



Offences and Penalties under GST

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Chapter XIX

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Basic Terms

Offence

Not defined in
the act

- **"Offence"** shall mean any act or omission made punishable by any law for the time being in force; **[Section 3(28) of the General Clauses Act, 1897]**
- "An offence would always mean **an act of omission or commission** which would be punishable by any law for the time being in force." **[SEBI vs Ajay Agarwal (2010) 3 SCC 765 (SC)]**.
- **"Mere intention to commit an offence, not followed by any act, cannot constitute an offence."** The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice." **[Ramkripal vs State of M.P. [(2007) 4 SCR 125 (SC)]**

Penalty

Not defined in
the act

- "Penalty is a liability composed as a punishment on the party committing the breach. The very use of the term 'penal' is suggestive of punishment and may also include any extraordinary liability to which the law subjects a wrong-doer in favour of the person wronged, not limited to the damages suffered." – **Karnataka Rare Earth (2004) 2 SCC 783**
- **"The creation of an offence by statute proceeds on the assumption that society suffers injury by the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence."** - **M/s Gujarat Travancore Agency, Cochin vs. C.I.T. , (1989) 3 SCC 52 (SC)**
- A penalty is a sum of money which the law exacts payment of by way of punishment for doing some act which is prohibited or for not doing some act which is required to be done. [Hidden Hollow Ranch v. Collins, 146 Mont. 321, 406 P.2d 365 368].

Basic Terms

Mens-rea

- Mens Rea is Latin Word meaning a “guilty mind”; guilty knowledge or intention to commit a prohibited act.” (*Parasnath Granite India Ltd vs State Of Rajasthan 2004 144 STC 271*).

Requirement of Mens-rea for levy of penalty for civil, criminal and quasi criminal offence

Mens-rea is not an essential ingredient for levy of penalty for civil offence/wrong –

- *Commissioner of Income Tax vs. Atul Mohan Binda (2009) 317 ITR 1 (SC)*;
- *Guljag Industries Vs. Commercial Taxes Officer, (2007) 7 SCC 269*
- *SEBI v. Shriram Mutual Fund [(2006) 5 SCC 361]*,
- *Bharjatiya Steel Industries vs Commissioner, Sales Tax, U.P on 5 March, 2008 SC*
- *R. S. Joshi vs. Ajit Mills Ltd. – AIR 1977 SC 2279*

Mens-rea is an essential ingredient for levy of penalty for criminal offence / wrong –

- *Nathulal Vs. State of Madhya Pradesh, AIR 1966 SC 43*
- *SEBI v. Cabot International Capital Corpn (2005) 123 Comp. Cases 841 (Bombay)*

OFFENCE V. DEFAULT

- **Penalties** are imposed when a person commits an offence. In case of **defaults** minor or otherwise, automatic penalties or late fees are provided in the enactment.
- Any **Infringement of law committed by a person is a default**; however, the same **may not be an offence**. It is the **state of mind of a person which can convert a default into an offence**.
- In the case of **Parashwanath Granite India Ltd.** , the Rajasthan High Court held that there is a distinction between honest and dishonest infringement of law, therefore , the penalties should **not** be levied automatic. The revenue must look into the main ingredient of offence of guilty mind i.e. called *mens rea*. Although in the case of economic offences the expressions giving rise to the words '*mens-rea*' have been long ago omitted, nevertheless, the expressions like 'falsely represents' used in the sections still indicate that the element of *mens rea* is still necessary before proving an offence.

That whether **mens rea** is an essential ingredient under civil offence can be identified from the statute where the statute creates an offence and an ingredient of the offence is attempt to evade tax by fraud, misrepresentation or knowingly or willful misrepresentation, deliberate attempt to evade tax etc.

LEVY OF PENALTY UNDER TAX LAWS – MENS REA, NATURE OF OFFENCE & JUDICIAL APPROACH

CORE QUESTION - Whether "mens rea (intention)" is required for levy of penalty under tax laws, and why courts sometimes waive penalties despite statutory breach?

Nature & Purpose of Penalty

Penalty is a statutory consequence of breach, not a moral punishment.

- Objectives: Ensure compliance
- Protect revenue
- Act as a deterrent

Penalty flows from law, not from blameworthiness.

KEY POINT: PENALTY ≠ PUNISHMENT FOR INTENT; IT IS CONSEQUENCE OF NON-COMPLIANCE.

Classification of Offences (Foundation)

Civil Offences: Regulatory / compensatory → mens rea generally not required

Criminal Offences: Punitive → mens rea mandatory

Quasi-Criminal Offences: Mixed → depends on statutory scheme

MISCLASSIFICATION LEADS TO WRONG PENALTY ARGUMENTS.

Mens Rea – Correct Legal Understanding

Mens rea means guilty mind / deliberate intent / conscious wrongdoing.

Criminal liability requires actus reus (Wrongful act) + mens rea.

Civil liability may arise on breach alone.

GOLDEN RULE: CIVIL PENALTIES CAN OPERATE WITHOUT INTENT; CRIMINAL PENALTIES CANNOT.

Apex Court's Master Test

The Supreme Court has clarified that no universal rule exists on mens rea in tax laws.

Penalty depends on *three decisive factors:

1. Object & scheme of the statute
2. Language of the penal provision
3. Nature of the penalty

STATUTE DECIDES MENS REA, NOT ASSUMPTIONS.

Object & Language of Statute

If object is revenue protection / compliance → strict liability applies.

If object is punitive → mens rea becomes relevant.

Words like wilful, fraud, suppression, intent → import mens rea.

Words like shall be liable, failure, contravention → indicate absence of mens rea.

COURTS CANNOT READ MENS REA WHERE LEGISLATURE OMITTED IT.

Civil vs Criminal Penalties

Civil penalties: Attracted once breach is proved → Intention irrelevant → Known as strict / absolute liability

Criminal penalties (prosecution): Mens rea essential → Must be proved beyond breach

No mens rea → no criminal conviction.

ROLE OF DISCRETION & BONA FIDE BELIEF

Where penalty is discretionary:

→ Bona fide belief → Technical / venial breach → Conduct of assessee may mitigate or avoid penalty.

Where penalty is fixed / mandatory: → Bona fide belief cannot nullify liability. → Good faith softens penalty, not the law.



Discretionary vs. Fixed Penalty Provisions

Discretionary Penalty

When statute provides maximum limit only, officer exercises discretion on quantum. Factors considered include:

- Gravity of default and extenuating circumstances
- Technical vs. deliberate breach
- Nexus between breach and statutory objective
- Token penalty for technical violations

Officer must act judicially, considering all relevant circumstances while determining appropriate penalty amount.

Fixed Penalty

When statute prescribes specific penalty amount with no discretion. Key principles:

- Once conditions satisfied, exact penalty must be levied
- No discretion in quantum - nothing more, nothing less
- Hearing limited to proving breach occurred
- Mandatory imposition after establishing violation

Dharamendra Textile (306 ITR 277)

principle: no discretion in quantifying when section specifies fixed amount.

As interpreted in case of Union of India vs. Ms. Dharmendra Textile dated

The decision of the Hon'ble Supreme Court in Dharmendra Textile Processors dated 29.09.2008 [306 ITR 277](SC) is frequently relied upon by the Revenue to contend that, **in cases of non-payment or short-payment of duty, the levy of penalty is automatic and leaves no discretion with the adjudicating authority. Such an interpretation is, however, legally untenable.**

The Hon'ble Supreme Court, in Union of India v. Rajasthan Spinning & Weaving Mills dated 12.05.2009 [238 E.L.T. 3](SC), has categorically clarified that the judgment in Dharmendra Textile Processors does not lay down that penalty is mandatorily leviable in every case of short-payment or non-payment of duty. The ratio of Dharmendra Textile is **confined only to cases involving fixed or mandatory penalties**, wherein once the statutory conditions for imposition of such penalty are satisfied, the adjudicating authority has no discretion in quantifying the penalty, and the penalty prescribed by the statute must be imposed.

However, the requirement of fulfilling the jurisdictional conditions for levy of penalty—such as the presence of fraud, suppression, wilful misstatement, or intent to evade—remains intact. Thus, penalty is not automatic, and Dharmendra Textile cannot be read to dispense with the necessity of establishing the foundational ingredients mandated under the statute.



Three Types of Liability

Civil Liability

Remedial and coercive in nature. Focuses on loss of revenue and providing remedy. No criminal intent required - breach of civil obligation triggers penalty regardless of guilty intention.

Criminal Liability

Requires mens rea (guilty mind). Involves willful failure and punitive penalties including imprisonment. Society suffers injury - deterrent must discourage repetition of offence.


Quasi-Criminal

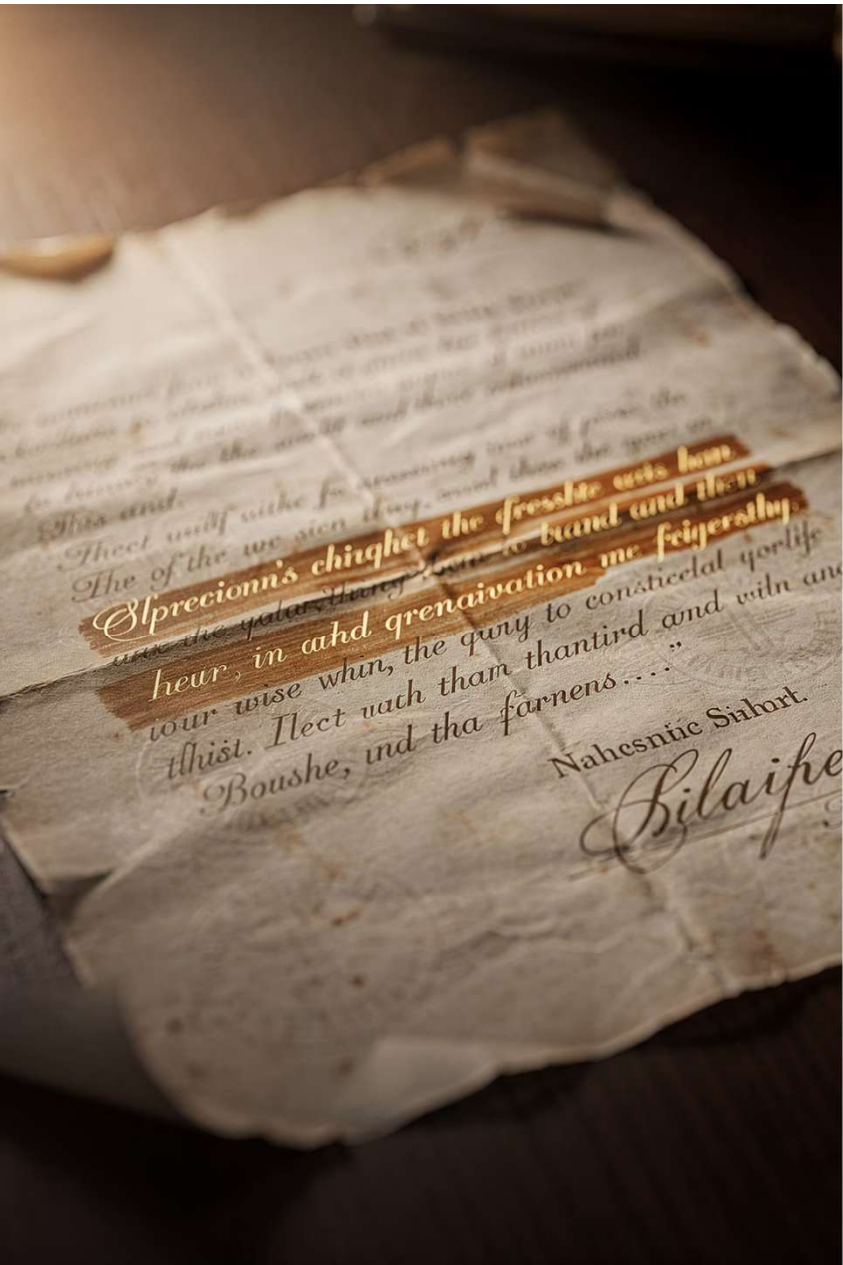
Hybrid nature with characteristics of both. Acts absolutely forbidden by law with personal penalties. Offender liable even without mens rea when Legislature deems prevention critical.

The Apex Court's Three-Factor Decisive Test

The Supreme Court has categorically clarified that **no universal rule exists** regarding *mens rea* requirements in tax law penalties. Instead, penalty liability depends on careful analysis of three decisive statutory factors.

01	02	03
Object and Scheme of the Statute	Language of the Penal Provision	Nature of the Penalty Imposed
Examine the legislative purpose: Is it primarily revenue protection and compliance enforcement, or is it designed to punish deliberate wrongdoing? The overarching objective guides interpretation.	Analyse specific words used: Terms like "wilful", "fraud", "suppression", or "intent" import <i>mens rea</i> requirements. Conversely, "shall be liable", "failure", or "contravention" indicate strict liability without requiring proof of intention.	Determine whether the penalty is compensatory (civil) or punitive (criminal) in character. The consequence's nature—whether fixed, discretionary, or prosecution-based—fundamentally affects mens rea requirements.

 **Fundamental Principle:** The statute itself decides mens rea requirements through its construction—courts cannot read in or exclude mens rea based on assumptions or policy preferences alone.



Incorporating Mens Rea in Civil Offences

When statutes use specific language, mens rea becomes an essential ingredient even in civil matters. The choice of words determines whether guilty intent must be proved.



