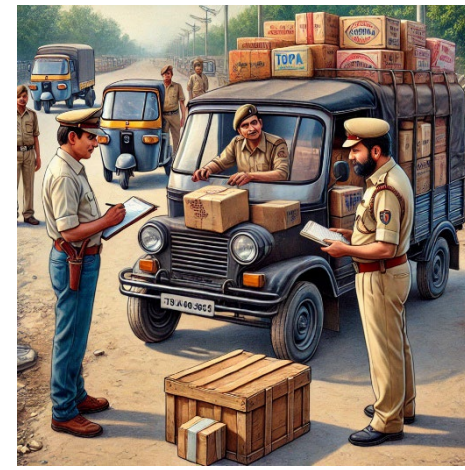
shall be **liable to detention or seizure**.

Thus, it covers the situations where a person transports any goods or stores any such goods while in transit without the documents prescribed under GST law (i.e. invoice and a declaration) or supplies or stores any goods that have not been recorded in the books or accounts maintained by him.

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Distinction between 'Seizure' and 'Detention'

The term 'seizure' has not been specifically defined in the GST Law. In Law Lexicon Dictionary, 'seizure' is defined as the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.



The difference between 'Seizure' and 'Detention' is as follows:

(i) Denial of access to the owner of the property or the person who possesses the property at a particular point of time by a legal order/notice is called **detention**. **Seizure** is taking over of actual possession of the goods by the department.

(ii) Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief which is arrived at after inquiry/investigation that the goods are liable to confiscation.

No such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

Release of goods, conveyance and/or documents on payment of specified penalty [Section 129(1)]

After detention or seizure, the above goods, conveyance and/or documents shall be released on payment of specified amount of penalty. The penalty amount is given in the table below.

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When owner of goods **COMES FORWARD** for payment of penalty [Section 129(1)(a)]:		
Taxable goods	**CGST/SGST/UTGST law**	**IGST law**
	Penalty equal to 200% of tax payable	Penalty equal to 200% of IGST payable
Exempted goods	Lower of the following: ✓ 2% of the value of goods or ✓ ₹ 25,000	Lower of the following: ✓ 4% of the value of goods or ✓ ₹ 50,000
When owner of goods DOES NOT COME FORWARD for payment of penalty [Section 129(1)(b)]:		
Taxable goods	Penalty equal to higher of the following ✓ 50% of value of goods or ✓ 200% of the tax payable on such goods	Penalty equal to higher of the following ✓ 100% of value of goods or ✓ 200% of the **IGST** payable on such goods
Exempted goods	Lower of ✓ 5% of the value of goods or ✓ ₹ 25,000	Lower of ✓ 10% of the value of goods or ✓ ₹ 50,000

It is important to note that the goods, conveyance and/or documents may also be released on furnishing security equivalent to amount payable in the above table.

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It may be noted that the penalty payable under section 129 is with reference to only the CGST Act. An equal amount of penalty is payable under the respective SGST/UTGST Act as well.

Similarly, under IGST Act, penalty payable will be sum of penalty payable under the CGST Act and penalty payable under SGST/UTGST Act.

(ii) Issuance of notice as well as passing of order for payment of penalty [Section 129(3) & (4)]

The proper officer detaining/seizing goods or conveyance shall issue a **notice within 7 days of such detention/seizure**, specifying the penalty payable. Thereafter, the proper officer shall pass an **order within a period of 7 days from the date of service of such notice**, for payment of penalty given in above table.

Thus, time-limit of 7 days each has been prescribed for issue of notice and passing of order for payment of penalty after detention/seizure of goods/conveyances.

An opportunity of being heard must be given to the person concerned before determining the penalty payable.

(iii) Conclusion of proceedings on payment of penalty payable [Section 129(5)]

All proceedings in respect of the notice issued shall be deemed to be concluded on payment of prescribed penalty.

(iv) Non-payment of penalty amount [Section 129(6)]

Where the person transporting any goods/ owner of such goods fails to pay the specified amount of penalty **within 15 days from the date of receipt of the copy of the order levying penalty**, the goods or conveyance so detained/seized shall be **liable to be sold or disposed of otherwise**, in the prescribed time and manner, to recover the penalty so payable[1].

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[1] *The manner of sale/disposal of the goods or conveyance so detained/seized for recovery of penalty has been prescribed in **rule 144A**.*

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However, where the detained/seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of **15 days** may be reduced by the proper officer.

Further, now, the **transporter can get the conveyance released** on payment of:

- ✓ penalty under sub-section (3)

  or

- ✓ ₹ 1 lakh (each under CGST and SGST/UTGST law and ₹ 2 lakh under IGST law)

whichever is **less**.

(v) Procedure for interception of conveyances for inspection of goods in movement, and detention and release of such goods and conveyances

During the movement of goods, the proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods. On being intercepted, the person in charge of the conveyance shall produce the documents related to the goods and the conveyance. The proper officer shall verify such documents.

Where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further.



Where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall record a statement of the person in charge of the conveyance and shall issue an order for physical verification/inspection of the conveyance, goods and documents, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods.

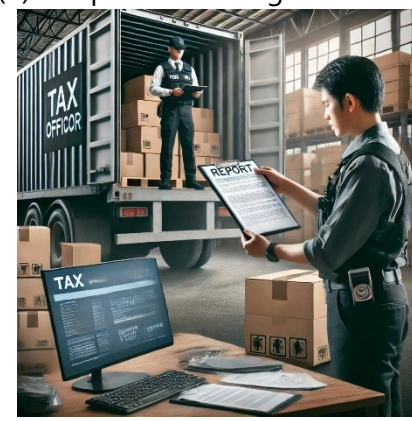
The proper officer shall conclude the inspection proceedings, either by himself or through any authorised proper officer within a period of 3 days (or extended time) from the date of issue of the order for inspection.

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On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a **report of such physical verification** and upload on common portal and serve a copy of the said report to the person in charge.

Where no discrepancies are found, the proper officer shall issue forthwith a **release order** and allow the conveyance to move further. However, where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129, he shall issue an **order of detention** and serve a notice under section 129(3) on the person in charge, specifying the penalty payable.

On payment of the penalty under section 129(1) or upon furnishing of security equivalent to the said amount, the goods and conveyance shall be released forthwith by a release order. Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under section 129(1) within **15 days** from the date of receipt of the copy of the order for detention, the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise[2].



(vi) Cases where detention/seizure may not be initiated

In case where a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 may not be initiated, in the following situations:

a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;

b) Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;

c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;

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[2] *Circular No. 41/15/2018 GST dated 13.04.2018*

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d) Error in one or two digits of the document number mentioned in the e-way bill;

e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;

f) Error in one or two digits/characters of the vehicle number.

In above situations, penalty to the tune of ₹ 500/- each under section 125 and the respective SGST Act should be imposed (₹1,000/- under the IGST Act)[3].

