

Chapter 21: Offences and Penalties under GST

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21.0 Introduction

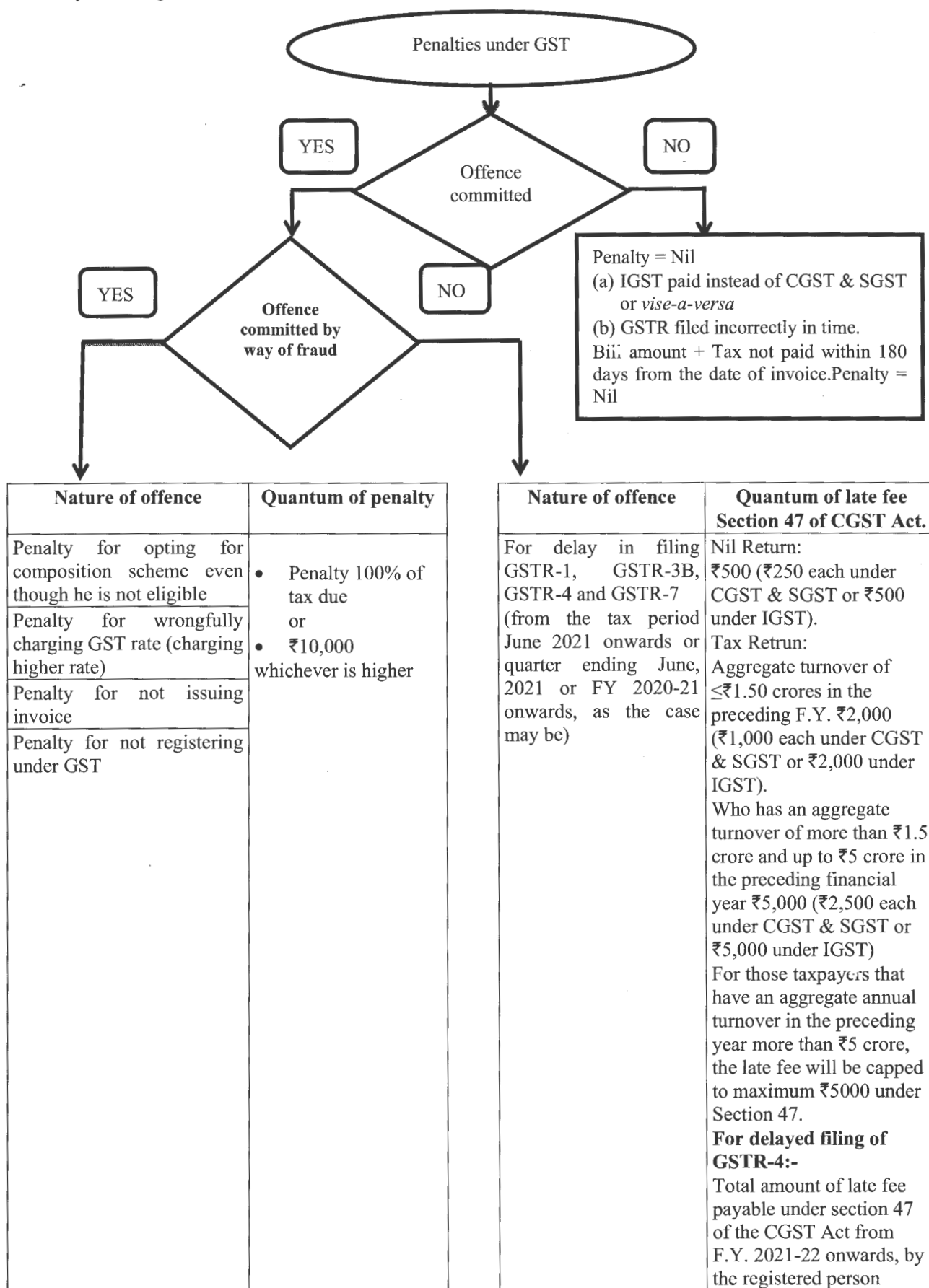
An offence under GST is a breach of the provisions of GST Act and GST Rules and hence penalty can be imposed.

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

Sections 122 to 131 contained in Chapter XIX of CGST Act, 2017 makes provisions relating to offence and penalties.

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Summary of these provisions are as follows:



Nature of offence	Quantum of penalty	Nature of offence	Quantum of late fee Section 47 of CGST Act.
			(composition taxpayer) who fail to furnish Form GSTR-4 by the due date, shall be as follows: Total tax payable in GSTR-4 is nil: ₹500 (₹250 each under CGST & SGST or ₹500 under IGST) Tax return: ₹2,000 (₹1,000 each under CGST & SGST or ₹2,000 under IGST) For delayed filing of GSTR-7:- ₹25 for every day during which such failure continues or ₹100 whichever is lower.
Penalty for incorrect invoicing	• Upto ₹25,000	Penalty for not filing GSTR.	Penalty 10% of tax due or ₹10,000 whichever is higher
Penalty for helping a person to commit fraud		Penalty for opting for composition scheme even though he is not eligible	

Example: M/s R Pvt Ltd. supplied goods worth ₹10,00,000 to M/s Y Ltd in the month of October 20XX plus GST 12%. M/s R Pvt Ltd. paid the GST on 5th January 20XX. ITC of ₹70,000 is available in the books in September 20XX. Calculate interest and penalty for delay in filing of October 20XX return if any.

Rework if dues paid against order under section 74 (dated 1st July, 20XX) of the CGST Act, 2017 (i.e. recovery of dues in case of fraud).

Answer:

Interest = ₹10,134

[i.e. $(1,20,000 - 70,000) \times 18\% \times 411/365$]

Total Penalty is ₹10,000.

[i.e. ₹5,000 (CGST) plus ₹5,000 (SGST)].

$(411 \text{ days} \times ₹50 = ₹20,550 \text{ CGST and SGST of } ₹20,550 \text{ or } ₹10,000 \text{ whichever is less})$

rework:

Interest = ₹32,430/-

[i.e. $1,20,000 \times 24\% \times 411/365$]

Total penalty is ₹1,20,000

$100\% \times ₹1,20,000 = ₹1,20,000 \text{ (CGST + SGST)}$

or

₹20,000 (i.e. ₹ 10,000 each Act.)

whichever is higher.

Example 2: Answer the following questions:

- Shagun started supply of goods in Vasai, Maharashtra from 01.01.20XX. Her turnover exceeded ₹40 lakh on 25.01.20XX. However, she didn't apply for registration. Determine the amount of penalty, if any, that may be imposed on Shagun on 31.03.20XX, if the tax evaded by her, as on said date, on account of failure to obtain registration is ₹1,26,000.
- Sagar, managing director of Telecom Solutions Ltd., is issued a summon to appear before the central tax officer to produce the books of accounts of Telecom Solutions Ltd. in an inquiry conducted on said company. Determine the amount of penalty, if any, that may be imposed on Sagar, if he fails to appear before the central tax officer.

(CA Final RTP May 2018)

Answer:

- (i) Section 122(1)(xi) of the CGST Act, 2017 stipulates that a taxable person who is liable to be registered under the CGST Act, 2017 but fails to obtain registration shall be liable to pay a penalty of:

- (a) ₹10,000 or
(b) an amount equivalent to the tax evaded [₹1,26,000 in the given case],
whichever is higher.

Thus, the amount of penalty that can be imposed on Shagun is ₹1,26,000.

- (ii) Section 122(3)(d) of the CGST Act, 2017 stipulates that any person who 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 is liable to a penalty which may extend to ₹25,000. Therefore, penalty upto ₹25,000 can be imposed on Sagar, in the given case.

As per the Finance Act, 2020, sub-section (1A) inserted in Section 122 of CGST Act, 2017, w.e.f. 1-1-2021:

namely,

Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of subsection (1) of Section 122 and at whose instance such transaction is conducted, shall be liable to pay penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

Note:

Section 122(1)(i): supplies any goods or services or both without issuance of any invoices or issues an incorrect or false invoice with regard to any such supply;

Section 122(1)(ii): issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

Section 122(1)(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;

Section 122(1)(ix): takes or distributes ITC in contravention of section 20 of the CGST Act, 2017 or the rules made thereunder.

Section 126 of CGST Act, 2017, General disciplines related to penalty:

Section 126(1) of CGST Act, 2017, 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 ₹5,000;
(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.