Key Words

"Deliberately," "knowingly," "willfully," "fraudulently," "intentionally" - these terms incorporate mens rea requirement.



Example: Section 11AC

Central Excise Act requires fraud, collusion, or willful misstatement - making mens rea essential for penalty.

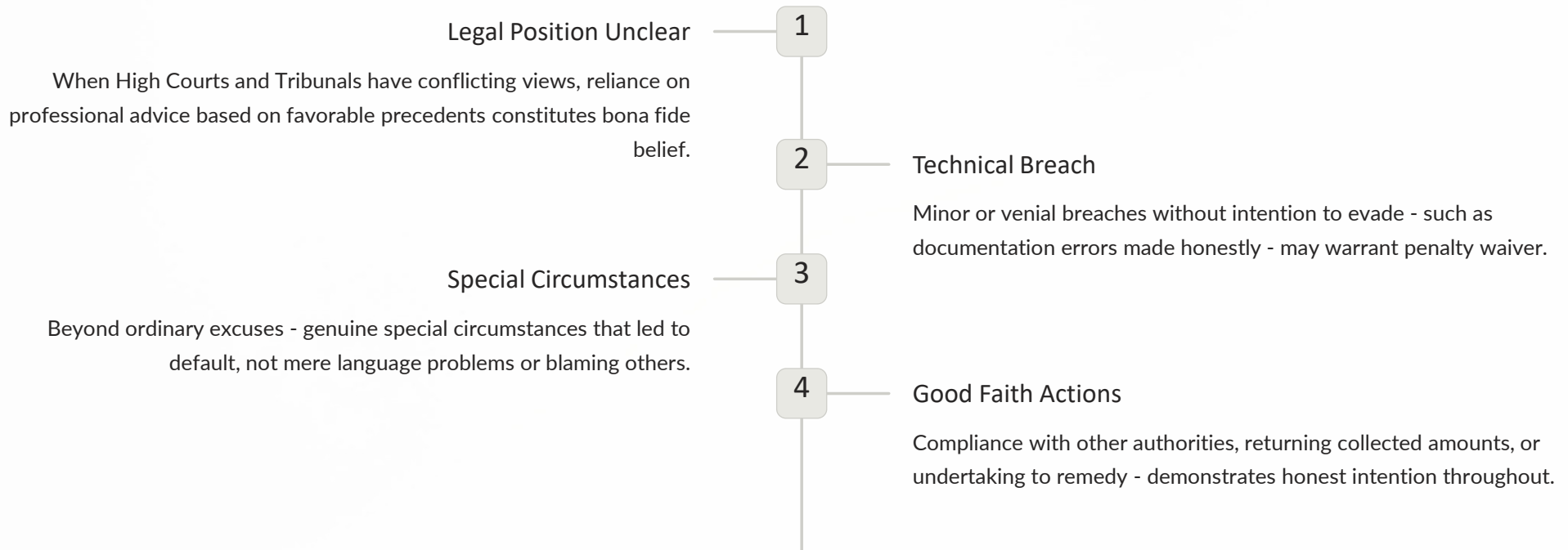


Proof Standard

When incorporated, deliberate deception with intent to evade must be established before penalty imposition.

Bona Fide Belief: A Valid Defense

Even in civil offences with mandatory penalties, bona fide belief can justify non-levy of penalty. The assessee must demonstrate honest, reasonable belief that conduct was lawful.



❏ **Critical Distinction:** Bona fide belief differs from mens rea. While mens rea may not be required in civil offences, bona fide belief based on firm facts can still justify dropping penalty proceedings.



Points to Check

1. Nature of offence – civil or criminal?
2. Language of provision – mens rea words present? At time of levy as well as quantification
3. Object of statute – compliance or punishment?
4. Is penalty fixed or discretionary?
5. Evidence of bona fide conduct?

Consolidated Takeaways

- ✓ No universal mens rea rule in tax laws
- ✓ Civil penalties largely follow strict liability
- ✓ Mens rea is crucial mainly for prosecution
- ✓ Bona fide belief mitigates, does not erase breach
- ✓ Statutory intent is supreme

“IN TAXATION, PENALTY FOLLOWS STATUTORY DESIGN – NOT THE TAXPAYER’S INTENTION – UNLESS THE LAW ITSELF DEMANDS INTENT.”

PENALTIES

Penalties are just like sanctions



Rationale for levying penalty is giving teeth to the legislation



Penalties are prescribed in the act to make compliance of law

Effective manner

Efficacious manner



BASIC PRINCIPLES RELATING TO PENALTY

Section 126 :-General disciplines related to penalty.

(1) No officer under this Act shall impose any penalty for **minor breaches** of

- ✓ tax regulations or **procedural requirements** and in particular, any omission or mistake in documentation which is easily rectifiable and
- ✓ made without fraudulent intent or gross negligence.

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

- a) a breach shall be considered a **'minor breach'** if the amount of **tax involved is less than five thousand rupees;**
- b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an **error apparent on the face of record.**

(2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

Section 126 :-General disciplines related to penalty.

- (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.

Sec 75(4)- Opportunity of being heard

An opportunity of being heard shall be granted

- where a **request is received in writing** from the person chargeable with tax **or penalty**, or
- where any **adverse decision is contemplated against such person**

Sec 75(5)- Adjournment

The proper officer shall , if sufficient cause is shown by the person chargeable with tax , grant time to the said person and adjourn the hearing for reasons to be in writing:

Provided that **no** such adjournment shall be granted for **more than three times** to a person during the proceedings.

Speaking Order

Sec 75(6)- The proper officer, in this order, **shall set out the relevant facts and the basis of his decisions.**

Sec 75(7)- Notice and order should be on same lines

The amount of **tax , interest and penalty** demand in the order shall not be in excess of the amount specified in the notice and **no demand shall be confirmed on the grounds other than grounds specified in the notice.**

Sec 75(13)- One penalty for one default

Where any **penalty** is imposed under section 73 or section 74, **no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.**

Penalty imposed should commensurate with the degree and severity of Breach of provisions of law and rules alleged

Penalty depends on totality of facts and circumstances of case

Penalty not imposable if the demand of duty/tax is not sustainable

No Penalty is imposable in case of Retrospective amendment In one of its historic judgments rendered in the case of J.K. Spinning and Weaving Mills Ltd. vs. UOI – 1987 (32) ELT 234 (SC), the Supreme Court held that it would be against all principles of legal jurisprudence to impose a penalty on a person or to confiscate his goods for an act or omission which was lawful at the time when such act was performed or omission made, but subsequently made unlawful by virtue of any provision of law.

Nature of breach & provisions of law under which penalty is imposed is to be specified

Penalty is not imposable when issue relates to the statutory interpretation In the case of Uniflex Cables Ltd. vs. CCE – 2011 (271) ELT 161 (SC), the Supreme Court dealt with the issue with regard to the imposition of penalty where the issue involved was of interpretational nature. Taking note of the fact that the Commissioner himself had found that it was only a case of interpretational nature, the Supreme Court quashed the order of the Commissioner imposing the penalty as also the order of the Tribunal so far as it confirmed the imposition of penalty on the Appellant.



Section 122-128

Issue wise Penalty under section 122

Supplier view point & Invoice Related Issue

- Sec 122(1)(i)
- Sec 122(1)(ii)
- Sec 122(1)(xix)
- Sec 122(3)(e)
- Sec 122(1)(xv)

Input Tax Credit

- Section 122(1)(vii)
- Section 122(1)(ix)

Refunds

Section 122(1)(viii)

Records

- Sec 122(1)(x)
- Sec 122(1)(xvi)

Furnishing Information, Tampering & Obstruction of Officer

- Section 122(1)(xiii)
- Section 122(1)(xvii)
- Section 122(1)(xx)
- Section 122(1)(xxi)
- Section 122(3)(d)

Payment of Tax / TDS / TCS

- Section 122(1)(iii)
- Section 122(1)(iv)
- Section 122(1)(v)
- Section 122(1)(vi)

Registration

- Section 122(1)(xi)
- Section 122(1)(xii)

Transportation of goods

- Sec 122(1)(xiv)
- Sec 122(1)(xviii)
- Section 122(3)(b)

Others

- Section 122(3)(c)
- Section 122(3)(a)

Section 122:- Penalty for certain offences



If a **taxable person**

Involved in

21 offences as specified in section 122(1)

Sec 2(107) ~~person~~2(84) liable to be registered u/s 22/24, whether or not actually registered

shall be liable to pay a penalty of

A. RS. 10000 or **10000*2**

B. an amount equivalent to the

100%

Tax, TDS, TCS, ITC, Refund

i. tax evaded or

ii. TDS (the tax not deducted under section 51 or short deducted or deducted but not paid to the Government) or


iii. TCS (tax not collected under section 52 or short collected or collected but not paid to the Government) or

iv. input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently,

whichever is higher

List of 21 offences as mentioned in sec. 122(1)

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

Invoice 

Supply 

Invoice incorrect 

Supply

e.g Mr. A sells cement (@28%) whereas he raises an invoice titled sand (@5%) and pays concessional rate of tax @5%. This is an offence of classification and evades tax of @23%

(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; e.g Bill Selling



Invoice but No G/S  BOGUS BILL

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due; e,g persons selling goods on MRP

(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;
e.G Hotel charge tax on supply of services where the tariff of rooms is below INR 1,000/-. At a later stage, they claim the supply being exempt and does not deposit.

(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

Fails to collect TDS or collects Lesser Amount or Fails to pay TDS

List of 21 offences as mentioned in sec. 122(1)

(vi)	fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;	Fails to collect TCS or collects Lesser Amount or Fails to pay TCS
(vii)	takes or utilizes input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;	ITC-without Receipt of G/S
(viii)	<u>fraudulently obtains refund</u> of tax under this Act;	Fraudulent Refund
(ix)	takes or <u>distributes input tax credit in contravention of section 20</u> , or the rules made thereunder;	ISD
(x)	<u>falsifies</u> or <u>substitutes financial records</u> or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;	False Records
(xi)	is liable to be registered under this Act but <u>fails to obtain registration</u> ; <u>e.g. Mr. Rohit is engaged in inter-state supply of various taxable goods. As per sec 24(i) of the CGST Act, he is mandatorily required to take registration in GST but fails to take registration.</u>	No Registration
(xii)	furnishes any <u>false information</u> with regard to registration particulars, either at the time of applying for registration, or subsequently;	False Particulars for Registration e.G Additional Place of Business not disclosed

Section 122:- Penalty for certain offences]

(xiii)	obstructs or <u>prevents any officer in discharge of his duties</u> under this Act;	Prevents Officers on duty
(xiv)	transports any taxable goods <u>without the cover of documents</u> as may be specified in this behalf;	e.g E way Bill missing found
(xv)	<u>suppresses his turnover leading to evasion of tax</u> under this Act;	after delivery
(xvi)	<u>fails to keep, maintain or retain books of account and other documents</u> in accordance with the provisions of this Act or the rules made thereunder;	
(xvii)	<u>fails to furnish information or documents called for</u> by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;	
(xviii)	supplies, transports or stores any goods which he has reasons to believe <u>are liable to confiscation under this Act;</u>	
(xix)	issues any invoice or document by <u>using the registration number of another registered person;</u>	
(xx)	tampers with, or <u>destroys any material evidence</u> or document;	
(xxi)	disposes off or <u>tampers with any goods that have been detained, seized, or attached</u> under this Act,	

LINK BETWEEN SECTION 73, 74 AND 122 OF THE CGST ACT

Sections **73 and 74** govern determination and recovery of tax where there is non-payment, short payment, or wrongful availment of ITC, with the presence or absence of intent deciding their applicability.

Section 122 deals with penalties for specified offences such as fake invoicing or irregular ITC, which may also trigger proceedings under Sections 73/74. Accordingly, **penalties under Section 122 are often imposed in addition to tax demands raised under Sections 73 or 74.**

In essence:

- 73/74 = Demand & Recovery (Tax-centric)
- 122 = Penalty (Offence-centric, broader scope)

However, section 122 operates independently of Sections 73/74, allowing penalties without a tax demand and against multiple persons, unlike tax recovery proceedings which are generally confined to the supplier.

BAR ON MULTIPLE PENALTIES – SECTION 75(13) CGST ACT



- Section 75(13) provides that once penalty is imposed under Section 73 or 74, no further penalty for the same act or omission can be levied on the same person under any other provision of the CGST Act.
- Accordingly, penalty under Section 122 cannot be imposed in addition to penalty under Section 73/74 for the same offence.
- However, this protection applies only when the act or omission is identical.
- Where the ingredients of offences are distinct, penalties under different provisions may still be sustained.

SECTION 73/74- INDEPENDENT PENALTY LEVYING PROVISIONS

- **Sub-section (9) of section 73** provides, in clear terms, for determination of a specified penalty as either 10% or Rs. 10,000, whichever is higher, and does not make any reference to section 122 of the Act.
- **Sub-section (11) of section 73** of the Act refers to the penalty as – “penalty under sub-section (9)”, further reinforcing that the penalty is properly levied under section 73(9) only.
- Sub-section (1) of section 74 also provides for determination of a specified penalty as an amount equivalent to the tax and **does not make any reference to section 122** of the Act.
- **Multiple references to section 50** while providing for interest payable indicate that the absence of any reference to section 122 of the Act under section 73 / 74 is perhaps not a mistake simpliciter by the Parliament, rather an intended omission.
- sub-section (13) of section 75 of the Act provides that:
“Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act ”

CBIC Circular No. 171/03/2022-GST clarifies that for a particular act or transaction, if demand and penalty are imposed under Section 73 or Section 74 of the GST Act, no separate penalty can be imposed for the same act under Section 122. In essence, penalty should be levied only under Sections 73/74, and simultaneous penalty under Section 122 is not permissible.



