



**The Institute of
Cost Accountants
of India (ICAI)**

Goods & Services Tax (GST) Certification Course

Disclaimer

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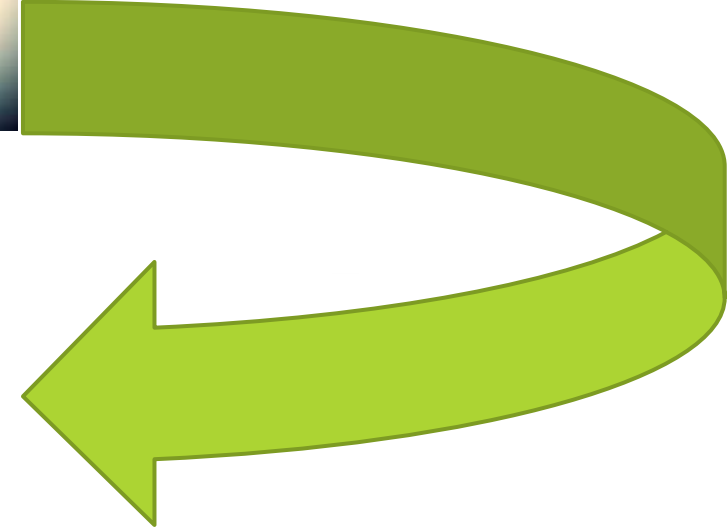
The presentation has been prepared to provide an overview of the applicable law pertaining to the subject matter. For detailed insight and for better understanding, its is advised to refer to relevant provisions in the Act and the related rules & notifications.

Offences, Penalties & Prosecution



Offences and consequences

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Offences and Penalties



Major Offences

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- Major offences
 - Tax not paid
 - Tax short paid
 - Input Tax credit wrongly availed or utilised
 - Erroneous refund of tax
- Intention
 - Fraudulent, through wilful-misstatement or by suppressing facts
 - Other than fraud, misstatement or suppressing facts
- Action
 - Demand & Recovery proceedings u/s 73 or u/s 74 of the Act

21 specified offences, Penalty Rs. 10,000 or amount of tax, whichever is higher [Sec 122(1) of CGST Act]

- Supply of goods or services or both without issue of any invoice or issue of incorrect or false invoice with regard to any such supply.
- Issue of any invoice or bill of supply without supply of goods or services or both in violation of the provisions of the Act or Rules.
- Collection of any amount as tax but failing to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due.
- Collection of any tax in contravention of the provisions of the Act but failing to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due.

Specified offences

- Failing to deduct or less deduction or failing to remit the tax under provisions of Sec 51 of CGST Act
- Failing to collect or less collection or failing to remit the tax under provisions of Section 52 of CGST Act
- Taking or utilising Input Tax Credit without actual receipt of goods or services or both either fully or partially.
- Fraudulently obtaining refund of tax under this Act
- Taking or distributing Input Tax Credit in contravention to Sec 20 of CGST Act
- Falsifying/ substituting financial records or producing fake accounts/ documents or furnishing any false information or return with an intention to evade payment of tax

Specified offences

- Failing to obtain registration, even though liable to be registered under this Act.
- Furnishing any false information with regard to registration particulars, either at the time of applying for registration or subsequently.
- Obstructing or preventing any officer in discharge of his duties
- Transporting any taxable goods without the cover of documents, as specified.
- Suppressing turnover leading to evasion of tax.
- Failing to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act

Specified offences

- Failing to furnish information/ documents called for by an officer or furnishing false information/ documents during any proceedings under this Act
- Supplying, transporting or storing any goods which, he has reasons to believe, are liable to confiscation.
- Issuing any invoice/ document by using the registration number of another registered person
- Tampering with or destroying any material evidence or document
- Disposing off or tampering with any goods that have been detained, seized or attached

Rs. 10,000 or tax, whichever is higher

Other offences

- *U/s 122(2) of CGST Act*, in case of supplies on which tax has not been paid or short paid or erroneously refunded or Input Tax credit has been wrongly availed or utilised, the penalty shall be
 - Equal to Tax or Rs. 10,000, whichever is higher (cases relating to fraud, wilful mistake, suppressing facts)
 - 10% of tax or Rs. 10,000, whichever is higher, for other cases
- *U/s 122(1A) of CGST Act*, any person who retains the benefit of a transaction covered under certain specified offences and at whose instance such transaction is conducted, the penalty shall be equal to the tax evaded or Input Tax Credit availed or passed on.

