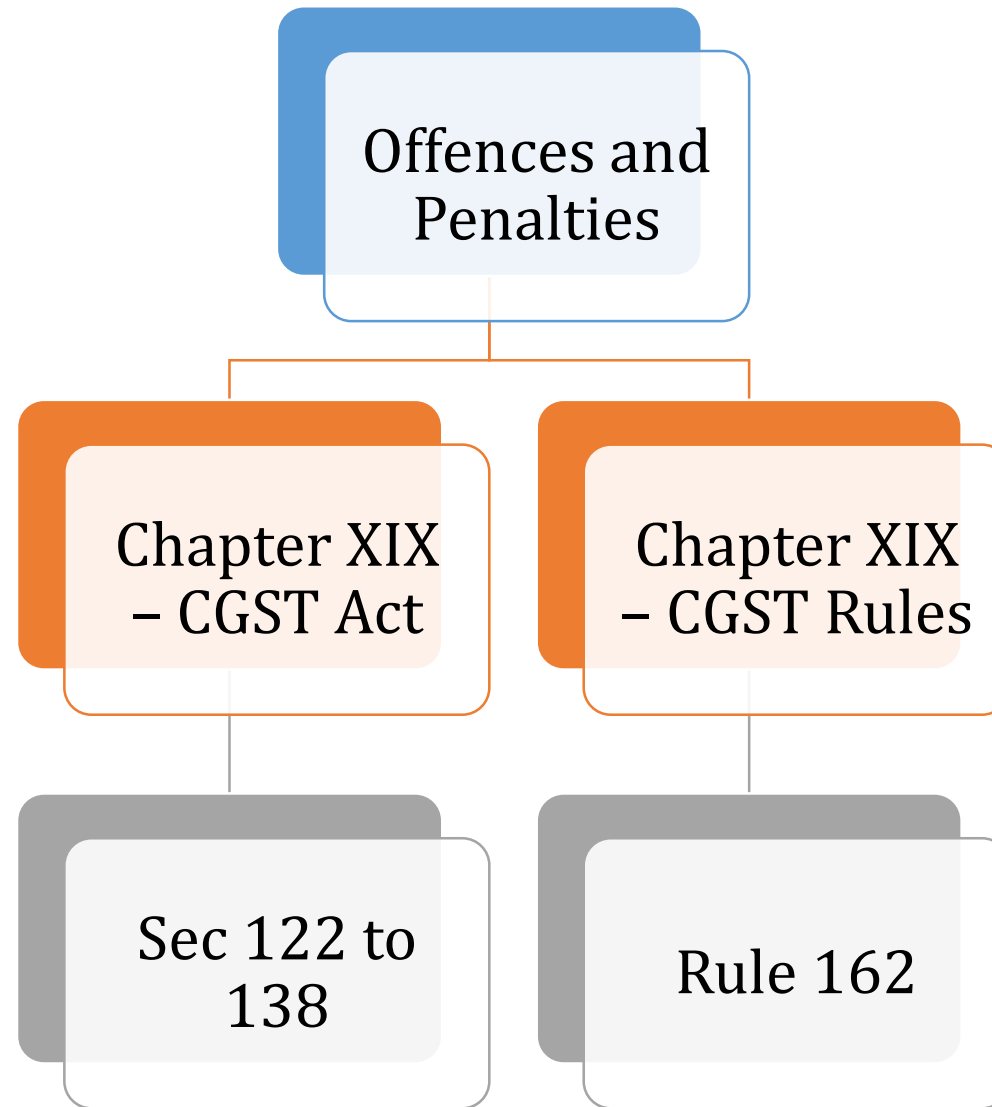


GST Offences & Penalties and Select Case Laws



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Offences and Penalties under GST – Chapter XIX



Offences and Penalties – Chapter XIX (CGST Act)

Sr. No	Section	Provision
1	122	Penalty for certain Offences
2	123	Penalty for failure to furnish information return
3	124	Fine for failure to furnish statistics
4	125	General penalty
5	126	General disciplines related to penalty.
6	127	Power to impose penalty in certain cases
7	128	Power to waive penalty or fee or both
8	129	Detention, seizure and release of goods and conveyances in transit
9	130	Confiscation of goods or conveyances and levy of penalty

Offences and Penalties – Chapter XIX (CGST Act)

Sr. No	Section	Provision
10	131	Confiscation or penalty not to interfere with other punishments
11	132	Punishment for certain Offences
12	133	Liability of officers and certain other persons
13	134	Cognizance of Offences
14	135	Presumption of culpable mental state
15	136	Relevancy of statements under certain circumstances
16	137	Offences by Companies
17	138	Compounding of offences
18	150	Failure to Furnish information return
19	151	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
Fake Invoices	• Supply of any goods/services without any invoice or issues a false invoice by TP • Issuing any invoice or bill without supply of goods/services • Issuing any invoices using the identification number of another bona-fide TP
Fraud	• Submission of false information while registering under GST • Submission of fake financial records/documents or files fake returns to evade tax • Does not provide information/gives false information during proceedings
Evasion of Tax	• Collects any GST but does not submit it to the government within 3 months • 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. • Obtaining refund of any CGST/SGST by fraud. • Avails and/ or utilizes input tax credit without actual receipt of goods and/or services • Deliberately suppressing sales to evade tax