Interpreting Section 122 along with Sections 73/74 would defeat the purpose of **the reduced-penalty framework under Sections 73/74, since Section 122 prescribes a fixed penalty** and does not allow reductions for voluntary payment at different stages. Such an interpretation would make the penalty relief provisions under Sections 73/74 ineffective and redundant.

**CIRCULAR NO.
171/03/2022
dated
06.07.2022**





Circular No.171/03/2022

Clarifications in case of Fake Invoicing

Sno	CASE	ISSUE	CLARIFICATION
1.	<ul style="list-style-type: none">Mr. A issued tax invoice to Mr. B without any underlying supply of goods or services or both.	<ul style="list-style-type: none">(a) Whether it is a supply u/s 7?(b) Whether any demand and recovery can be made from Mr. A u/s 73 or 74?(c) Whether any penal action can be taken against Mr. A ?	<ul style="list-style-type: none">(a) Not a supply u/s 7.(b) As no tax liability arises from Mr. A, hence No Demand and Recovery u/s 73 or 74 can be made from Mr. A.(c) Penal action under section 122(1)(ii) would be taken against Mr. A for issuance of fake invoice
2.	<ul style="list-style-type: none">Mr. A issued tax invoice to Mr. B without any underlying supply of goods or services or bothMr. B utilizes the ITC availed based on the fake invoice.Further, Mr. B issues tax invoice against an underlying supply to its customer	<ul style="list-style-type: none">(a) Whether Mr. B liable for demand and recovery of said ITC u/s 73 or 74?(b) Whether any penal action can be taken against Mr.B?	<ul style="list-style-type: none">(a) Mr. B <u>has utilized fraudulent ITC without receiving the goods</u> and services, in contravention of sec 16(2)(b), so he shall be liable for demand and recovery of said ITC, along with penal action, under u/s 74 for wrongful availment of ITC and Interest u/s 50.(b) No separate penalty for the same act u/s 122.

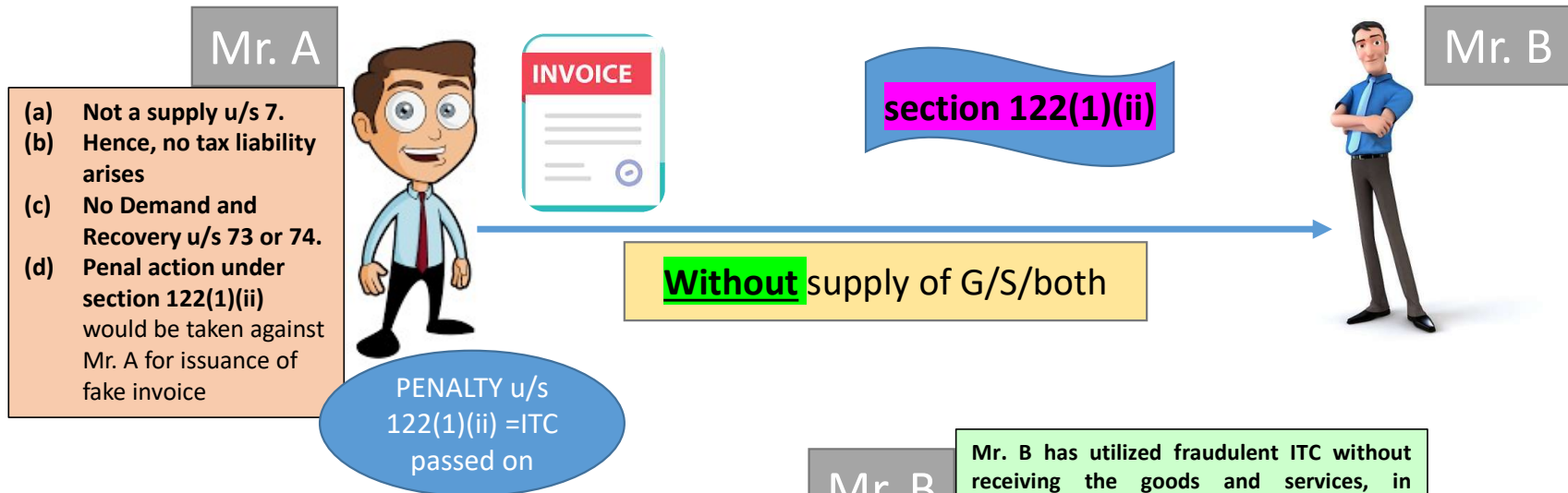
Circular No.171/02/2022

Clarifications in case of Fake Invoicing

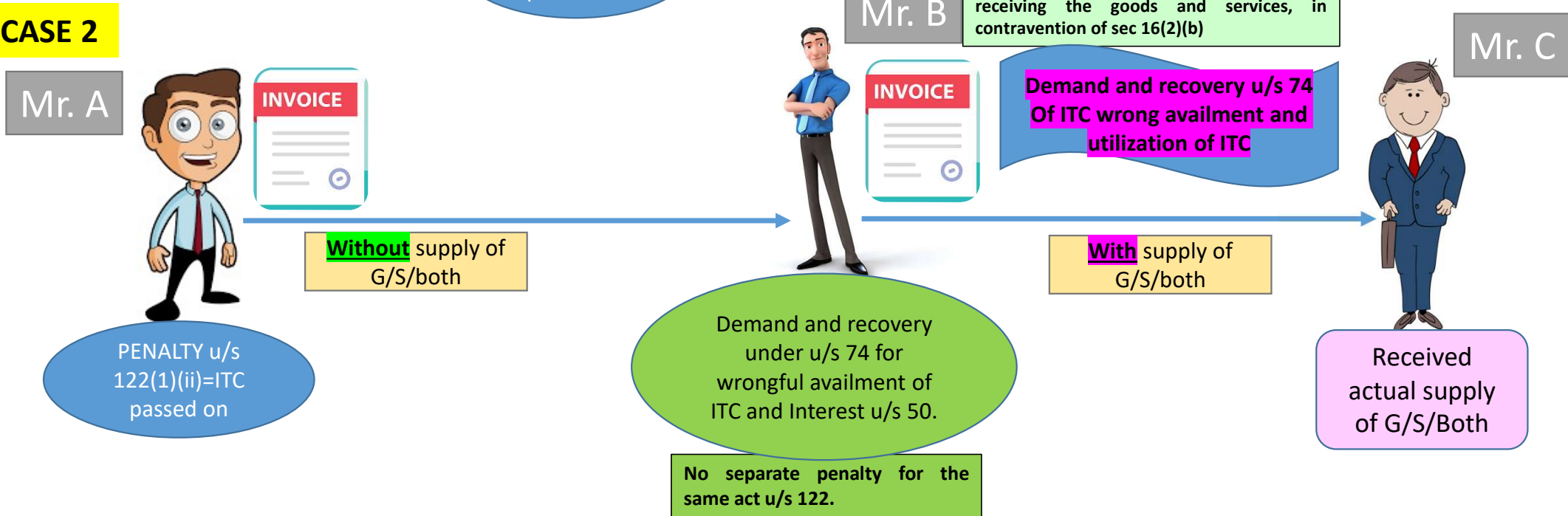
<u>Sno.</u>	<u>CASE</u>	<u>ISSUE</u>	<u>CLARIFICATION</u>
3.	<ul style="list-style-type: none">Mr. A issued tax invoice to Mr. B without any underlying supply of goods or services or both.Mr. B utilizes the ITC availed based on the fake invoice.Further, Mr. B issues tax invoice without an underlying supply to Mr. C.	<ul style="list-style-type: none">(a) Whether Mr. B liable for demand and recovery of said ITC u/s 73 or 74?(b) Whether any penal action can be taken against Mr.B?	<ul style="list-style-type: none">(a) As no tax liability arises from Mr. A, hence No Demand and Recovery u/s 73 or 74. Penal action u/s 122(1)(ii). (Case 1)(b) Mr. B has utilized fraudulent ITC without receiving the goods and services, in contravention of sec 16(2)(b). No Recovery u/s 74 as ITC utilized against Supply.(c) There was no supply u/s by Mr. B to Mr. C, Penal action under section 122(1)(ii) and 122(1)(vii) would be taken against Mr. B for issuance of fake invoice and utilizing ITC without actual receipt of Goods and/or services.

- IN ABOVE CASES-** Actual action to be taken against a person shall depend upon specific circumstances of the case which may involve complex mixture of above scenarios.
- The proceedings initiated under sec 73 & 74 were struck down due to lack of underlying supplies.**
- Section 132 may also be invocable.**

