

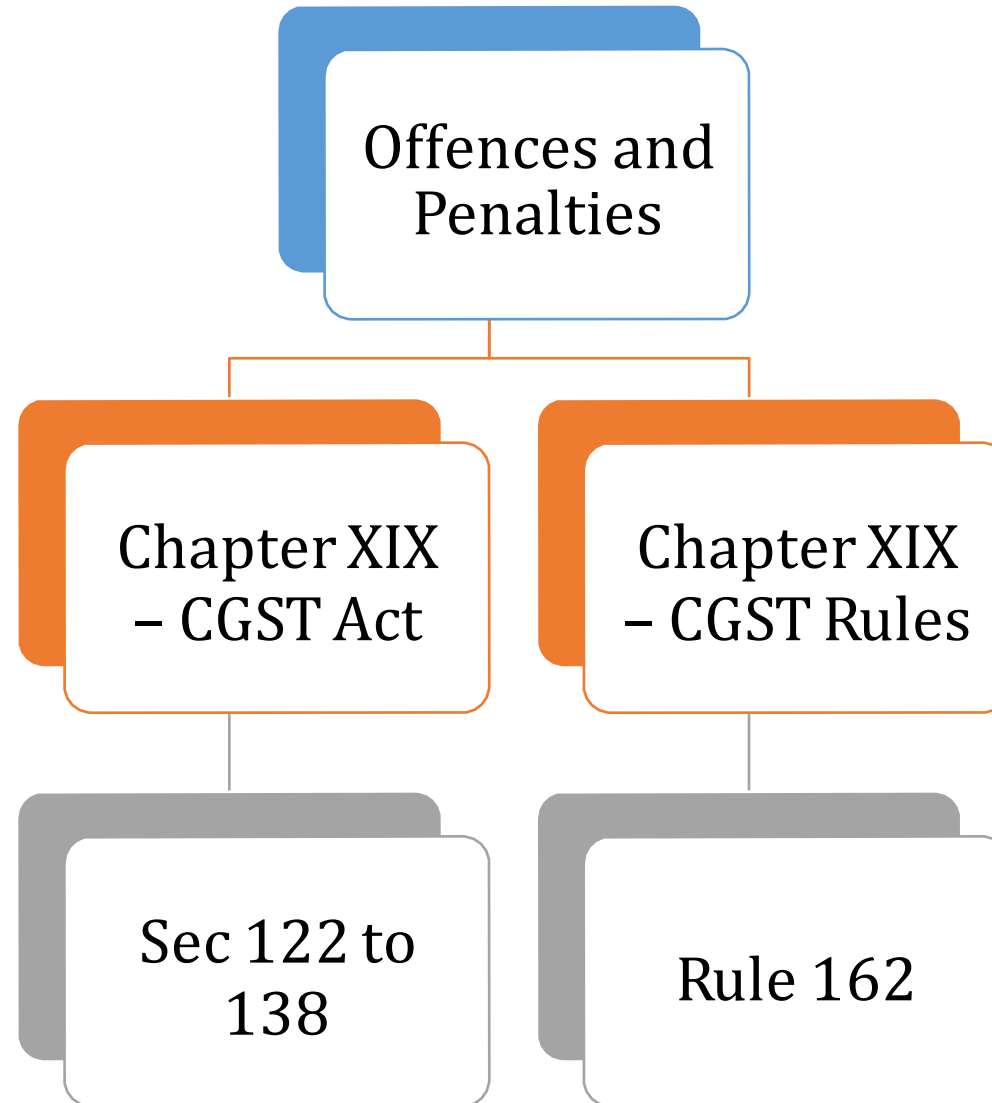
# **GST Offences & Penalties and Select Case Laws**

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# Offences and Penalties under GST – Chapter XIX



## Offences and Penalties – Chapter XIX (CGST Act)

Sr. No	Section	Provision
2	123	Penalty for failure to furnish information return
4	125	General penalty
6	127	Power to impose penalty in certain cases
8	129	Detention, seizure and release of goods and conveyances in transit

## Offences and Penalties – Chapter XIX (CGST Act)

Sr. No	Section	Provision
11	132	Punishment for certain Offences
13	134	Cognizance of Offences
15	136	Relevancy of statements under certain circumstances
17	138	Compounding of offences
19		Failure to furnish any information or return

## **Meaning of Offence**

**An offence is a breach of a law or rule, i.e., an illegal act.**

## **Meaning of Penalty**

**Word Penalty not defined under GST Law**

**A penalty is a punishment imposed by law for committing an offence or failing to do something that was the duty of a party to do.**