12. CONFISCATION OF GOODS OR CONVEYANCES AND LEVY OF PENALTY [SECTION 130]

STATUTORY PROVISIONS

Section 130	*Confiscation of goods or conveyances and levy of penalty*	
Sub-section	*Particulars*	
(1)	*Where 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*

[3] *Circular 64/38/2018 GST dated 14.09.2018*

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	(v)	*uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the 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 authorised 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:* *Provided further that the aggregate of such fine and penalty leviable shall not be less than the penalty equal to hundred per cent of the tax payable on such goods:* *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.*	
(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.*	

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(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 conveyance and deposit the sale proceeds thereof with the Government.*



ANALYSIS

Section 130 stipulates **5 scenarios** in which the goods or conveyances carrying such goods can be confiscated. However, before going through these scenarios, let us first understand what is 'confiscation'.



The word **'confiscation'** has not been defined in the CGST Act. The concept is derived from Roman law wherein it meant seizing or taking into the hands of emperor and transferring to Imperial "fiscus" or Treasury.

The word **"confiscate"** has been defined in Aiyar's Law Lexicon as to "appropriate (private property) to the public treasury by way of penalty; to deprive of property as forfeited to the State."

In short, it means transfer of the title to the goods to the Government.

(i) Scenarios where goods or conveyances are liable to confiscation [Section 130(1)]

Where 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;

(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

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(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the 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,

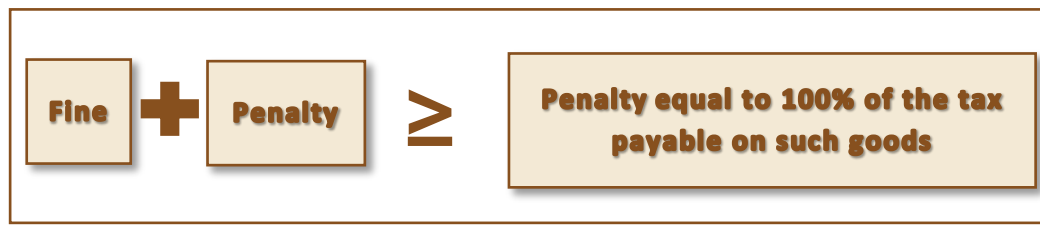


then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(ii) Redemption fine [Section 130(2)]

In case of confiscation of any goods or conveyance, 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. This fine shall be in addition to the tax and other charges payable in respect of such goods.





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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.

(iii) Opportunity of being heard [Section 130(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.

(iv) Title and possession of confiscated goods [Section 130(5) & (6)]

The title of confiscated goods or conveyance shall thereupon vest in the Government. Further, 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.

(v) Disposal of confiscated goods [Section 130(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 3 months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

13. CONFISCATION OR PENALTY NOT TO INTERFERE WITH OTHER PUNISHMENTS [SECTION 131]

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, 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. Such other punishment can be arrest, prosecution, cancellation of registration, etc.

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14. PUNISHMENTS FOR CERTAIN OFFENCES [SECTION 132]

STATUTORY PROVISIONS

Section 132	Punishment for certain offences	
Sub-section	**Clause/sub clause**	**Particulars**
(1)	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)	avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;
	(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 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;

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	(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;*
	(l)	*attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (f) and clauses (h) and (i) 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 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 an offence specified in clause (b), 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*

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		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), 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, 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.*	



ANALYSIS

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Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines "prosecution" as the institution and carrying on of the legal proceedings against a person. ***'Mens rea'*** or culpable mental state is necessary for prosecution under GST law.

(i) Cases where prosecution can be initiated and punishment thereof [Section 132(1), (2), (3) & (6)]

Cases where prosecution can be initiated	Supply without invoice
	Issuance of invoice without supply
	Wrongful/fraudulent availment of ITC
	Tax collected but not paid beyond 3 months
	Tax evasion/fraudulent refund
	False information/records etc. with an intention to evade tax
	Dealing in goods liable to confiscation
	Dealing in services in contravention of GST law
	Attempts to commit or abets any offence mentioned above

Anyone who commits or causes to commit and retain the benefits arising out of, any of the above offences can be prosecuted as under:

Offence	Amount Involved (AI) (in ₹)	Punishment	
Tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken	AI > 5 crores	with imprisonment upto 5 Years and with fine	Imprisonment shall be for a minimum period of 6 months in the absence of
	2 crores < AI ≤ 5 crores	with imprisonment upto 3 Years and with fine	

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Issuance of invoice without supply in violation of GST law leading to wrongful availment/utilisation of ITC/refund of tax	1 crores < AI ≤ 2 crores	with imprisonment upto 1 year and with fine	special and adequate reasons to the contrary to be recorded in the judgment of the Court
Falsification of information or records etc. with an intention to evade tax or abetting the commission of said offence		with imprisonment upto 6 months or with fine or with both	
For second and every subsequent offence under section 132	No limit	with imprisonment upto 5 Years and with fine	Imprisonment shall be for a minimum period of 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court.

Thus, generally, **arrests can be made under GST law** only where the amount involved exceeds ₹ 2 crores or where a person commits any of the offences second time or subsequently thereafter. However, whoever issues, or causes to issue and retain the benefits arising out of issuance of any invoice/bill without supply of goods and/or services in violation of the provisions of GST law leading to wrongful availment or utilisation of ITC or refund of tax and amount of such tax evaded/ITC wrongly availed or utilised or refund wrongly taken exceeds ₹ 1 crore but does not exceed ₹ 2 crore, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine.

A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

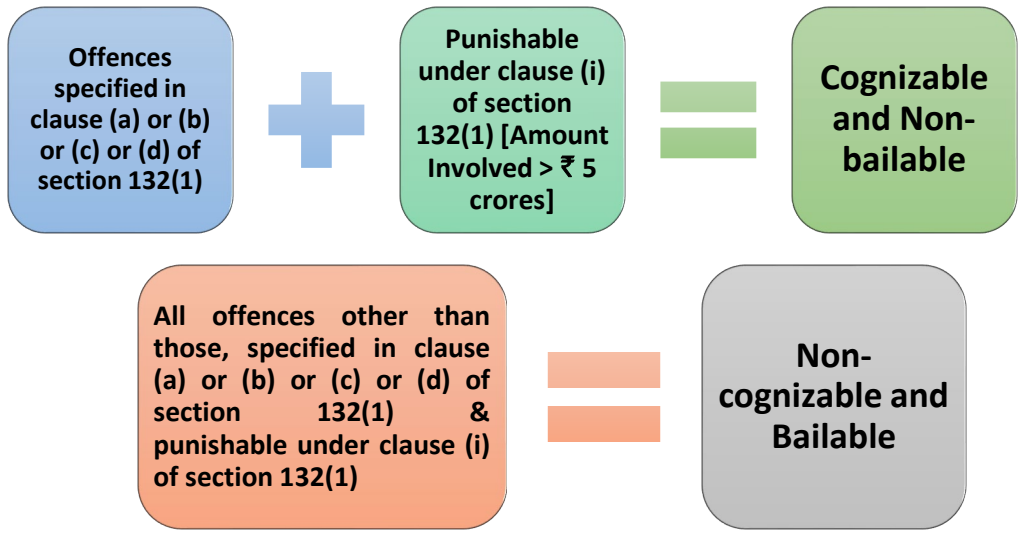
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(ii) Offences classified as cognizable offences and non- cognizable offences [Section 132(4) & (5)]

Let us first understand the meaning of the terms, cognizable offences and non- cognizable offences.

