

INTEREST LATE FEES AND PENALTIES UNDER GST

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Section 50 - Interest on delayed payment of Tax

Section 50(1):

- Every person who is liable to pay tax...
- but fails to pay the tax or any part thereof....
- shall for the period for which the tax or any part thereof remains unpaid
- pay, *on his own*
- interest at such rate, not exceeding eighteen per cent
- as may be notified by the Government...
- The 18% interest rate for section 50(1) was notified
- vide Notification no. 13/2017, Central Tax, Dt. 28th June 2017

Section 50 - Interest on delayed payment of Tax

Section 50(3):

- A —taxable personll who makes an
- undue or excess claim of input tax credit under sub-section (10) of section 42 or
- undue or excess reduction in output tax liability under sub-section (10) of section 43,
- shall pay interest on such undue or excess claim or
- on such undue or excess reduction....
- at such rate not exceeding twenty-four per cent.,
- as may be notified by the Government...
- The 24% interest rate for section 50(1) was notified vide Notification no. 13/2017, Central Tax, Dt. 28th June 2017.

Section 50 - Interest on delayed payment of Tax

Important Questions:

- Cases where interest to be paid @ 18% ?
- Cases where interest to be paid @ 24% ?
- On what amount interest to be paid ?
 - Gross Amount (Output tax liability), or
 - Net Amount - after deducting eligible ITC
- Refex Industries Limited v. The Assistant Commissioner of CGST & Central Excise [Writ Petition No. 23360 & 23361 of 2019 dated January 6th, 2020]
- The press release of GST Council meeting on 14th March '2020, has clearly stated that —Interest for delay in payment of GST to be charged on the net cash tax liability w.e.f. 01.07.2017|| .

Section 50 - Interest on delayed payment of Tax

Important Questions:

- Whether interest to be paid on ITC wrongly availed?
- Or will it be paid on ITC wrongly utilised?
- Whether there is interest on interest?
- Can interest be paid from electronic credit ledger?

Section 51 - Tax deduction at source

Section 51(1):

Notwithstanding anything to the contrary.....
(hereafter in this section referred to as —the deductor), to deduct tax at the rate of one per cent. from the *payment made or credited to the supplier* (hereafter in this section referred to as —the deductee) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Section 51(6):

- If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1),
- he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted

Section 52 – Collection of Tax at source

Section 52 - Every E-com operator is required to collect 1 % tax of the supplies made, where the consideration is collected by the E-com operator.

The tax so collected is to be deposited within 10 days after the end of the month in which such collection is made and a statement to be filed electronically within same time.

Section 52(6):

- If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein,
- other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities,
- shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed,
- subject to payment of interest, as specified in sub-section (1) of section 50

Section 56 – Interest on delayed refunds

Refund Due upon order
of a “Proper Officer” -
Section 54(5)

Refund not granted within
60 days of application

Interest to be
paid @ 6%,
after 60 days
till paid

Refund Due upon order
of adjudicating authority
or Appellate Authority or
Appellate Tribunal or
court

Refund not granted within 60
days of application filed after
such order

Interest to
be paid @
9%, after
60 days
till
paid

Section 73 & 74

Interest to be paid U/s 50:

- **Section 73** - Determination of tax not paid or short paid or Erroneously refunded or input tax credit wrongly availed or utilised - **other than Fraud.**
- **Section 74** - Determination of tax not paid or short paid or Erroneously refunded or input tax credit wrongly availed or utilised **for reasons of Fraud or any wilful misstatement or suppression of facts.**

Q & A - Interest

- If a registered person inadvertently claims ITC of Rs. 1,00,000/- instead of 10,000/- and upon realizing the mistake, later on reverses that credit.
- Whether Interest is to be paid?
- Yes
- At what rate?
- 18% or 24%?

Section 76(4)

- **Tax collected but not paid to Government.**
 - The person referred to in sub-section (1) shall
 - in addition to paying the amount referred to in sub-section (1) or sub-section (3)
 - **also be liable to pay interest thereon at the rate specified under section 50**
 - from the date such amount was collected by him to the date such amount is paid by him to the Government

Section 77(2)

- **Tax wrongfully collected and paid to Central Government or State Government.**
 - A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply,
 - but which is subsequently held to be an intra-State supply,
 - **shall not be required to pay any interest** on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

Section 80 - Payment of tax and other amount in instalments

- **Payment of tax and other amount in instalments**
 - On an application filed by a taxable person,
 - the Commissioner may, for reasons to be recorded in writing,
 - extend the time for payment or allow payment of any amount due under this Act,
 - other than the amount due as per the liability self-assessed in any return, by such person
 - in monthly instalments not exceeding twenty four,
 - subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed.

