



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

**Goods & Services Tax (GST) Certification Course**

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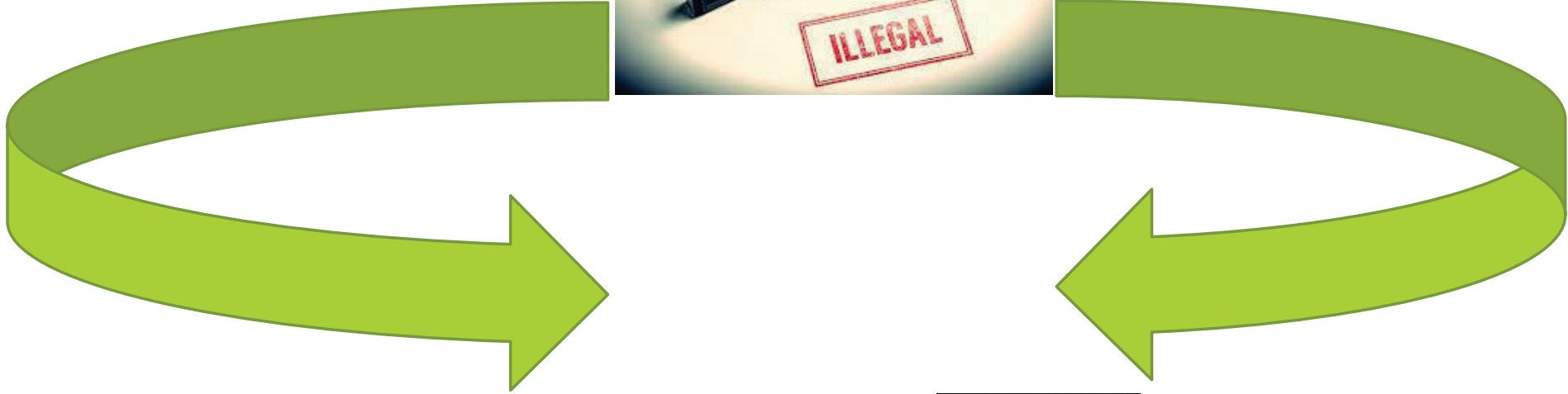
The presentation has been prepared to provide an overview of the applicable law pertaining to the subject matter. For detailed insight and for better understanding, its is advised to refer to relevant provisions in the Act and the related rules & notifications.

# Offences, Penalties & Prosecution



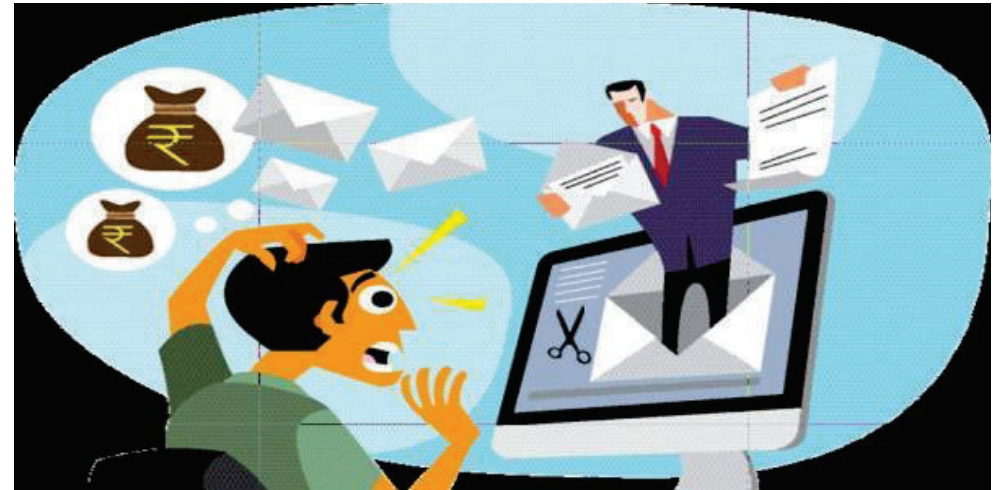
# Offences and consequences

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# Offences and Penalties



# Offences and Penalties

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**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 this Act.
- 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.