Offence under GST -

Offence	Category
Supply/ Transport of Goods	• Transportation of goods without proper documents • Supply/transporting goods which is liable to confiscation • Destroy/tampering goods which have been seized
Any Electronic Commerce Operator	• Allows any supply through it by an URP other than a person exempted from registration • Allows any inter-State supply through it by a person not eligible to make inter-State supply • fails to furnish the correct details as per Sec 52 for any outward supply effected through it by a person exempted from obtaining registration
Other Categories	• Not registered under GST although required to by law • Non deduction of TDS or deducting less amount where applicable. • Non collection of TCS or collecting less amount where applicable. • Being an ISD, taking or distributing input tax credit in violation of the rules • Obstructing proper officer during his duty (for example, he hinders the officer during the audit by tax authorities) • Non maintaining all the books that he required to maintain by law • Destruction of any evidence

Illustration of some offences under GST and Penalty -

Offence	Penalty
Delay in filing GST Returns	Late fee is Rs. 100 per day per Act (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 (High value fraud cases also have jail term)
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
Any Electronic Commerce Operator	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	Demand & recovery provisions of sections 73 & 74 will apply. - Cases involving Fraud - Higher of (i) 100% of tax due; or (ii) Rs. 10,000 - Cases non Involving Fraud - Higher of (i) 10% of tax due; or (ii) Rs. 10,000
Wrongfully charging higher GST rate than prescribed (For lower rate only Interest applicable)	Higher of (i) 100% of tax due; or (ii) Rs. 10,000 (if the additional GST collected is not submitted with the govt)
Any person retaining the benefit of transaction covered in some cases	Penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on

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 GST Returns	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
Failure to Furnish information return u/s 150	<u>Rs. 100/ day for the period during which such failure continues</u> <i>Subject to maximum penalty of Rs. 5,000</i>
- 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.	Upto Rs. 10,000 fine 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 <i>subject to a max limit of Rs. 25,000/-</i>
General Penalty – contravention of any provisions of this Act or any rules for which no penalty is separately provided	<i>Upto Rs. 25,000</i>

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, 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

CONSEQUENCE OF NON CONFIRMATION OF RULES

Amendment to Sections 129 and 130 of the CGST Act, 2017 (Provisions related to E-Way Bills)-

The CBIC vide Notification No. 39/2021–Central Tax dated December 21, 2021 notified certain amendments in Section 129 and 130 of the CGST Act, 2017 w.e.f. January 01, 2022

A. Section 129 - detention, seizure and release of goods and conveyances in transit -

a. Enhancement of Penalty

Situation	Taxable Goods	Exempt Goods
When owner comes forward - Sec 129(1)(a)	Penalty equal to 200% of tax payable (earlier penalty – 100% Tax)	Lowest of 2% of the value of goods or Rs. 25,000/- (no change)
When owner does not come forward - Sec 129(1)(b)	Penalty equal to higher of 50% of value of goods or 200% of the tax payable on such goods (earlier penalty – 50% of value of goods)	Lowest of 5% of the value of goods or Rs. 25,000/- (no change)

CONSEQUENCE OF NON CONFIRMATION OF RULES

b. Period of issuance of notice and passing of order under Section 129(3) of the CGST Act:

The proper officer detaining/seizing the goods, have to issue a notice (GST MOV-07) within 7 days specifying the penalty payable and pass an order (GST MOV-09) within next 7 days after service of such notice (earlier there was no such time limit)

c. Opportunity of being heard before determination of penalty –

No penalty shall be determined without giving opportunity of hearing, where penalty is payable on detention or seizure of goods or conveyance

CONSEQUENCE OF NON CONFIRMATION OF RULES

B. Amendment to Section 130 - confiscation of goods or conveyances and levy of penalty –

Section 129 and Section 130 of the CGST Act, 2017 has been delinked.