Section 16(2)

- Proviso to section 16(2)
 - Provided further that where a recipient fails to pay to the supplier of goods or services or both,
 - other than the supplies on which tax is payable on reverse charge basis,
 - **the amount towards the value of supply** along with tax payable thereon
 - within a period of **one hundred and eighty days** from the date of issue of invoice by the supplier,
 - *an amount equal to the input tax credit availed by the recipient shall be*
added to his output tax liability,
 - **along with interest thereon**, in such manner as may be prescribed.

Q & A - Interest

- If a registered person inadvertently claims ITC of Rs. 1,00,000/- instead of 10,000/- and upon realizing the mistake, later on reverses that credit.
- Whether Interest is to be paid?
- Yes
- At what rate?
- 18% or 24%?

Q & A - Interest

- If a registered person claims ITC appearing in his 2A, knowing well that it does not belong to him, and later on upon auditors observation, reverses that credit.
- Whether Interest is to be paid?
- Yes
- At what rate?
- 18% or 24%?

Q & A - Interest

- In case a registered person has treated an Inter-state supply as Intra-state supply and upon realization he corrects the mistake as per section 77. Is he required to also pay interest?
- No, in this case interest is not payable.

Late Fees under GST

Important Provisions – Late Fees

Section 47

Levy of late Fees

Section 51

Tax deduction at source

Section 47 – Levy of Late Fees

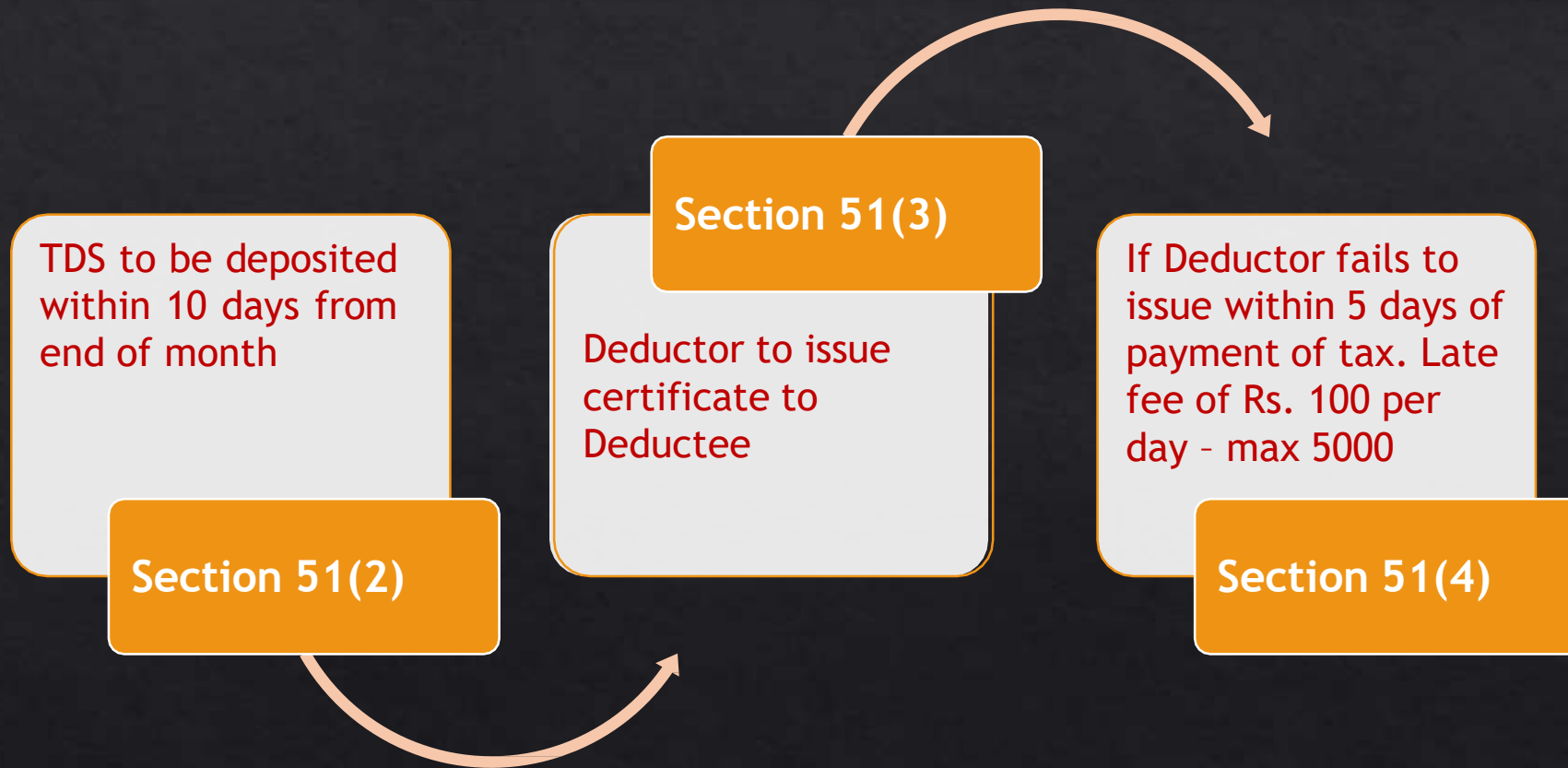
- (1) Any registered person who
- fails to furnish the details of outward or inward supplies required under section 37 or section 38 or
- returns required under section 39 or section 45
- by the due date shall
- *pay a late fee of one hundred rupees for every day during which such failure continues*
- subject to a *maximum amount of five thousand rupees.*