**A penalty can be both corporal or pecuniary, civil or criminal.**

**Both corporal (jail) and pecuniary (monetary) penalties are applicable under GST.**

# Offence under GST -

Offence	Category
<b>Fake/ Wrong Invoices</b>	<ul style="list-style-type: none"><li>• Supply of any goods/services without any invoice or issues a false invoice by TP</li><li>• Issuing any invoice or bill without supply of goods/services</li><li>• Issuing any invoices using the identification number of another bona-fide TP</li></ul>
<b>Fraud</b>	<ul style="list-style-type: none"><li>• Submission of false information while registering under GST</li><li>• Submission of fake financial records/documents or files fake returns to evade tax</li><li>• Does not provide information/gives false information during proceedings</li></ul>
<b>Evasion of Tax</b>	<ul style="list-style-type: none"><li>• Collects any GST but does not submit it to the government within 3 months</li><li>• After collection of any GST in contravention of provisions, but not depositing it to the government within 3 months. Failure to deposit such GST within 3 months is an offence under GST.</li><li>• Obtaining refund of any CGST/SGST by fraud.</li><li>• Avails and/ or utilizes input tax credit without actual receipt of goods and/or services</li><li>• Deliberately suppressing sales to evade tax</li></ul>

## Offence under GST -

Offence	Category
<b>Supply/ Transport of Goods</b>	<ul style="list-style-type: none"><li>• Transportation of goods without proper documents</li><li>• Supply/transporting goods which is liable to confiscation</li><li>• Destroy/tampering goods which have been seized</li></ul>
<b>Other Categories</b>	<ul style="list-style-type: none"><li>• Not registered under GST although required to by law</li><li>• Non deduction of TDS or deducting less amount where applicable.</li><li>• Non collection of TCS or collecting less amount where applicable.</li><li>• Being an ISD, taking or distributing input tax credit in violation of the rules</li><li>• Obstructing proper officer during his duty (for example, he hinders the officer during the audit by tax authorities)</li><li>• Non maintaining all the books that he required to maintain by law</li><li>• Destruction of any evidence</li></ul>

# Illustration of some offences under GST and Penalty -

Offence	Penalty
Delay in filing GST Returns	Late fee is Rs. 100 per day per Act. Rs100 each under CGST and SGST. Total will be Rs. 200/day. Maximum is Rs. 5,000. There is no late fee on IGST.
Non filing GST Returns	Higher of (i) 10% of tax due; or (ii) Rs. 10,000
Committing a fraud	Higher of (i) 100% of tax due; or (ii) Rs. 10,000 <b>(High value fraud cases also have jail term)</b>
Assisting a person to commit fraud	Penalty extending upto Rs. 25,000
Not issuing invoice	Higher of (i) 100% of tax due; or (ii) Rs. 10,000
Incorrect invoicing	Rs. 25,000
Not registering under GST	Higher of (i) 100% of tax due; or (ii) Rs. 10,000



# Illustration of some offences under GST and Penalty -

Offence	Penalty
Opting for composition scheme even though not eligible	<p>Demand &amp; recovery provisions of sections 73 &amp; 74 will apply.</p> <p>•<b>Cases involving Fraud -</b> Higher of (i) 100% of tax due; or (ii) Rs. 10,000</p> <p>•<b>Cases non Involving Fraud -</b> Higher of (i) 10% of tax due; or (ii) Rs. 10,000</p>
Wrongfully charging higher GST rate than prescribed (For lower rate only Interest is applicable)	<p>Higher of (i) 100% of tax due; or (ii) Rs. 10,000</p> <p><b>(if the additional GST collected is not submitted with the govt)</b></p>

Imprisonment Term for cases involving high value fraud	Tax amount involved	100-200 lakhs	200-500 lakhs	Above 500 lakhs
	Jail term	Upto 1 year	Upto 3 years	Upto 5 year
	Fine	In all three cases		

## Cases where only Interest is applicable (no Penalty) -

Offence	Penalty
Payment of Incorrect type of GST (IGST instead of CGST/SGST or vice versa	No penalty. Pay the correct GST and obtain refund of the wrong type of GST paid earlier
Incorrect filing of GSTR	Interest @18% on shortfall amount
Delay in payment of invoice of supplier	ITC will be reversed if payment is not made to supplier within 6 months from the date of invoice
Wrongfully charging GST rate— charging lower rate	Interest @18% applicable on the shortfall

## Offences and Penalties – Section 123, 124, 125, 150 and 151

Nature of Offence	Prescribed Penalty
<ul style="list-style-type: none"><li>Failure to Furnish information return u/s 150</li></ul>	<p><b><u>Rs. 100/ day for the period during which such failure continues</u></b> <b><i>Subject to maximum penalty of Rs. 5,000</i></b></p>
<ul style="list-style-type: none"><li>Failure to furnish any information or return under Sec 151— (a)without reasonable cause fails to furnish such information or return as may be required under that section, or (b)wilfully furnishes or causes to furnish any information or return which he knows to be false.</li></ul>	<ul style="list-style-type: none"><li><b>Upto Rs. 10,000 fine</b></li><li><b>in case of a continuing offence to a further fine which may extend to Rs. 100/ day after the first day during which the offence continues</b></li><li><b><i>subject to a max limit of Rs. 25,000/-</i></b></li></ul>
<ul style="list-style-type: none"><li>General Penalty – contravention of any provisions of this Act or any rules for which no penalty is separately provided</li></ul>	<ul style="list-style-type: none"><li><b><i>Upto Rs. 25,000</i></b></li></ul>