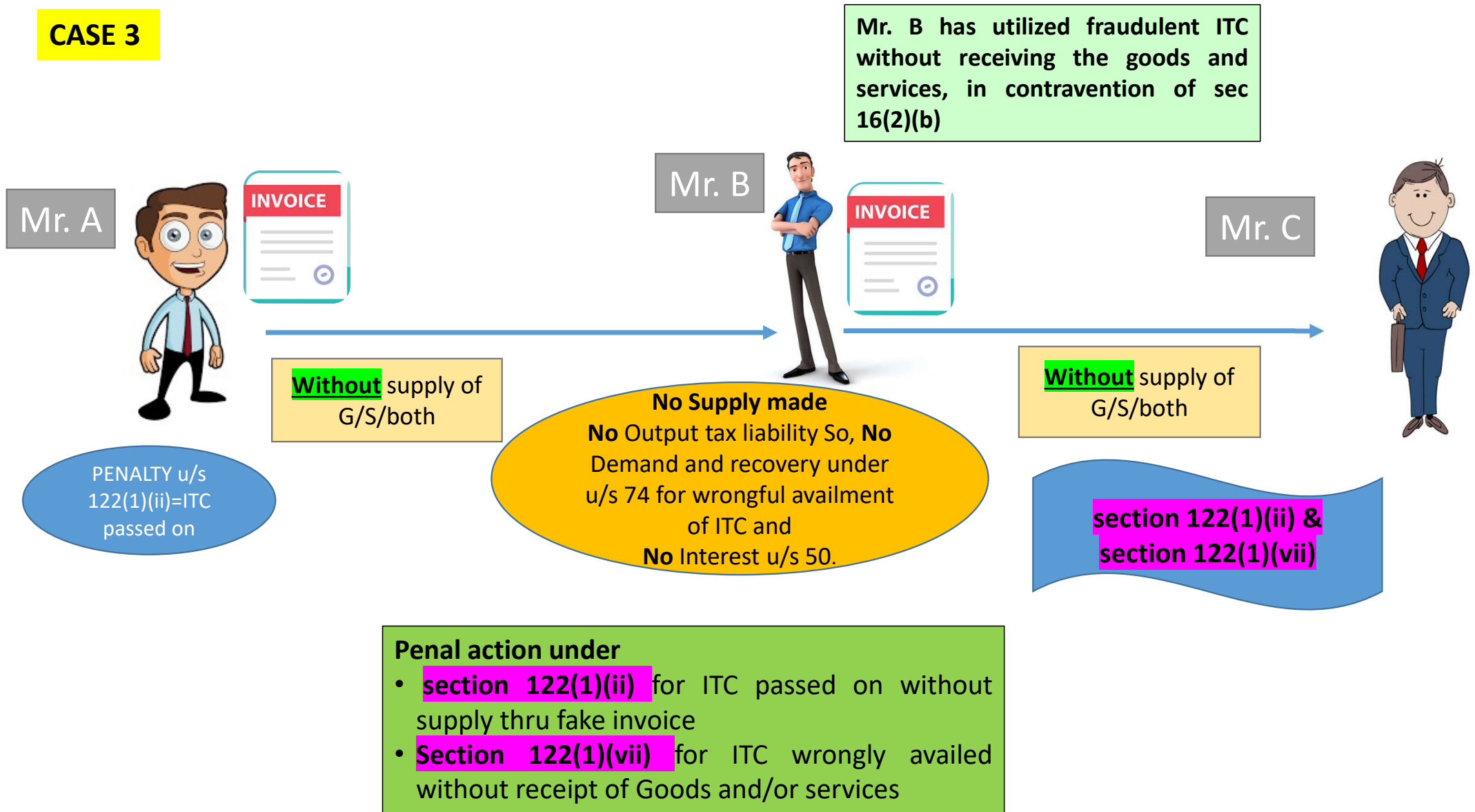
CASE 1



CASE 2

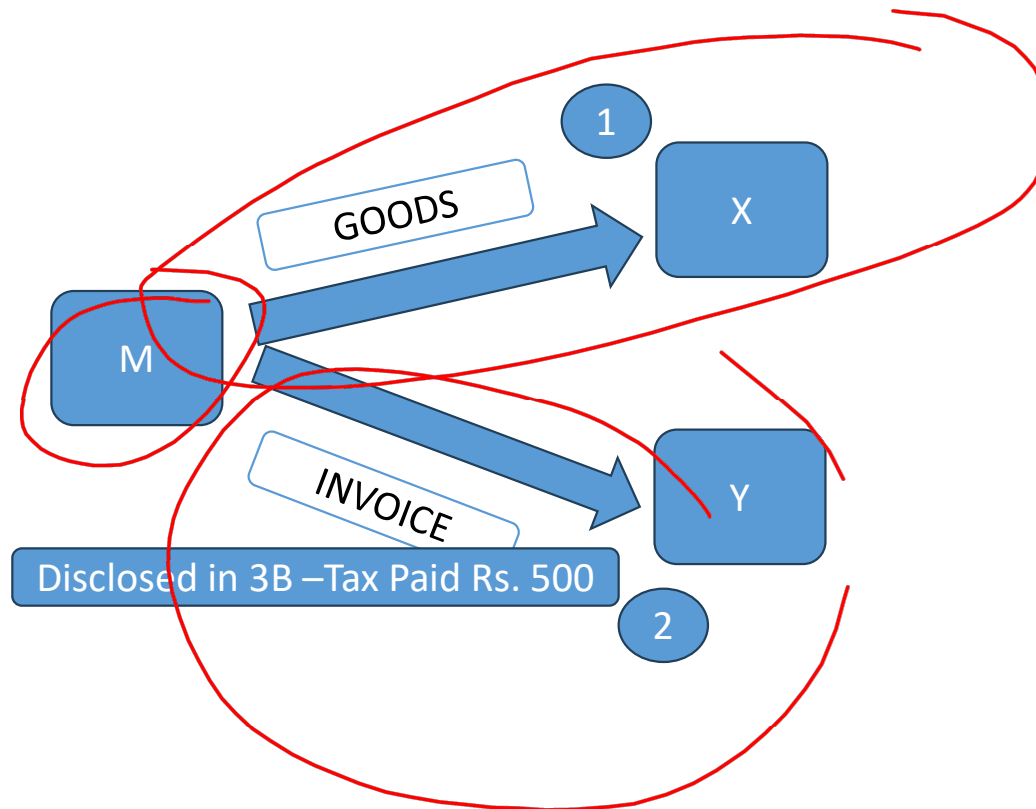


CASE 3



POINT TO BE CONSIDERED

Overall, Section 74 targets **tax evasion and revenue loss**, while Section 122 targets **statutory violations like fake billing**, even if no net tax loss occurs. Both provisions can apply together in complex fraud cases without resulting in double punishment for the same conduct.



Charges by Department

For Transaction No. 1

- 1) Tax not paid , Recovery u/s 74 along with interest and penalty –Rs. 500+500
- 2) Movement of Goods without Invoice – Section 122(1)(i) Rs. 500

For Transaction No. 2

- 1) Issued invoice without supply of goods –Section 122(1)(ii) Rs. 500. (Covered by Cir 177)

Other Penalties

Penalty u/s 122(1A) of Rs. 500 each on directors

Patanjali Ayurved Ltd. vs. Union of India

[2025] 175 taxmann.com 22 (Allahabad)/[2025] 99 GSTL 7 (Allahabad) [29-05-2025]

- **Penalty - Circular trading of tax invoices –**
- **Proceedings under section 74 v. penalty under section 122 –**
- Investigation indicated that Petitioner Patanjali Ayurved, acting as a main person of its three units situated at Uttarakhand, Haryana and Maharashtra, indulged in **circular trading of tax invoices only on paper without actual supply of goods –**
- **Three units of petitioner were issued notices under Sections 74 and 122 - SCN was issued by DGGI proposing to levy penalty of Rs. 273.51 crore on petitioner firm under Section 122(1), clauses (ii) and (vii) –**
- **In meantime, respondent authority vide adjudication order had set aside demands and dropped proceedings under Section 74 of CGST Act against petitioner and only penal action was proposed by department - Against two entities situated in Haryana and Maharashtra penal proceeding continued under section 122 –**
- **Petitioner challenged penalty under section 122 contending that without first determining tax under section 73/74 penal provision under section 122 cannot be invoked –**
- **It was also contended that a penalty under section 122 can only be imposed after a conviction under section 132 -**

Background of the case

- Patanjali Ayurved Ltd. is engaged in manufacturing FMCG products and operates **three manufacturing units in Uttarakhand, Haryana, and Maharashtra, all registered separately under GST with the same PAN**. The case concerns the period from April 2018 to March 2022.
- Based on information received regarding certain Delhi-based entities, the Directorate General of GST Intelligence initiated an investigation that included Patanjali's three units. A common demand-cum-show cause notice dated 19 April 2024 was issued, alleging circular trading of tax invoices without actual supply of goods and proposing tax demand and penalties.
- Patanjali challenged the notice before the Allahabad High Court, primarily objecting to the proposed penalty. During the proceedings, an adjudication order dated 10 January 2025 **dropped the tax proceedings against the Uttarakhand unit and exonerated the other two units from tax demands, while penalty proceedings continued. The continuation of the penalty proceedings led to the present writ petition.**
- The respondent authority-initiated proceedings under the CGST Act against the petitioner and its units. In the adjudication order dated January 10, 2025, the department set aside all demands and dropped proceedings under Section 74 against the petitioner.
- Section 74 action was considered only against the Uttarakhand unit, which allegedly availed ineligible IGST ITC of ₹47,65,37,283/- (₹38,57,21,402/- passed on), while the **Haryana and Maharashtra units were exonerated from Section 74 proceedings, facing only penalties under Section 122.**
- **The department found that the Uttarakhand unit sold more than it purchased, indicating all ITC was passed on. It also noted the show cause notice did not identify fake suppliers, all goods were accounted for, there were no stock mismatches, and reliance on third-party data without proper certification made the evidence inadmissible.** Transportation routes were also legally compliant.
- Concluding, the authority held that the petitioner properly passed on ITC, no Section 74 demand was sustainable, and therefore, no interest or penalty arose.

Patanjali Ayurved Ltd. vs. Union of India

[2025] 175 taxmann.com 22 (Allahabad)/[2025] 99 GSTL 7 (Allahabad)
[29-05-2025]

HELD :

- Conclusion of proceedings on main person under section 74 shall not ipso facto abate proceedings under section 122 proposed to be imposed on main person - There may be scenarios where a proceeding under section 73/74 may get concluded against main person but penalty proceedings under Section 122 for issue of fake invoices by main person may stand independent of proceedings under section 74, and
- **therefore, those proceedings under section 122 would not abate as per explanation 1(ii) of section 74**
Explanation 1(ii) to Section 74 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](#) and [125](#) are deemed to be concluded.
- Proceeding under section 122 is to be adjudicated by adjudicating officer and is not required to undergo prosecution; So far as contention that a **penalty under section 122 can only be imposed after a conviction under section 132 is concerned, it is to be noted that section 122 is a provision specifically for imposition of penalty to be adjudicated by proper officer while provisions from sections 132 to 138 deal with prosecution to be done by criminal courts**
- The High Court rejected these contentions, holding that penalties under **Section 122 are civil in nature**, distinct from criminal prosecution, and **can survive independently of proceedings under Section 74.**

Ques: Whether dropping a tax demand under section 74 would ipso facto nullify penalty proceedings under Section 122 and whether such GST penalties required criminal prosecution.

Facts: During the pendency of the writ petition, the GST authorities dropped the tax demand under Section 74 after concluding that there was no actual tax evasion, as the input tax credit had been passed on in subsequent supplies, **resulting in no revenue loss**. Despite this, the department continued with penalty proceedings under Section 122. **Patanjali argued that once the main tax proceedings were dropped, the penalty should also abate and that such penalties required criminal prosecution.**

Held:

- Section 74(1) of the CGST Act is an **enforcement provision aimed at cases involving tax shortfall or wrongful ITC** arising from fraud, wilful misstatement, or suppression of facts. It empowers tax authorities to recover unpaid or short-paid tax, along with interest and an equivalent penalty, through a structured adjudication process, and provides for an extended limitation period and higher penalties due to the alleged element of fraud.
- Judicial interpretation has clarified that **Section 74 is intrinsically linked to actual tax wrongdoing and presupposes a real loss of revenue or unjust benefit**. **Courts have held that mere availment of credit without its utilization, or procedural lapses without tax consequence, do not justify invocation of Section 74, and such cases may instead fall under other penalty provisions like Section 122 (Aathi Hotel v. Asstt. Commissioner (ST) (Fac) [2022] 137 taxmann.com 435/61 GSTL 343).** **Section 74 requires a revenue loss due to utilization of credit and is not triggered by a mere procedural breach.**
- **Explanation 1(ii) to Section 74** further defines its scope in cases involving **multiple parties** by providing that **once proceedings against the main tax-liable person are concluded under Section 73 or 74, related penalty proceedings against other persons under Sections 122 and 125 are deemed concluded**. This mechanism ensures consistency and prevents standalone penalty proceedings from surviving independently once the principal tax case is resolved, which became a central issue in the Patanjali case.

Explanation 1(ii) to Section 74

The High Court carefully dissected this argument and drew an important distinction: the Explanation's deeming fiction applies where a *main person liable to pay tax* and "*other persons*" are issued notice under the same proceedings. In such multi-party cases, if the main person's Section 73/74 case is resolved, the penalty proceedings against those other persons (typically, co-noticees who were to be penalized for aiding/abetting the main offender's act) are concluded by law.

Patanjali's situation was fundamentally different – here, *the same person(Patanjali) faced two prongs of liability: one for tax evasion (under Section 74) and another for statutory infractions (under Section 122).*

Overlap with Criminal Prosecution:

A broader implication of the judgment is clarifying that civil penalties and criminal prosecutions under GST can co-exist without conflict, as they address different facets.

This would not violate double jeopardy principles because one is not a "second trial" but an administrative sanction.

Doctrine of "Mens Rea" and Penalty:

Earlier tax laws (like the Income Tax Act or The Central Excise Act) prompted debates on whether penalties are Quasi- criminal. The Allahabad HC's discussion reinforces that the statutory language is paramount: it declined to read any extra requirements into Section 122, noting that courts "must avoid a construction that would defeat the purpose of the legislation".

“No Intent Required”

Section 132= Mens Rea

Section 122= Occurrence of Prohibited Act

Section 74 Penalty vs. Section 122

- **Section 74 imposes a tax-linked penalty (Tax Demand + Penalty)** arising from tax evasion or wrongful credit and is assessed along with the determination of tax, interest, and penalty through a single adjudication process. Its application depends on the existence of an actual tax shortfall or wrongful utilization of credit. **It essentially punishes the evasion of tax itself.**
- In contrast, Section 122 provides for **standalone civil penalties for specified statutory offences imposed by the department** such as issuing invoices without supply, using fake invoices, or other unlawful acts, even where no tax demand ultimately arises. **These penalties are imposed independently through separate adjudication and are not contingent upon a tax liability under Sections 73 or 74.**
- The Allahabad High Court emphasized that Section 74 targets tax evasion itself, whereas Section 122 penalizes unlawful conduct distinct from tax loss. **A person may therefore escape tax proceedings under Section 74 yet remain liable under Section 122 for statutory violations.**
- Procedural safeguards, including Section 75(13), prevent double penalties for the same act. **The Patanjali case illustrates this distinction, as the absence of revenue loss negated Section 74 proceedings, while penalties under Section 122 for alleged fake invoicing remained legally sustainable.**
- **Section 122 penalties can be imposed even if no tax is ultimately due under Section 73/74.** These penalties are **levied via adjudication** by GST officers (through an SCN and order specifically under Section 122). It addresses "unlawful acts or omissions" as distinct from the tax evasion itself.

QUES: CIVIL OR CRIMINAL

The Court rejected the argument that penalties under Section 122 of the CGST Act are criminal in nature and require prosecution before a court. The Court held that GST penalty proceedings are **civil and adjudicatory**, to be decided by departmental authorities, not criminal courts.

It clarified that the CGST Act deliberately creates two separate mechanisms:

- **Civil penalties** through adjudication (e.g., Section 122), and
- **Criminal prosecution** requiring sanction and trial (Sections 132 and 134).

Only offences specifically listed as criminal under Section 132 attract prosecution under Section 134. Although Section 122 uses the term “offence” and may involve severe penalties, it imposes **civil liability**, not criminal punishment.

Only offences specifically listed as criminal under Section 132 attract prosecution under Section 134. Although Section 122 uses the term “offence” and may involve severe penalties, it imposes civil liability, not criminal punishment.

The Court quoted with approval the idea that "the word 'offence' does not necessarily under all circumstances mean a crime" and that "penalty" is a slippery word, to be understood in context – it may cover civil liabilities for deterrence, not just crimes against the State. In support, the judgment noted that an order by a GST adjudicating authority imposing a penalty "is not that of conviction but of determination of the breach of a civil obligation".

CRUX

Thus, the Court concluded that GST authorities have the power to impose Section 122 penalties through departmental adjudication, without recourse to the criminal courts.

By affirming Section 122 as civil-administrative, *Patanjali* allows tax authorities to swiftly impose penalties without waiting for prosecution, while still permitting separate criminal action under Section 132 for serious cases.

This dual approach is not considered double punishment, as civil penalties and criminal prosecutions are legally distinct and have long been upheld by courts.

WHY SECTION 122 CGST ACT IS A CIVIL LIABILITY

- Sections 122 and 132 employ distinct terms—**penalty and punishment**—signifying different legal consequences: penalty is a civil liability in tax law, while punishment is a criminal sanction requiring prosecution, as consistently held by the Supreme Court.
- Penalty under Section 122 is a civil consequence in tax law, whereas Section 132 deals with serious offences attracting criminal prosecution.
- Mens rea is an essential element in criminal law for prosecuting an accused whereas in civil matters such as taxation mens rea is irrelevant for imposing civil liability.
- The legislative intent behind penalty provisions is deterrence and compliance, not criminal punishment.
- As recognised in tax jurisprudence and authoritative legal texts, tax penalties are remedial and coercive in nature, distinct from criminal sanctions, and the requirement of *mens rea* arises only where the statute provides for prosecution.