Note: There is no Late Fees under IGST Act

Section 47 – Levy of Late Fees

- (2) Any registered person who
- fails to furnish the return required under section 44
- by the due date
- shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues
- subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory.

Section 51 – Tax Deduction at Source



Penalties under GST

Important Provisions – Penalties

Section 122

Penalty for certain offences

Section 123

Penalty for failure to furnish information return

Section 124

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Section 125

General Penalty

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Section 127

Power to impose penalty in certain cases

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Section 129

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

Section 130

Confiscation of goods or conveyances and levy of penalty

Section 132

Punishment for certain offences

Section 122(1)

Where a “taxable person” falls under sub-sections (i) to (xxi) of section 122, he shall be liable to pay a penalty of:

Rs.. 10,000/-

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 - Penalty for certain offences

This section provides 21 offences which are as follows:--

Sl.No.	Offence
1.	Supply without invoice/incorrect /false invoice
2.	Issue invoice or bill without supply
3.	Collects tax & fails to pay beyond 3 months
4.	Wrongfully collects tax & fails to pay within 3 months
5.	No TDS or Less TDS u/s 51 or collects & fails to pay
6.	No TCS or Less TCS u/s 51 or collects & fails to pay
7.	Takes/Utilises ITC without receipt of goods
8.	Fraudulently obtains refund of tax
9.	Wrong distribution of ISD Credit
10.	False records/accounts/information
11.	Liable but fails to obtain registration

Section 122 - Penalty for certain offences

This section provides 21 offences which are as follows:--

Sl.No.	Offence
12.	False information in registration particulars
13.	Prevents/Obstructs officer in discharge of his duties
14.	Transport goods without documents
15.	Suppresses turnover
16.	Fails to keep/maintain books of accounts/documents
17.	fails to furnish information or documents called for by an officer
18.	supplies, transports or stores any goods which he has reasons to believe are liable to confiscation
19.	issues any invoice or document in other person's GSTIN
20.	tampers with, or destroys any material evidence or document;
21.	disposes off or tampers with any goods that have been detained, seized, or Attached

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;

Section 122(1A)

- (1A) —Any person
- **who retains the benefit** of a transaction covered under
- clauses (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.¶

Section 122(2)

- Any —registered personll 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

Section 122(3)

- —Any person who--
- Helps any person to commit fraud under GST
- Acquires/receives any goods/services with full knowledge that it is in violation of GST rules
- Fails to appear before the tax authority on receiving a summons
- Fails to issue an invoice according to GST rules
- Fails to account/vouch any invoice appearing in the books
- shall be liable to a penalty which may extend to twenty-five thousand rupees.

