



ADVAITA LEGAL
ATTORNEYS AND
ADVOCATES

Goods & Services Tax - Offences and Penalties, Job Work Procedure, Anti-profiteering Measures & GST Compliance Rating

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Offences and Penalties



Offences and Penalties

Section	Offence	Penalty
122 (1) Offence by a Taxable Person	<ul style="list-style-type: none"> i. Supply without invoice; ii. Invoice issued without the supply; iii. Amount collected as but not paid to the Govt. beyond a period of 3 months from the date on which such payment becomes due; iv. Tax not deducted or deducted incorrectly or amount deducted not paid to Govt.; v. Tax not collected or collected incorrectly or amount collected not paid to Govt.; vi. ITC availed or utilized without the receipt of supply; vii. Refund obtained fraudulently; viii. ITC distributed in contravention of the GST law; ix. Falsifying or substituting financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax; x. Failing to obtain registration despite liability; xi. Furnishing any false information regarding registration; xii. obstructing or preventing any officer in discharge of duties; xiii. Transporting any taxable goods without the cover of prescribed documents; xiv. Suppression of turnover leading to evasion of tax; xv. Failing to keep, maintain or retain books of account and other documents; xvi. Failing to furnish information or documents called for by an officer; xvii. Supplying, transporting or storing any goods which are liable to confiscation; xviii. Issuing any invoice or document by using the registration number of another registered person; xix. Tampering with, or destroying any material evidence or document; xx. Disposing off or tampering with any goods that have been detained, seized, or attached under the Act 	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

Offences and Penalties

Section	Offence	Penalty
<p>122 (2)</p> <p>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 utilized</p>	(a) for any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax	Ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher
	(b) for reason of fraud or any willful misstatement or suppression of facts to evade tax	Ten thousand rupees or the tax due from such person, whichever is higher
<p>122 (3)</p> <p>Any person who-</p>	<p>(a) aids or abets any of the offences specified in clauses (i) to (xxi) of Section 122 (1);</p> <p>(b) acquires possession of, or concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which are liable to confiscation;</p> <p>(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which are in contravention of any provisions of the Act or Rules;</p> <p>(d) fails to appear before the officer of central tax;</p> <p>(e) fails to issue invoice or fails to account for an invoice in his books of account</p>	Penalty which may extend to twenty-five thousand rupees

Offences and Penalties

Section	Offence	Penalty
<p>123</p> <p>If a person who is required to furnish an information return under section 150 (Obligation to furnish information return) -</p>	<p>Fails to do so within the period specified in the notice issued under sub-section (3) thereof</p>	<p>At the discretion of the Proper Officer-</p> <p>Penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues:</p> <p>Provided that the penalty imposed under the section shall not exceed five thousand rupees.</p>
<p>124</p> <p>If any person required to furnish any information or return under section 151 (Where Commissioner notifies for collection of statistics relating to any matter) —</p>	<p>(a) without reasonable cause fails to furnish such information or return as may be required under that section, or</p> <p>(b) wilfully furnishes or causes to furnish any information or return which he knows to be false,</p>	<p>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</p>
<p>125</p> <p>General Penalty</p>	<p>Any person, who contravenes any of the provisions of the Act or any rules made thereunder for which no penalty is separately provided for in the Act</p>	<p>Penalty which may extend to twenty-five thousand rupees.</p>

General Principles related to Penalty- S. 126

Penalty not to be imposed for minor breaches (tax amount is less than INR 5000 or rectifiable omission or mistake) of tax regulations and procedural requirements made without fraudulent intent or gross negligence

Penalty imposed to depend upon the facts and circumstances of each case and commensurate with the degree and severity of the breach

No penalty to be imposed without giving the opportunity of being heard

When a person voluntarily discloses the circumstances of a breach of tax law prior to the discovery of such breach, this fact may be considered as a mitigating factor when quantifying penalty