- ☐ The goods or conveyance detained or seized shall become liable to be sold or disposed off in the manner prescribed, in case the payment of imposed penalty is not made within 15 days from the date of receipt of copy of the order imposing such penalty.
- ☐ Further, conveyance used for transportation of the goods may be released on payment of penalty or Rs 1 Lakh whichever is less

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,
 - fraudulently avails ITC or refund,
 - Evades payment of tax
 - falsification or substitution of financial records,
 - acquires or deals in goods liable to confiscation,
 - receives/concerned with services in contravention,
 - 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

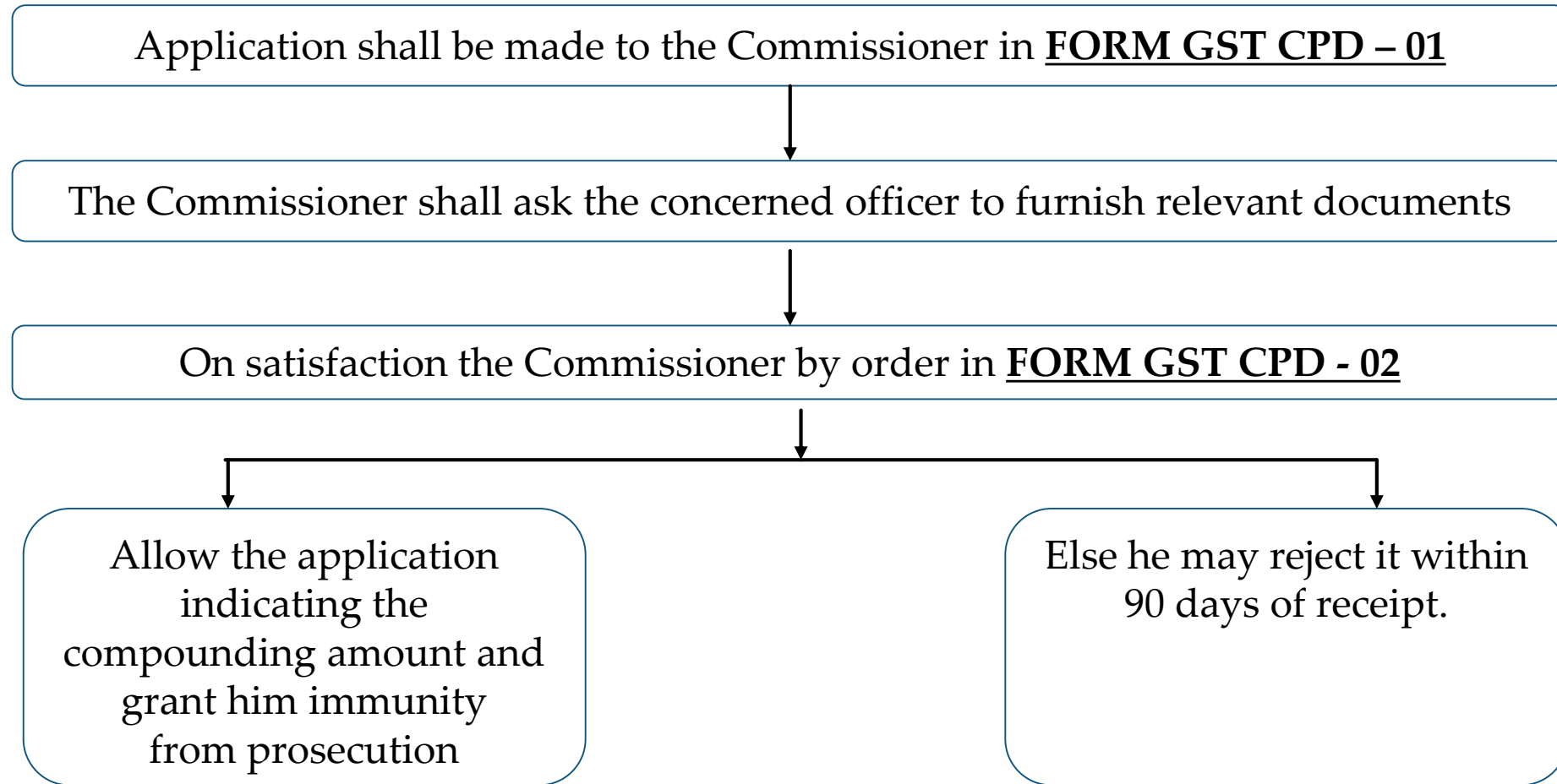
Compounding of Offences – Sec 138

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 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	<u>Held -</u> 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, <u>impugned order had been passed in violation of statutory requirements as indicated in section 75(4)</u>

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)	<u>Issue:-</u> 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 <u>against the principles of natural justice</u> and further direct the respondent to look into the documents and details furnished by the petitioner and thereafter <u>direct the respondent to grant a reasonable opportunity of being heard.</u> <u>Held:</u> 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. <u>The matters are remitted to the file of the respondent to pass orders afresh in accordance with law.</u>

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	<u>Held:</u> The only dispute is to <u>the mode and manner of recovery of GST</u> 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 <u>79(a), (b) and (e)</u>, 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 <u>recovery of GST can be make as arrears of land revenue by the Collector of the District on a requisition by the "Proper Officer"</u>.

