

Penalties and Prosecution

Following are the offences under GST Law other than those covered in sections 73 and 74 of the CGST Act, 2017.

Penalties can be imposed by departmental authorities to person committing the specified offence.

Relevant Sections of the CGST Act, 2017

- Section 122 - Penalty for certain offences
- Section 123 - Penalty for failure to furnish information return
- Section 124 - Fine for failure to furnish statistics
- Section 125 - General penalty
- Section 126 - General disciplines related to penalty
- Section 127 - Power to impose penalty in certain cases
- Section 128 - Power to waive penalty or fee or both
- Section 129 - Detention, seizure and release of goods and conveyances in transit
- Section 130 - Confiscation of goods or conveyances and levy of penalty
- Section 131 - Confiscation or penalty not to interfere with other punishments
- Section 132 - Punishment for certain offences
- Section 133 - Liability of officers and certain other persons
- Section 134 - Cognizance of offences
- Section 135 - Presumption of culpable mental state
- Section 136 - Relevancy of statements under certain circumstances
- Section 137 - Offences by companies
- Section 138 - Compounding of offences

Section 122(1)(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

*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**.*

Once penalty under provisions of section 73 or 74 are paid, all proceedings are concluded and penalty cannot be imposed under any other provision of GST Law [of course, prosecution can be launched].

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 - section 122(1A) of CGST Act inserted *vide* Finance Act, 2020, from 1-1-2021.

Section 122(1)(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

*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.***

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 - section 122(1A) of CGST Act inserted *vide* Finance Act, 2020, from 1-1-2021.

Fake tax Invoice (bogus invoice) means a tax invoice, without actual supply of goods or services or both, in order to enable the recipients of such invoices to avail and utilize input tax credit ("ITC") fraudulently.

CBIC Circular No. 171/03/2022-GST dated 6-7-2022 has clarified as follows –

Since there is only been an issuance of tax invoice without the underlying supply of goods or services or both (fake invoice), such an activity does not satisfy the criteria of "supply", as defined under section 7 of the CGST Act. As there is no supply by issuer of tax invoice in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, there is no tax liability. No demand and recovery is required to be made against person issuing fake invoice, under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against the issue of fake tax invoice.

The person issuing fake invoice shall be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both - para 1(Sr. No. 1) of CBIC Circular No. 171/03/2022-GST dated 6-7-2022.

Section 122(1)(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

*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.***

Section 122(1)(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

*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**.*

Section 122(1)(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 subsection (2) thereof, the amount deducted as tax

*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**.*

Section 122(1)(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

*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**.*

Section 122(1)(vii)

takes or utilizes input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder

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 - section 122(1A) of CGST Act inserted vide Finance Act, 2020, from 1-1-2021.

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.***

Section 122(1)(viii)

fraudulently obtains refund of tax 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.***

Section 122(1)(ix)

takes or distributes input tax credit in contravention of section 20, or the rules made thereunder

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 - section 122(1A) of CGST Act inserted *vide* Finance Act, 2020, from 1-1-2021.

*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.***

Section 122(1)(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

*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.***

Section 122(1)(xi)

is liable to be registered under this Act but fails to obtain registration

*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.***

Section 122(1)(xii)

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

*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**.*

Section 122(1)(xiii)

obstructs or prevents any officer in discharge of his duties 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**.*

Section 122(1)(xiv)

transports any taxable goods without the cover of documents as may be specified in this behalf

*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**.*

Section 122(1)(xv)

suppresses his turnover leading to evasion of tax 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**.*

Section 122(1)(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

*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.***

Section 122(1)(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

*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.***

Section 122(1)(xviii)

supplies, transports or stores any goods which he has reasons to believe are liable to confiscation 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.***

Section 122(1)(xix)

issues any invoice or document by using the registration number of another registered person

*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.***

Section 122(1)(xx)

tampers with, or destroys any material evidence or document

*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.***

Section 122(1)(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.***

Section 122(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 willful 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 willful 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.

Section 122(3)

Any person who-

(a) aids or abets any of the offences specified in clauses (i) to (xxi) of subsection (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.

Section 123

If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues
Provided that the penalty imposed under this section shall not exceed five thousand rupees

Section 124

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

- (a) without reasonable cause fails to furnish such information or return as may be required under that section, or
- (b) 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 ten thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty- five thousand rupees

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 twenty-five thousand rupees

General disciplines related to penalty - Section 126(1)

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

Section 126(1)(a)

a breach shall be considered a "minor breach" if the amount of tax involved is less than five thousand rupees

Section 126(1)(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

Section 126(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

Section 126(3)

No penalty shall be imposed on any person without giving him an opportunity of being heard

Section 126(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

Section 126(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

General disciplines related to penalty - Section 126(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.

Section 127

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

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.

Section 129(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.
- (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.

Section 129(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).

Section 129(4)

[No penalty] shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

Section 129(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.

Section 129(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)

Section 130(1)

- i. supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- ii. does not account for any goods on which he is liable to pay tax under this Act; or
- iii. supplies any goods liable to tax under this Act without having applied for registration; or
- iv. contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- v. uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or 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 .