Officer while imposing penalty to specify the nature of breach

S. 126 not applicable where penalty specified either as a fixed sum or as a fixed percentage

Other Related Provisions

S. 127- Power to impose penalty in certain cases	S. 128- Power to waive penalty or fee or both.
<p>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</p> <ul style="list-style-type: none"> (i) Section 62 (Assessment if non-filers of returns) or (ii) Section 63 (Assessment if unregistered persons) or (iii) Section 64 (Summary assessment in certain cases) or (iv) Section 73 (Determination of tax paid or short paid or erroneously refunded in cases of no fraud or willful misstatement) or (v) Section 74 Determination of tax paid or short paid or erroneously refunded in cases of no fraud or willful misstatement) or (vi) Section 129 (Detention, Seizure and Release of goods) or (vii) Section 130 (Confiscation of goods or conveyance), he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person 	<p>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</p>

Other Related Provisions

Section	Offence	Penalty
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 the 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-	<p>(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, <u>where the owner of the goods comes forward for payment of such tax and penalty;</u></p> <p>(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, <u>where the owner of the goods does not come forward for payment of such tax and penalty;</u></p> <p>(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</p>

Other Related Provisions

Section	Offence	Penalty
130 Confiscation of goods or conveyances and levy of penalty.	<p>Cases for confiscation- If any person-</p> <ul style="list-style-type: none"> (i) supplies or receives any goods in contravention of any of the provisions of the 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 the Act; or (iii) supplies any goods liable to tax under the Act without having applied for registration; (iv) 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 the 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 	<p>As per Section 122 as discussed above</p> <p>Option may also be given by the adjudging officer to pay fine in lieu of confiscation which will not exceed the market value of the goods confiscated and aggregate of the fine and penalty shall not be less than penalty leviable under S. 129 (1).</p>

Other Miscellaneous Provisions

- No court to take cognizance of any offence under the Act, except with the previous sanction of the Commissioner. (S. 134)
- In any prosecution for an offence under the Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution (S. 135)

Offences by Companies- S. 137

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under 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 officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly

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

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

Offenses Attracting Imprisonment

Section	Offence	Pecuniary Limit
132 Confiscation of goods or conveyances and levy of penalty.	<p>Cases for imprisonment- Where a person-</p> <p>(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of the Act or the rules made thereunder, with the intention to evade tax;</p> <p>(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;</p> <p>(c) avails input tax credit using such invoice or bill referred to in clause (b);</p>	<p>(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;</p> <p>(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;</p>

Offenses Attracting Imprisonment

Section	Offence	Pecuniary Limit
132 Confiscation of goods or conveyances and levy of penalty.	<p>Cases for imprisonment- Where a person-</p> <p>(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;</p> <p>(e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);</p> <p>(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 the Act;</p> <p>(g) obstructs or prevents any officer in the discharge of his duties under the Act;</p>	<p>(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;</p> <p>(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.</p>

Offenses Attracting Imprisonment

Section	Offence	Pecuniary Limit
132 Confiscation of goods or conveyances and levy of penalty.	<p>Cases for imprisonment- Where a person (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 the Act or the rules made thereunder;</p> <p>(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 the Act or the rules made thereunder;</p> <p>(j) tampers with or destroys any material evidence or documents;</p>	

Offenses Attracting Imprisonment

Section	Offence	Pecuniary Limit
132 Confiscation of goods or conveyances and levy of penalty.	<p>Cases for imprisonment- Where a person-</p> <p>(k) fails to supply any information which he is required to supply under the 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</p> <p>(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section</p>	<p>As per Section 122 as discussed above</p> <p>Option may also be given by the adjudging officer to pay fine in lieu of confiscation which will not exceed the market value of the goods confiscated and aggregate of the fine and penalty shall not be less than penalty leviable under S. 129 (1).</p>