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)	<u>Held:</u> For application of sections 129 and 130 of CGST Act/UP GST Act, it is immaterial that person proceeded against is <u>not a registered person or a supplier or a taxable person or is not doing any business</u> ; 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, <u>revenue can proceed to seize such goods including conveyance</u>

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	Issue: Under valuation of goods cannot lead to seizure of goods u/s 129 of the CGST Act. Held: 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

Queries Please



Thank you





(2024) 22 Centax 407 (M.P.) [30-08-2024]

(2024) 22 Centax 407 (M.P.)

IN THE HIGH COURT OF JUDICATURE OF MADHYA PRADESH AT INDORE
SUSHRUT ARVIND DHARMADHIKARI AND DUPPALA VENKATA RAMANA, JJ.

DEEPAK SINGHAL

Versus

UNION OF INDIA

W.P. No. 21645 of 2024, decided on 30-8-2024

GST : Where complaint was made and FIR was registered against one Shreenath Soya's proprietor in which petitioner had been implicated later on, penal provisions of IPC invoked without invoking penal provisions of section 132 of CGST Act, no sanction before launching prosecution taken from Commissioner as required under section 132(6) of CGST Act, FIR and consequential proceedings emanating therefrom were to be quashed, as against petitioner

Punishment for certain offences - Invoking penal provisions of IPC without invoking provisions under GST - Permission of Commissioner before invoking prosecution - Petitioner was proprietor of firm Agrawal Soya - On 11-8-2021, summon was issued to petitioner under section 70 of GST Act read with section 174 of MPGST Act pursuant to which statements of petitioner were recorded - Thereafter, GST authority in exercise of power conferred under section 67(2) of GST Act, conducted search and seizure operations on premises of Shreenath Soya - In inspection report it had been alleged that Shreenath Soya was bogus firm and was fraudulently registered, which had issued invoice/bill without supply of goods/services leading to wrongful availment or utilization of input tax credit - Complaint was made and FIR was registered against Shreenath Soya's proprietor in which petitioner had been implicated later on - HELD: There was no allegation against petitioner of forming bogus firm and even if allegations therein were taken at their face value, same constituted offence which were squarely covered by penal provision of section 132 of GST Act - No sanction before launching prosecution i.e., registration of FIR, was taken from Commissioner as required under section 132(6) of GST Act - No justification existed on part of authorities to invoke penal provisions of IPC without invoking penal provisions under GST - Accordingly, instant petition was to be allowed and FIR and consequential proceedings emanating therefrom were to be quashed, as against petitioner [Section 132(6) of Central Goods and Services Tax Act, 2017/Madhya Pradesh Goods and Services Tax Act, 2017][paras 8 to 12]

In favour of assessee

CASE CITED

Sharat Babu Digumarti v. Government (NCT of Delhi) — 2017 (2) SCC 18 — *Relied on*

REPRESENTED BY : Shri Shashwat Seth, Adv. for the Petitioner.

Shri Sudeep Bhargava, Dy. Adv. General for the Respondent.

[Order per : Sushrut Arvind Dharmadhikari, J.] - Heard finally at motion stage with consent of the parties.

1. The petitioner herein has filed the present petition seeking following reliefs from this court:-

"7.1 To issue a writ of Mandamus thereby quashing the entire proceedings and ancillary proceedings in pursuance to the summons issued on 11/08/2021 against the petitioner.

7.2. To issue a writ of mandamus thereby quashing the proceedings instituted against the petitioner in the Crime No. 61/2022 and its ancillary proceedings.

7.3. To issue a writ thereby seeking a clarification from the GST department and the police authority to explain its stance as to why the petitioner has been implicated in the whole proceedings of the Crime No. 61/2022.

7.4. To allow the petition with costs.

7.5. To issue or pass any such orders or direction as this Hon. Court may deem fit to pass in the matter in hand."

2. Brief facts of the case necessary for the disposal of present petition are as hereunder:-

- i. Petitioner is a proprietor of the proprietor firm named as M/s. Agrawal Soya Extracts Pvt Ltd carrying out its business of trade of Soya beans seeds and Soya De-Oiled Cakes.
- ii. On 11.08.2021, summon was issued to petitioner herein by Respondent No. 5 under Section 70 of GST Act, 2017 read with Section 174 of M.P GST Act, 2017 pursuant to which statements of petitioner were recorded.
- iii. On 14.02.2022, Respondent No. 5 in exercise of power conferred under Section 67(2) of GST Act, 2017, conducted search and seizure operations on the premises of M/s. Shreenath Soya Exim Corporate and prepared inspection report dated 04.07.2022 in which it has been alleged that M/s. Shreenath Soya Exim Corporate was bogus firm and fraudulently registered, which issued invoice/bill without supply of goods/services leading to wrongful availment or utilization of input tax credit/refund of tax.
- iv. Complaint dated 25.12.2022 was made by Respondent No.5 to Respondent No. 6, on the basis of which FIR No. 61/2022 under Section 420, 467, 468, 471 was registered by Respondent No. 6 on 26.12.2022 against M/s. Shreenath Soya Exim Corporate's proprietor Sachin Pateria in which petitioner has been implicated later on, on the basis of memorandum under Section 27 of Evidence Act.
- v. Aggrieved of the same, petitioner has approached this court.