Section 123 – Penalty for failure to furnish information return

- 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 subsection (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 – Fine for failure to furnish statistics

- 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) wilfully 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 – General Penalty

- Any person, who contravenes any of the provisions of this Act or any rules made there under
- 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

Section 126 – General disciplines related to penalty

- 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
- ◆ 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.

Section 126 – General disciplines related to penalty

(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, the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer, 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

Section 127 – Power to impose penalty in certain cases

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 - Power to waive penalty or fees or both

Section 128 - Power to waive penalty or fees or both

- 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.

- Some of the notifications issued drawing powers from section 128 are:

1. Notification No. 50/2017 - Central Tax Dated: 24th October, 2017.
2. Notification No. 74/2019 - Central Tax Dated: 26th December, 2019.
3. Notification No. 04/2020 - Central Tax Dated: 10th January, 2020.

Section 129 – Detention seizure and release of goods and conveyances in transit

- 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 there under,
- **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:**

Section 129

Goods and Vehicle carrying goods in contravention is seized

where the owner of the goods comes forward for payment of such tax and penalty

Taxable Goods - Penalty equal to 100% of tax payable on such goods.
Exempt Goods - Lesser of 2% of value of goods or Rs. 25,000/-

Section 129

Goods and Vehicle carrying goods in contravention is seized

where the owner of the goods **does not come** forward for payment of such tax and penalty

Taxable Goods - Penalty equal to 50% of value of goods less tax already paid.
Exempt Goods - Lesser of 5% of value of goods or Rs. 25,000/-

Section 129

Related Provisions:

- Section 68 - Inspection of goods in movement.
- Rule 138A - Documents and devices to be carried by a person-in-charge of a conveyance.
 - (1) The person in charge of a conveyance shall carry—
 - (a) the invoice or bill of supply or delivery challan, as the case may be; and
 - (b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner:

Section 129

Questions:

- Whether amount of tax and penalty paid U/s 129 eligible for input tax credit?
- Whether penalty can be imposed if there is a mistake in writing couple of alphabets of GSTIN of recipient?
- Can penalty U/s 129 be imposed for under valuation of goods?
- Upon detention of goods and conveyance can order U/s 130 be passed without passing an order U/s 129?

Section 130 – Confiscation of goods or conveyance and levy of penalty

- Notwithstanding anything contained in this Act, if —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.*
- **then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122**

Section 130 – Confiscation of goods or conveyance and levy of penalty

- 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 amount of penalty leviable under sub-section (1) of section 129:
- 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 131 – Confiscation and penalty not to interfere with other punishments