Example: Mangeshwar, registered under the CGST Act, 2017 has made a breach in payment of tax amounting to ₹6,100. Assessing authority has imposed a penalty as per law applicable to the breach. Invoking the provisions of Section 126, Mangeshwar argues that it is a minor breach and therefore no penalty is impossible.

In another instance, Mangeshwar has omitted certain details in documentation that is not easily rectifiable. This has occurred due to the gross negligence of his accountant and he makes a plea that he was unaware of it and therefore no penalty should be levied.

Mangeshwar voluntarily writes accepting a major procedural lapse from his side and requests the officer to condone the lapse as the loss caused to the revenue was not significant.

Also a lapse on the part of Mangeshwar has no specific penalty provision under the CGST Act, 2017. He is very confident that no penalty should be levied without a specific provision under this Act.

Discuss, what action may be taken by the Assessing Authority under law for each of the above breaches. (CA Final May 2018)

Answer:

As per Section 126(1) a breach shall be considered a 'minor breach' if the amount of tax involved is less than ₹5,000; no penalty is imposed on such minor breach.

In the given case it is ₹6,100, hence, it is not minor breach. Therefore, argument of Mangeshwar is not correct.

As per Section 126(1) of the CGST Act, 2017, 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 and made without fraudulent intent or gross negligence. No penalty is imposed on such omission or mistake in documentation.

In the given case Mangeshwar has omitted certain details in documentation that is not easily rectifiable. Hence, penalty will be imposed.

As per Section 126(5) of CGST Act, 2017, 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.

In the given case proper officer may consider condoning the lapse.

Section 126(6) of CGST Act, 2017, 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. In the given case as per section 126 penalty can be imposed.

Power to impose penalty in certain cases Section 127 of the CGST Act, 2017:

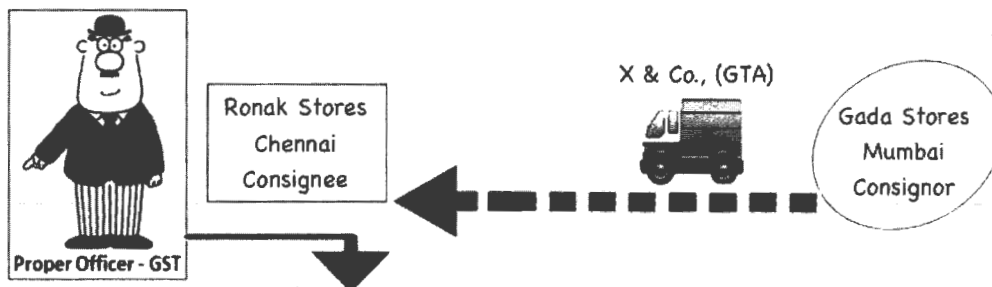
Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity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

Power to waive penalty or fee or both Section 128 of the CGST Act, 2017:

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.

Detention, seizure and release of goods and conveyances in transit Section 129 of the CGST Act, 2017:

Section 129, Detention, seizure and release of goods and conveyances in transit,
As per Finance Act, 2021 (w.e.f. 1-1-2022):



As per section 129(1) of the CGST Act, 2017 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,-- Upon payment of penalty in addition to tax and interest. W.e.f. 1-1-2022, only penalty is payable for release of such goods but amount of penalty is now higher.

Particulars	Taxable Goods		Exempted Goods	
	When owner comes forward	When owner does not come forward	When owner comes forward	When owner does not come forward
Penalty Sec 129(1)(a)/(b)	200% of Tax payable on such goods	50% of the value of goods or 200% of the tax payable on such goods, whichever is higher.	@2% of the value of goods Or ₹25,000 Whichever is less	@5% of the value of goods Or ₹25,000 Whichever is less
Sec 129(1)(c), Upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) of Section 129(1), in such form and manner as may be prescribed.				

Section 129(3), The Proper Officer shall issue notice within 7 days of such detention or seizure, specifying the penalty payable, and thereafter pass an order within 7 days from the date of service of such notice, for payment of penalty u/s 129.

Section 129(6), Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within 15 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 in newly inserted rule 144A, 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.

As a result, proceedings under section 129 delinked from the proceedings under section 130 of CGST Act, 2017.

Example: calculate the amount to be paid for release of goods detained or seized under section 129 of the CGST Act, 2017, if owner of the goods does not come forward for payment of applicable tax and penalty.

Particulars	Amount in ₹
Value of goods	15,00,000
GST payable on such goods	2,70,000

Answer:

In the given case, the amount payable under section 129 is ₹7,50,00/-

Penalty only is payable.

$15,00,000 \times 50\% = 7,50,000$

Or

$2,70,000 \times 200\% = 5,40,000$

Whichever is higher.

A new rule 144A (**Recovery of penalty by sale of goods or conveyance detained or seized in transit**) has been inserted with effect from 01.01.2022. The new rule lays down that where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under section 129(1) within fifteen days from the date of receipt of the copy of the order passed under section 129(3), the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance.

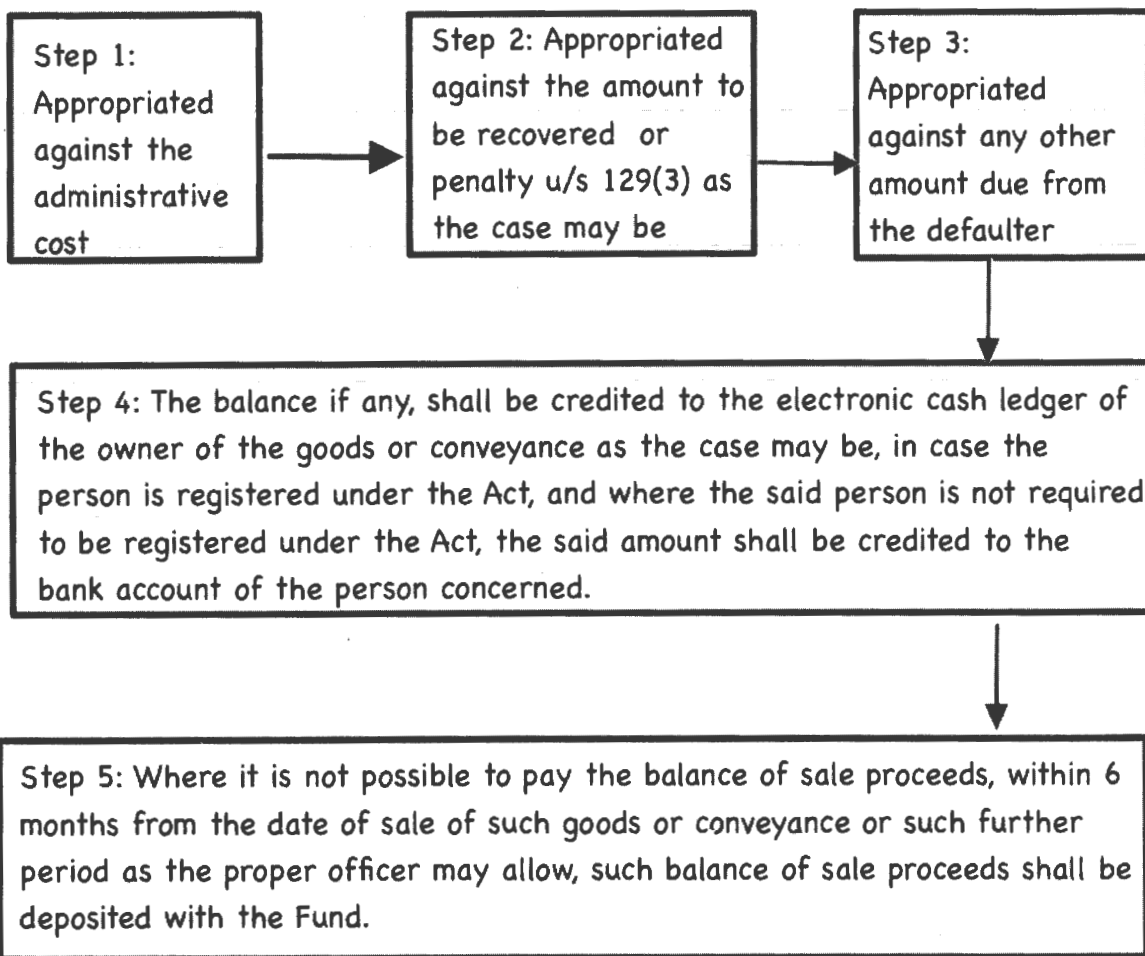
If the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer. The said goods or conveyance shall be sold through a process of auction, including e-auction.