# **General Discipline relating to Penalty – Sec 126**

**No Penalty for minor breach/mistake where the tax involved is less than Rs. 5,000/- and are easily rectifiable**

**No penalty will be imposed without issuing SCN or giving personal hearing**

**Penalty cannot be levied Suo-moto on contravention. Reasonable explanation needs to be provided by the Officer**

**Voluntary disclosure of non payment of tax to the prescribed officer before examination conducted by him shall be considered as mitigating factor.**

**Not applicable where the penalty is prescribed under the Act as either a fixed sum or expressed as a fixed percentage**

## Power to impose Penalty in certain cases – Sec 127

- i. Person liable to a penalty when not covered under any proceedings under Section 62 or 63 or 64 or 73 or 74 or 129 or 130 , the proper officer will issue an order.
- ii. Order issued shall levy a penalty as determined by the proper officer.
- iii. A **reasonable opportunity of being heard** will be granted before such issue of order.

## Power to waive Penalty, Fees or Both – Sec 128

- i. The Government may, by notification waive in part or full ,any penalty under section 122 or 123 or 125 or any late fee under section 47 .
- ii. Such relief will be available to specified class of taxpayers and under such mitigating circumstances on recommendation of the council

# Detention, Seizure of Goods and/or Conveyances – Sec 129

Applicable to person who transports or stores any goods which are in transit in contravention to provision of this act

Detained/ seized goods can be released when

Where the owner comes forward

- Payment of tax and penalty equals to 100% of the **tax payable**
- In case of exempted goods:
  - a) 2% of the value of goods or b) Rs 25000, whichever is less ;

Where the owner doesn't come forward

- Payment of tax and penalty equals to 50% of the **value of goods** reduced by tax already paid
- In case of exempted goods:
  - a) 5% of the value of goods or b) Rs 25000, whichever is less ;

Furnishing of security equivalent to the amount payable as determined under clause (a) and (b)

# **Detention, Seizure of Goods and/or Conveyances – Sec 129**

**Notice or order shall be issued by the proper officer. Opportunity of being heard to be provided to the person.**



**Proceedings deemed to be concluded on payment of the applicable amount**



**Failure to pay within 7 days of detention / seizure shall initiate proceeding of confiscation**



**Period of 7 days to be reduced where goods detained are perishable in nature**



## **Confiscation of Goods and/or Conveyance and Levy of Penalty – Sec 130**

### **➤ Applicable to any person who :**

- Supplies / receives goods with the intention to evade taxes ;
- Does not account for goods on which he is liable to pay tax
- Supplies goods liable to tax without registration ;
- Contravenes the provisions of the acts or rules with the intent to evade payment of tax ;
- Uses conveyance as a means for transport for carriage of goods unless owner proves that it was without the knowledge of owner, his agent and the person in charge
- Option to pay fine in lieu of confiscated goods or conveyance shall be provided by the officer concerned.

### **➤ In case of confiscation of goods :**

- Fine shall not exceed the market value of goods confiscated less tax chargeable.
- Aggregate of fine and penalty leviable not to be less than penalty leviable for detention.

## **Confiscation of Goods and/or Conveyance and Levy of Penalty – Sec 130**

- **In case of confiscation of conveyance :**
  - Option to pay fine equal to the tax payable on goods being transported.
- When fine in lieu of confiscation imposed, the owner will in addition be liable to tax, penalty and charges for the goods/conveyance
- No order for confiscation without opportunity of being heard
- The title of the confiscated goods shall vest with the Government.
- Officer taking possession can take assistance from Police officer for taking possession
- On satisfaction that confiscated goods are not required and after reasonable time not exceeding 3 months to pay fine, officer may dispose of goods

# Prosecution and Compounding of Offences

## **Confiscation or penalty not to interfere with other punishments**

- This is without prejudice to provisions contained in Code of Criminal Procedure, 1973
- Confiscation or penalty not to prevent infliction of any other punishment to which the person affected is liable

## Punishment for Certain Offences – Sec 132

- Section 132 states the major offences under this act *which warrant institution of criminal proceedings and prosecutions.*
- Offences such as
  - supply of goods without issuance of invoice,
  - issuance of bill without supply,
  - availment of ITC wrongly without receiving actual supply,
  - collects taxes but fails to pay, evades tax,
  - fraudulently avails ITC or refund,
  - falsification of financial records,
  - obstructs or prevents any officer from discharge of duties,
  - acquires or deals in goods liable to confiscation,
  - receives/concerned with services in contravention,
  - fails to supply or supplies false information,
  - destruction of material evidences, etc.,
  - attempts to commit or abets commission of offence

## Punishment for Certain Offences – Sec 132

Nature of Offence	Amount Involved	Period of Maximum Imprisonment and Fine
Tax evaded or Input Tax Credit wrongly taken or utilized, or refund wrongly taken	Exceeds Rs 1 crores but upto Rs 2 crores	1 year and with fine
	Exceeds Rs 2 crores but upto Rs 5 crores	3 years and with fine
	Exceeds Rs 5 crores	5 years and with fine
Commits or abets the commission of an offence specified in clause (f) or (g) or (j)		6 months or with fine or with both
For second or every subsequent offence u/s 132	No limit	5 years and with fine

without any specific and special reason as recorded in the order by the court the term of the imprisonment should not be less than 6 months.