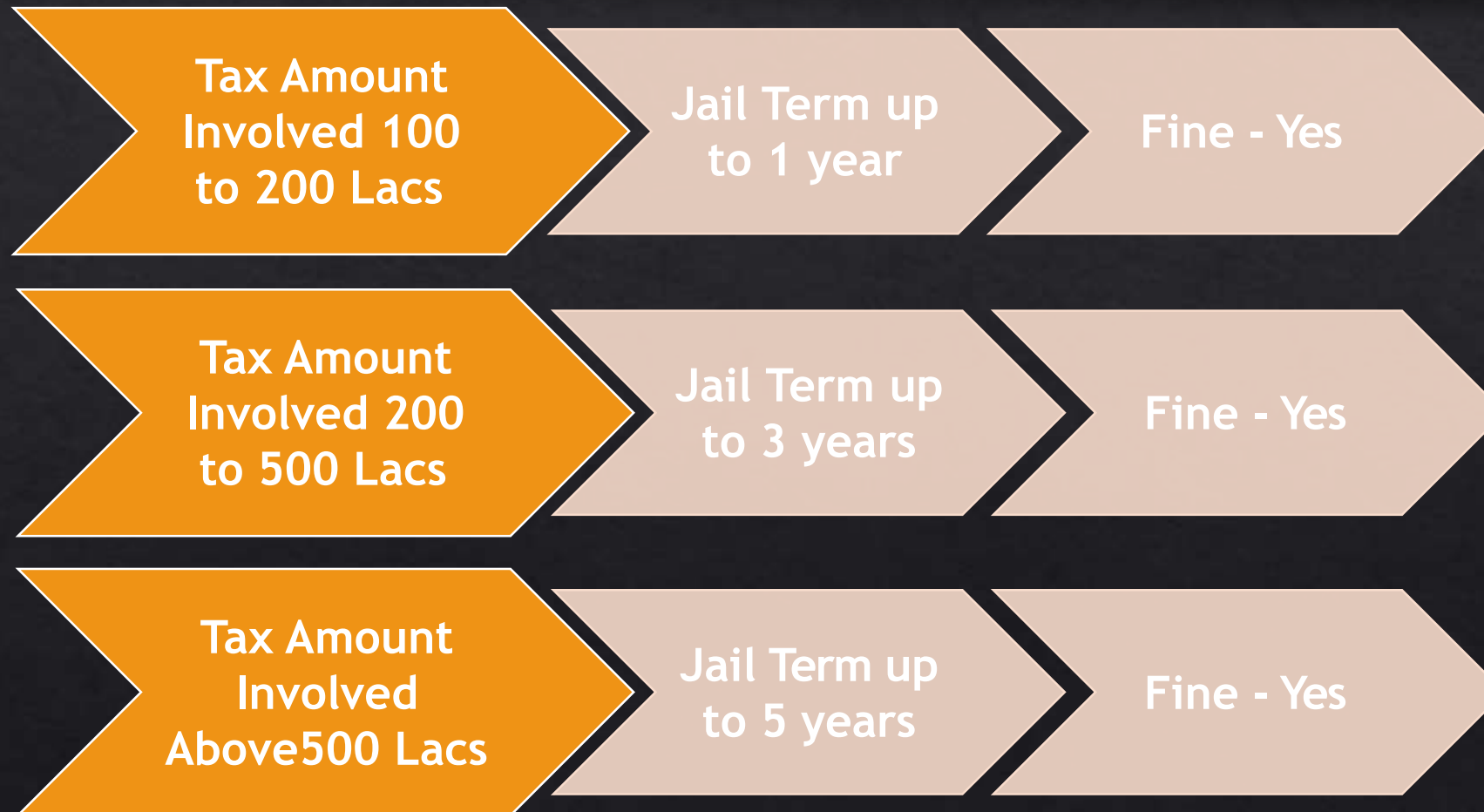
- Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973,
- **no confiscation made**
- **or penalty imposed**
- **under the provisions of this Act or the rules made thereunder**
- **shall prevent the infliction of any other punishment to which the person affected thereby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

Section 132 - Punishment for certain offences

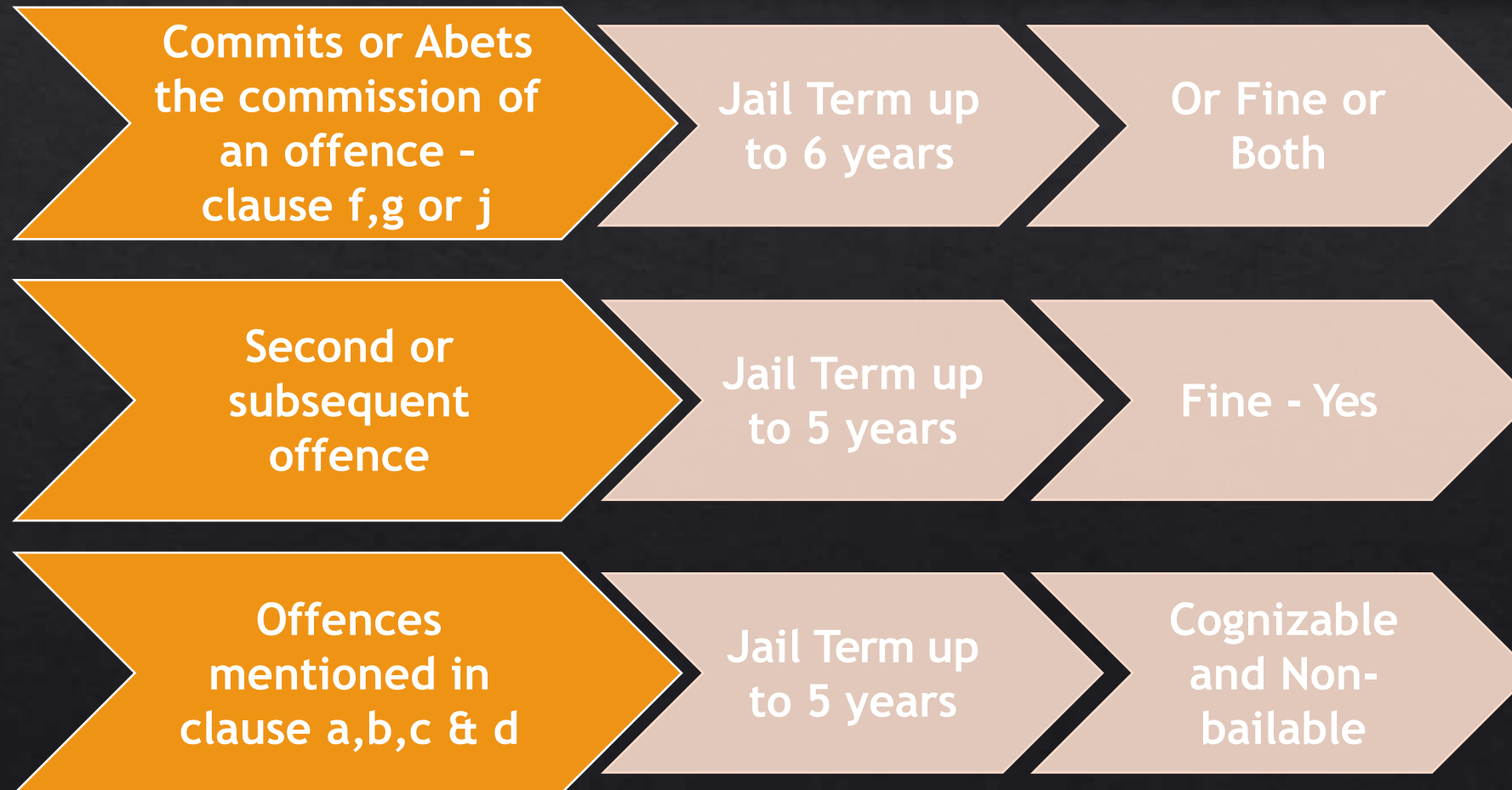
This section provides 12 offences which are as follows:--