Question: Who will be considered as the "owner of the goods" for the purposes of section 129(1) of the CGST Act?

Answer: As per the CBIC Circular No. 76/50/2018-GST, dated 31st Dec. 2018, It is hereby clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods.

Sequence of appropriation of sale proceeds realized for recovery of penalty under section 129(3):

Sequence of appropriation provided for sale proceeds realised for recovery of penalty under section 129(3) dealt under Rule 154 of CGST Rules, 2017:



[Vide Notification No. 40/2021 CT dated 29-12-2021]

Confiscation of goods or conveyances and levy of penalty Section 130 of the CGST Act, 2017:

As per Section 130(1) of the CGST Act, 2017—

- (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.

As per Section 130(2) of the CGST Act, 2017, 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.

As per Section 130(3) of the CGST Act, 2017, 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.

As per Section 130(4) of the CGST Act, 2017, 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.

As per Section 130(5) of the CGST Act, 2017, Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

As per Section 130(6) of the CGST Act, 2017 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.

As per Section 130(7) of the CGST Act, 2017, 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.

Example: From the details given below determine the maximum amount of fine in lieu of confiscation leviable under 130 of CGST Act, 2017 on:

- (i) the goods liable for confiscation.
- (ii) On the conveyance used for carriage of such goods.

Details are as follows:

Cost of the goods for owner before GST	15,00,000
Market value of goods	20,00,000
GST on such goods	3,60,000

You are also required to explain relevant legal provisions in brief.

[CA Final May 2018 (new)] 5 Marks

Answer:

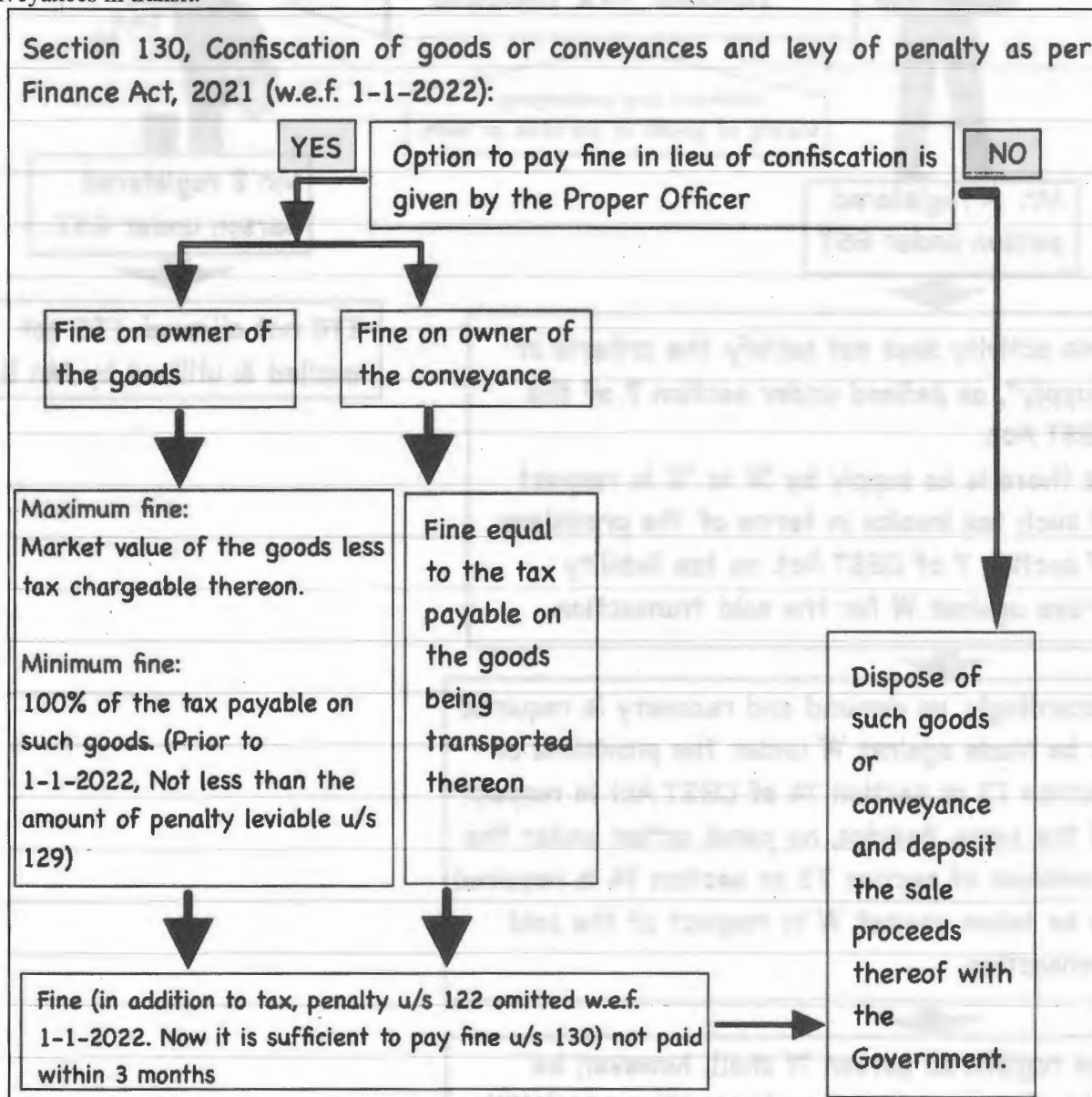
- (i) Fine in lieu of confiscation u/s 130 of CGST Act, 2017 = ₹16,40,000/-
(₹20,00,000 – ₹3,60,000)
- (ii) Fine in lieu of confiscation u/s 130 of CGST Act, 2018 = ₹3,60,000/-

Note:

- (a) Fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:
- (b) 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.

Proceedings under section 130 delinked from proceedings under section 129:

w.e.f. 1-1-2022, Section 130 of the CGST Act (i.e. **Confiscation of goods or conveyances and levy of penalty**) has been amended to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.

**Proceedings under section 129 and section 130 delinked from proceedings under section 74 of CGST Act, 2017:**

Section 74 deals with Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful mis-statement or suppression of facts.