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Job Work Measures



Job Work

S. 2 (68)

Any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly

Definition

S. 19

- Principal, subject to restrictions as prescribed, allowed input tax credit on inputs sent to a job worker for job work.
- Notwithstanding the condition of receipt of goods for availing ITC u/s Section 16(2)(b), the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work
- Where the inputs sent for job work are not received back by the principal after completion of job work within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out. However, where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

Input Tax Credit

Job Work

S. 19

- The principal shall, subject to restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.
- Notwithstanding the condition of receipt of goods for availing ITC u/s Section 16(2)(b), the principal shall be entitled to take credit of input tax on capital goods even if the **capital goods are directly sent to a job worker for job work without being first brought to his place of business.**
- Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out. However, where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.
- Aforesaid provisions are not applicable to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Input Tax Credit

Other Miscellaneous Provisions

S. 22

Supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal and the value of such goods shall not be included in the aggregate turnover of the registered job worker

Explanation (ii)

S. 143

- Inputs or capital goods can be sent by the principal to the job worker for job work without payment of tax and likewise from the said job worker to another
- Inputs and capital goods need to be brought back by the principal (other than moulds and dies, jigs and fixtures, or tools) after completion of job work within one and three years respectively to the principal's place of business without payment of tax.
- Inputs and capital goods need to be supplied by the principal (other than moulds and dies, jigs and fixtures, or tools) after completion of job work within one and three years respectively on payment of tax (if supply is in India) or without payment of tax (in case of export)
- In case the job worker is unregistered, principal can supply goods from the place of business of the job worker only after declaring the latter's place of business as his additional place of business.

Job Work Procedure

Other Miscellaneous Provisions

S. 143

- If inputs sent for job work are not received back by the principal after completion of job work or are not supplied from the place of business of the job worker within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.
- Where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal or are not supplied from the place of business of the job worker within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent
- Any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.
- For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

Job Work Procedure

Rule 45 of CGST Rules-

Conditions and restrictions in respect of inputs and capital goods sent to the job worker

- ✓ The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job-worker.
- ✓ The challan issued by the principal to the job worker shall contain the details specified in Rule 55.
- ✓ The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter shall be included in FORM GST ITC-04 furnished for that period on or before the twenty-fifth day of the month succeeding the said quarter or within such further period as may be extended by the Commissioner by a notification in this behalf:

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

- ✓ Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest



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Anti-Profiteering



Anti-profiteering measure envisaged under Section 171

❖ Section 171 of the CGST Act:

*“(1) Any **reduction in rate of tax on any supply of goods or services** or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.*

*(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a **commensurate reduction** in the price of the goods or services or both supplied by him.*

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.”

❖ ‘Commensurate reduction’ – **means what?**

❖ The Central Government has issued the Central Goods and Services Tax Rules, 2017, wherein, Chapter XV deals with Anti-Profiteering rules – *the same are discussed on the subsequent slides*

Constitution of the Authority and Committees

1 National Anti-Profitteering Authority (Rule 122)

Composition :

Chairman

(Holds or has held post equivalent to the rank of secretary to Govt. of India)

Four (4) Technical Members

(Commissioners/ Ex-Commissioners of State or Central Tax)

2 Standing Committee on Anti-profitteering (Rule 123)

Composition :