OTHER SIDE OF THE COIN

The imposition of a penalty exceeding Rs. 273 crore in a case where no tax shortfall was ultimately established undermines the jurisprudence laid down in cases such as ***CITv. Vegetable Products Ltd. (1973) 88 ITR 192 (SC)***, where ambiguity in penal provisions was resolved in favour of the assessee.

When there is room for competing interpretations of overlapping provisions (Sections 74 and 122), the interpretation that avoids excessive or disproportionate penalty — **especially where revenue loss is absent** — ought to prevail.

While the Court's effort to delineate civil and criminal liability under the CGST Act is doctrinally appreciated, its reading of the Explanation appears inconsistent with both statutory text and legislative intent.

The language is plain and categorical: once the tax proceedings under Section 74 are dropped or concluded against the principal noticee, the penalty proceedings under Sections 122 and 125 — even if arising from the same SCN — are deemed to be concluded as well against all the persons.

The phrase "all persons" in the Explanation necessarily includes the main noticee unless expressly excluded. **There is nothing in the text to suggest that the deeming fiction operates only in respect of co-noticees and not the principal taxpayer himself.**

Moreover, it is well-established that **deeming provisions must be interpreted strictly and literally**, and courts must not read limitations or exceptions into them.

Case Laws:



- ***East End Dwellings Co. Ltd. v. Finsbury Borough Council [(1952) AC 109]***
- ***Safari Retreats Private Ltd. v. Chief Commissioner of CGST [2019] 105 taxmann.com 324/74 GST 500/25 GSTL341 (Ori) [TS-350-HC-2019 (ORI)-NT]***



122(1A)

122(1A)

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

- a. **Supply of any goods or services** or both without issue of any invoice or issue of an incorrect or false invoice.

Invoice  Supply 
- b. **Issuing 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.

 Invoice but No G/S  BOGUS BILL
- c. **Taking or utilising 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.

ITC-without Receipt of G/S
- d. **Taking or distributing input tax credit** in contravention of section 20 (Input service distributor), or the rules made thereunder.

ISD

Q1: Penalty u/s 122(1A) can be applied
RETROSPECTIVELY before 01.01.2021????
Q2: SECTION 122(1) applies to non taxable person

The Supreme Court in *Mukesh Kumar Garg vs. Union of India & Ors. - 2025 (8) TMI 469 has* granted leave and stayed recovery of the penalty amount subject to the petitioner depositing 25% of the demand before the GST department.

Mukesh Kumar Garg vs. Union of India

[2025] 177 taxmann.com 199 (SC)/[2025] 111 GST 341 (SC)/[2025] 101 GSTL 3 (SC)

[04-08-2025]

INTERIM : Two primary contentions were raised - Firstly, Section 122(1) of CGST Act, 2017 would not be applicable to petitioner as petitioner is non-taxable person - Secondly, provisions of Section 122 (1A) of Act which came into force w.e.f. 01.01.2021 cannot be applied retrospectively for assessment years 2017-2020 - Instant Court granted stay on recovery of amount directed to be deposited provided appellant deposits 25 per cent of demand before GST department either through Electronic Ledger or through Cash Ledger [Section 16, read with sections 74, 107 and 122, of Central Goods and Services Tax Act, 2017/ Delhi Goods and Services Tax Act, 2017 - Article 226 of Constitution of India, 1950] [Paras 1 to 3] [Partly in favour of assessee]

DELHI HIGH COURT: Court's judgment dated May 9, 2025 in **Mukesh Kumar Garg Versus Union Of India & Ors. - 2025 (5) TMI 922 -DELHI HIGH COURT**

Input tax credit - Fraudulent transactions - Appeal v. writ remedy - Where alternate remedy exists - Department conducted a detailed investigation and a show cause notice was issued to petitioner alleging that petitioner along with some other persons incorporated 28 firms and in collusion with other traders availed ITC without supply of goods - High Court held that when fraudulent transactions are entered into, a factual analysis would be required to be undertaken and same cannot be decided in writ jurisdiction - Court, in exercise of its writ jurisdiction, could not adjudicate upon or ascertain factual aspects pertaining to what was role played by Petitioner, whether penalty imposed was justified or not, whether same required to be reduced proportionately in terms of invoices raised by Petitioner under his firm or **whether penalty was liable to be imposed under Section 122(1) and Section 122(3) of CGST Act** - Since appellate remedy under Section 107 was available, petition could not be entertained - Petitioner could avail appellate remedy under Section 107 - SLP was filed against order -

- The case required factual analysis- so no writ entertained
- Unscrupulous Litigant

The Penalty can only be imposed on the company and not the directors

Cases Referred:

- a) Rajendra F Doshi vs. Commissioner of Customs (CESTAT- Mumbai)[82 E.L.T 429]
- b) Globe Rexine Private Limited vs. Commissioner of Central Excise (2006)(203) E.L.T 632 (Tribunal-Chennai)

Shantanu Sanjay Hundekari vs. Union of India

[2024] 161 taxmann.com 27 (Bombay)/[2024] 105 GST 429 (Bombay)/[2024] 89 GSTL 62 (Bombay)
[28-03-2024]

Penalty for certain offences - Penalising employee of another company - Taxable person -Company-MLIPL was appointed as Steamer agent of Danish Shipping company Maersk-Denmark - Petitioner was Taxation Manager of MLIPL and was holding power of attorney to represent Maersk before tax authorities - After investigation, respondent authorities alleged that a sum of Rs. 1561 crores was wrongly utilized as Input Tax Credit by Maersk – Petitioner was called upon to show cause for levying penalty equivalent to tax evaded by Maersk amounting to Rs. 3731 crore under section 122(1A) of CGST Act and proceeding against him ‘for indulging’ into offences of nature as prescribed under section 137 of CGST Act, 2017 read with section 20 of IGST Act for wilful suppression of facts resulting in evasion of GST by Mearsk - **HELD :** Provision of section 122(1A) of CGST Act, would manifest that person like petitioner, who was a mere employee of MLIPL, would not fall within purview of said provision, as petitioner could not be a ‘taxable’ or a ‘registered person’ within meaning and purview of CGST Act so as to retain benefits as provision ordains - Hence, section 122(1A) could not be invoked against petitioner - Thus qua petitioner, impugned show cause notice was to be quashed and set aside [Section 122(1A) of Central Goods and Services Tax Act,2017/Maharashtra Goods and Services Tax Act, 2017] [Para 8] [Against revenue]

-Petitioner was called upon to show cause for indulging into offences of nature prescribed under section 137 of CGST Act, read with section 20 of IGST Act, for wilful suppression off acts resulting in evasion of GST by Mearsk - **HELD :** None could apprehend as to how section 137 of CGST Act can form part of any invocation against petitioner that too along with provision of section 122(1A), as show cause notice was issued under section 74 of CGST Act - Section 74 is not a penal provision, whereas section 137 falls under Chapter XIX which provides for 'offences and penalties' - In any event, proceedings under section 137 cannot be proceedings which can be made answerable in a demand cum show cause notice issued under section 74, as proceedings under section 137 would be in nature of a prosecution necessarily involving applicability of section 134 - Thus, basic jurisdictional requirements/ingredients were not attracted for issuance of show cause notice under section 74 of CGST Act so as to invoke section 122(1A) and section 137 against petitioner -Thus, qua petitioner, impugned show cause notice was to be quashed and set aside [Section137, read with section 74 and section 122, of Central Goods and Services Tax Act,2017/Maharashtra Goods and Services Tax Act, 2017] [Para 8] [Against revenue]

Bhupender Kumar vs. Additional Commissioner Adjudication CGST Delhi North

[2025] 176 taxmann.com 356 (Delhi)/[2025] 100 GSTL 283 (Delhi)

[07-07-2025]

Where assessee, a GST consultant, had **knowingly enabled creation of fake firms for availing ITC of ₹285 crores fraudulently**, penalties under sections 122(1A), 122(3), and 125 were upheld; writ was not to be entertained, but liberty was granted to pursue appellate remedy

Penalty - ITC fraud/Fake billing - GST consultant assisting in fraud - Appeal v. writ remedy - Assessee was a GST consultant against whom a **show cause notice was issued by DGGI raising a demand of Rs. 285 crores** - It was alleged that **54 fake firms were created and operated by one Sehgal and his associates** and assessee was one of consultants engaged by Sehgal who enabled creation of said firms used for fraudulent availment and passing on of input tax credit (ITC) - **Assessee was imposed penalty under section 122(1A) of CGST Act, 2017 equivalent to ITC availed, collectively amounting to Rs. 285 crores and further penalty of Rs. 75,000 was imposed under section 122(3)(a), (d) & (e) of CGST Act and penalty of Rs.75000 under Section 125 - HELD: Assessee was fully aware and enabled creation of these fake firms and was aware that ITC was being fraudulently availed of - Assessee, being a **GST consultant** who was also earlier facilitated liaison work with Revenue Department for around 4 years had clearly made use of his knowledge and assisted Sehgal in setting up these fake firms - **Assessee could not rebut allegations that he was benefitted from transactions or did not derive any benefit from said transactions** - Writ jurisdiction ought not to be exercised in such cases - However, though limitation period had expired, assessee could be given an opportunity to avail of his appellate remedy in accordance with law under section 107 of CGST Act, 2017 [Section [122](#) of Central Goods and Services Tax Act, 2017/ Delhi Goods and Services Tax Act, 2017] [Paras 16, 17, 21, 26 and 27] **[In favour of revenue]****

The Delhi High Court in the case of Bhupender Kumar versus Additional Commissioner Abjudication CGST Delhi North & Ors has made it clear that **Section 122(1A) of the Goods and Services Tax Act 2017 can be imposed retrospectively, provided the show cause notice had been issued to the assessee when the provision was introduced.**

- Refusing to entertain the writ
- Cases referred: Mukesh Kumar Garg vs. Union of India & Ors. - 2025 (8) TMI 469
- **Para 24:** In so far as the retrospective application of Section 122(1A) of CGST Act is concerned, the same would be governed by the date of the SCN. The SCN was issued on 8th March, 2024. The law has been clearly amended to also implicate such individuals who may be involved in such fraudulent transactions and the said law cannot be set at naught by holding the same to not be retrospectively applicable to transactions which took place prior to the date when the law was enacted. On the day when the SCN was issued, the provision Section 122 (1A) was in place.
- **Para 25:** The manner in which fraudulent ITC has been availed would also show that it was a continuous process and not a one time act of the parties involved. Under such circumstances Section 122(1A) of the CGST Act was clearly applicable.
- Relevant Provisions: ITC availment is a continuous process governed by date when SCN issued

Amit Manilal Haria vs. Joint Commissioner of CGST & CE

[2025] 173 taxmann.com 805 (Bombay)/[2025] 109 GST 628 (Bombay)/[2025] 98 GSTL 17 (Bombay)

[16-04-2025]

Penalty - For certain offences - Penalty against key persons - Position prior to 1-1-2021 - Period July 2017 to March 2022 - Impugned penalty order was passed against three petitioners, who were CFO, CEO and director of company 'Shemaro' as **they were held persons responsible for GST evasion by company** - Petitioners challenged said order on ground that show cause notice proposed penalty on petitioners for period July 2017 to March 2022, but **no penalty could have been demanded for any period prior to 1-1-2021 which is date of coming into force of section 122(1A) with prospective effect** –

HELD : Matter was to be listed and reply was to be filed by respondents - In meantime ad interim stay/relief was to be granted to petitioners [Section 122 of Central Goods and Services Tax Act, 2017/ Maharashtra Goods and Services Tax Act, 2017][Paras 4 to 6][Against revenue]

it was held that, *Prima facie*, we find substance in the argument that Section 122(1A), brought on the statute book only with effect from January 1, 2021, **cannot be retrospectively applied to impose penalty for periods prior to that date.**

Section 122(1A) is prospective in nature and cannot be invoked for alleged contraventions prior to January 1, 2021 and that Penalty under Section 122(1A) applies only to a person who is a “taxable person” and who has retained the benefit of the contravention, which must be proved with evidence.

Penal provisions---RETRO

Penal Provision cannot be retrospective unless explicitly stated

Cases Referred:

- Vatika Township (2014) 367 ITR 466 (SC)
- Govind das vs. The Income Tax Officer (1976) 103 ITR
- Hitendra Vishu Thakur (1994) 4 SCC 602

Gurudas Mallik Thakur vs. Commissioner of Central Goods and Service Tax

[2025] 174 taxmann.com 116 (Delhi)/[2025] 98 GSTL 517 (Delhi)

[23-04-2025]

Penalty - ITC fraud - Penalty on director - Appeal v. writ remedy - Investigation was conducted against company wherein it was revealed that CENVAT credit to tune of Rs.22.41 crore was availed which was inadmissible - Notices were issued on directors and penalty was imposed -On writ by petitioner-director, **HELD:** Each of Directors were trying to shrug off their responsibility - **Directors are clearly not owning up responsibility as to who took decisions in respect of availment of ITC and non-filing of GST returns - Petitioners submitted that by time 122 (1A) of CGST Act was enacted and had come into effect i.e. 1st January 2021**, Petitioners were no longer directors of company - Matter required closer scrutiny on facts by Appellate Authority as to who was responsible for running company and who was taking decisions including relating to generation of invoices, making payments, etc. - However, same is beyond scope of a writ petition - Correct remedy for Petitioners would be to approach Appellate Authority - Section [122](#), read with section [107](#), of Central Goods and Services Tax Act, 2017/ Delhi Goods and Services Tax Act, 2017] [Para 37 to 40][Partly in favour of revenue]

WHO is PO for Section 122 ???