Sl.No.	Offence
a.	Supply without invoice/incorrect /false invoice to evade tax
b.	Issue invoice or bill without supply - wrongful availment or utilization of ITC or refund
c.	Avails ITC based on b above
d.	Collects tax & fails to pay beyond 3 months
e.	Evades tax or Fraudulently avails ITC or obtains refund (other than a to d)
f.	False records/accounts/information
g.	Prevents/Obstructs officer in discharge of his duties
h.	supplies, transports or stores any goods which he has reasons to believe are liable to confiscation
i.	Receives supply in contravention of provisions - reason to believe
j.	tampers with or destroys any material evidence or documents;
k.	Fails to supply information or providing false information
l.	attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k)

Section 132 – Punishment for certain offences



Section 132 – Punishment for certain offences



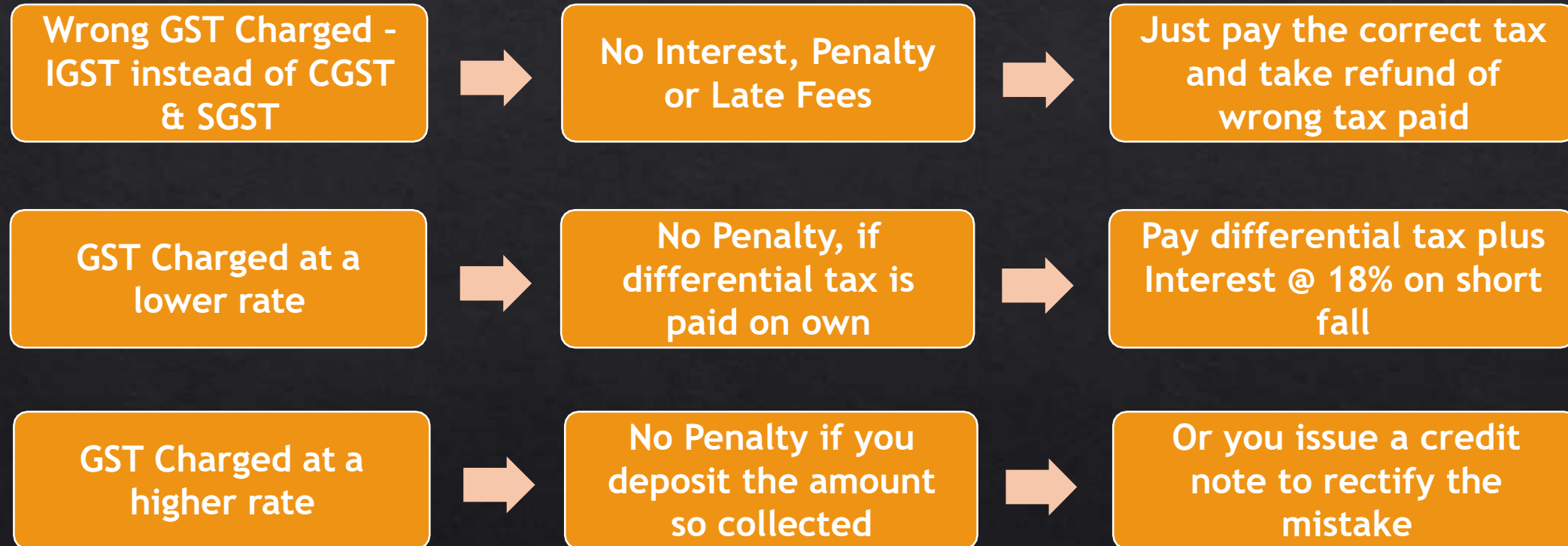
Section 133 – Liability of officers and certain other persons