Officers of the State and Central Government

3 State Level Screening Committee (Rule 123)

To be constituted in each State by the State Governments

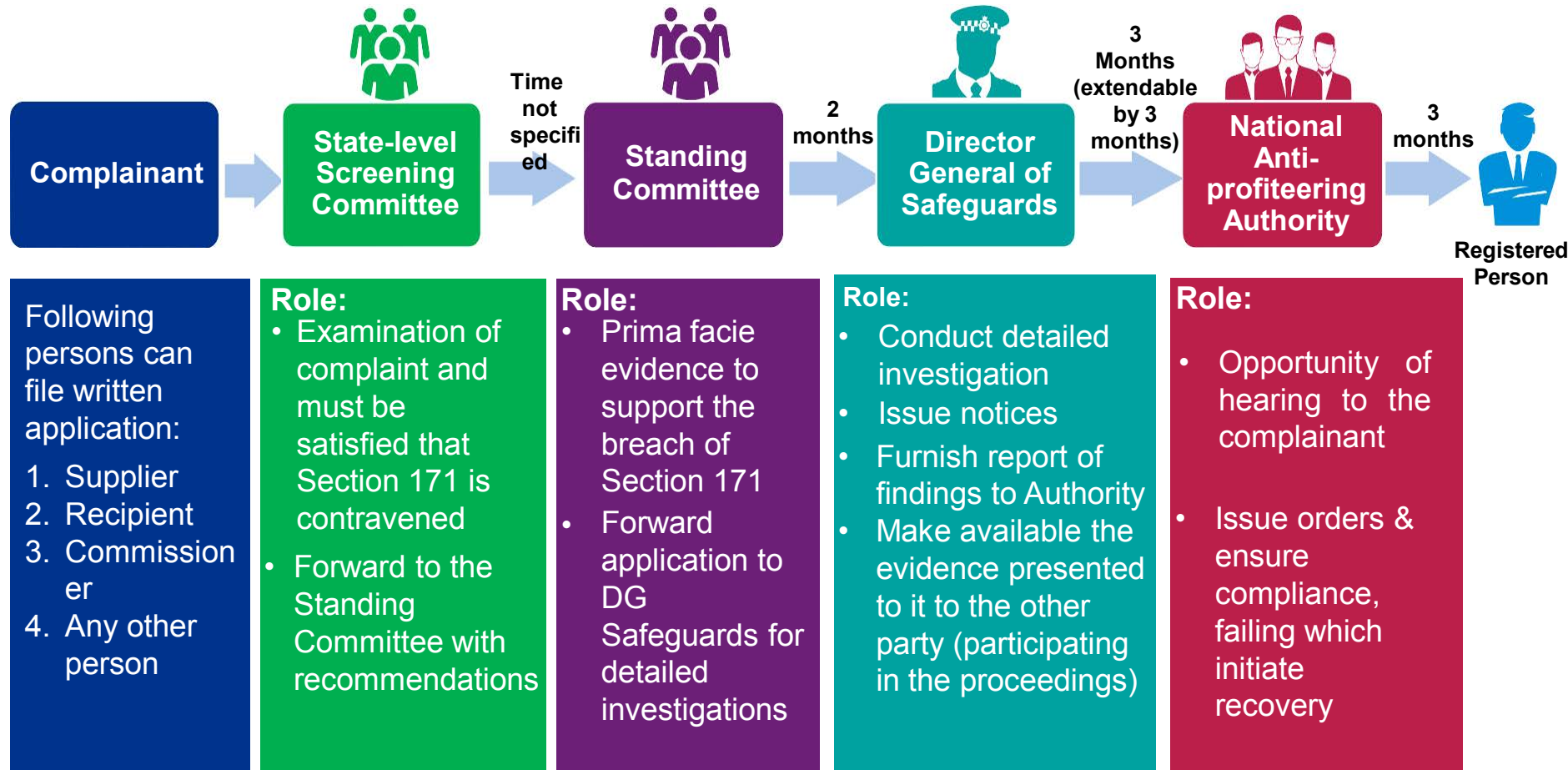
Composition :

- 1 officer of State Government
- 1 officer of Central Government

4 Reference to the Director General of Safeguards (DG Safeguards) for the purpose of undertaking investigation (Section 129)