Who is the proper officer in proceedings wherein the only question is levy of penalty under Section 122 and 125 of CGST Act, 2017

Section 122 and 125: No mention of proper officer to levy penalty as in Section 123 and 129. Further, said sections only mention penalty amount for the offences.

Rule 142(1) referring Section 122: Calls for the proper officer and provides that he shall serve, along with the notice issued section 122 or section 125, a summary thereof electronically in FORM GST DRC-01.

Circular No. 3/3/2017-GST dated 05-07-2017 : Mentions Section 123 and 127 but no mention of PO for Section 122. Rule 142(1) referring Section 122 makes Superintendent of Central Tax as PO.

For Section 127: The Deputy Commissioner/ Assistant Commissioner is considered as the proper officer. Can it be considered that reference to Section 127 covers Section 122 and 125 as well. This cannot be a case, because when we refer Rule 142(1)- Superintendent of Central Tax, it contains reference to Section 122, Section 125 and Section 127 separately. Therefore all these sections shall be construed separately.

Further, Circular No. 3/3/2017-GST Dated 05-07-2017 makes Superintendent of Central Tax as the proper officer for Sub-rule (1), (2), (3) and (7) of Rule 142. Now Rule 142(1) provides for issuance of notice under section 52 or section 73 or section 74 or section 74A or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 but then interestingly there is a separate authorisation for Section 73, 74, 76, 123, 127, 129 and 130 in Circular No. 3/3/2017-GST Dated 05-07-2017.

The question still remains who is the proper officer for levy of penalty, whether

- a) Since 122 and 125 does not make any reference to the proper officer unlike other sections, therefore whoever officer is seized of any of the proceedings under the Statute, he can levy penalty under Section 122 and 125 in those proceedings on being satisfied that offence leviable to penalty under those sections has been committed and interestingly, there is no monetary prescribed for this unlike for Section 73 and 74, or
- b) We have to draw analogy from reference of Section 127 in Circular No 3/3/2017 Dated 05-07-2017 or
- c) We have to draw analogy from reference to Rule 142(1) of CGST Rules in Circular No 3/3/2017 Dated 05-07-2017.

Interesting times ahead and what is happening at ground level, it appears option

(a) is being followed and the question is whether at all it is correct. Because by this even a Superintendent of Central Tax can levy penalty of any amount when supposedly question is of issuance of invoice without supply and since circular for monetary limit of tax applies to Section 73 and 74 and in Section 122(1)(ii) penalty is not linked to tax but input tax credit passed on irregularly.

CIRCULAR NO.3/3/2017-GST

GST PROPER OFFICER RELATING TO PROVISIONS OTHER THAN REGISTRATION AND COMPOSITION UNDER THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

CIRCULAR NO.3/3/2017-GST, DATED 5-7-2017
AS AMENDED BY CIRCULAR NO.31/05/2018-GST, DATED 9-2-2018

In exercise of the powers conferred by clause (91) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with Section 20 of the Integrated Goods and Services Tax Act (13 of 2017) and subject to sub-section (2) of section 5 of the Central Goods and Services Tax Act, 2017, the Board, hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to the various sections of the Central Goods and Services Tax Act, 2017 or the rules made thereunder given in the corresponding entry in Column (3) of the said Table:—

TABLE

S. No.	Designation of the officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
1.	Principal Commissioner/ Commissioner of Central Tax	i. Sub-section (7) of Section 67 ii. Proviso to Section 78
2.	Additional or Joint Commissioner of Central Tax	i. Sub-sections (1), (2), (5) and (9) of Section 67 ii. Sub-section (1) and (2) of Section 71 iii. Proviso to section 81 iv. Proviso to sub-section (6) of Section 129 v. Sub-rules (1),(2),(3) and (4) of Rule 139 vi. Sub-rule (2) of Rule 140
3.	Deputy or Assistant Commissioner of Central Tax	i. Sub-sections (5), (6), (7) and (10) of Section 54 ii. Sub-sections (1), (2) and (3) of Section 60 iii. Section 63 iv. Sub-section (1) of Section 64 v. Sub-section (6) of Section 65

viii. Sub-section (1) of Section 79 ix. Section 123 x Section 127

ix. Section 123

x. Section 127

xi. Sub-section (3) of Section 129

xii. Sub- sections (6) and (7) of Section 130

xiii. Sub- section (1) of Section 142

xiv. Sub-rule (2) of Rule 82

xv. Sub-rule (4) of Rule 86

xvi. Explanation to Rule 86

xvii. Sub-rule (11) of Rule 87

xviii. Explanation 2 to Rule 87

xix. Sub-rules (2) and (3) of Rule 90

xx. Sub-rules (2) and (3) of Rule 91

xxi. Sub-rules(1), (2), (3), (4) and (5) of Rule 92

xxii. Explanation to Rule 93

xxiii. Rule 94

xxiv. Sub-rule (6) of Rule 96

xxv. Sub-rule (2) of Rule 97

xxvi. Sub-rules (2), (3), (4), (5) and (7) of Rule 98

xxvii. Sub-rule (2) of Rule 100

xxviii. Sub-rules (2), (3), (4) and (5) of Rule 101

xxix. Rule 143

xxx. Sub-rules (1), (3), (4), (5), (6) and (7) of Rule 144

xxxi. Sub-rules (1) and (2) of Rule 145

xxxii. Rule 146

xxxiii. Sub-rules (1), (2), (3), (5), (6), (7), (8), (10),(11), (12), (14) and (15) of Rule 147

xxxiv. Sub-rules(1),(2) and (3) of Rule 151

CIRCULAR NO.3/3/2017-GST

		<p>xxxv. Rule 152</p> <p>xxxvi. Rule 153</p> <p>xxxvii. Rule 155</p> <p>xxxviii. Rule 156</p>
4.	Superintendent of Central Tax	<p>i. Sub-section (6) of Section 35</p> <p>ii. Sub-sections (1) and (3) of Section 61</p> <p>iii. Sub-section (1) of Section 62</p> <p>iv. Sub-section (7) of Section 65</p> <p>v. Sub-section (6) of Section 66</p> <p>vi. Sub-section (11) of Section 67</p> <p>vii. Sub-section (1) of Section 70</p> <p>viii. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73</p> <p>2 [(viii)(a). Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74]</p> <p>ix. Sub-rule (6) of Rule 56</p> <p>x. Sub-rules (1), (2) and (3) of Rule 99</p> <p>xi. Sub-rule (1) of Rule 132</p> <p>xii. Sub-rule (1), (2), (3) and (7) of Rule 142</p> <p>xiii. Rule 150</p>
5.	Inspector of Central Tax	<p>i. Sub-section (3) of Section 68</p> <p>ii. Sub-rule (17) of Rule 56</p> <p>iii. Sub-rule (5) of Rule 58</p>

Amended by Cir 31/05/2018

RULE 142

No power to Summon

WHO CAN IMPOSE PENALTY UNDER SECTION 122 and SECTION 125



- Section 122 & 125 define penalty amount for the offences, but don't mention who the proper officer is to impose them.
- As per rule 142(1), the proper officer shall serve DRC-01 for penalties under section 122 & 125. But it still doesn't define who that proper officer is.
- Circular 3/3/2017 assigns officers for other sections, but it doesn't mention section 122 or 125. So, there's no direct guidance on the penalties under this section.

The references in the circular are as follows:

- a) Reference to Section 127 cannot be deemed to cover Sections 122 and 125, as Rule 142(1) explicitly refers to all three sections separately, requiring independent construction.
- b) Further ambiguity arises as Circular No. 3/3/2017-GST authorises the Superintendent as proper officer for Rule 142(1), while simultaneously issuing separate authorisations for specific sections (73, 74, 76, 123, 127, 129 and 130) already covered under that rule.

**ISSUE: Identification of
Proper Officer for levy of
penalty**

3 Possible views emerge

In the absence of clarity:

- Even officers of lower rank may impose substantial penalties
- leading to potential overreach in serious cases such as fake invoicing
- resulting in inconsistent treatment across matters.

- I. any officer conducting proceedings under the Act may impose such penalty if an offence is established. Notably, there is no prescribed monetary threshold, unlike Sections 73 and 74.
- II. guidance may be inferred either from the reference to Section 127 in Circular No. 3/3/2017 dated 05.07.2017
- III. from the authorisation linked to Rule 142(1) of the CGST Rules in the same Circular.

Circular No. 254/11/2025

DATED 27-10-2025



ASSIGNING PROPER OFFICER UNDER SECTION 74A, SECTION 75(2) AND SECTION 122 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND RULES MADE THEREUNDER

This circular expressly defines the proper officer for Section 122, filling a gap left under Circular No. 3/3/2017 and amending Circular No. 31/05/2018, thereby bringing clarity to penalty proceedings under Section 122.

Attention is invited to **Circular No. 1/1/2017-GST (26.06.2017)** assigning proper officers for registration and composition levy under the CGST Act, and **Circulars No. 3/3/2017-GST (05.07.2017)** and **No. 31/05/2018-GST (09.02.2018, as amended)** regarding appointment of proper officers under the CGST and IGST Acts.

NO PROPER OFFICER HAS BEEN ASSIGNED IN RESPECT OF THE FOLLOWING

(a)	Section 74A	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward.
(b)	Section 122	Penalty for certain offences
(c)	Section 75(2)	General provisions relating to determination of tax
(d)	Rule 142(1A)	Issuance of a communication in FORM GST DRC-01A before issuance of any show cause notice under section 73 or section 74 or section 74 A of the CGST Act, 2017.

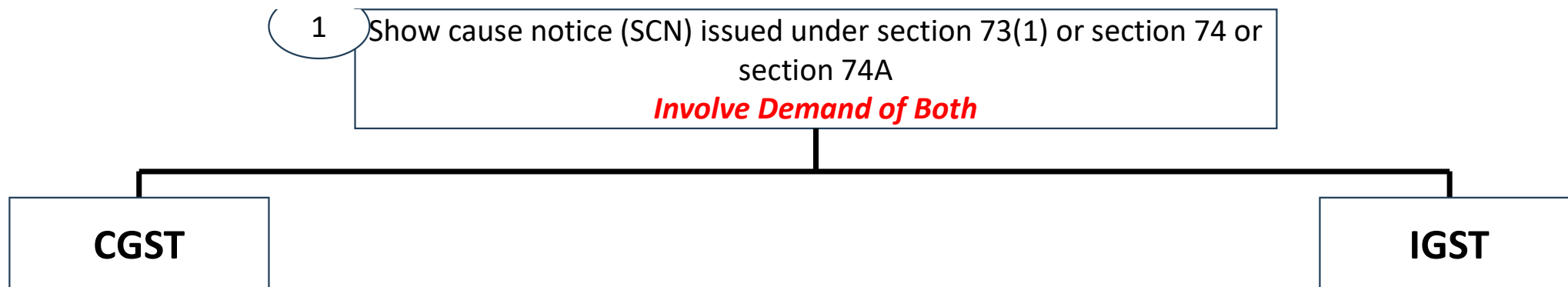
In exercise of statutory powers under the CGST and IGST Acts, the Board assigns the officers specified in Table-I as proper officers for the corresponding provisions of the CGST Act and Rules.

Table-I

S. No.	Designation of the officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
1.	a. Additional or Joint Commissioner of Central Tax,	i. Sub-sections (1), (2), (3), (6), (7), (8), (9) and (10) of Section 74 A. ii. Section 122. iii. Rule 142(1A) of the CGST Rules, 2017.
	b. Deputy or Assistant Commissioner of Central Tax,	
	c. Superintendent of Central Tax	

In exercise of powers under the CGST and IGST Acts, the Board assigns the officers specified in Table-II as proper officers to issue show cause notices and pass orders under Section 74A of the CGST Act (and corresponding IGST provisions), subject to the prescribed monetary limits.

Sl. No.	Officer of Central Tax	Monetary limit of the amount of Central Tax (including cess) not paid or short paid or erroneously refunded or input tax credit of Central Tax wrongly availed or utilized for issuance of show cause notices and passing of orders under section 74A of CGST Act	Monetary limit of the amount of Integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of Integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders under section 74A of CGST Act made applicable to matters in relation to integrated tax vide section 20 of the IGST Act	Monetary limit of the amount of Central Tax and Integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of Central Tax and Integrated Tax wrongly availed or utilized for issuance of show cause notices and passing of orders under section 74A of CGST Act made applicable to Integrated tax vide section 20 of the IGST Act
(1)	(2)	(3)	(4)	(5)
1.	Superintendent of Central Tax	Not exceeding Rupees 10 lakh	Not exceeding Rupees 20 lakh	Not exceeding Rupees 20 lakh
2.	Deputy or Assistant Commissioner of Central Tax	Above Rupees 10 lakh and not exceeding Rupees 1 crore	Above Rupees 20 lakh and not exceeding Rupees 2 crore	Above Rupees 20 lakh and not exceeding Rupees 2 crore
3.	Additional or Joint Commissioner of Central Tax	Above Rupees 1 crore without any limit	Above Rupees 2 crore without any limit	Above Rupees 2 crore without any limit



The proper officer shall be determined on the basis of the combined amount of Central Tax and Integrated Tax (including cess), mentioned in column (5) of the Table-II above

2.