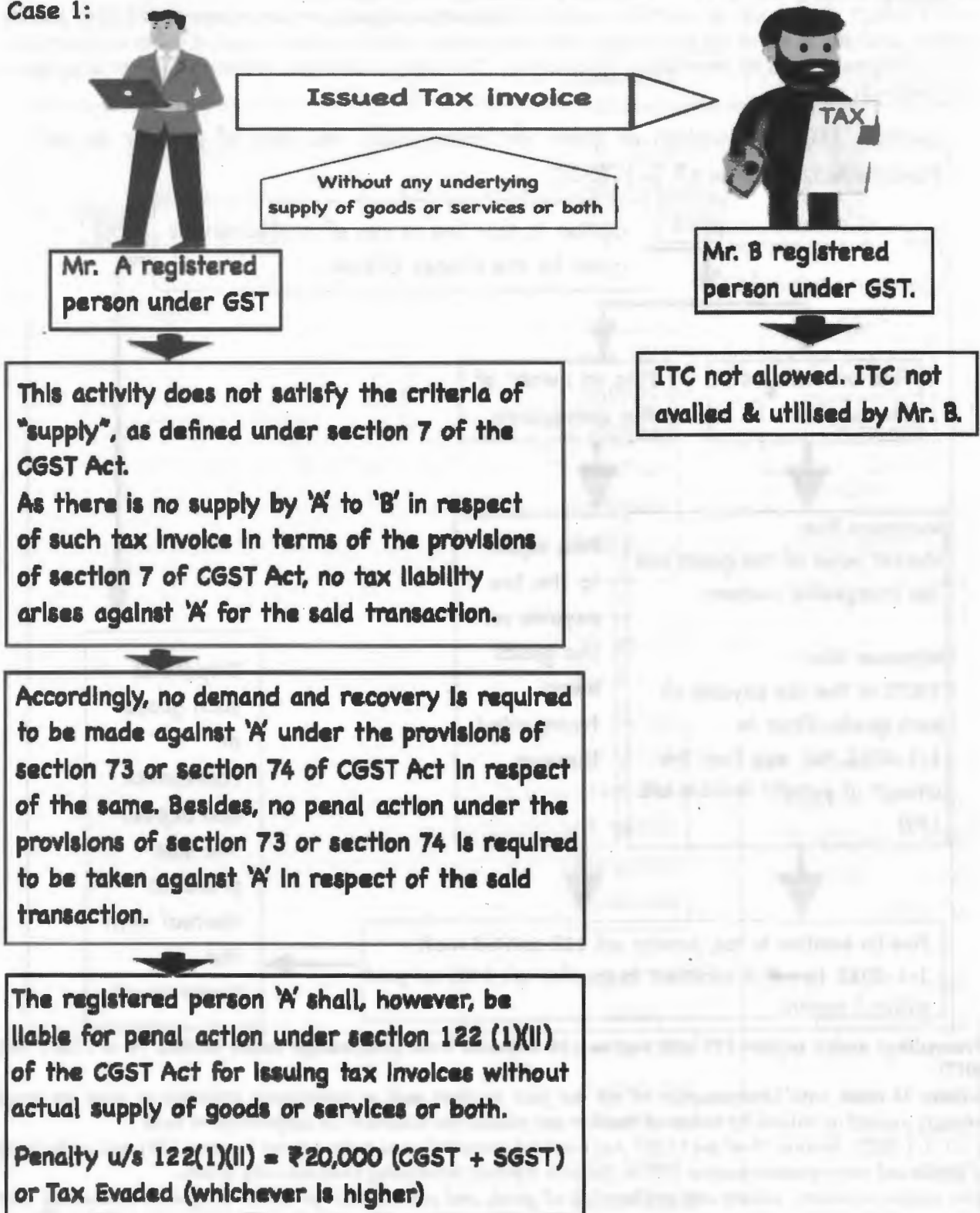
w.e.f. 1-1-2022, Section 74 of the CGST Act has been amended so as to make seizure (section 129) and confiscation of goods and conveyances (section 130) in transit a separate proceeding from recovery of tax.

This makes detention, seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.

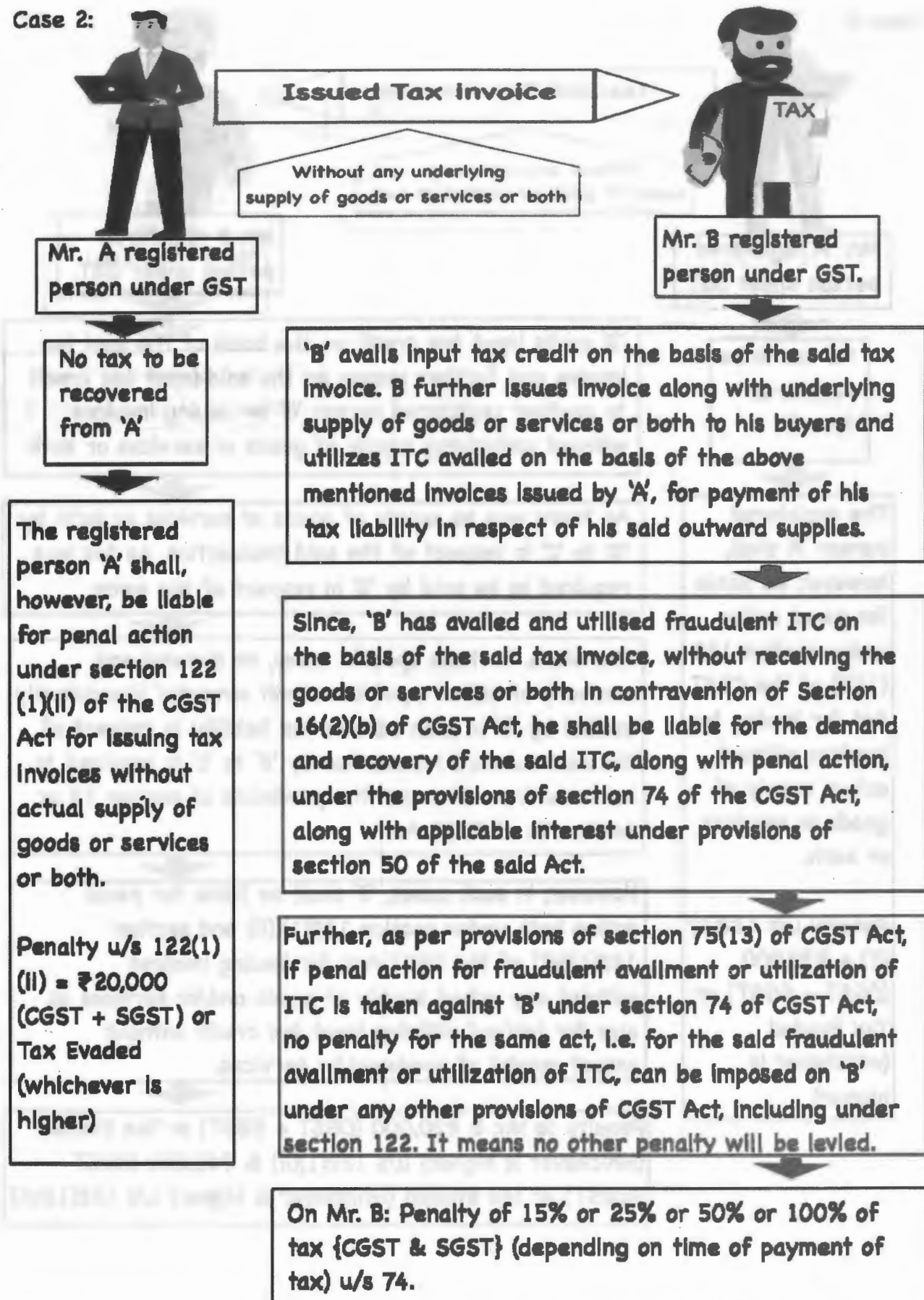
A circular has been issued clarifying various issues relating to applicability of demand and penalty provisions under the CGST Act, 2017 in respect of transactions involving fake invoices:

[Circular No. 171/03/2022-GST, dated 6th July, 2022]

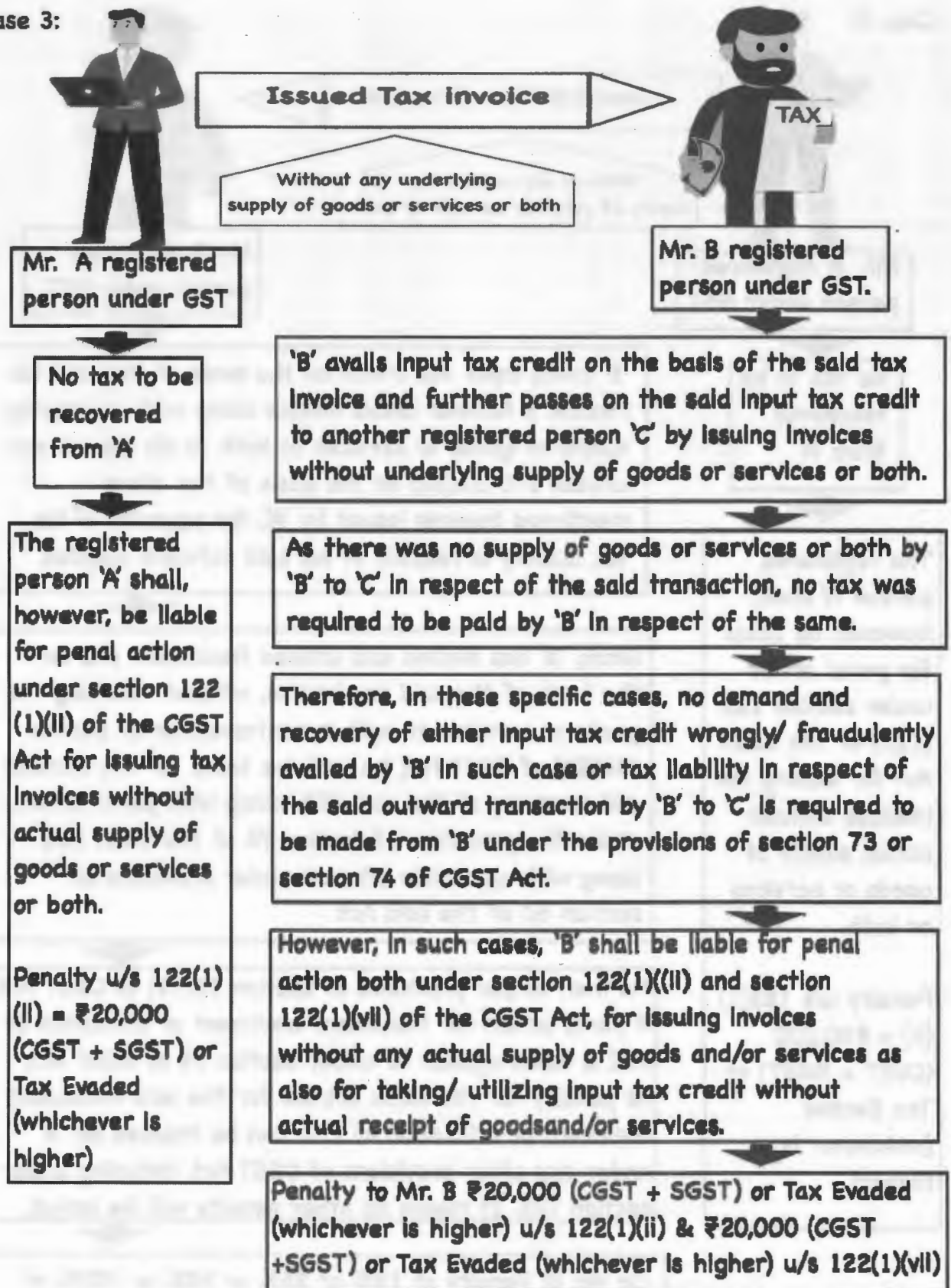
Case 1:



Case 2:



Case 3:



Since, 'C' has availed and utilised fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both in contravention of Section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act.

Mr. C has to pay penalty @15% or 25% or 50% or 100% of tax as the case may be u/s 74 along with Interest u/s 50.

Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case.

21.1 Arrest, Prosecution and Compounding of Offence

The person committing the offence will be punishable depending on the amount involved which is as follows:

Prosecution is the conducting of legal proceedings against someone in respect of a criminal charge.

Any person committing the following offences (i.e., deliberate intention of fraud) becomes liable to prosecution, i.e., face criminal charges Section 132(1) of the CGST Act, 2017:

The following are cognizable offences if the tax evaded > ₹500 lakh (section 132(5) of the CGST Act, 2017):

Whoever commits any of the following offences (from the Finance Act, 2020, dated 27-3-2020 read as Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences), namely (Section 132(1) of the CGST Act, 2017):—

- (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), (this clause shall be substituted from the Finance Act, 2020 dated 27-3-2020 namely- 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;

Note: all the above offences shall be non-cognizable and bailable where tax evaded ≤ ₹500 lakh (Section 132(4) of the CGST Act, 2017).

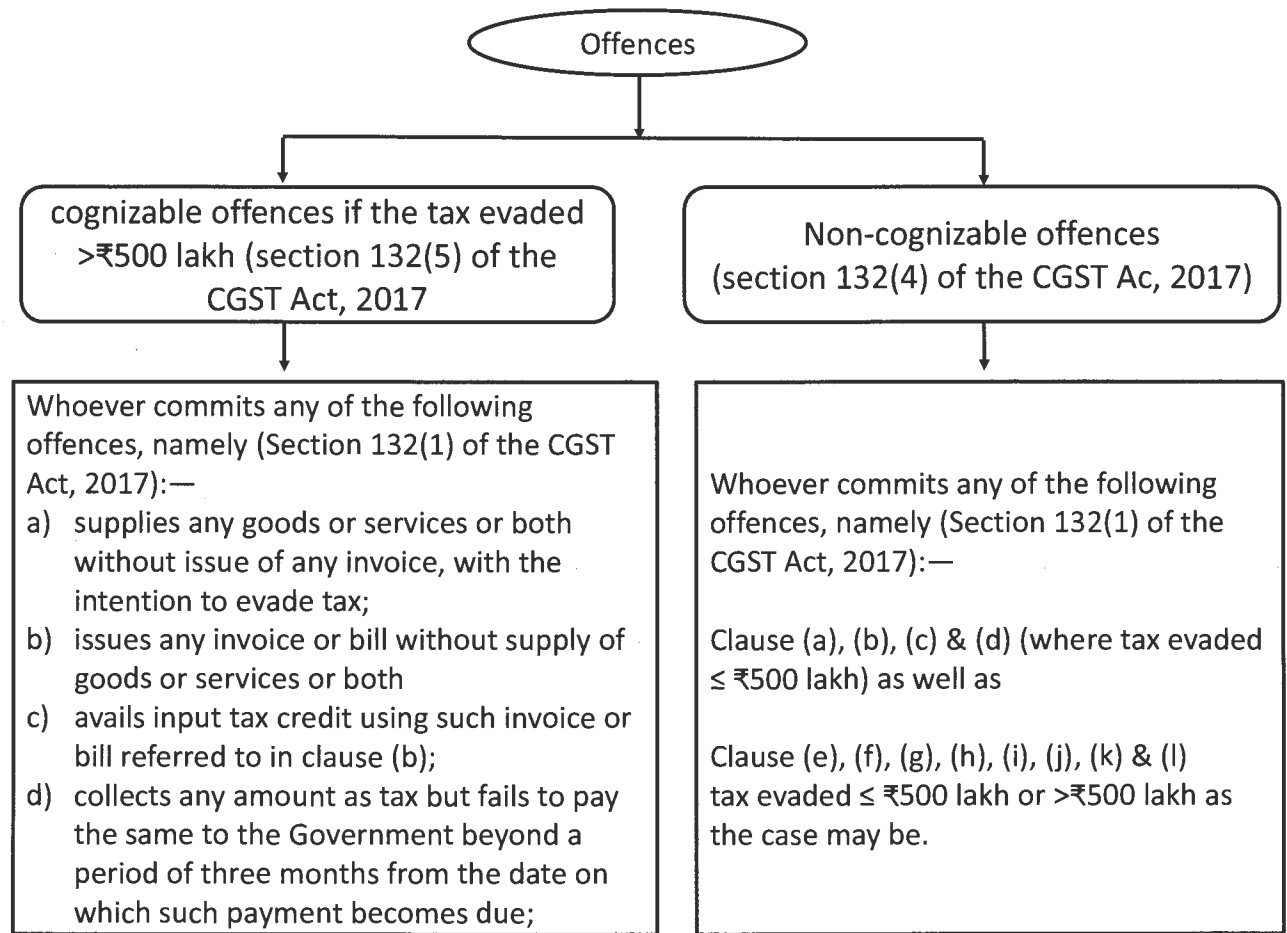
The following are non-cognizable and bailable offences irrespective of the tax amount evaded (Section 132(4) of the CGSG Act, 2017):

Whoever commits any of the following offences, namely (Section 132(1) of the CGST Act, 2017):—

- (e) evades tax, (fraudulently avails input tax credit omitted from the Finance Act, 2020, dated 27-3-2020) 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,

Cognizable or non-cognizable:

Section	Tax amount involved	Quantum of punishment by imprisonment	Cognizable or non-cognizable	Bailable or non-bailable
132(1)(i)	> ₹500 lakhs	Upto 5 years with fine	Cognizable	Non-bailable
132(1)(ii)	> ₹200 lakhs ≤ ₹500 lakhs	Upto 3 years with fine	Non-cognisable	Bailable
132(1)(iii)	> ₹100 lakhs ≤ ₹200 lakhs	Upto 1 years with fine	Non-cognisable	Bailable
132(1)(iv)	Offence specified in clauses (f), (g) or (j) of Section 132(1) of the CGST Act, 2017	Upto 6 months or with fine or with both	Non-cognisable	Bailable

Simplified approach:**21.2 Second and subsequent offence:**

Section 132(2) of the CGST Act, 2017 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.**

21.3 Minimum imprisonment is 6 months:

Section 132(3) of the CGST Act, 2017 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.

21.4 Prior permission from the Commissioner:

Section 132(6) of the CGST Act, 2017 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.