- **Cognizable Offences** - Cognizable offences means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a Court.
- **Non-cognizable offences** - Non cognizable offences means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a Court order, except as may be authorized under special legislation.

Let us see which offences under GST law are classified as cognizable and non-bailable and which offences are classified as non-cognizable and bailable:



Just to reiterate, offences specified in clause (a) or (b) or (c) or (d) of section 132(1) are as follows-

(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;

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(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) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill

(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;

(ii) Meaning of 'Tax' for the purpose of section 132 [Explanation to section 132]

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 SGST Act, IGST Act or the UTGST Act and cess levied under the GST (Compensation to States) Act.

15. LIABILITY OF OFFICERS AND CERTAIN OTHER PERSONS [SECTION 133]

- Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation 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 **6 months** or with fine which may extend to **₹ 25,000**, or with both.

- A Person shall be prosecuted for any offence under this section –
  - **In case of Government Servant** – With the previous sanction of Government only;
  - **In case of person other than Government Servant** - With the previous sanction of Commissioner only.

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16. COGNIZANCE OF OFFENCES [SECTION 134]

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.

17. PRESUMPTION OF CULPABLE MENTAL STATE [SECTION 135]



- 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. As per Explanation (i) to section 135, the expression **"culpable mental state"** includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.
- It shall, however, be a defense 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. As per explanation (ii) to section 135, 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.

18. RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES [SECTION 136]

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 the truth of the facts which it contains, in any prosecution for an offence under this Act,–

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(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.

19. OFFENCES BY COMPANIES [SECTION 137]

- Where an offence under this Act has been committed by a person being a company (means a body corporate and includes a firm or other association of individuals), 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 [Sub-section (1) of section 137].



However, where an offence that has been committed by the 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 of, any director, manager, secretary or other officer of the company,

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such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly [Sub-section (2) of section 137]

- 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. [Sub-section (3) of section 137].
- As per Explanation (ii) to Section 137 **"director"**, in relation to a firm means a partner in the firm.
- 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. [Sub-section (4) of section 137].

20. COMPOUNDING OF OFFENCES [SECTION 138 READ WITH RULE 162]

STATUTORY PROVISIONS	
Section 138	***Compounding of offences***
Sub-section	***Particulars***
(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 may be, of such compounding amount in such manner as may be prescribed:*

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	Provided that nothing contained in this section shall apply to—	
	(a)	*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*
	(c)	*a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132*
	(d)	*a person who has been convicted for an offence under this Act by a court;*
	(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.*	
(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 twenty-five percent of the tax involved and the maximum amount not being more than one hundred per cent. of the tax involved.*	
(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.*	



ANALYSIS

- As per the provisions of section 138(1), any offence may be compounded by the Commissioner, either before or after the institution of prosecution, upon payment of such compounding amount in such manner as may be prescribed, by the person accused of the offence, to the Central Government or the State Government, as the case be.

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- On receipt of the application from the applicant, the commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, which may be considered relevant for the examination of such application.
- On being satisfied that the applicant has made full and true disclosure of facts relating to the case, the Commissioner may, by order, allow the application indicating the compounding amount (discussed in subsequent paras) and grant him immunity from prosecution or reject such application within 90 days of the receipt of the application.



- The application shall not be decided without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.
- 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.
- The applicant shall, within a period of 30 days from the date of the receipt of the order, pay the compounding amount as ordered by the commissioner and shall furnish the proof of such payment to him.
- In case the applicant fails to pay the compounding amount within 30 days, the order of compounding shall be vitiated and be void.
- However, the following offences shall not be compounded-

  (a) 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 ;

  (c) a person who has been accused of committing an offence under section 132(1)(b);

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

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

- Compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences. Further, any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law [Proviso to Section 138(1)].
- The amount for compounding of offences under this section shall be such as may be prescribed, subject to –

(i) The minimum limit for compounding amount is 25% of tax involved.

(ii) The upper limit for compounding amount is 100% of tax involved [Sub-section (2) of section 138].

The said compounding amount has been prescribed by sub-rule (3A) to rule 162. The compounding amount shall be determined in the following manner:

S. No.	Offence	Compounding amount if offence is punishable under section 132(1)(i)	Compounding amount if offence is punishable under section 132(1)(ii)
1	Offence specified in section 132(1)(a)	Up to 75% of the amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 50% of such amount of tax evaded or the amount of ITC wrongly	Up to 60% of the amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 40% of such amount of tax evaded or the amount of ITC wrongly
2	Offence specified in section 132(1)(c)		
3	Offence specified in section 132(1)(d)		
4	Offence specified in section 132(1)(e)		

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		availed/ utilised or the amount of refund wrongly taken.	availed/ utilised or the amount of refund wrongly taken.
5	Offence specified in section 132(1)(f)	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
6	Offence specified in section 132(1)(h)		
7	Offence specified in clause (i) of section 132(1)		
8	Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f)and clauses (h) and (i) of sub-section (1) of section 132	Amount equivalent to 25% of such amount of tax evaded or ITC wrongly availed/ utilised or refund wrongly taken.	Amount equivalent to 25% of such amount of tax evaded or ITC wrongly availed/ utilised or refund wrongly taken.

However, where the offence committed by the person falls under more than one category specified in the Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.

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- 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 [Sub-section (3) of section 138].
- Immunity granted to a person 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 of the Act shall apply as if no such immunity had been granted.



21. ETHICS UNDER GST

(i) Meaning of Ethics

The Oxford Dictionary defines the term **"Ethics"** as the moral principle that governs a person's behavior or how an activity is conducted. Ethics provides a framework for distinguishing between right and wrong, guiding decision-making, and determining what is considered morally acceptable in a given context.

Ethics are fundamental to the effective functioning of any taxation system; this also holds true for the Goods and Services Tax (GST) regime in India. Ethical conduct contributes to increased regulatory compliance and reduced tax evasion which in turn leads to increased Government revenue collection. This tax revenue can be used for public welfare and development projects.

It also helps in creating a fair, transparent, and trustworthy tax environment and reduces uncertainty that supports economic growth and development.

Unethical practices like issuing bogus invoice without underlying supply, wrongful availment of ITC, etc. not only undermine the tax revenues, but also create an uneven playing field for honest taxpayers. Ethical behavior may also reduce tax-related disputes and litigations.

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(ii) Role of Chartered Accountant in ensuring ethics under GST

The professional behaviour of a Chartered Accountant is governed by a set of ethical guidelines and principles - known as Code of Ethics - laid down by the ICAI.

Every Chartered Accountant has to abide by this code of ethics. It encourages the Chartered Accountants to be honest, fair, and professional in their working and advocates to follow the rules to ensure that they are doing the right thing for their clients and the public at large.