Aiding/ Abating offences *[Sec 122(3) of CGST Act]*

- Any person who aids or abets any of the 21 specified offences
- Acquires possession of goods or in any way concerns himself in any other manner with any goods which he knows or has reasons to believe are liable for confiscation
- Receives or is in any way concerned with the supply of, or deals with any supply of services which he knows or reasons to believe are in contravention to the Act
- Fails to appear before the Officer when issued with a summon for appearance to give evidence or produce a document in an inquiry.
- Fails to issue invoice or fails to account for an invoice in his Books of Account

Penalty up to Rs. 25,000

Offences and Penalties

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- *U/s 150 of CGST Act*, Local authorities, Government bodies, and other authorities are required to provide information from time to time and file prescribed returns
- Failure to file returns or provide information on time invokes penal provisions, wherein the Proper Officer shall serve notice.
- Failure to respond within the timeframe may lead to penalty of Rs. 100 per day, subject to a maximum of Rs. 5,000 (*Sec 123 of CGST Act*)

Offences and Penalties

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- *U/s 151 of CGST Act*, the Commissioner, by notification, may direct that statistics may be collected relating to any matter dealt with by or in connection with the Act.
- Upon issue of such request, the concerned persons is required to furnish such information or returns, in such form and manner as may be prescribed.
- In cases of wilful default in providing the information or providing false information wilfully, the fine shall be up to Rs. 10,000. In case of continuing offence, the fine shall be Rs. 100 per day, subject to maximum of Rs. 25,000 [*Sec 124 of CGST Act*]

General Discipline – Sec 126

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- No penalty for minor breaches i.e. omission or mistake which is easily rectifiable as apparent on record or when the tax amount is $< \text{Rs. } 5,000$
- Penalty to be in commensurate with the degree and severity of the breach
- No penalty shall be imposed without giving the other party a fair chance to be heard.
- Nature of breach and applicable law to be specified in the Notice/ Order.
- In case of voluntary disclosure, prior to the discovery of the breach by the Officer, the Proper Officer may consider imposing lower penalty.
- Above provisions not applicable where penalty is specified as a fixed sum or as fixed percentage.

- If no penalty separately specified for an offence, the penalty can be imposed up to a maximum of Rs. 25,000 (*Sec 125 of CGST Act*)
- If the Proper officer is of the view that a person is liable to a penalty and the same is not covered under any other provisions of the Act, he may issue an Order levying such penalty after giving a reasonable opportunity of being heard to such person (*Sec 127 of CGST Act*)
- Government, on the recommendations of the Council, may, by notification, waive in part or full, any penalty or any late fee. [*Sec 128 of CGST Act*]
- Once the amount (tax + interest + penalty, if any) is paid, all proceedings are deemed concluded (except provisions relating to prosecution).

Detention of goods and conveyances

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- Any transportation or storage in transit in contravention to the provisions of the Act shall be liable to detention or seizure of goods and conveyance [*Sec 129(1) of CGST Act*]
- Goods and conveyance, so detained or seized, shall be released on
 - Payment of tax and penalty equal to 100% of tax {Payment of penalty equal to 200% of tax} (2% of value of goods or Rs. 25,000, whichever is lower, in case of exempted goods) → Owner comes forward
 - Payment of tax and penalty equal to 50% of value of goods {Payment of penalty equal to 50% of value of goods or 200% of the tax payable, whichever is higher} (5% of value of goods or Rs. 25,000, whichever is lower, in case of exempted goods) → Owner doesn't come forward
 - Furnishing security equivalent to the amount payable as above.
- No goods or conveyance to be detained or seized without giving Order of detention or seizure on the person transporting the goods [*proviso to Sec 129(1) of CGST Act*].