All offences are non-cognizable and bailable except the cases where tax evasion is more than Rs. 500 Lakhs.

## Liability of Officers and Certain Other Officials – Sec 133

- Following person will be punishable if they wilfully disclose any information furnished in any return under this act :
  - i. Any person engaged in collection of statistics under Section 151 or compilation or computerisation ;
  - ii. Any officer of central tax having access to information specified under Section 150(1);
  - iii. Any person engaged in service on the common portal ;
  - iv. Agent of the common portal
- If information is disclosed for the following purpose they will not be punishable:
  - i. for the purpose of prosecution for an offence under this act or any other act;
  - ii. for execution of duties under the said section ;

### Penalty Imposed :

- Imprisonment upto 6 months;
- Fine upto Rs 25000;
- Both

# Liability of Officers and Certain Other Officials – Sec 133

- A person shall not be prosecuted for any offence under this section :
  - i. In case of **Government Servant** – Only with the previous sanction of the Government.
  - ii. In case of **Non-Government Servant** – Only with the previous sanction of Commissioner.



# Prosecution and Compounding of Offences – Sec 134, 135, 136 & 137

## COGNIZANCE OF OFFENCES [ Sec 134 ]

- Courts inferior than Magistrate of the First Class shall not declare the judgment for any offence committed under this act .

## PRESUMPTION OF CULPABLE MENTAL STATE [ Sec 135 ]

- Any offence under this act will be **presumed to be done in a culpable mental state** by the court.
- However, the accused can defend himself by proving the fact he was not in such mental state.
- 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**.

# Prosecution and Compounding of Offences – Sec 134, 135, 136 & 137

## RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES [ Sec 136 ]

A statement signed by a person during the course of proceeding is relevant for proving the truth of the facts in any prosecution for an offence under this act.

- When the person who made the statement is :
  - Dead or cannot be found
  - Incapable of providing evidences
  - Restricted by the adverse party
  - Presence of the person requires time or expenses involved for presenting the person, is considered unreasonable by the court .
- When the person who made the statement is considered as a witness by the court , the statement should be produced as a evidence in interest of the justice.

# **Prosecution and Compounding of Offences – Sec 134, 135, 136 & 137**

## **OFFENCES BY COMPANIES [ SEC 137 ]**

- **Offence committed by a company**
- Every person who at the time of offence being committed was responsible for the conduct of the business of the company shall be deemed to be guilty .
- Proceedings shall be conducted accordingly.
- If proved that the offence was committed with the consent of the key managerial persons or negligence on their part , they shall also be deemed to be guilty.

# Prosecution and Compounding of Offences – Sec 134, 135, 136 & 137

- **Offence by Partnership Firm or LLP or a HUF or a Trust**
- The partners or karta or the managing trustee shall be deemed to guilty for offence committed under this act.
- If proved the offence was committed without their knowledge or measures were exercised to stop such offence then they shall not be held liable

# Compounding of Offences – Sec 138

Compounding **not available** in following circumstances:

Compounding already allowed one time in respect of certain specified offences

Compounding allowed once shall not be allowed again if in the previous compounding case, value of supplies > Rs. 1 Crore in offences not specified above

~~A person accused of committing any offence under this act which is an offence under any other law~~

~~A person convicted for an offence under this act by a court~~

~~A person who obstructs any officer discharging duty, tampers material evidence, fails to supply information or supplies false information~~

# Compounding of Offences – Sec 138

## General Rules regarding Compounding -



Compounding not to affect proceedings instituted under any other law

Compounding only after payment of taxes, interest, penalty for such offence is made