The fundamental principles are: integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

The Chartered Accountants Act, 1949 prescribes the disciplinary action if a Chartered Accountant is found guilty of any Professional or Other Misconduct (as defined in Schedules to the Chartered Accountants Act). *The same have been discussed in detail in Chapter 19 - Professional Ethics & Liabilities of Auditors in Paper 3 - Advanced Auditing, Assurance and Professional Ethics at Final level.*

A Chartered Accountant in practice would be deemed to be guilty of professional misconduct under **clause (7) of Part I of the Second Schedule** to the Chartered Accountant Act, 1949, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties. Further, as per **clause (8) of Part I of the Second Schedule** to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.

A Chartered Accountant needs to follow ethical conduct while discharging his professional duties under the Goods and Services Tax (GST) law, namely, compliance functions, furnishing certifications/reports and advisory roles, by adhering to a set of principles and practices that promote integrity, transparency, and compliance.

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He should maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on latest applicable positions of GST law. In case of any violation of law in performing the compliance, certifications/reporting and advisory functions, he shall also be liable to applicable penalty and prosecution (in some cases) under GST law.

Chartered Accountants play a crucial role in ensuring GST compliance within their clients' organizations. This involves assisting in the process of obtaining registration, structuring the transactions and conditions stipulated in agreements for making /receiving supply, optimizing tax positions, ensuring the necessary GST compliances including e-way bill, payment of taxes, TDS/TCS compliances, compliances with anti-profiteering provisions and timely filing of periodic returns.

Generally, Chartered Accountants are responsible for ensuring the maintenance of accurate and detailed records of all GST-related transactions. This includes invoices, receipts, and other relevant documents. Such meticulous record-keeping is a legal requirement as well as an ethical duty of the Chartered Accountant.

Another major responsibility of a Chartered Accountant in the realm of GST is to act as a tax advisor to their clients. This entails a comprehensive understanding of the client's business operations and goals.

Chartered Accountants must assess the impact of GST on various aspects of the business, including supply chain, pricing strategies and financial reporting.

A Chartered Accountant, who holds a certificate of practice and who has not been debarred from practice, can also appear on behalf of his client before a GST officer, GST Appellate Authority or GST Appellate Tribunal in connection with any proceedings under GST law, as an authorised representative of the client.

Furthermore, Chartered Accountants play a vital role in the GST ecosystem by providing certifications that affirm compliance with GST laws and regulations. These certifications are mandatory in specific situations and are required to ensure compliance with GST regulations.

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They primarily aim at curbing the unethical practices and preventing the leakage of revenue. Thus, it is the duty of every Chartered Accountant to exercise utmost care and due diligence while granting these certifications.

While providing said certification, the Chartered Accountant has to comply with the ethical requirements of the Code of Ethics issued by the ICAI, the relevant applicable requirements of the Standard on Quality Control (SQC - 1), Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements.

The certifications/reports required to be furnished by a Chartered Accountant under GST law have been explained in detail hereunder:

(iii) Certifications/reports to be furnished by a Chartered Accountant required under the GST law

1. Certification of the amount of ITC claimed at the time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status [Sub-section (1) of section 18 read with rule 40]

The credit on inputs held in stock and contained in semi-finished goods or finished goods held in stock and capital goods at the time of registration/voluntary registration or coming into regular tax/tax-paying status is available in the following manner:

Section No.	Persons eligible to take credit	Goods entitled to ITC	
		Inputs held in stock/ capital goods	as on
(1)	(2)	(3)	(4)
Section 18(1)(a)	Person who has applied for registration within 30	Inputs held in stock and inputs contained in semi-	The day immediately preceding the date from which he becomes liable to pay tax

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	days from the date on which he becomes liable to registration and has been granted such registration	finished or finished goods held in stock	
Section 18(1)(b)	Person who is not required to register, but obtains **voluntary registration**	**Inputs** held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date of registration
Section 18(1)(c)	Registered person **who ceases to pay compositio n tax and switches to regular scheme**	**Inputs** held in stock and inputs contained in semi-finished or finished goods held in stock **and capital goods**	The day immediately preceding the date from which he becomes liable to pay tax under regular scheme
Section 18(1)(d)	Registered person whose exempt supplies	**Inputs** held in stock and inputs contained in semi-	The day immediately preceding the date from which such supply becomes taxable

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	become taxable supplies	finished or finished goods held in stock relatable to such exempt supply **and capital goods exclusively used for such exempt supply**	

In all the above cases, the registered person has to make an electronic **declaration in Form ITC-01** on the common portal, clearly specifying the details relating to the inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods on the days mentioned in column (4) of table above. The declaration is to be filed within 30 days (extendable by Commissioner/Commissioner of State GST/Commissioner of UTGST) from the date when the registered person becomes eligible to avail ITC. If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together exceeds ₹ 2,00,000, the declaration needs **to be certified by a practicing Chartered Accountant** or Cost Accountant.

A Chartered Accountant is required to examine the books of accounts and other relevant documents / records of the taxpayer and to provide a reasonable assurance that the amounts declared in the Form GST ITC-01 have been accurately drawn from the books of accounts and other relevant documents / records of the taxpayer and is claimed as ITC.

2. Certification that the sale, merger, demerger, amalgamation, lease or transfer of business done with a specific provision for the transfer of liabilities [Section 18(3) read with rule 41]

In case of sale, merger, demerger, amalgamation, transfer or change in ownership of business etc., the ITC that remains unutilized in the

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electronic credit ledger of the registered person can be transferred to the new entity, provided there is a specific provision for transfer of liabilities in such change of constitution. The registered person should furnish the details of change in constitution in Form ITC - 02 on the common portal. Further, he needs to submit **a certificate from practicing Chartered Accountant** or Cost Accountant certifying that the change in constitution has been done with a specific provision for transfer of liabilities.

A Chartered Accountant is required to examine the books of accounts and other relevant documents / records of the taxpayer and to provide a reasonable assurance that the sale, merger, demerger, amalgamation, lease or transfer or business has been done with a specific provision for the transfer of liabilities.

3. Certification that in case of refund claim exceeding ₹ 2 lakh by the applicant, there is no unjust enrichment [Section 54 read with rule 89(2)(m)]

A certificate in **Annexure 2 of Form GST RFD-01** is to be issued by a Chartered Accountant or Cost Accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person (i.e., there is no unjust enrichment in the case of the applicant) in a case where the amount of refund claimed exceeds ₹ 2 lakh.

The certification by the Chartered Accountant should be based on meticulous examination of the books of accounts and other relevant documents / records supporting the refund claim thereby providing a reasonable assurance that the incidence of tax, interest or any other amount claimed as refund, has not been passed on to any other person.

4. Certification of the amount of ITC to be reversed on cancellation of registration or on switching to composition levy/exit from tax-paying status, in respect of inputs for which tax invoices are not available [Section 29(5)/section 18(4) read with rule 44(5)]

Section 29(5) requires reversal of ITC on cancellation of registration of a registered person. Similarly, section 18(4) requires reversal of ITC

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when a registered person who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.

