



Ref No: ICAI /GST\_DoO/9-2020

Date: 07/09/2020

To,

**Shri Virender Kumar Choudhary,**  
Pr. ADG, GST, Mumbai

Sub: Video Conference on Consultation meeting regarding decriminalization of certain offences under the GST Laws

Ref: Google Meet on **04.09.2020 at 11:00 hours**

Respected Sir

With reference to above we are submitting our response as follows.

GST Law envisages two types of punishments. These can be simultaneous and concurrent. Penalty for violation of statutory provisions involves a penalty of money and confiscation of goods and these penalties are imposable by the department authorities. Criminal punishment is of imprisonment and fine, which can be granted only in a criminal court after prosecution but these are also provided under GST Law. Provisions related to penalty has been provided in section 122 to section 131 whereas provisions related to prosecution and compounding are provided in section 132 to 138 of GST Act. It is also seen that many noncompliance are also covered under both categories that are penalties as well as prosecution and compounding.

Section 122 to 131 contained in Chapter XIX of GST Act makes provisions related to offence and penalties on taxable person, personal penalty, confiscation of goods or conveyance and different non compliances of different obligations cast upon the supplier under different provisions. Section 132 of CGST Act, 2017 provides that whoever commits any of the offences covered under respective clauses shall be punishable with imprisonment specified in the respective section. Section 132(2) provides that where any person convicted of an offence is again committed an offence under this section; he shall be punishable for second and every subsequent offence with imprisonment for a term which may extend to 5 years and with fine. Section 132(3) further provides that in absence of special and adequate reason to the contrary to be recorded in the judgement, the imprisonment referred to in few clauses shall not be for a term less than six months. These section does not specify the special and adequate reasons but some of the factors can be 'age of the accused', 'accused is not principal offender' etc.

**The nature of offence specified in case of Clause (f), (g) and (j) of section 132(1) are exactly same with section clause (x), (xiii) and (xx) of section 122(1) of GAT Acts. The nature of offence as specified in above clauses are as follows.**

(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;

(j) Tampers with or destroys any material evidence or documents;

**Besides of above in case of the following, the nature of offence specified u/s 132(1) are more or less similar to contraventions specified in section 122(1) of GST Act. The details of reference clauses are given below.**



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Sl. No.	Clauses in section 122(1)	Clauses / provisions in section in section 122(1) or 122(3)
1	(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;	(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;
2	(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 there under;	122(3)(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 there under;
3	(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 there under;	122(3)(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 there under;
4	(k) fails to supply any information which he is required to supply under this Act or the rules made there under 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	(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made there under or furnishes false information or documents during any proceedings under this Act;

From the above, it is our observation that the existing GST Law allows liberal use of arrest provisions where an individual can be put behind bars merely on reasons to believe that he or she must have escaped tax liability before investigation on the issue could be concluded. Moreover, misuse of input tax credit provision also allows for arrest even if the fault may be committed by someone else.

The provisions basically need to decriminalize violations involving minor technical and procedural defaults. Besides, for majority of the compoundable offences, sections should be shifted to internal adjudication mechanism. From the stakeholder's perspective, offences which are minor technical defaults, defaults resulting from bonafide actions of officers, administrative defaults in filing of forms, reports and some minor genuine delays etc are the matters that could be dealt with using civil penalties rather than criminal prosecutions. Besides above the it is suggested to shift the prosecution clauses as provided in the table to civil liabilities as covered under section 122 to 131 of GST Acts.

Thanking You.

**CMA Niranjan Mishra**  
**Chairman, Indirect Taxation Committee**  
**The Institute of Cost Accountants of India**