Example 1: Discuss the prosecution, arrest and bail implications, if any, in respect of the following cases pertaining to the period November 2017:

- ‘Ram’ avails input tax credit of ₹162 lakh without actual receipt of excisable goods. However, he is yet to utilize the same (i.e. Yet to confirm this credit in his GSTR-2A return).
- ‘Rahim’ wilfully evades payment of tax of ₹275 lakh.
- ‘Robert’ fails to supply information sought by the Central Tax Officer. The amount of GST involved is ₹8 lakh.
- ‘Lakshman’ collects ₹585 lakh as tax from its clients but deposits only ₹25 lakh with the Central Government.
- ‘Karthik’ collects ₹265 lakh as IGST from its clients and deposits ₹261 lakh with the Central Government by falsifies or substitutes financial records or produces fake accounts or documents.

What will be the prosecution implications, if Rahim, Robert, Lakshman and Karthik are convicted for subsequent offences?

Answer:

Person	Offence	Prosecution/ Imprisonment	Arrest	Bail
‘Ram’	No offence. Because utilization of ITC not confirmed in his return GSTR-2A	Not applicable	Not applicable	Not applicable
‘Rahim’	Non-cognizable offence [Section 132(1)(e)]	Upto 3 years with fine [Section 132(1)(ii)]	Arrest can be ordered by Commissioner of Central Tax.	Bailable Offence [Section 132(4)]
‘Robert’	Non-cognizable offence [Section 132(1)(k)]	Not applicable [since, tax evasion does not exceed ₹100 lakh]	No Arrest can be ordered by Commissioner of Central Tax.	Not applicable
‘Lakshman’	Cognizable offence Section 132(1)(d)	Upto 5 years with fine [Section 132(1)(i)]	Arrest can be ordered by Commissioner of Central Tax without arrest warrant	Non-Bailable Offence [Section 132(5)]
‘Karthik’	Non-cognizable offence [Section 132(1)(f)]	Upto 6 months or with fine or with both [Section 132(1)(iv)]	Arrest can be ordered by Commissioner of Central Tax.	Bailable Offence [Section 132(4)]

If Rahim, Robert, Lakshman and Karthik are convicted for subsequent offences:

Person	Prosecution for subsequent offences [Section 132(2) of the CGST Act, 2017]
‘Rahim’	Imprisonment upto 5 years with fine
‘Robert’	Imprisonment upto 5 years with fine
‘Lakshman’	Imprisonment upto 5 years with fine
‘Karthik’	Imprisonment upto 5 years with fine

Example 2: M/s X Pvt Ltd., issued invoice without supply of goods for ₹20 crore. Central Tax Authority issued a show cause notice by demanding following:

CGST & SGST 18% = ₹3.60 crore

Penalty 100% of tax due = ₹3.60 crore

Interest 24% p.a

You are required to answer the following:

- Is it cognizable offence?
- Quantum of punishment if M/s X Pvt Ltd., has been convicted.

Answer:

- It is non-cognizable Offence.

(b) Quantum of punishment:

Section	Tax amount involved	Quantum of punishment by imprisonment	Cognizable or non-cognizable	Bailable or non-bailable
132(1)(ii)	> ₹200 lakhs ≤ ₹500 lakhs	Upto 3 years with fine	Non-cognizable	Bailable

Note:

- (i) Minimum imprisonment is 6 months unless special or adequate reasons are noticed by the Judiciary.
- (ii) If the assessee committed second and subsequent time then irrespective of evasion of tax, maximum imprisonment upto 5 years.

21.4.1 Power to arrest

As per Section 69(1) of CGST Act, 2017, 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.

As per section 69(2) of CGST Act, 2017, 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.

As per Section 69(3) of CGST Act, 2017, 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.

Monetary limit of ₹500 lakh is not applicable to prosecute a person:

(i) **Habitual evaders:** A company/taxpayer would be treated as habitual evader, if it has been involved in two or more cases of confirmed demand (at the first adjudication level or above) of tax evasion/fraudulent refund or misuse of ITC involving fraud, suppression of facts etc. in past two years such that the total tax evaded and/or total ITC misused and/or fraudulently obtained refund exceeds Five Hundred Lakh rupees. DIGIT database may be used to identify such habitual evaders.

(ii) **Arrest Cases:** Cases where during the course of investigation, arrests have been made under section 69 of the CGST Act.

Guidelines on issuance of summons under section 70 of the CGST Act, 2017:

(Instruction No. 03/2022-23 (GST-Investigation) dated 17.08.2022)

Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Deputy/ Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.



the officer issuing summons should record in file about appearance/ non-appearance of the summoned person



Issuance of summons may be avoided to call upon statutory documents which are digitally/ online available in the GST portal.



Summons should not issued in first instance to Senior management officials unless their involvement in the decision making leads to loss of revenue.



↓

Generation and quoting of Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation.

↓

The summoning officer must be present at the time and date for which summons is issued. In case of any exigency, the summoned person must be informed in advance in writing or orally.

↓

All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged persons.

↓

Generally 3 summons at reasonable intervals will be issued in case summoned person does not join investigation. After that a complaint should be filed with jurisdictional magistrate. However, this does not bar to issue further summons to the said person under section 70 of the CGST Act, 2017.

Guidelines for arrest and bail in relation to offences punishable under the CGST Act, 2017 (Instruction No. 02/2022-23 (GST-Investigation), dated 17.08.2022):

I.e. non-bailable offence or arrest is necessary to ensure proper investigation etc. Arrest not be resorted in cases of technical nature i.e. demand of tax is based on a difference of opinion regarding interpretation of Law.

Step 2: Procedure to arrest
Pr. Commissioner/Commissioner shall record on file that after considering the nature of offence, the role of person involved and evidence available, he has reason to believe that the person has committed an offence as mentioned in Section 132 and may authorize an officer of central tax to arrest the concerned person(s).

Step 3: Arrest memo
The arrest memo should indicate relevant section (s) of the CGST Act, 2017 or other laws attracted to the case and to the arrested person and inapplicable provisions should be struck off. In addition, the grounds of arrest must be explained to the arrested person and this fact must be mentioned in the arrest memo and also informed immediately to a nominated or authorised person of the arrested person.

Step 4: Post arrest formalities

In cases, where a person is arrested under sub-section (1) of Section 69 of the CGST Act, 2017, for an offence specified under sub-section (4) of Section 132 of the CGST Act, 2017 (i.e. ballable offences), the Assistant Commissioner or Deputy Commissioner is bound to release a person on bail against a bail bond.

In cases, where a person is arrested under sub-section (1) of Section 69 of the CGST Act, 2017, for an offence specified under sub-section (5) of Section 132 of the CGST Act, 2017 (non-ballable), the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

Step 5: Report to be sent

a monthly report of all persons arrested in the Zone shall be sent by the Principal Chief Commissioner(s)/Chief Commissioner(s) to the Directorate General of GST Intelligence, Headquarters, New Delhi, by the 5th of the succeeding month.

Section 133, Liability of officers and certain other persons:

Where any person engaged in connection with the collection of statistics u/s 151 or if any officer of central tax having access to information specified under section 150(1) wilfully acts otherwise than his duties shall be punishable with imprisonment for the term which may extend to 6 months or with fine which may extend to ₹25,000/-.

A person shall be prosecuted for any offence under this section:-

- ☐ In case of Government Servant – with the previous sanction of Government only.
- ☐ In case of person other than Government Servant – with the previous sanction of Commissioner only.

w.e.f. 1-1-2022, Section 151 of the CGST Act has been substituted to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.

Earlier, Commissioner was required to issue a notification to call for information from the concerned persons relating to any matter in respect of which statistics were to be collected.

W.e.f. 1-1-2022, section 152 of the CGST Act, has been amended so as to provide that no information obtained u/s 150 and 151 shall be used for the purpose of any proceedings under that Act without giving an opportunity of being heard to the person concerned.

w.e.f 1-1-2022, Section 168 of the CGST Act has been amended to enable the jurisdictional commissioner to exercise powers under section 151 to call for information.

Section 135, Presumption of culpable mental state:

In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—For the purposes of this section,—

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

Section 136, Relevancy of statements under certain circumstances:

A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, and may be admitted in evidence in the interest of justice, if:

Section 136(a):

1. the person who made the statement is dead
2. or cannot be found,
3. or is incapable of giving evidence,
4. or is kept out of the way by the adverse party,
5. or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable;

‘Or’

Section 136 (b):

If the above 5 circumstances do not exist, then before the statement is treated relevant and admissible under the law, it is necessary that—

- the maker of the statement is ‘not only’ required to be present in the proceedings before the adjudicating authority,
- ‘but’ the court is also obliged under the law to examine him
- ‘and’ the court has to form an opinion
- that having regard to the circumstances of the case,
- the statement should be admitted in evidence in the interest of justice.