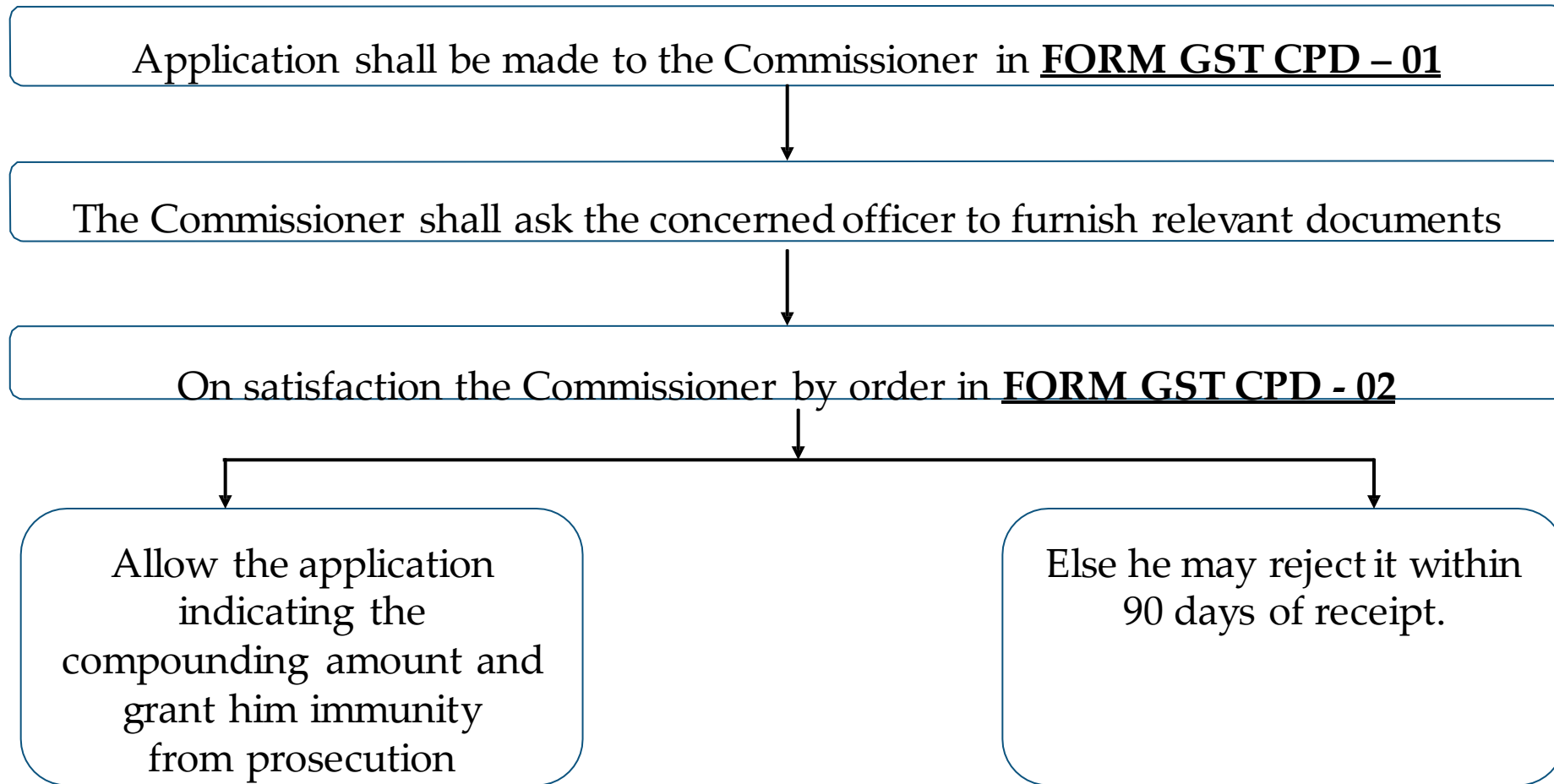
Minimum Compounding amount = Higher of Rs. 10,000/- or 50% of tax involved

Maximum compounding amount = Higher of Rs. 30,000/- or 150% of tax involved Upon

Payment, no further proceedings to be initiated & accused person will stand abated

# Compounding of Offences – Sec 138 and Rule 162

## Procedure for Compounding -



# Compounding of Offences – Sec 138 and Rule 162

## Procedure for Compounding -

Compounding shall be allowed only after payment of taxes, interest and penalty

Compounding amount shall be paid within 30 days from the date of receipt of order

Failure to pay the compounding amount shall lead to order being void

Immunity granted may be withdrawn anytime in case any material facts was concealed  
by the applicant



# Select Case Laws & Critical issues



## Sec 17(5) – Ineligible ITC – Construction Services

Forum	Parties & Case No	Brief
Odisha HC	Safari Retreats Pvt Ltd – WP(C) No.20463 of 2018	<p><b>Issue:</b> ITC on construction of property which is to be let out?</p> <p><b>Held: Odisha High Court Ruling –</b></p> <ul style="list-style-type: none"><li>❖ Clause (c) and (d) of section 17(5) of CGST Act provides that input tax credit is <b><i>not available</i></b> when the immovable property is constructed <b><i>‘on his own account’</i></b>.</li><li>❖ And that this condition cannot be applied in cases where construction of immovable property is <b><i>intended for letting out</i></b>.</li><li>❖ It was further held that the shopping mall was <b><i>neither intended for sale nor on his own account</i></b> but was <b><i>‘intended for letting out’</i></b>.</li><li>❖ For these reasons, it was held that <b><i>set off ITC on the goods/services used in the construction of mall</i></b> is admissible against the <b><i>GST payable on the renting of immovable property service</i></b>.</li></ul>

## Sec 17(5) – Ineligible ITC – Motor Vehicles

Forum	Parties & Case No	Brief
Bombay HC	CMS Info Systems Limited In Writ Petition No. 5801 of 2019	<p><b>Issue:</b> ITC on purchase of Cash Carry Vans for transport of Money for Banks. Purchase of motor vehicles i.e. cash carry vans - cash management network pan India – Whether ITC is available for purchase of such vehicles?</p> <p><b><i>Applicant's Contention:</i></b></p> <p>✓The vans were use for carrying of goods and hence ITC is eligible as per GST Laws.  ✓Same is not covered under blocked credit u/s 17(5)</p> <p><b>Ruling of Authority for Advance Ruling –</b></p> <ul style="list-style-type: none"> <li>•Money is not covered in the definition of goods under the CGST Act.</li> <li>•It can not be said that it is “<b><i>not goods</i></b>” for general purpose and “<b><i>goods</i></b>” for the applicant</li> </ul> <p><b><u>Current Position -</u></b></p> <p>The Bombay High Court <b><i>allowed ITC on purchase of Motor vehicles</i></b> for carry of cash for banks and financial institutions and reversed the decision of Appellate Authority for Advance Ruling Mumbai in aforesaid case.</p> <p>The same was appealed vide <b>Writ Petition No. 5801 of 2019</b> and order was issued on 09/07/2019</p>