Examination of the application filed by the complainant

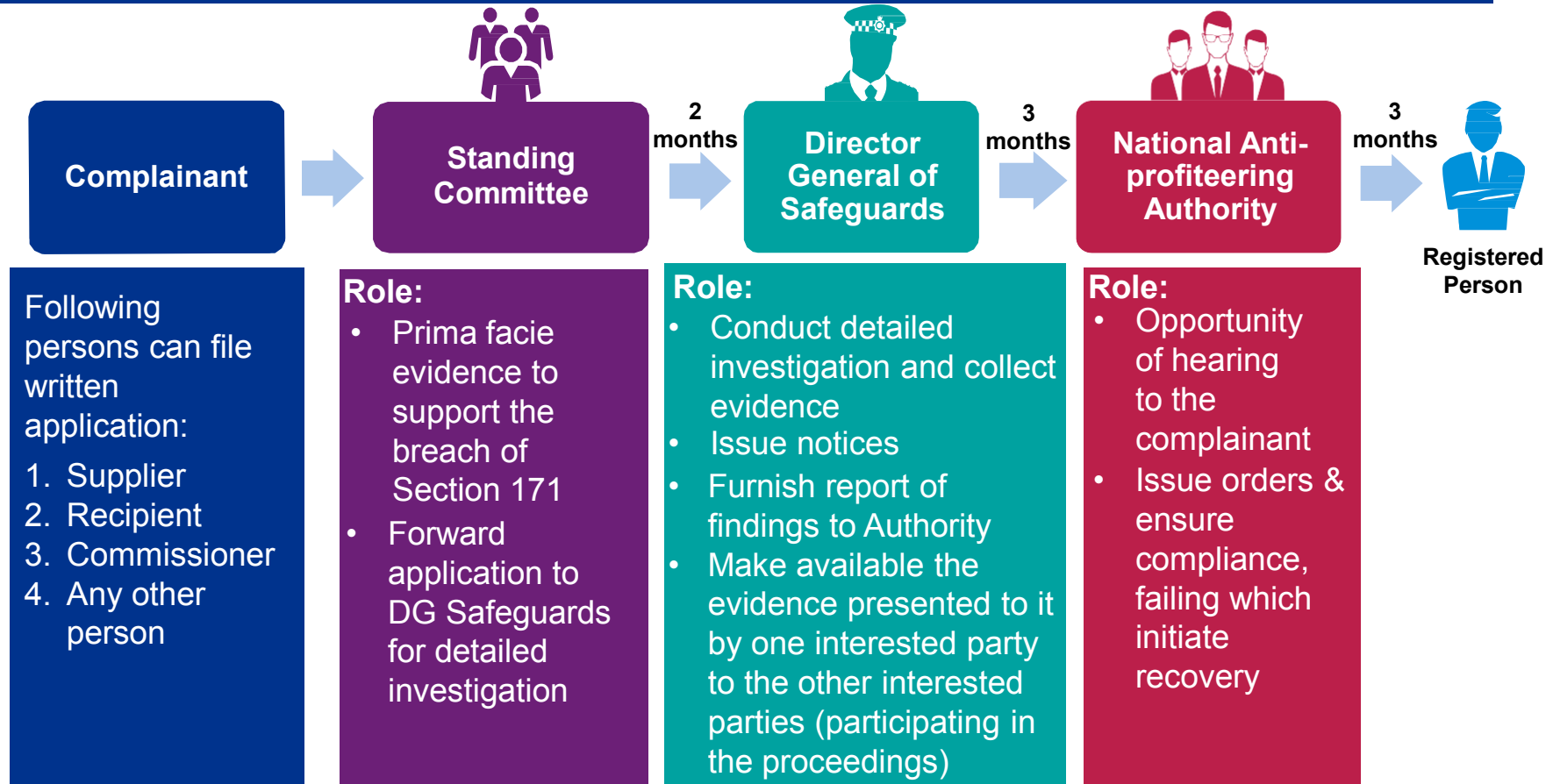
Issues - Local nature



Term Local nature not defined?