ITC on inputs should be reversed proportionately on the basis of corresponding invoices on which credit had been availed on such inputs. If invoices are not available, ITC can be reversed on the basis of the prevailing market price of such goods on the date of switch over/exemption/cancellation of registration. The details so furnished on the basis of prevailing market value need to be duly certified by a practicing Chartered Accountant or Cost Accountant.

The certification by the Chartered Accountant should be based on meticulous examination of the books of accounts and other relevant documents / records of the taxpayer thereby providing a reasonable assurance as regards the correctness of the quantum of the amount of ITC to be reversed in case where the tax invoices related to the inputs held in stock are not available.

5. Audit report under section 66

Section 66 provides that if at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that –

- the value (of goods and/or services) has not been correctly declared; or
- the credit availed is not within the normal limits,

he may, with the prior approval of the Commissioner, issue a direction to the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant as may be nominated by the Commissioner and specified in the said direction.

The Chartered Accountant or Cost Accountant shall submit a report of such audit duly signed and certified by him within the period of 90 days to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

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The Assistant Commissioner may extend the said period 90 days by a further period of 90 days –

- on an application made to him in this behalf by the registered person or the Chartered Accountant or Cost Accountant; or
- for any material and sufficient reason.

The expenses of the examination and audit of records including the remuneration of such Chartered Accountant or Cost Accountant, shall be determined and paid by the Commissioner and such determination shall be final. On conclusion of special audit, the registered person shall be informed of the findings of special audit.

Upon the conclusion of special audit under section 66, the registered person is communicated the proposed tax, interest and other liabilities, if any, along with the audit findings and the registered person is called upon to discharge the liabilities.

In case the registered person discharges the liabilities as proposed, no further action is taken. Otherwise, the authorities may initiate proceedings against the registered person under sections 73 or 74 for determination of the tax liability of the person audited.

A Chartered Accountant must approach the Special Audit with an unbiased and impartial mindset, free from any external influences or conflicts of interest. This ensures that the audit findings are based on factual evidence and professional judgment, rather than personal biases. He should first go through the terms of reference provided by the GST authorities to understand the scope and objectives of the special audit. This document outlines the specific areas and tax periods to be audited. He should conduct a comprehensive review of all relevant documents, including financial statements, invoices, transaction records, and any other documentation provided by the taxpayer. This ensures that the audit findings are based on accurate and reliable information. He should take steps to identify and mitigate any potential conflicts of interest that may arise during the special audit. This includes refraining from engaging in any activities or relationships that could compromise their objectivity or independence. If a conflict of interest does arise, it should be promptly disclosed to the relevant parties.

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Apart from the aforesaid specific roles defined in the GST Law for Chartered Accountants, there may be specific scenarios where the attested documents, certificates issued by the Chartered Accountants are relied during the proceedings under GST Law by the tax authorities and also judicial forums, as a general practice while dealing with the GST Law related disputes.

CASE STUDIES

Case Studies have been incorporated to exemplify some of the ethical considerations that a Chartered Accountant should bear in mind when issuing various certificates/reports under relevant GST provisions as well as while giving GST related advise to the client, ensuring GST compliances at the same time. This is intended to encourage the students to act ethically while discharging any GST related function and abstain themselves from inadvertently indulging in any unethical practices. We have discussed the significant implications that would arise under the GST law in such cases. Students may also refer the relevant provisions of demands and recovery, offences, penalties and prosecution under the GST law for ascertaining the consequences of the unethical practices being followed. Further, a Chartered Accountant in practice may be deemed to be guilty of the professional misconduct in such cases, primarily under clause (7)/ clause (8) of Part I of the Second Schedule to the Chartered Accountant Act, 1949, in such cases.

Case Study 1

Facts of the case

M/s L and Co., a partnership firm with two partners – Mr. X and Mr. Y, is registered under GST in Kolkata, West Bengal. It is engaged in supplying the materials used for construction related activity. Mr. X and Mr. Y are friends and each of them also have their own separate sole proprietorship firms engaged in supplying construction material; these firms are registered under GST. Mr. A[4] is the tax consultant of the firm - M/s L and Co.

Mr. X gets an offer from a customer - M/s W Pvt. Ltd., (hereinafter referred to as WPL) - to issue some supply related bills to meet the budget allocated to WPL by their management in relation to civil works. Mr. X shall earn a commission of 20%

[4] *Mr. A is not a Chartered Accountant.*

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of the value of supply charged in the supply bills accepted by WPL. Mr. X agrees to share 50% of his earnings with Mr. Y for undertaking the above project. M/s L and Co. needs a bank loan for expanding its business operations and the supply bills issued to WPL will inflate the turnover of M/s L and Co. Mr. X and Mr. Y sought advice from their tax consultant Mr. A as to how to execute the above project for the supply bills to be issued to WPL. Based on the guidance provided by Mr. A, it is executed as follows:

- M/s L and Co. shall issue supply related bills for steel, jelly stone and cement for ₹ 280 lakh to Mr. X wherein the delivery site shall be of WPL (Bill to Ship to Model).
- Mr. X shall avail and utilise the input tax credit (ITC) on the bill of ₹ 280 lakh and shall separately enter into a contract with WPL for supply of steel, jelly stone and cement (to be used for construction of foundation of Plant and Machinery) for ₹ 280 lakh. Further, Mr. X, in his individual capacity, shall issue labour work related bills for ₹ 40 lakh for the assembly and erection work relating to construction of foundation of Plant and Machinery undertaken at the site of WPL, without actually providing any service. WPL will avail and utilise the ITC on the bills of ₹ 280 lakh and ₹ 40 lakh used for underlying supply of goods.
- All inventory registers are updated duly by M/s L and Co. without any actual movement/supply of the material and some e-way bills are also generated on behalf of Mr. X for the supplies made to the work site of WPL.

Mr. A assures Mr. X and Mr. Y that:

- Inventory registers are up to date for material movement.
- Compliances pertaining to e-way bill have been taken care of.
- Money shall be duly realised as per the bills issued.

Mr. X approached his friend - Mr. P, a practicing Chartered Accountant, for seeking his help in above arrangement. However, Mr. P makes Mr. X conversant with the following GST implications that may arise in above arrangement:

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GST implications

1. **Issue of invoice by M/s L and Co. to Mr. X:** Since there has only been an issuance of tax invoice by the registered person - M/s L and Co. - to registered person 'Mr. X' without the underlying supply of steel, jelly stone and cement, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7. As there is no supply by M/s L and Co. to Mr. X in respect of such tax invoice in terms of the provisions of section 7, no tax liability arises against M/s L and Co. for the said transaction, and accordingly, no demand and recovery is required to be made against M/s L and Co. under the provisions of section 74A in respect of the same. The registered person - M/s L and Co. - shall, however, be liable for penal action under section 122(1)(ii) for issuing tax invoices without actual supply of goods. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1)(ii).