W.e.f. 01-10-2022, Consequent to the amendment in section 38, sub-section (2) of section 168 has been amended so as to remove the reference of section 38 therefrom.

Example: Mr. Truth in the statement made and signed by him under section 70 has stated the facts that M/s RRR Ltd. has supplied raw material to him without issue of any invoice. Before this statement of Mr. Truth, can be considered to be relevant and admissible in prosecution against M/s RRR Ltd, for the purpose of proving that M/s RRR Ltd. have committed an offence of supplying the goods issue of invoice, it is necessary that statement of Mr. Truth passes the test of ‘being relevant’. This test of relevance is placed in Section 136 of the Act.

Section 137, Offences by companies (including Public & Private):

Example 1: What are the consequences of offences committed by Companies and certain other persons?

Answer: When an offence is committed by a Company, every person who at the time of offence was committed was in charge of or was responsible to the Company for the conduct of business of the Company as well as the Company shall be deemed to be guilty of the offence and shall be liable to be prosecuted against and punished accordingly.

Example 2: What are the consequences of an offence (under the CGST Act) has been committed by a Company and it is proved that the offence has been committed with the consent of any director, manager, secretary or other officers of the company?

Answer: If an offence under the Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officers of the Company, then such director, manager, secretary or other officers of the Company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Example 3: What would be the situation if the person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence?

Answer: Such person shall not be liable to any punishment.

Example 4: What are the consequences of offences committed by taxable person being a partnership firm or a LLP or HUF or a trust?

Answer: If offences are committed by taxable person being a partnership firm or a LLP or HUF or a trust, the partner or Karta or managing trustee respectively shall deemed to be guilty of offence and shall be liable to be proceeded against and punished accordingly.

Further, If offences are committed by partnership firm or a LLP or HUF or a trust and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, the partner or Karta or managing trustee respectively, then such partner or Karta or managing trustee shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Example 5: Is culpable mental state necessary for prosecution?

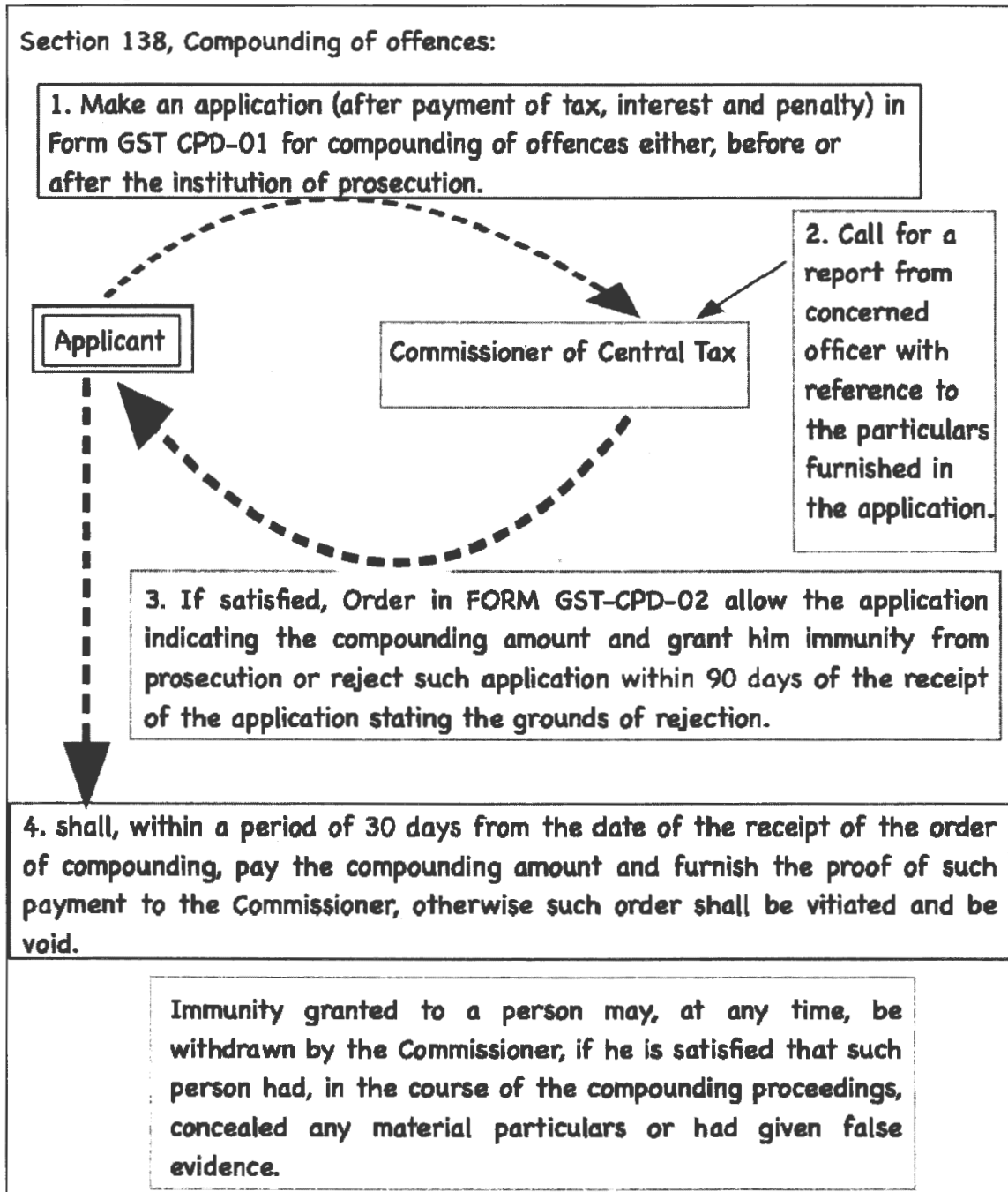
Answer: Yes. In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of culpable mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Section 134, Cognizance of Offences:

No court shall take cognizance (i.e. notice) 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.

21.5 Compounding of offences under GST [Section 138 of the CGST Act, 2017]

Compounding of offences is a short cut method to avoid litigation. In the case of prosecution for an offence in a criminal court, the accused has to appear before the Magistrate at every hearing through an advocate. Court proceedings are time-consuming and expensive. In compounding, the accused is not required to appear personally and can be discharged on payment of compounding fee which cannot be more than the maximum fine leviable under the relevant provisions.



Compounding will not be available for—

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;

- (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;
- (c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;
- (d) a person who has been convicted for an offence under this Act by a court;
- (e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132 of the CGST Act, 2017; and
- (f) any other class of persons or offences as may be prescribed:

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

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

Amount payable for compounding

The amount payable for compounding of offences shall be 50% of the tax involved subject to a minimum ₹10,000.

Maximum amount for compounding is—

150% of the tax

OR

₹30,000

-Whichever is higher.

Abatement of further proceedings:

On payment of the compounding amount, no further proceedings shall be initiated against the accused person for the same offence and any criminal proceedings, if already initiated, will be abated.

Apart from prosecution, the offender can also be arrested.

Example 1: Are there any monetary limits prescribed for compounding of offence?

Answer: Yes. The lower limit for compounding amount is to be the greater of the following amounts:—

- 50% of tax involved, or
- ₹10,000.

The upper limit for compounding amount is to be greater of the following amounts:—

- 150% of tax involved, or
- ₹30,000.

Example 2:

Answer whether the following offences are compoundable as per section 138 of CGST Act, 2017.