- (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 subsection (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.***

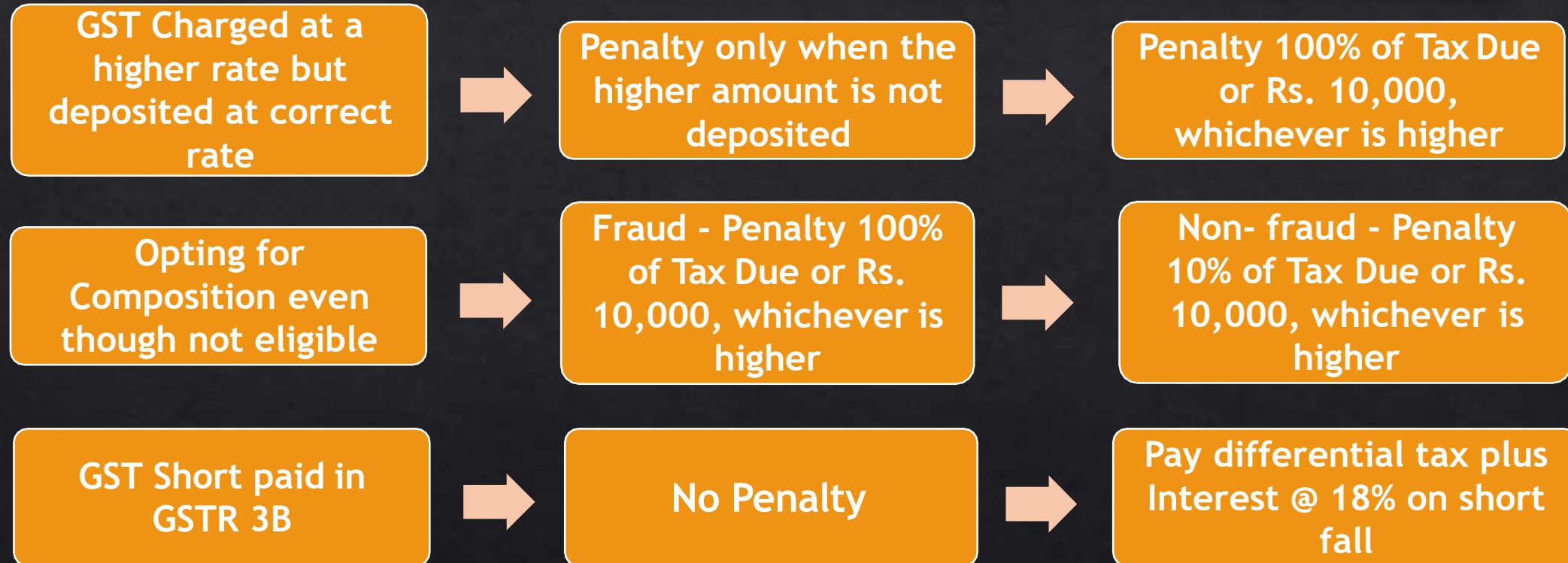
Section 134 – Cognizance of offences

- 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.

Offence Vs. Interest Vs. Penalty Vs. Late Fees



Offence Vs. Interest Vs. Penalty Vs. Late Fees



Offence Vs. Interest Vs. Penalty Vs. Late Fees



Thank you.....!

TRD - ICAI