Detention of goods and conveyances

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- Goods so seized can be provisionally released upon executing a bond and furnishing security, as may be prescribed. *[Sec 129(2) of CGST Act]* { Section Omitted}
- The proper officer detaining or seizing goods or conveyances shall issue a Notice {within 7 days of such detention or seizure} specifying the ~~tax and~~ penalty payable and thereafter, pass an Order {within 7 days of the notice} for payment of ~~tax and~~ penalty. *[Sec 129(3) of CGST Act]*
- No ~~tax, interest or~~ penalty shall be determined without giving the person concerned an opportunity of being heard *[Sec 129(4) of CGST Act]*
- On payment of the amount in the Order, all proceedings in respect to the Notice shall be deemed concluded. *[Sec 129(5) of CGST Act]*

Detention of goods and conveyances

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- If tax and penalty not paid within 14 days* of such detention or seizure, proceedings under provisions of confiscation shall apply [*Sec 129(6) of CGST Act*] {*Substituted*}
- If the penalty is not paid within 15 days* from the date of receipt of Order passed, the goods or conveyance so detained or seized shall be liable to be sold or disposed of to recover the penalty payable.
- Conveyance shall be released on payment by the transporter of the penalty amount as per the Order of Rs. 1 lakh, whichever is less.

Confiscation of goods and conveyances

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- *U/s 130(1) of CGST Act*, cases which will fall under this section – Any person, who
 - Supplies or receives goods in contravention to the law with an intent of tax evasion
 - Doesn't account for the goods on which he is liable to pay tax
 - Supplies goods liable to tax without having applied for registration
 - Contravenes any of the provisions of this Act with an intent to evade payment of tax
 - Uses any conveyance as a mean of transport for carriage in contravention to law*
- Penalty – As per the provisions of Sec 122 of CGST Act
- 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 [*Sec 130(4) of CGST Act*]
- Once the goods or conveyance is confiscated, the title shall, thereupon, vest in the Government [*Sec 130(5) of CGST Act*]

Confiscation of goods and conveyances

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- Proper Officer shall give an option to the owner of goods to pay a fine in lieu of confiscation.
 - Fine cannot exceed the market value of goods confiscated. *[1st proviso to Sec 130(2) of CGST Act]*
 - Aggregate of Fine and penalty cannot be less than penalty leviable in case the goods would have been detained {cannot be less than 100% of the tax payable on such goods} *[2nd proviso to Sec 130(2) of CGST Act]*
 - In order to avoid confiscation of the conveyance, the owner of the conveyance used for carriage has an option to pay a fine equal to the tax payable on the goods being transported thereon *[3rd Proviso to Sec 130(2) of CGST Act]*
- Fine is in addition to the tax, penalty or any charges payable. *[Sec 130(3) of CGST Act]* {Section omitted}
- If satisfied that goods or conveyance is not required in any proceedings, the Proper Officer, after giving reasonable time, not exceeding 3 months to pay fine in lieu of confiscation, shall proceed to dispose the same and deposit the sale proceeds with the Exchequer. *[Sec 130(7) of CGST Act]*

Offences and Prosecution



Offences – 12 specified offences *[Sec 132(1) of CGST Act]*

- Supplying any goods or services or both without issue of any invoice with the intention to evade tax
- Issuing any invoice or bill without supply of goods or services or both leading to wrongful availment or utilisation of Input Tax Credit or refund of tax
- Availment of Input Tax Credit using invoice or bill issued without getting supply or without issue of invoice or bill relating to such goods or services or both
- Collecting any amount as tax but failing to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due
- Evading tax or fraudulently obtaining refund
- Falsifying or substituting financial records or producing fake accounts/ documents or furnishing any false information with an intention to evade payment of tax due

Offences

- Obstructing or preventing any officer in the discharge of his duties
- Acquiring possession of goods or in any way concerning himself in any other manner with any goods which, he knows or has reasons to believe, are liable to confiscation
- Receiving, or is in any way, concerned with the supply of, or in any other manner dealing with any supply of services which, he knows or has reasons to believe, are in contravention to the Act
- Tampering with or destroying any material evidence or documents
- Failing to supply any information or supplying false information which he is required to supply under this Act
- Attempting to commit or abating any of the offences mentioned above