Section 130(2)

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

Section 130(2) Proviso

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 2 [penalty equal to hundred percent. 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.

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

Section 130(5)

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

Section 130(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.

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 three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

Section 131

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

Section 132(1)

- 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 utilization 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
- (g) obstructs or prevents any officer in the discharge of his duties under this Act
- (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder
- (j) tampers with or destroys any material evidence or documents;
- (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section shall be punishable-

Section 132(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.

Section 132(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.

Section 132(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

Section 132(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.

Section 132(6)

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

Action under section 132 can be initiated - In cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case - - para 2 of CBIC Circular No. 171/03/2022-GST dated 6-7-2022.

Section 133(1)

Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerization thereof or if any officer of central tax having access to information specified under sub-section (1) of section 150 , or if any person engaged in connection with the provision of service on the common portal or the agent of common portal, willfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.

Section 133(2)

Any person-

- a) who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;
- b) who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

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.

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 but it shall 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.

Explanation .-For the purposes of this section,-

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

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

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

Section 137

(1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or *karta* or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, *mutatis mutandis* , apply to such persons.

(4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Section 138

(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by

- the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed
- (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 ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.
- (3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

Section 138 Proviso

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) of

sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses

- (a) to (f) of the said sub-section;
- (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;
- (c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;
- (d) a person who has been convicted for an offence under this Act by a court;
- (e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of subsection (1) of section 132; and
- (f) any other class of persons or offences as may be prescribed:

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

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

Other important points –

1. Demand and penalty for issuing fake (bogus) invoices:

Fake tax Invoice (bogus invoice) means a tax invoice, without actual supply of goods or services or both, in order to

enable the recipients of such invoices to avail and utilize input tax credit ("ITC") fraudulently.

If the person who has availed and utilised ITC on the basis of fake (bogus) tax invoice makes further supply, he is not liable to pay tax as there is no 'supply'.

However, person who has availed and utilised ITC on the basis of fake (bogus) tax invoice makes further supply, he shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, 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.

Action under section 132 can be initiated - In cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable.

No other penalty once penalty in section 73 or 74 is paid - Non-payment or short payment of taxes or improper availment or utilization of input tax credit or erroneous refunds are major offences. These are covered under sections 73 and 74 of CGST Act. Once penalty under provisions of section 73 or 74 are paid, all proceedings are concluded and penalty cannot be imposed under any other provision of GST Law [of course, prosecution can be launched].

Separate notice and order if offence not covered under any other provision:

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person - section 127 of CGST Act.

Procedure for imposition of penalty

The proper officer shall serve, along with the (a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in form GST DRC-01 (b) statement under section 73(3) of section 74(3), a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable - rule 142(1) of CGST Rules inserted w.e.f. 1-4-2019.

The proper officer *may*, before service of notice to the person chargeable with tax, interest and penalty, under section 73(1) or sub-section (1) of Section 74(1), as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A** - rule 142(1A) of CGST Rules as amended on 15-10-2020. [Till 15-10-2020, the word was 'shall'. It has been replaced by 'may'].

Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of section 73(5) or, as the case may be, tax, interest and penalty in accordance with the provisions of section 74(5), or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act he shall inform the proper officer of such payment in form GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in form GST DRC-04 - rule 142(2) of CGST Rules inserted w.e.f. 1-4-2019.

Where the person chargeable with tax makes payment of tax and interest under section 73(8) or, as the case may be, tax, interest and penalty under section 74(8) within thirty days of the service of a notice under rule 142(1), or where the person concerned makes payment of the amount referred to in section 129(1) within *seven days of the notice issued under Section 129(3) but before the issuance of order under the said section 129(3)* he shall intimate the proper officer of such payment in form GST DRC-03 and the proper officer shall issue an order in form GST DRC-05 concluding the proceedings in respect of the said notice - rule 142(3) of CGST Rules inserted w.e.f. 1-4-2019. [The words in italics inserted w.e.f. 1-1-2022. Earlier, the words were 'fourteen days of detention or seizure of the goods and conveyance,'].

The representation referred to in section 73(9) or section 74(9) or section 76(3) or the reply to any notice issued under any section whose summary has been uploaded electronically in form GST DRC-01 under rule 142(1) shall be furnished in form GST DRC-06 - rule 142(4) of CGST Rules inserted w.e.f. 1-4-2019.

A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in form GST DRC-07, specifying therein the amount of *tax, interest and penalty, as the case may be, payable by the person concerned* - rule 142(5) of CGST Rules inserted w.e.f. 1-4-2019. The words in italics inserted w.e.f. 1-1-2022. Till 1-1-2022, the words were 'tax, interest and penalty payable by the person chargeable with tax'.

The order referred to in rule 142(5) shall be treated as the notice for recovery - rule 142(6) of CGST Rules inserted w.e.f. 1-4-2019.

Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in form GST DRC-08 - rule 142(7) of CGST Rules inserted w.e.f. 1-4-2019.