Particulars	Compoundable – Yes/No	Reason
X Pvt Ltd is making taxable supplies and not issuing tax invoice with the Intention to evade tax	Yes	This offence falls in Section 132(1)(a). Such offence is compoundable once. If X Pvt Ltd commits it for Second time, then it is not compoundable
2. (a) X firm issued tax invoice to few customers without actually making supply in order to give input tax benefit to customers	<u>In case of X Firm-</u> (a) Committed offence for First time – Yes Committed offence for Second time – No	<u>In case of X Firm-</u> This offence falls in Section 132(1)(b). Such offence is compoundable once. If X Firm commits it for Second time, then it is not compoundable
(b) Customers availed Input tax credit or claimed refund with the above said Invoices issued by X Firm	<u>In case of customers-</u> (b) Committed offence for First time – Yes Committed offence for Second time – No	<u>In case of Customers-</u> This offence falls in Section 132(1)(c). Such offence is compoundable once. If X Firm commits it for Second time, then it is not compoundable

Particulars	Compoundable – Yes/No	Reason
Z LLP has a tax liability of ₹10 Lakhs for the month of August 2017. Z LLP failed to pay till 30th December 2017. Due date of payment for Z LLP is 20th September.	Committed offence for First time – Yes Committed offence for Second time – No	This offence falls in Section 132(1)(d). Such offence is compoundable once. If Z LLP commits it for Second time, then it is not compoundable
Y, an exporter intentionally availed excess refund of Input Tax credit	Committed offence for First time – Yes Committed offence for Second time – No	This offence falls in Section 132(1)(e). Such offence is compoundable once. If Y commits it for Second time, then it is not compoundable
F a dealer has intentionally furnished wrong information in return in order to evade or minimize tax outflow	Committed offence for First time – Yes Committed offence for Second time – No	This offence falls in Section 132(1)(f). Such offence is compoundable once. If Y commits it for Second time, then it is not compoundable
T Ltd manufacturer of Chemicals has not allowed an officer to allow the business premises wherein it the duty of the officer to visit the premises and also given moneys to officer not to investigate company as order in the Act.	NOT COMPOUNDABLE	This offence falls in Section 132(1)(g). Such offence is not compoundable
ABC Ltd have tampered or destroyed material evidence under this Act for Assessment	NOT COMPOUNDABLE	This offence falls in Section 132(1)(j). Such offence is not compoundable
Z Pvt Ltd company Intentionally fails to provide information or supplied wrong information to the officer	NOT COMPOUNDABLE	This offence falls in Section 132(1)(k). Such offence is not compoundable
Mr.A being a GTA knowingly transported drugs or goods without proper Invoice to other place. Such goods are liable to confiscation. If the Value of above supplies is (a) ₹50 Lakhs (b) ₹150 Lakhs The value the amount involved in such offence is ₹50 Lakhs	Compoundable without any limit. (a) Compoundable without any limit. (b) Committed offence for First time – Yes Committed offence for Second time – No	This offence falls in Section 132(1)(h) for which no restriction is mentioned in Section 138(a). (a) This offence falls in Section 132(1)(h) for which no restriction is mentioned in Section 138(a). (b) This offence falls in Section 132(1)(h) though not mentioned in section 138(a) it falls under section 138(b) since value exceeded ₹One Crore rupees. Such offence is compoundable once. If Y commits it for Second time, then it is not compoundable
Mr. B is committed an offence for which court has convicted him.	NOT COMPOUNDABLE	This offence falls in Section 138(d) which is not compoundable.

21.6 Penalty of the CGST Act, 2017

Section	Nature of offence	Time limit	Quantum of penalty
73 or 122(2)(a)	Person liable to pay Tax if the same: <ul style="list-style-type: none"> not paid, or short paid, or erroneously refunded, or input tax wrongly availed, or utilized for any reason other than fraud or wilful misstatement or suppression of facts to evade tax. 	Time Limit for issue of Show Cause Notice (Section 73(2)): <ul style="list-style-type: none"> 3 months prior to the time limit for issuance of order as per section 73(10) Time Limit for issuance of Order (Section 73(10)) <ul style="list-style-type: none"> 3 years from the due date of furnishing of Annual return for the relevant FY, or 3 years from the date of erroneous refund 	(1) Nil (Zero) if amount due is paid with interest prior to or within 30 days of issuance of SCN. (2) 10% of amount due or ₹10,000/- whichever is higher as per the adjudication order. (3) 10% of amount due or ₹10,000/- whichever is higher if self-assessed tax or amount collected as tax has not been paid within period of 30 days from the due dates of payment of such tax.
74 or 122(2)(b)	Person liable to pay Tax if the same: <ul style="list-style-type: none"> not paid, or short paid, or erroneously refunded, or input tax wrongly availed, or utilized by reason of fraud or any wilful-misstatement or suppression of facts to evade tax. 	Time Limit for issue of Notice (Section 74(2)): <ul style="list-style-type: none"> 6 months prior to the time limit for issuance of order as per section 74(10)). Time Limit for issuance of Order (Section 74(10)) <ul style="list-style-type: none"> 5 years from the due date of furnishing of Annual return for the relevant FY, or 5 years from the date of erroneous refund 	(1) 15% if amount due is paid with interest prior to issuance of SCN. (2) 25% of amount if the same is paid with interest within 30 days of issuance of SCN. (3) 50 % of amount if the same is paid with interest within 30 days of issuance of adjudication order. (4) 100% of amount due or ₹10,000/- whichever is higher

Explanation 1.—For the purposes of section 73 and section 74:—

- the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;
- where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.—For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Example 1: An assessee has been served with show cause notice (SCN) demanding CGST & SGST of ₹2,00,000 each on 30th November 2017 and the same is adjudicated against him on 12th January, 2018. However, such adjudication order has been received by the assessee on 14th January 2018.

Find the penalty under section 73 of the CGST Act, 2017 in the following independent cases:

- assessee paid tax, interest on 2nd December, 2017.
- assessee paid tax, interest and penalty if any on 14th January, 2018.

Answer:

- Penalty = nil

Since, tax and interest paid within 30 days from the date of issuance of show cause notice.

Note: It means we should count no. of days (i.e. 30 days) from the date of receipt of SCN.

- penalty = ₹40,000 [(i.e. 4,00,000 x 10% = ₹40,000 or ₹20,000 (i.e. 10,000 each Act.) whichever is higher]

Example 2: An assessee has been served with show cause notice (SCN) demanding CGST & SGST of ₹2,00,000 each on 20th December 2017 and the same is adjudicated against him on 12th Jan 2018 with tax, interest and penalty under section 74. However, such adjudication order has been received by the assessee on 14th January 2018.

Find the penalty under section 74 of the CGST Act, 2017 in the following independent cases:

- assessee paid tax, interest and penalty if any on 8th November 2017.
- assessee paid tax, interest and penalty on 2nd December 2017.
- assessee paid tax, interest and penalty on 2nd Feb 2018.
- assessee paid tax, interest and penalty on 12th Feb 2018.

Answer:

- Penalty = ₹60,000 (₹4,00,000 x 15%)
- Penalty = ₹60,000 (i.e. same as above)
- Penalty = ₹2,00,000 (₹4,00,000 x 50%)
- Penalty = ₹2,00,000 (₹4,00,000 x 50%)

Note: Maximum penalty = ₹4,00,000 or ₹20,000 whichever is higher

Note: in the case of *CCus & CEx.v Ashok Kumar Tiwari* 2015 (37) STR 727 (All), 30 days count reckoned from next day of receipt but not from the date of issue of order.

Example 3: Rajul has been issued a show cause notice (SCN) on 31.12.2021 under section 73(1) of the CGST Act, 2017 on account of short payment of tax during the period between 01.07.2017 and 31.12.2017. He has been given an opportunity of personal hearing on 15.01.2022. Advise Rajul as to what should be the written submissions in the reply to the show cause notice issued to him. (CA Final RTP May 2018)

Answer: The SCN has been issued for the period between 01.07.2017 to 31.12.2017 which falls in the financial year (FY) 2017-18. Due date for furnishing annual return for the FY 2017-18 is 31.12.2018 and 3 years' period from due date of filing annual return lapses on 31.12.2021. Thus, SCN under section 73(1) ought to have been issued latest by 30.09.2021.

Since the notice has been issued after 30.09.2021, the entire proceeding is barred by limitation and deemed to be concluded under section 75(10) of the CGST Act, 2017.

Amendment of section 151, Power to collect statistics: w.e.f. 1-1-2022, Section 151 of the CGST Act has been substituted to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.

Earlier, Commissioner was required to issue a notification to call for information from the concerned persons relating to any matter in respect of which statistics were to be collected.

Amendment of section 152, Bar on disclosure of information: w.e.f. 1-1-2022, Section 152 of the CGST Act has been amended so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

Amendment of section 168, Power to issue instructions or directions: w.e.f. 1-1-2022, Section 168 of the CGST Act has been amended to enable the jurisdictional commissioner to exercise powers under section 151 to call for information.