Offences and Prosecution

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Amount of Tax Evaded or ITC wrongly availed or utilised or Refund wrongly taken	Period of Maximum Imprisonment and Fine
Exceeding Rs. 500 Lacs	5 years and Fine
Exceeding Rs. 200 Lacs up to Rs. 500 Lacs	3 years and Fine
Exceeding Rs. 100 Lacs up to Rs. 200 Lacs	1 year and Fine
Commits/ abets certain specified offences	6 months or Fine or both
In case of repetition of Offence	5 years and Fine



Offences relating to evasion where the amount is more than Rs. 500 Lacs, are cognizable and non-bailable

Power to arrest – Sec 69

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- Where the Commissioner has reasons to believe that the person has committed certain specified offences which are liable to prosecution and
 - Where the amount of evasion is > Rs. 2 Cr, or
 - Where any offence liable for prosecution has been committed againhe may, by Order, authorise any officer to arrest such person.
- Where the arrest has been made and
 - where the amount of tax evasion is > Rs. 5 Cr., the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within 24 hours.
 - in other cases, bail shall be admitted or in default of bail, the person shall be forwarded to the custody of the Magistrate.
- In case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

- A person shall not be prosecuted for any offence except with the previous sanction of the Commissioner. [*Sec 132(6) of CGST Act*]
- Prior sanction of the Commissioner is required for the Courts to take cognizance of any offence punishable under the Act. No Court inferior to that of a Magistrate of the First Class shall try any such offence under the Act. [*Sec 134 of CGST Act*]
- Obligation cast on the accused to prove the absence of *mens-rea*, else its implied that offence has been committed intentionally and with guilty mind. [*Sec 135 of CGST Act*]
- *U/s 136 of CGST Act*, a statement recorded during the course of investigation or enquiry shall be relevant to prove the truthfulness of the facts when,
 - the person who made the statement is not available during proceedings due to death, unavailability, incapacity, kept out of way, presence can't be obtained without unreasonable delay.
 - the person is examined as a witness before the Court and the Court admits such statement as evidence in the interest of justice.

- Where an offence has been committed by a company, every person who, at the time the offence was committed, was in charge of and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- If 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,
 - In case of Company, the Person-in-charge such as Director, Secretary, Manager etc., they shall be considered guilty and shall be liable for punishment along with Company
 - In case of Partnership Firm or LLP, HUF or Trust, Partner of Firm or LLP/ Karta of Family/ Managing Trustee of the Trust shall be deemed to be guilty.
- If the person proves that the offence was committed without his knowledge or that he had exercised suitable precautions and all exercised due diligence to prevent such offence, no punishment can be rendered to him.

- *U/s 133(1) of CGST Act*, any person engaged in collection of statistics or any officer having access to information or person engaged in connection with services on the common portal wilfully discloses any information, otherwise than in execution of his duties, shall be prosecuted.
- Penalty – Fine up to Rs. 25,000 or 6 months imprisonment or both
- Prosecution proceedings can be initiated in case
 - A Government servant, with the previous sanction of the Government
 - Not a Government servant, with the previous sanction of the Commissioner

Compounding of offence

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- Can be initiated either before or after institution of prosecution [*Sec 138(1) of CGST Act*]
- Exclusions
 - Person who has been allowed to compound once in respect of certain specified offences which were liable for prosecution (mostly offences relating to supplies, ITC, Refund or falsifying docs)
 - Person who has been allowed to compound once in respect of any offence (except certain specified offences liable for prosecution) in respect of supplies of value exceeding Rs. 1 Cr.
 - Person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force
 - Person convicted for an offence under this Act by a Court
 - Person who has been accused of committing certain specified offence (other than those having monetary implications) which are liable for prosecution
 - Any other person or offence, as may be prescribed

Compounding of offence

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- *U/s 138(2) of CGST Act*, Compounding amount shall be as prescribed, subject to
 - Minimum – Rs. 10,000 or 50% of tax involved, whichever is higher
 - Maximum – Rs. 30,000 or 150% of tax, whichever is higher
- Compounding shall be allowed only after making payment of tax, interest, and penalty [*2nd proviso to Sec 138(1) of CGST Act*]
- Compounding allowed under this Act shall not affect the proceedings, if any, instituted under any other law. [*1st proviso to Sec 138(1) of CGST Act*]
- Once compounding amount paid, no further proceedings can be initiated. If already initiated, the proceeding shall stand abated [*Sec 138(3) of CGST Act*]