2. **Issue of invoice by Mr. X to WPL:** The registered person - Mr. X has availed and utilized fraudulent ITC on the basis of the tax invoice issued in contravention of the provisions of section 16(2)(b), without receiving the supply of steel, jelly stone and cement. Further, there was no supply of steel, jelly stone and cement and labour work related services by Mr. X to WPL. Thus, in respect of the said transactions, no tax was required to be paid. In these specific cases, no demand and recovery of either ITC wrongly/ fraudulently availed by Mr. X in such case or tax liability in respect of the said outward transaction by Mr. X to WPL is required to be made from Mr. X under the provisions of section 74A. However, in such cases, Mr. X shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii), for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1)(ii) subject to specified conditions.

   WPL will be liable for the demand and recovery of the ITC availed and utilised by it, along with penal action under section 74A along with applicable interest under provisions of section 50, for taking/ utilizing ITC without actual receipt of steel, jelly stone and cement and without receiving the assembly and

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erection services, used for underlying supply of goods. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1)(ii) subject to specified conditions.

3. **GST implications on Mr. A:** Mr. A who advised for designing the above business practice shall also be liable to a penalty in terms of the provisions of 122(3) since in the given case, he has aided or abetted the offences specified above. This offence is also punishable with imprisonment subject to specified conditions.

Mr. P apprised Mr. X that if any Chartered Accountant advises Mr. X on above arrangement, then he will also be punishable with penalty in terms of the provisions of 122(3) for aiding/abetting the offences specified above and may also be punishable with imprisonment subject to specified conditions. Further, he may also be held guilty of professional misconduct.

Case Study 2

Facts of the case

Doodle LLC is an entity registered in Germany and is engaged in providing online services across multiple countries including India. The service offerings include certain services which are covered within the purview of online information and database access or retrieval services i.e. OIDAR services liable to GST in India. Since Doodle LLC does not have any place of business in India, it appointed one of its employee - Mr. X[5] as its authorized representative for all the purposes in India which includes undertaking GST compliances and also as an authorized signatory for any other regulatory compliances in India. Mr. X is a partner in XYZ & Associates LLP. Post appointment of Mr. X, following chain of events unfolded:

1. Mr. X, being an authorized representative of Doodle LLC, made an application for registration as an OIDAR service provider in India and undertook other GST compliances. Subsequently, Mr. X started filing the monthly GST returns and made payment of applicable GST in India on behalf of Doodle LLC. In lieu of such services, Mr. X was being remunerated a fixed sum on monthly basis as professional fee. The appointment of Mr. X was in his personal capacity and not a professional service contract with his partnership firm - XYZ & Associates LLP. However, for recovery of amount of fixed monthly

[5] *Mr. X is not a Chartered Accountant.*

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remuneration from Doodle LLC, the invoices as 'export of services' were issued by Mr. X in the name of his partnership firm. The corresponding refund benefit was claimed by the partnership firm of Mr. X for input tax credit against such export of service invoices.

2. Doodle LLC appointed influencers in India to promote its services in India. The tax invoices of such influencers were received by Mr. X in name of XYZ & Associates LLP and input tax credit was availed by the partnership firm for such services. Said ITC was utilised for further supply of services. However, the actual service recipient in such case was Doodle LLC.

3. Subsequently, Doodle LLC was required to submit certain affidavits and accounting records before the office of the Enforcement Directorate. Being an authorized representative/ signatory of Doodle LLC, Mr. X approached Mr. P, a practicing Chartered Accountant, to prepare the affidavits and accounting records which included critical financial information and data of Doodle LLC. He elaborated the entire arrangement among Doodle LLC, Mr. X and XYZ & Associates LLP to Mr. P. He further requested Mr. P to certify and attest such records, which would be prepared and compiled by Mr. P in capacity of a practicing Chartered Accountant for submission before Enforcement Directorate.

Mr. P apprised Mr. X of the following GST implications:

GST implications

1. Incorrect issuance of invoice for export of services and claim of refund of input tax credit on the basis of such export of service related invoices

Mr. X was appointed as authorized representative and signatory of Doodle LLC in his personal capacity to undertake the compliances enumerated under the GST law in India. However, the consideration for such services was received at the behest of invoices issued in the name of his partnership firm. Further, such invoices were issued as 'export of service' invoices and corresponding refund of input tax credit was claimed by the firm of Mr. X. This act of Mr. X alongwith his firm is punishable as follows:

- Since Mr. X supplied services to Doodle LLC without any invoice, he shall also be liable for the demand and recovery of tax on said supply, along with penal action under section 74A. Even if the contention is made

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that invoice was issued for such services by the firm of Mr. X, the same shall be treated as an incorrect invoice or false invoice as both, Mr. X and XYZ & Associates LLP are separate persons as per GST Law.

- Since both, Mr. X and XYZ & Associates LLP are different persons, the invoice issued by the firm shall be construed as issuance of invoice without supply of services viz. an offence punishable under section 122(1)(ii).
- Incorrect refund was claimed by XYZ & Associates LLP for input tax credit on the basis of incorrect invoice for export of services to Doodle LLC. This is an offence under section 122(1)(viii).
- All the above offences may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

2. Availment of input tax credit without actual receipt of services

XYZ & Associates LLP received invoices from the influencers who were actually providing services to Doodle LLC. Further, the input tax credit related to such invoices was availed by XYZ & Associates LLP in contravention of the provisions of section 16. Accordingly, the input tax credit availed and utilised by XYZ & Associates LLP for further supply of services is incorrect. Thus, XYZ & Associates LLP will be liable for the demand and recovery of the said ITC, along with penal action under section 74A alongwith interest under section 50 as the actual service recipient was Doodle LLC and not XYZ & Associates LLP.

This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

3. GST implications on Mr. X

Mr. X was fully involved in wrongdoings in terms of the business transactions of Doodle LLC in India. Further, he was the authorized representative and signatory of Doodle LLC in India. Mr. X is liable to penalty under section 122(1A) and section 122(3) since he is involved in aiding and abetting the offences committed hereunder at his instance and has also derived monetary benefits from such practices. This offence may also be punishable

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with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

If a Chartered Accountant takes up the assignment offered by Mr. X and also attests/certifies the Doodle LLC's accounting records that would be prepared by him, for submission before the Enforcement Directorate in India, he may be held guilty of professional misconduct.

Case Study 3

Facts of the Case:

ABC & Associates LLP (ABC), a firm of Chartered Accountants, was empanelled with the Commissioner of GST for appointment as Special Auditor under section 66. X Ltd., a registered person under GST, was selected by the Office of the Commissioner for special audit under section 66 for a financial year on account of irregularities noticed during scrutiny of returns. ABC was nominated by the Office of the Commissioner for special audit of X Ltd. Assume that the following events unfolded in relation to the appointment and audit procedure:

1. The appointment of special auditor was based on the undertaking furnished by the firm that the partners of the firm or any of their relatives are not directly or indirectly related to the auditee. However, while submitting the declaration in relation to such appointment, if ABC fails to disclose the fact that spouse of one of the partners of ABC is working under full time employment as a Head of Tax Department of the auditee i.e. X Ltd., what will be its implications?