# Offences and Penalties

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## Specified offences

- Failing to deduct/ less deduction/ failing to remit the tax under provisions of Sec 51 of CGST Act
- Failing to collect/ less collection/ 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

- Liable to be registered under this Act but failing to obtain registration
- 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 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

## **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 are liable to confiscation
- 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 are in contravention to the provisions of the Act.
- 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
- 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 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, direct that statistics may be collected relating to any matter dealt with by or in connection with this 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 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

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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 < Rs. 5,000 [*Sec 126(1) of CGST Act*]
- Penalty to be in commensurate with the degree and severity of the breach [*Sec 126(2) of CGST Act*]
- No penalty shall be imposed without giving the other party a fair chance to be heard. [*Sec 126(3) of CGST Act*]
- Nature of breach and applicable law to be specified in the notice/ order [*Sec 126(4) of CGST Act*]
- Proper Officer may consider imposing lower penalty in case of voluntary disclosure [*Sec 126(5) of CGST Act*]
- Above provisions not applicable where penalty is specified as a fixed sum or as fixed percentage [*Sec 126(6) of CGST Act*]

# General Discipline

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- If no penalty 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 may, by notification, waive in part or full, any penalty or any late fee on the recommendations of the Council. [*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, shall be released on
  - Payment of tax and penalty equal to 100% 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 (5% of value of goods or Rs. 25,000, whichever is lower, in case of exempted goods) → Owner doesn't come forward
  - Furnishing of security for the amount (Execution of bond with security for provisional release of goods)
- No goods or conveyance to be detained without giving order of detention on the person transporting the goods [*proviso to Sec 129(1) 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*]
- If amount not paid within 14 days\* of such detention or seizure, proceedings under provisions of confiscation shall apply [*Sec 129(6) of CGST Act*]

# Confiscation of goods and conveyances

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- *U/s 130 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 applying 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, thereafter, 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. Aggregate of Fine and penalty cannot be less than penalty leviable in case the goods would have been detained [*Sec 130(2) of CGST Act*]
- The owner of the conveyance used for carriage shall, in order to avoid confiscation of the conveyance, be given the option to pay a fine equal to the tax payable on the goods being transported [*Sec 130(2) of CGST Act*]
- If satisfied that the goods or conveyance is not required, 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



# Ground Rules

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- A person shall not be prosecuted for any offence except with the previous sanction of the Commissioner. *[Sec 132(6) of CGST Act]*
- Prosecution proceedings to be tried only before the Court of Judicial Magistrate First Class or above, with prior approval of the Commissioner. *[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 with guilty mind. *[Sec 135 of CGST Act]*
- U/s 137 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 is not available during proceedings due to unavoidable circumstances
  - Court admits such statement as evidence in the interest of justice

# Ground Rules

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- In case of Company, Person-in-charge such as Director, Secretary, Manager etc., considered guilty and liable for punishment along with Company [*Sec 137(2) of CGST Act*]
- In case of Partnership Firm or LLP, HUF or Trust, Partner of Firm or LLP/ Karta of Family/ Managing Trustee of the Trust deemed to be guilty [*Sec 137(3) of CGST Act*]
- If the person proves that the offence was committed without his knowledge or that he had exercised suitable precautions to prevent such offence, no punishment can be rendered to him [*Sec 137(4) of CGST Act*]

## 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, 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, 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 and/ or Fine
In case of repetition of Offence	5 years and Fine



Offences, except where tax evasion is more than Rs. 500 Lacs, is non-cognizable and bailable

# Offences and Prosecution

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- U/s 133 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 can be prosecuted.
- Penalty – Fine up to Rs. 25,000 and/ or 6 months imprisonment
- Prior approval
  - 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 liable for prosecution (mostly offences relating to supplies and ITC)
  - Person who has been allowed to compound once in respect of any offence liable for prosecution (acquiring goods or services in contravention to law) 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 an offence liable for prosecution (other than monetary implications)
  - 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 [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]



# Union Budget 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 comes 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(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(2)	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



# Union Budget 2021

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Section	Provision of Law	Current	Proposed	Remarks
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
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>

# Union Budget 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