Thank You

Manmohan Daga
Daga & Associates



**KEEP
CALM
&
FOLLOW
THE RULES**

Finance Act 2021

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Section	Provision of Law	Current	Proposed	Remarks
Expl 1(ii) of Sec 74	Demand and recovery provisions	If notice issued and proceedings concluded u/s 73 or u/s 74, the proceedings against all the persons liable to pay penalty u/s 122, 125, 129 and 130 are deemed to be concluded.	If notice issued and proceedings concluded u/s 73 or u/s 74, the proceedings against all the persons liable to pay penalty u/s 122 and 125 are deemed to be concluded.	Detention, seizure and confiscation provisions separated from the Demand and Recovery provisions
129(1)(a)	Penalty in case of detention of goods and conveyance (in case the owner comes forward)	Tax and Penalty equal to 100% of tax payable	Penalty equal to 200% of tax payable	1. Only the penalty amount needs to be paid in order to secure release of goods. Tax amount to be paid through GSTR-3B 2. Penalty amount in case of Sec 129(1)(b) modified
129(1)(b)	Penalty in case of detention of goods and conveyance (in case the owner doesn't come forward)	Tax and penalty equal to 50% of value of goods	Penalty shall be higher of a) 50% of the value of goods b) 200% of the tax payable	
129(2)	Execution of Bond and Furnishing of security for release of goods and conveyance so detained or seized	The goods seized shall be released, on a provisional basis, upon execution of a bond and furnishing of a security	Omitted	For provisionally releasing goods, the requirement of executing bond removed. Now, for release, security will have to be furnished
129(3)	Notice by Proper Officer detaining the goods and conveyance and Order thereof	The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty	The proper officer detaining or seizing goods or conveyance shall issue a notice within 7 days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of 7 days from the date of service of such notice, for payment of penalty	The law now prescribes a time limit for issuance of notice and passing the order of detention or seizure

Finance Act 2021

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Section	Provision of Law	Current	Proposed	Remarks
129(4)	Person concerned to be given an opportunity of being heard	No tax, interest or penalty shall be determined without giving the person concerned an opportunity of being heard	No penalty shall be determined without giving the person concerned an opportunity of being heard	Procedural, since tax and interest are now to be paid through GSTR-3B
129(6)	In case of failure to pay penalty, provisions relating to confiscation to be initiated	If the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty within 14 days, provisions of confiscation shall be initiated	<p>If the person transporting any goods or the owner of such goods fails to pay the amount of penalty within 15 days from the date of receipt of the copy of the order, the goods or conveyance so detained or seized shall be liable to be sold or disposed of.</p> <p>Provided that the conveyance shall be released on payment by the transporter of penalty as determined or Rs. 1 Lac, whichever is less.</p>	<p>Earlier, in case of non payment, the goods and conveyance was liable to be confiscated. Now, the provision is to directly sell or dispose off the same.</p> <p>The transporter has been given an option to get his conveyance released on payment of penalty</p>

Finance Act 2021

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Section	Provision of Law	Current	Proposed	Remarks
130(1)	Confiscation	Notwithstanding anything contained in this Act, if any person.....	Where any person.....	The confiscation provision no longer overrides any other provision of the Act
2nd proviso to Sec 130(2)		Aggregate of fine and penalty leviable shall not be less than the amount of penalty leviable u/s 129(1)	Aggregate of fine and penalty leviable shall not be less than the penalty equal to 100% of the tax payable on such goods	Proceedings of confiscation stands delinked with the penalty proceedings due to detention of goods.
130(3)		Where any fine in lieu of confiscation of goods or conveyance is imposed, the owner of such goods or conveyance shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance	Omitted	Requirement to pay tax, penalty and charges in addition to the fine payable in respect of the goods or conveyance has been omitted
151	Power to collect statistics	Commissioner to issue notification to call for any information. Once notification is issued, the person is then called to furnish such information or returns	Commissioner or any authorised person, by order, may direct the person to furnish information	Empowerment to the Commissioner to call for information