SCN
(Under Section 73 /74/74A)



STATEMENT (RELATED TO SCN)
(Under Section 73 /74/74A)

- Proper officer shall be determined based on the highest amount of tax specified in the show cause notice and statement across all tax periods

- ***SCN issued under section 73/74/74A and P.O assign within the monetary limit. However, amount of tax demanded in the subsequent statement goes beyond the monetary limits. The proper officer who has issued the earlier show cause notice and statement (if any issued), shall issue a corrigendum and make the earlier show cause notice and statement (if any issued) answerable to the proper officer competent to adjudicate the statement with the higher amount of tax demanded.***

In case there is no change in the monetary limit when the statement is issued, the *statement shall be issued by the same proper officer who has issued the show cause notice* in section 73(1)/74/74A of CGST Act, and he shall make the statement answerable to the same adjudication authority mentioned in the show cause notice issued earlier.

- The proper officer shall be determined based solely on the amount of tax demanded, **excluding penalties from the calculations.**

Notices issued by officers of Audit Commissionerate of Central Tax, the proper officer of the jurisdictional Central Tax Commissionerate of the noticee shall make the statement to be issued under sub-sections (3) and (4) of section 73 or section 74 or section 74A of the CGST Act answerable to the adjudicating authority mentioned in the earlier show cause notice issued under sub-section (1) of section 73 or section 74 or section 74A of the CGST Act, 2017

Section 75(2) of CGST Act provides that where any Appellate Authority or Appellate Tribunal or Court concludes that:

1.

SCN Under Section 74 issued

2.

Not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established

3.

Proper officer shall determine the tax payable by such person, deeming as if the ***notice were issued under section 73(1) of CGST Act.***

4.

The ***proper officer for this purpose shall be the same officer*** who is the adjudicating authority for such SCN issued under section 74

In exercise of powers under the CGST and IGST Acts, the Board assigns the officers specified in Table-III as proper officers to issue show cause notices and pass orders under Section 122 of the CGST Act (and corresponding IGST provisions), subject to the prescribed monetary limits.

Table-III

Monetary limit for issuance of show cause notices and passing of orders under section 122 of CGST Act

Sl. No.	Officer of Central Tax	Monetary limit of the amount of penalty in relation to the Central Tax for issuance of show cause notices involving only penalty and passing of orders under section 122 of CGST Act	Monetary limit of the amount of penalty in relation to the Integrated Tax for issuance of show cause notices involving only penalty and passing of orders under section 122 of CGST Act made applicable to matters in relation to Integrated Tax vide section 20 of the IGST Act	Monetary limit of the amount of penalty in relation to the Central Tax and Integrated Tax for issuance of show cause notices involving only penalty and passing of orders under section 122 of CGST Act made applicable to matters in relation to Integrated Tax vide section 20 of the IGST Act
(1)	(2)	(3)	(4)	(5)
1.	Superintendent of Central Tax	Not exceeding Rupees 10 lakh	Not exceeding Rupees 20 lakh	Not exceeding Rupees 20 lakh
2.	Deputy or Assistant Commissioner of Central Tax	Above Rupees 10 lakh and not exceeding Rupees 1 crore	Above Rupees 20 lakh and not exceeding Rupees 2 crore	Above Rupees 20 lakh and not exceeding Rupees 2 crore
3.	Additional or Joint Commissioner of Central Tax	Above Rupees 1 crore without any limit	Above Rupees 2 crore without any limit	Above Rupees 2 crore without any limit

Show cause notice (SCN) issued under section 122

Involve Demand of Penalty of Both

CGST

IGST

The proper officer shall be determined on the basis of the combined amount of Central Tax and Integrated Tax (including cess), mentioned in column (5) of the Table-III above

COMPARISON

Sr. No	Earlier Position (Circulars 31/05/2018, as amended by 169/01/2022 & 239/33/2024)	Present Position (Circular 254/11/2025 dated 27-10-2025)
1.	Proper Officers were clearly defined for section 73 and 74 (tax demand proceedings)	Express assignment of proper officer under Section 122 for issuance of SCNs and passing of penalty orders.
2.	No specific assignment of proper officer under Section 122 (penalty provisions)	Separate monetary limits prescribed specifically for penalty-only proceedings under Section 122.
3.	Section 122 penalties were being dealt with by implication or linkage to proceedings under Sections 73/74 or Rule 142.	Clear Demarcation of roles: a) Additional or Joint Commissioner of central Tax, b) Deputy or Assistant Commissioner of Central Tax, c) Superintendent of Central Tax Based on penalty amount
4.	Resulted in ambiguity regarding authority to issue SCN and adjudicate penalty-only cases under Section 122.	Removes dependence of Section 122 on Sections 73/74 proceedings and brings clarity and certainty to penalty adjudication provisions.

Finance Act 2023 w.e.f 01.10.2023 inserted a new sub-section (1B) in section 122 of the Central Goods and Services Tax Act so as to provide for penal provisions applicable to electronic commerce operators in case of contravention of provisions relating to supplies of goods or services made through them by unregistered persons or composition taxpayers.

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

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(iii) fails to furnish the correct details in the statement to be furnished under sub-**section** (4) of **section** 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

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

24b. Inserted by the Finance Act, 2023, w.e.f. **1-10-2023**.

24c. Substituted for "Any electronic commerce operator who" by the Finance (No. 2) Act, 2024, w.r.e.f. **1-10-2023**. [However Notification No. 17/2024(S.O. 4253(E))-Central Tax, dated 27-9-2024 appoints **1-11-2024**, as the date of enforcement]

Electronic
commerce
operator

Penalty for certain offences

Inserted after sub-section 122(1A)



(1B) Any electronic commerce operator, who is liable to collect tax at source under section 52,

DEFAULTS

(i) Allows
Supply of Goods
& Services

By

Unregistered
Person

Other than a person
exempted from
registration by
Notification

(ii) Allows
INTER STATE Supply
of Goods & Services

By

In eligible
Person

who is not eligible
to make such inter-
State supply

(iii) Fails to furnish
Correct details in
GSTR-8

Of

outward
supply of
goods

by a person exempted
from obtaining
registration under this
Act

Shall be
Liable
To pay

Rs.10000/-

(or)

**amount
equivalent
to the
amount
of tax
involved**

amazon
Flipkart



Section 122(2) :- Penalty for certain offences

(2) Any registered person who

supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—

a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax,

shall be liable to a penalty of ten thousand rupees or ten per cent of the tax due from such person,

w.i.higher

b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax,

shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

Section 122(3) :- Penalty for certain offences

(3) Any person who—

Person Not Directly Involved Not covered in 122(1A)

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

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

25000*2

5 specific issues covered

Section 123 :- Penalty for failure to furnish information return.

If a person who is required to furnish an information return under section 150

- ✓ fails to do so within the period specified in the notice issued under sub-section (3) thereof,
- ✓ the proper officer may direct that such person shall be liable to pay
- ✓ a penalty of **one hundred rupees for each day** of the period during which the failure to furnish such return continues:

Provided that the penalty imposed under this section shall not exceed **five thousand rupees.**

Note: IR are not Tax Returns but rather tax documents which are used to report certain business transactions.

Section 124 :-Fine for failure to furnish statistics.

Power to
collect
statistics

If any person required to furnish any information or return under section 151,—

- a) without reasonable cause fails to furnish such information or return as may be required under that section, or
- b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

he shall be punishable with a fine which may extend to ten thousand rupees and

- ✓ in case of a continuing offence
- ✓ to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty five thousand rupees.

Max. Rs. 10000

Continuing offence= Fine of Rs. 100 each day max. 25000/-

Section 125 :-General penalty.

- ✓ Any person, who contravenes any of the provisions of this Act or any rules made thereunder
- ✓ for which no penalty is separately provided for in this Act,
- ✓ shall be liable to a penalty which may extend to twenty five thousand rupees.

25000*2

**NO GENERAL PENALTY WHEN
LATE FEES APPLIES**

Tvl. Jainsons Castors v. AC (2025)

- **Court:** Madras High Court | **Citation:** [2025] 171 taxmann.com 833
- **Issue:** Whether Sec 125 penalty valid alongside Sec 47 late fee
- **Held:** Dual penalization impermissible – Sec 125 penalty struck down
- **Impact:** Establishes proportionality in GST penal provisions
- **Takeaway:** Contest excessive penalties when specific provisions already exist.
- **Relevant Provisions:**

Section 47 – Late fee for delay in return filing

Section 125 – General penalty

Section 73 – Not applicable in procedural delay cases



Judgment:
Section 125 penalty struck down.
Only late fee under Section 47 upheld.

Background:

Petitioner filed **GSTR-9 late**, and paid late fee under Section 47.
Later received an additional **general penalty under Section 125** of ₹50,000.
Petitioner challenged **dual penalization**.

Petitioner's Arguments:

Once Section 47 penalty (late fee) is imposed, **Section 125 penalty cannot be applied** for same contravention.
The nature of violation is procedural, not intentional or fraudulent.

Respondent's Arguments:

Section 125 gives power to impose general penalty **for any default where no specific penalty is provided**.
Additional penalty valid in this case due to prolonged delay and non-compliance.

Court Observations:

Section 47 is **specific provision** for late return filing.
Invoking **Section 125 alongside Section 47** is improper.
Penalty under Section 125 must apply **only in absence of specific penalty provisions**.

Section 127 :-Power to impose penalty in certain cases.

Assessment
sections

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 74A] or section 129 or section 130**, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

Inserted by the Finance (No. 2) Act, 2024, w.e.f. **1-11-2024**.

- Empowers the PO to initiate separate penalty proceedings if penalty is not leviable under any provisions of sec. 62/63/64/73/74/74A
- Penalties can be imposed even in cases where no proceedings are open with regard to assessment/ adjudication/ detection or confiscation after opportunity of being heard.

Section 128 :- Power to waive penalty or fee or both.

The Government may, by notification, waive in part or full,

- ✓ any penalty referred to in section 122 or section 123 or section 125 or
- ✓ any late fee referred to in section 47 for such class of taxpayers and
- ✓ under such mitigating circumstances as may be specified therein on the recommendations of the Council

A number of
Notifications issued
under this

DETENTION u/s 129

(covered in separate PPT)

Section 131 :- Confiscation or penalty not to interfere with other punishments.

Administrative provision

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973 (2 of 1974), no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

Eg. Prosecution, arrest, cancellation of registration

Section 132 :- Punishment for certain offences.

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

Invoice  Supply 

- 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 the invoice or bill referred to in clause (b) or **fraudulently avails input tax credit without any invoice or bill**;*
- d) collects any amount as tax but fails to pay the same to the **Government beyond a period of three months from the date on which such payment becomes due**;
- e) evades tax, 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 provides any false information with an intention to evade payment of tax due under this Act;

Transporter
also covered

Section 132 :- Punishment for certain offences.

- h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- i) receives or is in any **way concerned with the supply of**, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- j) ^{35e}***]
- k) ^{35f}***]
- l) attempts to commit, or abets the commission of any of the offences mentioned in ^{35g}[*clauses (a) to (f) and clauses (h) and (i)*] of this section,

Section 132 :- Punishment for certain offences.

shall be punishable—

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

Section 132 :- Punishment for certain offences.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the **second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.** 5 years

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a **term not less than six months.** Min 6 mnths

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

a/b/c/d—cognizable+ non bailable	Others non- cognizable + bailable
----------------------------------	-----------------------------------

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

Section 132 :- Punishment for certain offences.

(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.

Cognizable means Arrest without Warrant
(Immediate Arrest)

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

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

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

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

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

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

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

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

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

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

"(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or"

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

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

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

Decriminalization under GST



Proposed 48th Council Meeting
Passed in Budget 2023 w.e.f 01.10.2023

CHANGES BROUGHT IN

- raise the minimum threshold of tax amount for launching prosecution under GST from Rs. One Crore to **Rs. Two Crores**, except for the offence of issuance of invoices without supply of goods or services or both;
- • reduce the compounding amount from the present range of 50% to 150% of tax amount **to the range of 25% to 100%**;
- • decriminalize certain offences specified under clause (g), (j) and (k) of sub-section (1) of section 132 of CGST Act, 2017, viz.-
 - o obstruction or preventing any officer in discharge of his duties;
 - o deliberate tempering of material evidence;
 - o failure to supply the information.

Finance Act, 2023 w.e.f 01.10.2023 amended sub-section (1) of section 132 of the Central Goods and Services Tax Act so as to decriminalise offences specified in clauses (g), (j) and (k) of the said sub-section and to increase the monetary threshold from one hundred lakh rupees to two hundred lakh rupees for launching prosecution for the offences under the said Act, except for the offences related to issuance of invoices without supply of goods or services or both.

Section 132 :- Punishment for certain offences.

12 offences—9

namely:—

Invoice  Supply 

- 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 the invoice or bill referred to in clause (b) or **fraudulently avails input tax credit without any invoice or bill;***
- d) collects any amount as tax but fails to pay the same to the **Government beyond a period of three months from the date on which such payment becomes due;**
- e) evades tax, 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;

Invoice but No G/S 
BOGUS BILL


Section 132 :- Punishment for certain offences.