2. Material discrepancies in the valuation of stock transfer to related parties by the auditee were noticed by ABC. If ABC fails to disclose these material discrepancies in the audit report submitted to the Office of Commissioner, what will be its implications?

3. The input tax credit claim by X Ltd. i.e. the auditee, under Form GST ITC- 01, was certified by one of the associate firms of ABC in favour of X Ltd. Such certificate was based on incorrect facts and against the eligibility criteria for input tax credit as per section 18. However, if ABC fails to exercise the due diligence and the certificate is taken on record by ABC as an audit procedure and is relied upon at the time of finalization of audit report and submission of findings, what will be its implications?

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4. ABC receives a consideration of ₹ 5 lakh from X Ltd. in the name of special audit conducted.

GST implications

Following implications may arise in the above cases:

1. False undertaking submitted before the Office of Commissioner GST and the audit engagement undertaken on the basis of such undertaking

The essential terms of the appointment as special auditor included that the partners or any of the relatives of the partners are not directly or indirectly linked to X Ltd. i.e. the auditee. If the spouse of one of the partners of ABC is working as Head of Tax Department of the auditee. Non-disclosure of said fact in the undertaking and other engagement documents and accepting such engagement tantamount to submission of false undertaking by a Chartered Accountant firm to the Government Authorities. Further, a question may be raised about the independence of the audit team considering the fact that spouse of one of the partners of the firm is holding a key position in X Ltd. i.e. the auditee.

2. Non-reporting of material discrepancies noticed during the audit procedure and reliance upon incorrect certificates and information

ABC audit team did not exercise due diligence to ascertain that the input tax credit availed by X Ltd. is not in compliance with the GST provisions. Instead, ABC relied on the certificate issued by its own associate firm which justified the incorrect input tax credit claim by X Ltd. In such a scenario both ABC and the associate firm, which issued the certificate to justify the input tax credit claim, were aiding and abetting X Ltd. in wrongful availment of credit, which is an offence punishable with penalty under 122(3). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions. Further, ABC as well as its associate firm may be held guilty of professional misconduct.

3. Receiving consideration for special audit from the auditee

The consideration for special audit under section 66 is payable by the Office of Commissioner and cannot be directly recovered from the auditee. In the present case the receipt of ₹ 5 lakh from the X Ltd., i.e. the auditee by ABC is an offence under GST provisions. The same is liable to penalty under general

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penalty under section 125 apart from other penal provisions under the GST Law. Further, this will also have an impact on the independence of the auditor – ABC.

Case Study 4

Facts of the Case:

A Ltd. is engaged in the business of manufacturing cotton yarn, wherein cotton is the principal raw material in the manufacturing process. The price of cotton varies depending upon the market conditions and is dependent on various external factors. Mr. X[6] is tax consultant of A Ltd. Mr. X advises A Ltd. on GST compliances.

In order to meet expansion related expenditure, A Ltd. sought a term loan and working capital loan from banks. As per the bank, the turnover and profitability criteria of A Ltd. were not meeting the benchmarks of bank for sanction of any loan facility. Accordingly, following actions were undertaken by Mr. X being the tax consultant of A Ltd.:

1. A separate entity i.e. B Ltd. was incorporated and the Directors of A Ltd. were appointed as Directors in B Ltd. This ensured that the control of B Ltd. remains with the Directors of A Ltd. Further, B Ltd. obtained GST registration as a manufacturer of yarn wherein Mr. X assisted B Ltd. in obtaining such GST registration. Mr. X obtained registration providing fake documents for registration.

2. Subsequently, A Ltd. started issuing tax invoices for supply of yarn to B Ltd. However, there was no actual movement of goods by A Ltd. to B Ltd. The tax invoices were issued and the same were reported in the GST returns by A Ltd. Further, B Ltd. availed the input tax credit of all such tax invoices reported by A Ltd. The finished goods related to such tax invoices were sold in the local market by A Ltd. in cash without charging any GST and without issuance of tax invoice.

3. B Ltd. issued tax invoices for provision of certain services to A Ltd. in form of testing of cotton, repairs and maintenance of machinery installed at A Ltd. apart from other services. However, no such services were actually provided by B Ltd. to A Ltd. The input tax credit appearing in the books of B Ltd. (which

[6] *Mr. X is not a Chartered Accountant.*

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was availed on the basis of fake yarn invoices) was utilized by B Ltd. at the time of discharging GST liability in relation to the alleged tax invoices issued against provision of services to A Ltd.

4. Further, B Ltd. issued tax invoices for sale of yarn (allegedly purchased from A Ltd.) to other group entities to ensure that the stock of yarn becomes zero in the books of accounts at the year end. The tax invoices were issued at a rate lowered by 90% of the actual tax invoice received from A Ltd. contending that the quality of yarn had deteriorated during the storage.

5. Mr. X was aware of the aforesaid actions of A Ltd. and B Ltd. Further, the GST returns were filed by Mr. X for both the companies.

6. A Ltd. approached Mr. P, a practicing Chartered Accountant to issue relevant certificates to the bank certifying the turnover of A Ltd. and B Ltd. as genuine turnover to ensure that the required loan amount is sanctioned to A Ltd. A Ltd. elaborated the entire arrangement made by it with regard to B Ltd.

Mr. P apprised A Ltd. of the following GST implications that may arise in the given case:

GST implications

1. GST registration of B Ltd. sought on the basis of fake documents

As per section 122(1)(xii), furnishing of false information with regard to registration particulars is an offence liable to penalty under GST Law. Thus, B Ltd is liable to penalty under section 122(1)(xii).

2. Issuance of tax invoice without actual supply of goods or services

Following instances happened wherein there was no actual supply of goods or services, however, tax invoice was issued:

- Fake issuance of tax invoice for supply of yarn by A Ltd. to B Ltd. (Para 2)
- Fake issuance of tax invoice for supply of services by B Ltd. to A Ltd. (Para 3)
- Fake issuance of tax invoice for supply of goods by B Ltd to group entities (Para 4)

The aforesaid actions are liable for penal action under section 122(1)(ii) for issuing tax invoices without actual supply of goods and services. This offence

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may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

3. Fraudulent input tax credit availment

B Ltd. availed fraudulent input tax credit of the goods (yarn) which were not at all received by B Ltd. and the same was used in discharge of the tax liability related to invoices issued without any underlying supply of goods or services.

B Ltd. has availed and utilized fraudulent ITC on the basis of the said tax invoice, in contravention of the provisions of section 16(2)(b), without receiving the supply of goods and accordingly. In this case, there was no supply of by B Ltd. to A Ltd. in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by B Ltd. in such case or tax liability in respect of the said outward transaction by B Ltd. to A Ltd. is required to be made from B Ltd. under the provisions of section 74A. However, in such cases, B Ltd. shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii), for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.