# Advance Ruling – Determination of Tax Liability (supply or not)

- In Re M/S Columbia Asia Hospitals Private Limited (GST Appellate Authority for Advance Ruling Karnataka)
- Question: Whether the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the Central Goods and Services Tax Act, 2017 (CGST Act) shall be treated as supply as per Entry 2 of Schedule I of the CGST Act or  
it shall not be treated as supply of services as per Entry 1 of Schedule III of the CGST Act? ”.
- Order: The activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the Central Goods and Services Tax Act, 2017 (CGST Act) shall be treated as supply as per Entry 2 of Schedule I of the CGST Act.

# Press Release – CBIC – 15<sup>th</sup> Nov, 2019

- **New Delhi:** Central Board of Indirect Taxes & Customs (CBIC) today clarified that salaries are not subject to GST and no GST has been demanded on salaries paid to CEOs or employees. CBIC said that the media report in this regard alleging that tax authorities want to impose GST on salaries paid to employees is factually incorrect and misrepresents tax authorities.
- CBIC emphasised the GST law position which clearly states under **Section 7(2) read with Schedule III** of the **Central Goods and Services Act, 2017** (CGST Act) that the salaried services by an employee to the employer shall be treated neither as a supply of goods nor as a supply of services. **So, salaries as such cannot be subject to GST. CBIC said that in this regard no notice has been issued to any companies demanding GST on salaries whatsoever.**

# Press Release – CBIC – 15<sup>th</sup> Nov, 2019

- CBIC further clarified that it has already been made amply clear vide ~~its press release dated 10<sup>th</sup> July, 2017~~ that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods nor supply of services).
- CBIC said that the GST charged on the prices/charges by any supplier of goods or services from his consumers does comprise all costs including cost of raw material, capital goods, input services and employee costs, etc. But this does not mean that salaries paid to the employees by the employer are being taxed under GST.
- It must also be made clear that offices of an organisation in different States are regarded as distinct persons under **Section 25** of CGST Act. Hence, what is taxable under GST is supply of goods and services by the head office to its branch office/s and vice versa. Any tax charged on such supplies is available to the recipient as input tax credit. This is not any additional cost to the organisation. Also, it is a worldwide practice under GST laws.

## Sec 50 – Interest to be paid on net liability or gross liability?

Forum	Parties & Case No	Brief
Hyderabad HC	Telangana High Court Judgment in Megha Engineering & Infrastructure Ltd – WP No. 44517 of 2018	<p><b>Issue: <i>Delay in filing GSTR 3B – Interest to be paid on net liability or gross liability?</i></b></p> <p><b>Held: <u>Telangana High Court Ruling –</u></b></p> <ul style="list-style-type: none"> <li>✓Until a return is filed as self – assessed, no entitlement to credit and no actual entry of credit in Electronic Credit Ledger takes place</li> <li>✓No payment may be made out of such credit</li> <li>✓Once the claim is made in the return, the same gets credited in ECL.</li> <li>✓Only on entry in ECL, payment can be made using ITC.</li> <li>✓CBIC has issued a press release clarifying that the applicability of <b><u>Notification No 63/2020 – Central Tax dated 25th August, 2020</u></b> is to be treated prospectively due to technical reasons. However, CBIC has assured that no recoveries shall be made for the past period as well by the Central and State tax administration in accordance with the decision taken in the 39 Meeting of GST Council. Relief is provided to taxpayers from July 2017.</li> </ul>

**Clarification by CBIC in respect of levy of GST on remuneration payable to Directors -**

Much confusion was created by recent Advance Ruling passed by Rajasthan Authority for Advance Ruling in the case of **M/s Clay Craft India Pvt Ltd (Jaipur) (Order No RAJ/AAR/2019- 20/33 dated 20<sup>th</sup> February, 2020)** which held that remuneration payable to Directors is taxable and liable to GST under reverse charge.

Department had started issuing notices to the entities for levying GST on remuneration payable to directors.