Examination of the application filed by the complainant

Issues - Other than local nature



A senior government official stated in an interview that the authority will take up cases of mass importance and will not look into small cases – no monetary threshold has been fixed in this regard

Nature of the order

- ❖ **Section 2(4) of the CGST Act defines the term ‘adjudicating authority’ – means **any authority****, appointed or authorized to pass any order or decision under the CGST Act
- ❖ **Section 107 of the CGST Act provides –** Any person aggrieved by any order passed under this Act by an **adjudicating authority** may appeal to such Appellate Authority
 - An appeal against the order of the Appellate Authority will lie either before a National/Regional Bench or before a State/Area Bench
 - Subsequent appeal from State/Area Bench shall lie before the High Court and an appeal against an order of National/Regional Bench shall lie before the Supreme Court
- ❖ **Section 171 of the CGST Act –** provides for **constitution of an authority** to examine whether ITC availed by any person or the reduction in the tax rate have actually resulted in reduction in the price of the goods/services supplied by him
- ❖ **Thus, by definition the authority constituted under Section 171 can qualify as an adjudicating authority under Section 2(4) of the CGST Act**
 - **Consequently, an appeal against the order of the said authority may lie before the Appellate Authority (under Sec. 107) – which can be further appealed**

Overreach and excess delegation

Provision under CGST Act	CGST Rules, 2017	Observation
171(1) – Reduce the price commensurate with reduction in rate of tax or the benefit of ITC	127(iii)(a) – Authority to order reduction in prices	Both the provision and the corresponding rule are in consonance
171(3) – The authority shall exercise such powers and functions as may be prescribed	127(iii)(b) – Return the amount along with interest @ 18%	Levy of interest being an essential legal function cannot be delegated
	127(iii)(b) – Recover the amount and deposit it in Consumer Welfare Fund	Recovery of the amount – not specified under the CGST Act – excessive delegation
	127(iii)(c) – Impose penalty as specified in the Act	Provision in the CGST Act does not provide for imposition of penalty – excessive delegation
	127(iii)(d) – Cancellation of registration under the Act	Section 171 of the CGST Act does not contemplate the cancellation of registration
No guidelines provided for determining the methodology and procedure for ascertaining whether the reduction in rate of tax or the benefit of ITC has been passed to the recipient	126 – Provides that the authority may determine the methodology and the procedure for ascertaining whether the benefit has been passed to the recipient	Rule has travelled beyond the scope provided under the statute – excessive delegation
Jurisdiction – essential legislative function cannot be created by delegated legislation		

Mapping the impact of the provision- Illustration

Particulars	Current Regime	GST Regime
	Amount in INR	Amount in INR
Cost of Purchases	100.0	100.0
Add: Excise Duty @ 12.5%	12.5	
Subsequent Sale by the Vendor		
Gross Purchase Price	112.5	118.8
Purchase Price net-off credit	112.5	100
Add: VAT @ 12.5%	14.06	
Add: GST @ 18% on purchase price net-off credit		18
Sale price	126.56	118

- Price of goods may decrease in the GST regime considering the fungibility of tax credits
- In terms of the Anti Profiteering Clause, such benefit is expected to be passed on by the seller to the buyer

Questions unanswered

Neither the CGST Act nor the CGST Rules provide the guidelines for determining the methodology and procedure, for ascertaining the fact of profiteering by the supplier, and the same has been left to the discretion of the authority



'Any other person' eligible to make complaint of profiteering



No time limit prescribed for forwarding application received by State-level Screening committee to Standing Committee



How to apportion common credit to each product or service and ensure that the benefit has been passed on to customer





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GST Compliance Rating



Compliance Rating Under GST

- ❑ Provision for compliance rating under the GST contained in **Section 149** of the CGST Act.
- ❑ Every registered person may be assigned a goods and services tax compliance rating score by the Government **based on his record of compliance** with the provisions of the Act.
- ❑ The goods and services tax compliance rating score will be determined on the basis of such parameters as may be prescribed.
- ❑ The goods and services tax **compliance rating score will be updated at periodic intervals** and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.



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