3. Learned Counsel for the Petitioner has submitted that GST Act, 2017 is a complete code which provides for procedure to be adopted by GST Authorities, penalties in case of breach of provisions of GST Act and punishment for offences committed under GST Act. It is further submitted that admittedly in the case at hand, search and seizure operations conducted by GST Authorities under Section 67(2) of GST Act revealed commission of offence which is punishable under Section 132 of GST Act and hence, GST being a special statute, any offence which is squarely covered by the GST Act, provisions of IPC could not have been invoked without invoking the provisions of GST Act and hence registration of FIR at the instance of GST Authorities under provisions of Indian Penal Code without invoking penal provisions under GST Act is bad in law and the FIR and consequential proceedings are liable to be quashed on this ground. It is further submitted that Section 132(6) of GST Act requires previous sanction of the Commissioner before a person can be prosecuted for offences committed under Section 132 of GST Act and GST Authorities in order to bypass such procedural safeguard have gotten FIR registered under the penal provisions of IPC without invoking penal provisions under GST Act which cannot be permitted and hence on this ground also, FIR and consequential proceedings are liable to be quashed. In support of his submission, Learned Counsel for the petitioner has placed reliance on judgment of hon'ble apex court in *Sharat Babu Digumarti v. Government (NCT of Delhi)* 2017 (2) SCC 18.

4. Per Contra, Learned Counsel for Respondents has submitted that offence under GST Act and IPC are distinct and there is no prohibition registration of offences under IPC by Police authorities on complaint being made by GST Authorities.

5. Heard learned counsel for the parties and perused the record.

6. Upon hearing learned counsel for the parties, following issue arises for consideration before this court:-

"Whether the GST Authorities can launch prosecution invoking penal provisions under Indian Penal Code, without invoking the penal provisions of GST Act, when the alleged offences are covered under the provisions of GST Act and that too without obtaining Sanction under Section 132(6) of GST Act? If not, then whether the prosecution so launched is hit by legal bar against the institution or continuance of the proceedings so as to warrant quashment?

7. Before adjudicating the present petition on merits, fruitful reference can be made to relevant statutory provisions under the GST Act which are liable to be referred to for adjudication of the present petition:-

"67. Power of inspection, search and seizure.—

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—

- (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or
- (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

- (3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.
- (4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.
- (5) The person from whose custody any documents are seized under subsection (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.
- (6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.
- (7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

- (8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.
- (9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.
- (10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word —Magistrate, wherever it occurs, the word —Commissioner were substituted.
- (11) Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.
- (12) The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

69. Power to arrest.—

- (1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.
- (2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty four hours.
- (3) Subject to the provisions of the Code of Criminal Procedure, 1973,—
 - (a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;
 - (b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

70. Power to summon persons to give evidence and produce documents.—

- (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.
- (2) Every such inquiry referred to in sub-section (1) shall be deemed to be a —judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code.

122. Penalty for certain offences.—

- (1) Where a taxable person who—
 - (i) *supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;*
 - (ii) *issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;*
 - (iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
 - (iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
 - (v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;
 - (vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;
 - (vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;
 - (viii) *fraudulently obtains refund of tax under this Act;*
 - (ix) *takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;*
 - (x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
 - (xi) is liable to be registered under this Act but fails to obtain registration;
 - (xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
 - (xiii) obstructs or prevents any officer in discharge of his duties under this Act;
 - (xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;
 - (xv) suppresses his turnover leading to evasion of tax under this Act;
 - (xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
 - (xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;
 - (xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;
 - (xix) issues any invoice or document by using the registration number of another registered person;
 - (xx) tampers with, or destroys any material evidence or document;
 - (xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act, he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.
- (2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised—
 - (a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such

person, whichever is higher;

- (b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

(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.

132. Punishment for certain offences—

(1) *Whoever commits any of the following offences, namely:—*

- (a) *supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;*
- (b) *issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;*
- (c) *avails input tax credit using such invoice or bill referred to in clause (b);*
- (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, fraudulently avails input tax credit 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—*
 - (i) *in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;*
 - (ii) *in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;*
 - (iii) *in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;*

- (iv) *in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.*
- (2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.
- (3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.
- (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in subsection (5) shall be non- cognizable and bailable.
- (5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.
- (6) *A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.*