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Considering the difficulty faced by



## Levy of GST on Directors Remuneration

S. No	Director Category	Nature of Payment	Treatment
1	Independent Director or Non-Employee Director	Any Payment	GST Payable under Reverse Charge Mechanism
2	Whole Time Director including Managing Director	Remuneration or Salary – TDS Deducted u/s 192 - “Salaries”	GST not payable (Employer-employee relation). <b>Exempted under Schedule III of CGST Act, 2017</b>
3	Whole Time Director including Managing Director	Any payment made – TDS u/s 194J - “ <b><i>fees for professional or technical services</i></b> ”	GST is payable under Reverse Charge Mechanism
4	Any Director	Sitting Fees	GST is payable under Reverse Charge Mechanism

## ***Applicability of GST on Directors Remuneration – a critical analysis***

Rajasthan Authority for Advance Ruling - [M/s Clay Craft India Pvt Ltd \(Jaipur\) \(Order No RAJ/AAR/2019-20/33 dated 20<sup>th</sup> February, 2020\)](#)

### **A. Position under GST Law on taxability of services provided by Director**

a. Section 9(3) and Section 9(4) of the CGST Act, 2017 contains the provisions with respect to Reverse Charge Mechanism in respect of certain services which are notified from time to time.

a. **Notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017** provides for GST to be paid on reverse charge basis by the recipient of the such services. The notification is issued under Section 9(3) of the CGST Act, 2017. **Entry 6** of the said Notification reads as under -

<b>S. No</b>	<b>Category of Supply of Services</b>	<b>Supplier of Service</b>	<b>Recipient of Service</b>
6	Services supplied by a Director of a company or a body corporate to the said company or the body corporate	A director of a company or a body corporate	The company or a body corporate located in the taxable territory

**Schedule III of CGST Act, 2017** provides for certain transactions which are neither considered as supply of goods or supply of service – One entry being, **Services by an employee to the employer in the course of or in relation to his employment are NOT to be considered as a supply**

# ***Applicability of GST on Directors Remuneration – a critical analysis***

## **B. Positions under Service Tax Regime on services provided by Director –**

Services of Director of a 'Body Corporate' has been included in the purview of Director Services, w.e.f **11<sup>th</sup> July, 2014**. ***Service provided by a director in the capacity of an employee*** of the Company or Body Corporate shall not be chargeable to service tax. Deduction of TDS under salary head can establish the same.

Service Tax was payable under Reverse Charge on Sitting fees payable to Directors for attending Board or Committee meetings.

## **Reference Case Laws under Service Tax Regime -**

**1.ALLIED BLENDERS AND DISTILLERS PVT. LTD. Vs. C.C.E. & S.T., AURANGABAD 2019 (24) G.S.T.L. 207 (Tri. - Mumbai)**

**2.BRAHM ALLOY LIMITED Vs. COMMISSIONER OF CGST & C. EX., DURGAPUR 2019 (24) G.S.T.L. 616 (Tri. - Kolkata)**

## ***Applicability of GST on Directors Remuneration – a critical analysis***

### **C. Questions to Ponder on applicability of GST on Directors Remuneration**

<b>S. No</b>	<b>Questions to Ponder</b>	<b>Evidence may be gathered from-</b>
<b>I</b>	Whether any agreement or contract is made with the director?	Contract/ agreement entered with Directors and check the terms and conditions
<b>II</b>	Whether directors is a full time or whole time director?	Contract/ agreement entered with Directors and e- form filed with MCA (Form 32/ DIR 12) to check designation of the Director
<b>III</b>	Whether director participates in the day to day activities or affairs of the Company?	Terms of reference of the Appointment letter or contract with the director
<b>IV</b>	Whether the director receives salary as a remuneration and periodicity of such payment?	Salary register or payment of remuneration to Director. Periodicity may not be material (Monthly or quarterly) but nature of payment is material.
<b>V</b>	Whether the company deducts the TDS u/s 192 of the Income Tax Act, 1961?	Obtain copy of TDS Certificate or form 26AS from the Director to check the nature of deduction.
<b>VI</b>	If the remuneration is declared under the head Salary in the Income Tax Returns filed by the director?	Income Tax Return filed with Income Tax Department and head of Income such remuneration is reported by the Director

**Sec 73** - Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful misstatement or suppression of facts

Forum	Parties & Case No	Brief
Odisha HC	Serajuddin & Co. v. UOI [2020] 114 taxmann.com 480 (Orissa) W.P. (C). NO. 386 OF 2020 January 9, 2020	<b>Held</b> - Where Competent Authority had passed order under section 73 on assessee without granting time to file reply to show cause notice and without giving an opportunity of personal hearing, <b><u>impugned order had been passed in violation of statutory requirements as indicated in section 75(4)</u></b>

**Sec 73 & 74** - Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful misstatement or suppression of facts

Forum	Parties & Case No	Brief
Delhi HC	Serajuddin & Co. v. UOI [2020] 114 taxmann.com 480 (Orissa) W.P. (C). NO. 386 OF 2020 January 9, 2020	<p><b><u>Issue:-</u></b> The writ petition has been filed challenging the letter and summon whereby the petitioner has been asked to deposit Rs.2.69 crs/- being alleged as inadmissible ITC and file DRC-03 challan without initiating any adjudication process either under Section 73 or Section 74 of CGST Act. Departments states that the <b><u>intent behind issuing the impugned letter was to give an opportunity to the petitioner to come forward and either explain the transaction or deposit the tax with minimum interest and penalty under Section 74(5) of the CGST Act without going through the adjudication procedure.</u></b> He clarifies that if after the investigation the respondent is not satisfied with the petitioner's response, it shall follow the adjudication process for recovery.</p> <p><b><u>Held:</u></b> It is clarified, as a matter of abundant caution, that as the demand is disputed by the petitioner, <b><u>no coercive steps shall be taken for recovery of the said demand without following the adjudication process.</u></b></p>