This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

4. Incorrect information in GST returns and falsification of books of accounts

The GST returns filed by A Ltd. and B Ltd. were not backed by correct information in terms of supply of goods and services. Knowing that there was no supply of goods or services and input tax credit is not available, the returns were filed by both the companies. The books of accounts and financial records were also falsified in terms of information related to sales and inventory. This act of furnishing incorrect information in GST return and falsifying financial records is an offence under section 122(1)(x). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

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5. GST implications on Mr. X

Mr. X, being a consultant of A Ltd., had adequate knowledge of the fraud and wilful misrepresentation of the facts in terms of maintaining the financial records and submission of information in GST returns. In fact, Mr. X himself was filing the GST returns and was aware of the fake invoices and ineligible input tax credit availment by the companies. Mr. X shall be liable to a penalty in terms of the provisions of 122(3) since in the given case, he has aided or abetted the offences specified above. This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

If a Chartered Accountant undertakes the assignment of issuing relevant certificates to the bank thereby certifying the turnover of A Ltd. and B Ltd., he may be held guilty of professional misconduct. Further, he shall also be liable to a penalty in terms of the provisions of 122(3). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

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TEST YOUR KNOWLEDGE

1. *What is the quantum of penalty for an offence mentioned under section 122(1), 122(1A) and section 122(2)?*

2. *Mr. X, an unregistered person under GST, purchases the goods supplied by Mr. Y who is a registered person without receiving a tax invoice from Mr. Y and thus helps in tax evasion by Mr. Y. A disciplinary action is taken against Mr. X and an adhoc penalty of ₹ 20,000/- is imposed by passing an order without describing contravention for which penalty is going to be imposed and without mentioning the provisions under which penalty is going to be imposed. Should Mr. X proceed to pay for penalty or challenge the order passed by Department?*

3. *Examine the implications as regards the bailability and quantum of punishment on prosecution, in respect of the following cases pertaining to the month of December under CGST Act, 2017-*

   (i) 'X' collects ₹ 245 lakh as tax from its clients and deposits ₹ 241 lakh with the Central Government. It is found that he has falsified financial records and has not maintained proper records.

   (ii) 'Y' collects ₹ 550 lakh as tax from its clients but deposits only ₹ 30 lakh with the Central Government.

   What will be the implications with regard to punishment on prosecution of 'X' and 'Y' for the offences? What would be the position, if 'X' and 'Y' repeat the offences?

   It may be assumed that offences are proved in the Court.

4. *Discuss the cognizable and non-cognizable offences under section 132?*

5. *Bindusar CEO of Ashoka Solution Ltd is issued a summon to appear before the central tax officer to produce the books of accounts of Ashoka Solution Ltd in an enquiry conducted on said company. Determine the amount of penalty if any that may be imposed on Bindusar under the CGST Act, 2017 if he fails to appear before the central tax officer.*

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ANSWERS

1. Section 122(1) provides that any taxable person who has committed any of the specified offences mentioned thereunder, shall be liable to a penalty which shall be higher of the following amounts:

(a) ₹ 10,000/-; or

(b) An amount equivalent to, any of the following (Applicable as the case may be) **–**

(i) Tax evaded; or

(ii) Tax not deducted under section 51 or short deducted or deducted but not paid to the Government; or

(iii) Tax not collected under section 52 or short collected or collected but not paid to the Government; or

(iv) Input tax credit availed of or passed on or distributed irregularly; or

(v) Refund claimed fraudulently

Further, section 122(1A) provides that any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of section 122(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 of or passed on.

Moreover, section 122(2) provides that if any registered person who supplies any goods and/or services on which any tax has not been paid or short paid or erroneously refunded or where the ITC has been wrongly availed or utilized:-

(i) for any reason other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall be liable to a penalty of ₹ 10,000 or 10% of the tax due from such person, whichever is higher.

(ii) for reason of fraud, or any willful misstatement or suppression of facts to evade tax, penalty shall be equal to ₹ 10,000 or the tax due from such person, whichever is higher.

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2. The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126. Accordingly—

- no penalty is to be imposed without affording an opportunity of being heard to the person proceeded against to rebut the allegations levelled against him,
- the penalty is to depend on the totality of the facts and circumstances of the case, the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged,
- the nature of the breach is to be specified clearly in the order imposing the penalty,
- the provisions of the law under which the penalty has been imposed is to be specified.

Since the order suffers from lack of clarity about nature of breach which has taken place and about applicable law under which penalty has been imposed, such order passed by the department should be challenged.

3. **(i)** Failure to pay any amount collected as tax beyond 3 months from due date of payment is a specified offence as per clause (d) of Section 132(1).

In the present case, failure to deposit the tax ₹ 4 lakh (₹ 245 lakh – ₹ 241 lakh). As the amount of failure does not exceed ₹ 200 lakh therefore, failure to deposit ₹ 4 lakh collected as tax by 'X' will not be punishable with imprisonment as per section 132(1).

Further, falsification of financial records by 'X' is a specified offence as per section 132(1)(f) and punishable with imprisonment upto 6 months or with fine or both as per clause (iv) of section 132(1) assuming that falsification of records is with an intention to evade payment of tax due under the CGST Act, 2017 and the said offence is bailable in terms of section 132(4).

(ii) Failure to pay any amount collected as tax beyond 3 months from due date is punishable with imprisonment upto 5 years and with fine, if the

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amount of tax evaded exceeds ₹ 500 lakh in terms of section 132(1)(d) read with clause (i) of section 132(1).

Since the amount of tax evaded by 'Y' exceeds ₹ 500 lakh (₹ 550 lakh - ₹ 30 lakh), 'Y' is punishable with an imprisonment for a term which may extend to 5 years and with fine. It has been assumed that amount of ₹ 520 lakh collected as tax is not paid to the Government beyond 3 months from the due date of payment of tax.

Such offence is non-bailable in terms of section 132(5).

If 'X 'and 'Y' repeat the offence, they shall be punishable for second and for every subsequent offence with imprisonment upto 5 years and with fine in terms of section 132(2) of the CGST Act, 2017.

Such imprisonment shall also be of at least 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court.

4. As per section 132(5), following offences are cognizable offences, provided amount of tax evaded or input tax credit wrongly availed/ utilised or refund wrongly taken exceeds ₹ 5 crores, namely:

(a) Supply without issuance of invoice with the intention to evade tax

(b) Issuance of any invoice/ bill without supply leading to wrongful availment/ utilisation of ITC or refund of tax

(c) Availment of ITC using invoice/ bill against which no supplies have been made or fraudulent availment of ITC without any invoice or bill.

(d) Failure to pay the amount collected as tax to the Government beyond a period of 3 months from the due date of payment.

Further, section 132(4) provides that all offences specified under section 132 are non-cognizable offences except the cognizable offences specified as aforesaid.

5. Sec 122(3)(d) stipulates that any person who 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 enquiry is liable to a penalty which may extend to ₹ 25,000. Therefore, penalty upto ₹ 25,000 can be imposed on Bindusar under the CGST Act, 2017 in the given case.

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