8. Upon perusal of record, it is apparent that the petitioner herein had been summoned under Section 70 of GST Act vide Summon dated 11.08.2021 and he had given his statement with GST Authorities and thereafter no action under GST Act was taken against the petitioner by GST Authorities. GST authorities conducted search and seizure operations while exercising powers under Section 67(2) of GST Act, on the premises of M/s. Shreenath Soya Exim Corporate and prepared inspection report dated 04.07.2022, in which it has been alleged that Shri Vaibhav Laxmi Industries was bogus firm and has been fraudulently registered, which issued invoice/bill without supply of goods/services leading to wrongful availment or utilisation of input tax credit/refund of tax. Upon perusal of inspection report dated 04.07.2022 along with FIR, it becomes quite apparent that there is no allegation against the petitioner of forming the bogus firm and even if the allegations therein are taken at their face value, the same constitutes offence which are squarely covered by the penal provision of Section 132 of GST Act, 2017. It is not disputed that no sanction before launching prosecution *i.e.* registration of FIR, was taken from Commissioner as required under Section 132(6) of GST Act and no justification exists on part GST authorities to invoke penal provisions of IPC without invoking penal provisions under GST bypassing the procedure as prescribed under GST Act and in the considered opinion of this court, such justification is mandatory especially when uncontroverted allegations in the inspection report dated 04.07.2022 and FIR, constituted offence squarely covered under the provisions of GST Act, 2017, specifically Section 132 of GST Act.

9. In the considered opinion of this court, GST Act, 2017 is a special legislation which holistically deals with procedure, penalties and offences relating GST and at the cost of repetition this court cannot emphasise more that the GST Authorities cannot be permitted to bypass procedure for launching prosecution under GST Act, 2017 and invoke provisions of Indian Penal Code only without pressing into service penal provisions from GST Act and that too without obtaining sanction from commissioner under Section 132(6) of GST Act especially when the alleged actions squarely fall within the precincts of offence as enumerated under GST Act, 2017. This would defeat the very purpose of enacting a special statute such as GST Act, 2017, as the GST Authorities instead of conducting search and seizure and conducting proceedings as prescribed under GST Act, 2017 themselves would be delegating the same to local police authorities which cannot be said to be the intent of the legislature while enacting GST Act, 2017.

10. In view of the above, this court has no hesitation in holding that GST Authorities cannot bypass procedure prescribed under GST Act for launching prosecution by simply invoking penal provisions under IPC without invoking penal provisions under GST Act especially when the allegations so revealed as a result of search and seizure conducted by GST Authorities constituted offence covered under the penal provisions of GST Act as that would amount to bypassing procedural safeguards as provided under Section 132(6) of GST Act which requires sanction of the commissioner prior to initiation of prosecution, which is to the prejudice of the petitioner herein. Letting GST Authorities to adopt such course of action would amount to abuse of process of law which cannot be permitted by this court.

11. At this juncture, fruitful reference can be made to judgment of hon'ble apex court in *Sharat Babu Digumarti v. Government (NCT of Delhi)* 2017 (2) SCC 18, in which it has been held as hereunder:-

"32. The aforesaid passage clearly shows that if legislative intent is discernible that a latter enactment shall prevail, the same is to be interpreted in accord with the said intention. We have already referred to the scheme of the IT Act and how obscenity pertaining to electronic record falls under the scheme of the Act. We have also referred to Sections 79 and 81 of the IT Act. *Once the special provisions having the overriding effect do cover a criminal act and the offender, he gets out of the net of the IPC and in this case, Section 292. It is apt to note here that electronic forms of transmission is covered by the IT Act, which is a special law. It is settled position in law that a special law shall prevail over the general and prior laws. When the Act in various provisions deals with obscenity in electronic form, it covers the offence under Section 292 IPC.*"

12. Resultantly, this petition deserves to be allowed and is hereby allowed. Ex Consequenti, FIR in Crime No.61/2022 under Section 420, 467, 468 and 471 registered with Respondent No. 6 and consequential proceedings emanating therefrom are hereby quashed, as against the petitioner. No order as to costs.

Section - 122, Central Goods And Services Tax Act, 2017

CHAPTER XIX OFFENCES AND PENALTIES

Penalty for certain offences. [23](#)

[24](#) 122. (1) Where a taxable person who—

- (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
- (ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;
- (iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- (iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- (v) fails to deduct the tax in accordance with the provisions of sub-section (1) of [section 51](#), or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;
- (vi) fails to collect tax in accordance with the provisions of sub-section (1) of [section 52](#), or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of [section 52](#);
- (vii) takes or 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;
- (viii) fraudulently obtains refund of tax under this Act;
- (ix) takes or distributes input tax credit in contravention of [section 20](#), or the rules made thereunder;
- (x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
- (xi) is liable to be registered under this Act but fails to obtain registration;
- (xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
- (xiii) obstructs or prevents any officer in discharge of his duties under this Act;
- (xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;
- (xv) suppresses his turnover leading to evasion of tax under this Act;
- (xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
- (xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;
- (xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;
- (xix) issues any invoice or document by using the registration number of another registered person;
- (xx) tampers with, or destroys any material evidence or document;
- (xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

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.