## Sec 75 – General Provisions relating to determination of tax

Forum	Parties & Case No	Brief
Madras HC	M. R. Hitech Engineers (P) Ltd., v. The State Tax Officer, Office of the Deputy Comm (ST) (Intelligence)	<p><b><u>Issue:-</u></b> The Writ Petition was filed to call for the records of the respondent and quash the Order as it is violative of Sections 75(4) and 75(6) of TNGST Act, 2017 and <b><u>against the principles of natural justice</u></b> and further direct the respondent to look into the documents and details furnished by the petitioner and thereafter <b><u>direct the respondent to grant a reasonable opportunity of being heard.</u></b></p> <p><b><u>Held:</u></b> It is not in dispute that individual and separate personal hearing notice was not issued to the petitioner. On the ground of violation of statutory mandate under Section 75(4) of TNGST Act, 2017, the impugned orders have to be necessarily quashed. They are accordingly quashed. <b><u>The matters are remitted to the file of the respondent to pass orders afresh in accordance with law.</u></b></p>

## Sec 79 – Recovery of Tax

Forum	Parties & Case No	Brief
Allahabad HC	Mohd. Yunushv v. State of U.P. [2018] 94 taxmann.com 171 (Allahabad)  WRIT-C NO. 6392 OF 2018 APRIL 13, 2018	<b><u>Held:</u></b> The only dispute is to <b><u>the mode and manner of recovery of GST</u></b> for which the attention of the Court has been drawn to Section 79 of the Act, 2017. In particular he has drawn the attention of the Court to Section <b><u>79(a), (b) and (e)</u></b> , to contend that liability of tax can be recovered from the person concerned, payable by him in terms of the aforesaid provisions and in default "Proper Officer" as defined under Section 2(9) can prepare the certificate and send it to the Collector of the District for realisation thereof as arrears of land revenue. It is therefore, clear from a perusal of these provisions that <b><u>recovery of GST can be made as arrears of land revenue by the Collector of the District on a requisition by the "Proper Officer"</u></b> .



## Sec 129 – Detention, Seizure and Release of Goods and Conveyances in Transit

Forum	Parties & Case No	Brief
Allahabad HC	Ashok Kumar Bhatia v. State of U.P.* [2019] 104 taxmann.com 453 (Allahabad)	<b><u>Held:</u></b> For application of sections 129 and 130 of CGST Act/UP GST Act, it is immaterial that person proceeded against is <b><u>not a registered person or a supplier or a taxable person or is not doing any business</u></b> ; if such person is a transporter of goods and goods are being transported and have been seized in transit and if charge is made out against transporter, <b><u>revenue can proceed to seize such goods including conveyance</u></b> <hr/>

## Sec 129 – Detention, Seizure and Release of Goods and Conveyances in Transit

Forum	Parties & Case No	Brief
Raipur HC	K.P. Sugandh Ltd. and Ors. V. State of Chhattisgarh and Ors. WP Nos. 36 and 49 of 2020 March 16, 2020	<p><b>Issue:</b> Under valuation of goods cannot lead to seizure of goods u/s 129 of the CGST Act.</p> <p><b>Held:</b> Given the said facts and circumstances of the case, this Court is of the opinion that under valuation of a good in the invoice cannot be a ground for detention of the goods and vehicle for a proceeding to be drawn under Section 129 of the CGST Act, 2017 read with Rule 138 of the CGST Rules, 2017. In view of the aforesaid the impugned order Annexure P/1 i.e. the order passed under Section 129 and the order of demand of tax and penalty both being unsustainable deserves to be and is accordingly set-aside/quashed</p>

## Sec 10 – IGST Act – Place of supply of goods other than supply of goods imported into, or exported from India

Forum	Parties & Case No	Brief
Telanga  na AAAR	Penna  Cement Industries Ltd - Order No 03/2020 dated March 02, 2020	<p><b>Issue:</b> Applicant is manufacturer of cement having two cement plants in Telangana - They occasionally made inter-state sale of cement on ex-factory/works basis from their plants in Telangana - when they make ex-factory sales from their plant, delivery terminates at their factory gate itself but the further movement is carried by recipient or transporter of goods up to the billing address State - inasmuch as in such cases, the delivery terminates in another State and, therefore, applicant is of the view that they should charge IGST in respect of such supplies - <b><u>Applicant, therefore, seeks to know as to what tax should be charged on ex-factory inter-State supplies made by them.</u></b></p> <p><b>Held:</b> <b><u>IGST is chargeable on ex-factory inter-state supplies</u></b> since although the goods are made available by the supplier to the recipient at the factory gate, this <b><u>is not the point where the movement terminates</u></b> since the recipient subsequently assumes the charge for transportation of the goods up to the destination in another state - place (in the other State) where the goods are destined <b><u>turns out to be 'place of supply'</u></b> in terms of section 10(1)(a) of the IGST Act - <b><u>consequently, the 'location of supplier' and the 'place of supply' fall under different States and the supply qualifies as inter-State supply</u></b></p>

# Queries Please



Thank you