- 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,

Clause (a) to (f) and clause (h) and (i)

Section 132 :- Punishment for certain offences.

shall be punishable—

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

Persons covered under Sec 132

Whoever commits, or causes to commit and retain the benefits.

Punishments

Amount of default	Punishment
Exceeds 5 crores	Imprisonment upto 5 years with Fine*
Exceeds 2 crores but less than 5 crores	Imprisonment upto 3 years with Fine*
Exceeds 1 crores but less than 2 crores ONLY for CLAUSE (b)	Imprisonment upto 1 year with Fine*
Other Specified offence in CLAUSE (f)	Imprisonment upto 6 months with fine or both

Note 1 *Minimum period shall be 6 months

Note 2 Repeated offence period shall be upto 5 years with fine

Section 132 :- Punishment for certain offences.

(a)

/

(b)

/

(c)

/

(d)

+

(i)

=

Cognizable +
non bailable

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;









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;**

*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;***

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;**

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;**

Section 132 :- Punishment for certain offences.

Offence involving	Punishment extending to			
Tax evaded exceeding Rs. 5 crore	5 years		and 	Cognizable Not bailable if under clause (a,b,c,d)
Repeat offenders	5 years		and Fine	
Tax evaded between Rs. 2 crore to Rs. 5 Crore	3 years		and 	NON cognizable & bailable
Tax evaded between Rs. 1 Crore to Rs. 2 Crore ONLY for CLAUSE (b)	1 years		and 	NON cognizable & Bailable
X False records	6 months		or 	or both

ILLUSTRATIONS

Illustration

Discuss the prosecution, arrest and bail implication, if any, in respect of the following cases:

- (i) Mohan a registered contractor evades payment of tax of INR 2.80 cr.
- (ii) Satish a registered person, fails to supply information sought by central tax officer. The amount of GST involved is INR 17 lakh.
- (iii) Raman a registered contractor, collects INR 5.90 crores as tax from its clients but deposits INR 20 lakhs with the Central Government.
- (iv) Sunil, dealer of steel, collects INR 5.80 crores as IGST from its client and deposits INR 3.90 crore with the central Government by falsifying or substituting financial records and producing fake accounts.

Also discuss, what would be the prosecution implication, if Mohan, Satish, Raman and Sunil are convicted for subsequent offences?

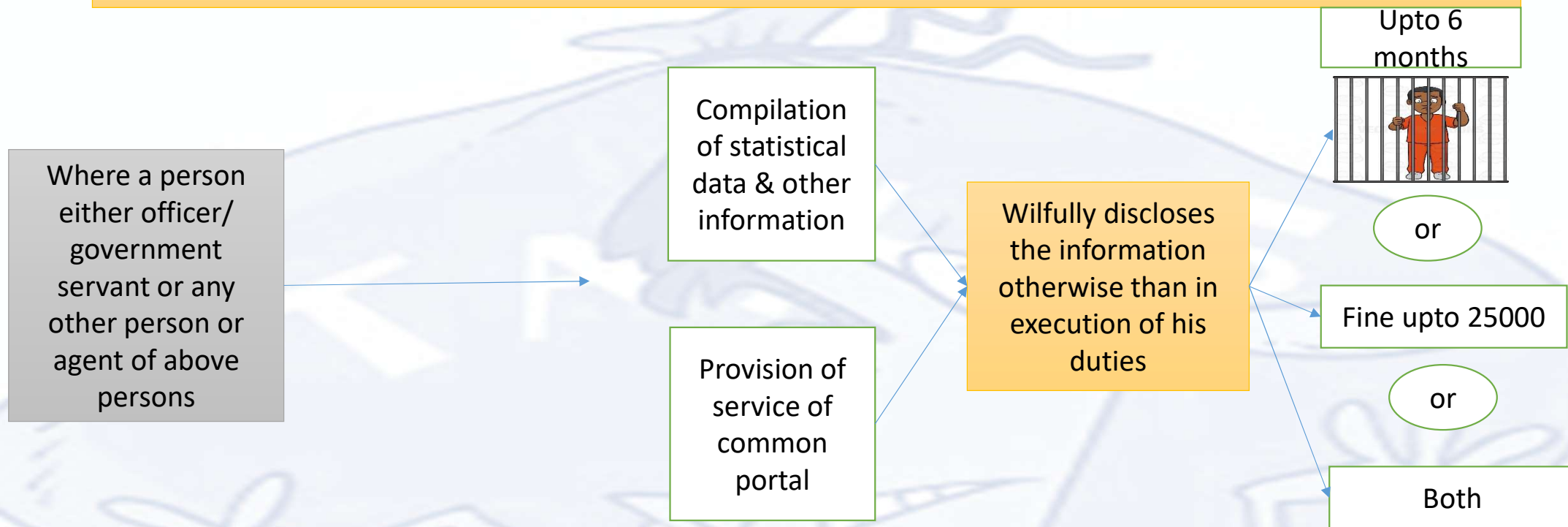
Person	Offence	Prosecution	Arrest	Bail
Mohan	Non-cognizable Offence [section 132(1)(e)]	Upto 3 Years With Fine [Section 132(1)(ii)]	Arrest can be ordered by commissioner of Central Tax	Bailable offence [Section 132(4)]

Satish	Non-cognizable offence [section 132(1)(k)]	Not applicable [since, tax evasion not exceeds INR 100 lakhs]	No Arrest can be ordered by Commissioner of Central Tax.	Not applicable <div>NOT AN OFFENCE for 132</div>
Raman	Cognizable offence [Section 132(1)(d)]	Upto 5 Years with fine [section 132(1)(i)]	Arrest can be ordered by Commissioner of Central Tax	Non-Bailable Offence [Section 132(5)]
Sunil	Non-cognizable offence [Section 132(1)]	Upto 1 Year with fine [Section 132(1)(iv)]	Arrest can be ordered by commissioner of Central Tax	Bailable offence [Section 132(4)] <div>Less than 2 crores</div>

Section 133 :- Liability of officers and certain other persons.

- (1) Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof or if any officer of central tax having access to information specified under sub-section (1) of section 150, or if any person engaged in connection with the provision of service on the common portal or the agent of common portal, wilfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.
- (2) Any person—
- a) who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;
 - b) who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Section 133 :- Liability of officers and certain other persons.



For Government servant---sanction from government for initiating proceedings

For non Government servant- sanction from commissioner for initiating proceeding

Section 134 :- Cognizance of offences.

No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the **previous sanction of the Commissioner**, and **no court inferior to that of a Magistrate of the First Class**, shall try any such offence.

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.

Burden of Proof lies on the accused to prove No Culpable Mental State

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, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

- a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, 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
- b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

Statement given will be relied upon in above mentioned situations regarding the facts furnished in case of prosecution

Section 137 :-Offences by companies.

(1) Where an offence committed by a person under this 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 this 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 this 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 this section shall render any such person liable to any punishment provided in this 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.

Explanation.—For the purposes of this section,—

- i. "company" means a body corporate and includes a firm or other association of individuals; and
- ii. "director", in relation to a firm, means a partner in the firm.

COMPOUNDING

A. Provisions under Chapter XIX

Section / Rule	Particulars
Section 138	Compounding of Offences
Rule 162	Procedure for Compounding of Offences

B. Forms under Chapter XIX – Offences and Penalties

Form No.	Purpose
FORM GST CPD-01	Application for compounding of offence
FORM GST CPD-02	Order for rejection / allowance of compounding of offence


Section 138 :-Compounding of offences.

(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case may be, of such compounding amount in such manner as may be prescribed⁸³:

Provided that nothing contained in this section shall apply to—

- a) ^{38a}[*a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132;*]
- b) ^{38b}[***];
- c) ^{38c}[*a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132;*];
- d) a person who has been convicted for an offence under this Act by a court;
- e) ^{38d}[***]
- 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:



Section 138 :-Compounding of offences.

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

(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ^{38e}*[twenty-five per cent. of the tax involved and the maximum amount not being more than one hundred per cent. of the tax involved.]*

(3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

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

38. See rule 162 and Form Nos. CPD-01 and CPD-02 of the CGST Rules, 2017.

38a. Substituted by the Finance Act, 2023, w.e.f. **1-10-2023**. Prior to its substitution, clause (a) read as under:

"(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;"

38b. Omitted by the Finance Act, 2023, w.e.f. **1-10-2023**. Prior to its omission, clause (b) read as under:

"(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;"

38c. Substituted by the Finance Act, 2023, w.e.f. **1-10-2023**. Prior to its substitution, clause (c) read as under:

"(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;"

38d. Omitted by the Finance Act, 2023, w.e.f. **1-10-2023**. Prior to its omission, clause (e) read as under:

"(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; and"

38e. Substituted for "ten thousand rupees or fifty per cent of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent of the tax, whichever is higher" by the Finance Act, 2023, w.e.f. **1-10-2023**.

Finance Act, 2023 w.e.f 01.10.2023 amended first proviso to sub-section (1) of section 138 of the Central Goods and Services Tax Act so as to exclude the persons involved in offences relating to issuance of invoices without supply of goods or services or both from the option of compounding of the offences under the said Act.

It further seeks to amend sub-section (2) so as to rationalise the amount for compounding of various offences by reducing the minimum as well as maximum amount for compounding.

Compounding of offences

(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed :

Provided that nothing contained in this section shall apply to—

(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;

“(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132;”;

- ~~(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 clause (b) of sub-section (1) of section 132; ~~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; and~~
- (f) any other class of persons or offences as may be prescribed:

- The following points are worth considering:
 - a) Irrespective of the amount, if a person deals with goods liable for confiscation or services in contravention of the provisions, he can apply for compounding.
 - b) The limit of value earlier was Rs. 1 crore to apply for compounding of certain offences has now been removed.
 - c) Earlier, a person accused of committing an offence under any other law could not apply for compounding. This restriction has now been removed
 - d) **A person who is accused of issuing fake invoices without an actual supply of goods or services would not be allowed to apply for compounding now**

OLD

NEW



MINIMUM

10000
OR
50% OF TAX

Whichever is higher

25% OF TAX involved

MAXIMUM

30000
OR
150% OF TAX

Whichever is higher

100% OF TAX involved

Procedure for compounding of offences

Application to the Commissioner in
FORM GST CPD-01



The Commissioner would obtain relevant
documents from PO



Commissioner to pass order in FORM
GST CPD-02



Allow compounding and grant him
immunity from prosecution

Else he may reject it within 90, days of receipt and after
affording opportunity of being heard

Compounding allowed subject to payment of taxes, interest

In case taxes etc. not paid the compounding shall be void

Compounding amount to be paid within 30 days

Immunity may be withdrawn in case any material facts was concealed

STATE OF ANDHRA (NOW ANDHRA PRADESH) VERSUS BELLAMKONDA VENKATA SUBBAIAH AND ANOTHER

1956 (12) TMI 35 - ANDHRA PRADESH HIGH COURT

Facts of the case

- The assessee was proceeded against under the **Madras General Sales Tax Act, 1939** (as applicable to Andhra Pradesh at that time).
- The assessee **opted for composition(compounding) of the offence** under **Section 16 of the Act** instead of facing prosecution.
- After compounding, the assessee sought to **challenge the levy / quantum / consequences** arising out of the composition.
- The State contended that **once composition is accepted, no appeal or revision lies.**

Decision

Once an assessee voluntarily opts for compounding of an offence, the matter attains finality.

- Composition is a consensual settlement between the assessee and the department.
- By agreeing to composition, the assessee waives the right to contest the offence or the resulting liability.
- No statutory appeal or revision is maintainable against an order of composition.
- Courts cannot sit in appeal over a voluntary composition accepted by the assessee.

Key Lessons

Compounding of offences is not an adjudication

It is not open to challenge once accepted

The assessee **cannot approbate and reprobate** (cannot accept compounding and later dispute it)

Court here is only a signing authority and not an adjudicating authority

P.P. Varkey and Co. Vs The Sales Tax Officer and Others (18 March 1999)

High Court of Kerala, O.P.P No. 2610/96/I

Facts of the case

- The petitioner is a **registered dealer** under the Kerala GST Act.
- **On 7 March 1988**, the petitioner's business premises were inspected by the **Intelligence Officer**, who found **accounting irregularities**.
- The petitioner **applied to compound the offence under Section 47**, which allows settlement of offences for a **fixed compounding fee**.
- The authorised officer **accepted the compounding**, imposing the **maximum fee of ₹1 lakh**, which the petitioner **paid in full**.
- Despite this, the department **imposed a penalty under Section 45A for the same offence**, and the petitioner challenged the penalty via revisional orders.

Petitioner's Argument:

- **Section 47 compounds the offence**, meaning the offence is settled once the compounding fee is paid.
- **Neither the Revenue nor the assessee** can challenge the compounding or reopen the offence.
- Imposition of a **penalty under Section 45A** for the same offence **violates the principle of compounding**.

Respondent's Argument:

- Compounding under Section 47 **protects only against prosecution**, not against **penalty under Section 45A**.
- Therefore, even after the offence is compounded, the department can still impose a **penalty**.

Held:

- The Court held that when once the matter is compounded u/s 47 no prosecution or penalty proceedings can be initiated for the very same offence.
- Since Petitioner has compounded the offence and Department has accepted the maximum compounding fee of rupees one lakh, no further penalty u/s 47 can be imposed on the Petitioner.

THANK YOU

Disclaimer

The views expressed are solely of the author and the content of this document is solely for information purpose and not to be construed as a professional advice. In cases where the reader has any legal issues, he/she must in all cases seek independent legal advice.

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