[24a](#) [(1A) Any person who retains the benefit of a transaction covered under clause (i), (ii), (vii) or clause (ix) of sub-section (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.]

[24b](#) [(1B) [24c](#) [Any electronic commerce operator, who is liable to collect tax at source under section 52,]—

- (i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;
- (ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or
- (iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.]

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—

- (a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent of the tax due from such person, whichever is higher;
- (b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

(3) Any person who—

- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);
- (b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;
- (e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account,

shall be liable to a penalty which may extend to twenty five thousand rupees.

[23.](#) See [rule 142](#) and [Form Nos. DRC-01, DRC-07](#) and [DRC-08](#) of the CGST Rules, 2017.

[24.](#) Enforced with effect from 1-7-2017.

[24a.](#) Inserted by the Finance Act, 2020, w.e.f. 1-1-2021.

[24b.](#) Inserted by the Finance Act, 2023, w.e.f. **1-10-2023**.

[24c.](#) Substituted for "Any electronic commerce operator who" by the Finance (No. 2) Act, 2024, w.r.e.f. **1-10-2023**.

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Section - 123, Central Goods And Services Tax Act, 2017

Penalty for failure to furnish information return. ²⁵

²⁶ **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.

^{25.} See [rule 142](#) and [Form Nos. DRC-01, DRC-07](#) and [DRC-08](#) of the CGST Rules, 2017.

^{26.} Enforced with effect from 1-7-2017.

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Section - 125, Central Goods And Services Tax Act, 2017

General penalty. [26c](#)

[26d](#) **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.

[26c.](#) See [rule 142](#) and [Form Nos. DRC-01, DRC-07](#) and [DRC-08](#) of the CGST Rules, 2017.

[26d.](#) Enforced with effect from 1-7-2017.



Section - 126, Central Goods And Services Tax Act, 2017

General disciplines related to penalty.

[26e](#) **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.

Explanation.—For the purpose of this sub-section,—

- (a) a breach shall be considered a 'minor breach' if the amount of tax involved is less than five thousand rupees;
 - (b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.
- (2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.
- (3) No penalty shall be imposed on any person without giving him an opportunity of being heard.
- (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.
- (5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.
- (6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

[26e.](#) Enforced with effect from 1-7-2017.



Section - 127, Central Goods And Services Tax Act, 2017

Power to impose penalty in certain cases. ²⁷

^{27a} **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](#) ²⁸[or section 74A] 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.

²⁷. See [rule 142](#) and [Form Nos. DRC-01, DRC-07](#) and [DRC-08](#) of the CGST Rules, 2017.

^{27a}. Enforced with effect from 1-7-2017.

²⁸. Inserted by the Finance (No. 2) Act, 2024, with effect from a date yet to be notified.

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Section - 128, Central Goods And Services Tax Act, 2017

Power to waive penalty or fee or both.

[28a](#) **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.

[28a](#). Enforced with effect from 1-7-2017.



Section - 129, Central Goods And Services Tax Act, 2017

Detention, seizure and release of goods and conveyances in transit. ²⁹

³⁰ 129 ³¹. (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,—

- ^{31a} [(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:

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

(2) ^{31b}[***]

^{31c} [(3) *The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).]*

(4) ^{31d}[No penalty] shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

³² [(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):*

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.]

²⁹. See [rule 142](#) and Form Nos. GST INS-04, DRC-01, DRC-03, DRC-05, DRC-07 and DRC-08 of the CGST Rules, 2017.

³⁰. Enforced with effect from 1-7-2017.

31. For Clarification with respect to E-way Bill System, see Press Note, dated 31-3-2018.

For procedure for interception of conveyances for inspection of goods in movement and detention, release and confiscation of such goods and conveyances, see [Circular No. 41/15/2018-GST, dated 13-4-2018](#).

For issues regarding "Bill to ship to" for e-way bill, see CBEC Press Release, dated 23-4-2018.

For Clarifications on certain issues under GST laws, see [Circular No. 47/21/2018-GST, dated 8-6-2018](#).

For modification of procedure for interception of conveyances for inspection of goods in movement and detention, release and confiscation of such goods and conveyances, as clarified by [Circular No. 41/15/2018-GST, dated 13-4-2018](#), see [Circular No. 49/23/2018-GST, dated 21-6-2018](#).

For E-way bill in case of storing of goods in godown of transporter, see [Circular No. 61/35/2018-GST, dated 4-9-2018](#).

For Clarification on certain issues (sale by government departments to unregistered person; levability of penalty under [section 73\(11\)](#) of the CGST Act; rate of tax in case of debit notes/credit notes issued under [section 142\(2\)](#) of the CGST Act; applicability of Notification No. 50/2018-Central Tax; valuation methodology in case of TCS under Income-tax Act and definition of owner of goods) related to GST, see [Circular No. 76/50/2018-GST, dated 31-12-2018](#).

31a. Substituted by the Finance Act, 2021, w.e.f. **1-1-2022**. Prior to their substitution, clauses (a) and (b) read as under :

- "(a) on payment of the applicable tax and penalty equal to one 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 tax and penalty;
- (b) on payment of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid thereon 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 tax and penalty;"

31b. Omitted by the Finance Act, 2021, w.e.f. **1-1-2022**. Prior to its omission, sub-section (2) read as under :

"(2) The provisions of sub-section (6) of [section 67](#) shall, *mutatis mutandis*, apply for detention and seizure of goods and conveyances."

31c. Substituted by the Finance Act, 2021, w.e.f. **1-1-2022**. Prior to its substitution, sub-section (3) read as under :

"(3) 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 under clause (a) or clause (b) or clause (c)."

31d. Substituted for "No tax, interest or penalty" by the Finance Act, 2021, w.e.f. **1-1-2022**.

32. Substituted by the Finance Act, 2021, w.e.f. **1-1-2022**. Prior to its substitution, sub-section (6), as amended by the Central Goods and Services Tax (Amendment) Act, 2018, w.e.f. 1-2-2019, read as under :

"(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of [section 130](#):

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fourteen days may be reduced by the proper officer."



Section - 130, Central Goods And Services Tax Act, 2017

Confiscation of goods or conveyances and levy of penalty. ³³

³⁴ 130. (1) ^{34a}[Where] any person—

- (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- (ii) does not account for any goods on which he is liable to pay tax under this Act; or
- (iii) supplies any goods liable to tax under this Act without having applied for registration; or
- (iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- (v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

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

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

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the ^{34b}[penalty equal to hundred per cent of the tax payable on such goods]:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) ^{34c}[***]

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

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

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(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.

³³. See [rule 142](#) and [Form Nos. DRC-01, DRC-07](#) and [DRC-08](#) of the CGST Rules, 2017.

³⁴. Enforced with effect from 1-7-2017.

34a. Substituted for "Notwithstanding anything contained in this Act, if" by the Finance Act, 2021, w.e.f. **1-1-2022**.

34b. Substituted for "amount of penalty leviable under sub-section (1) of section 129" by the Finance Act, 2021, w.e.f. **1-1-2022**

34c. Omitted by the Finance Act, 2021, w.e.f. **1-1-2022**. Prior to its omission, sub-section (3) read as under :

"(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub- section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance."

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Section - 131, Central Goods And Services Tax Act, 2017

Confiscation or penalty not to interfere with other punishments.

[35](#) **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.

[35.](#) Enforced with effect from 1-7-2017.



Section - 132, Central Goods And Services Tax Act, 2017

Punishment for certain offences.

[35](#) 132. (1) [35a](#) [Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences], namely:—

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
- [35b](#) [(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 [35c](#) [***] 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) [35d](#) [***]
- (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) [35e](#) [***]
- (k) [35f](#) [***]
- (l) attempts to commit, or abets the commission of any of the offences mentioned in [35g](#) [clauses (a) to (f) and clauses (h) and (i)] of this section,

shall be punishable—

- (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;
- (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;
- (iii) in the case of [35h](#) [an offence specified in clause (b),] where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;
- (iv) in cases where he commits or abets the commission of an offence specified in clause (f) [35i](#) [***], he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

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

Explanation.— For the purposes of this section, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

[35.](#) Enforced with effect from 1-7-2017.

[35a.](#) Substituted for "Whoever commits any of the following offences" by the Finance Act, 2020, w.e.f. 1-1-2021.

[35b.](#) Substituted by the Finance Act, 2020, w.e.f. 1-1-2021. Prior to its substitution, clause (c) read as under :

"(c) avails input tax credit using such invoice or bill referred to in clause (b);"

[35c.](#) Words ", fraudulently avails input tax credit" omitted by the Finance Act, 2020, w.e.f. 1-1-2021.

[35d.](#) Omitted by the Finance Act, 2023, w.e.f. **1-10-2023**. Prior to its omission, clause (g) read as under :

"(g) obstructs or prevents any officer in the discharge of his duties under this Act;"

[35e.](#) Omitted by the Finance Act, 2023, w.e.f. **1-10-2023**. Prior to its omission, clause (j) read as under :

"(j) tampers with or destroys any material evidence or documents;"

[35f.](#) Omitted by the Finance Act, 2023, w.e.f. **1-10-2023**. Prior to its omission, clause (k) read as under :

"(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"

[35g.](#) Substituted for "clauses (a) to (k)" by the Finance Act, 2023, w.e.f. **1-10-2023**.

[35h.](#) Substituted for "any other offence" by the Finance Act, 2023, w.e.f. **1-10-2023**.

[35i.](#) Words, brackets and letters "or clause (g) or clause (j)" omitted by the Finance Act, 2023, w.e.f. **1-10-2023**.