



CA Vishal Bhattad

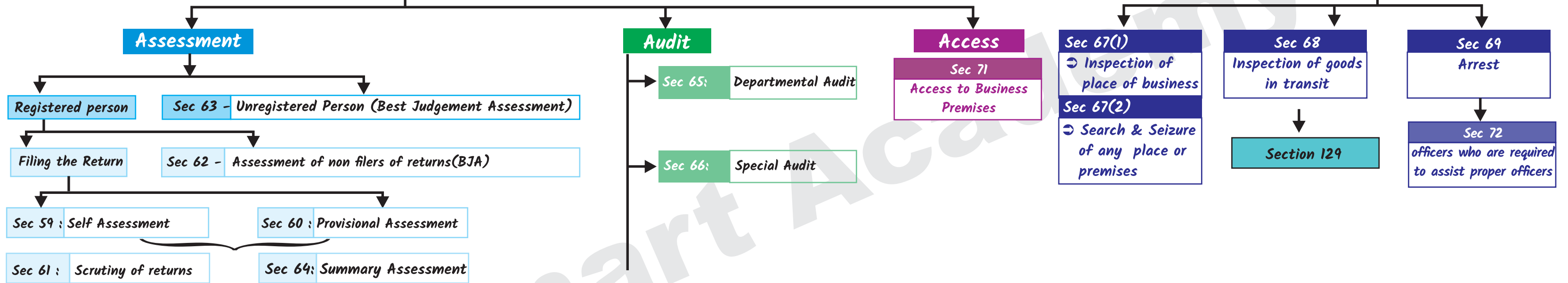
# Offences, Penalties and Punishment

(Sec 122 to Sec 138)

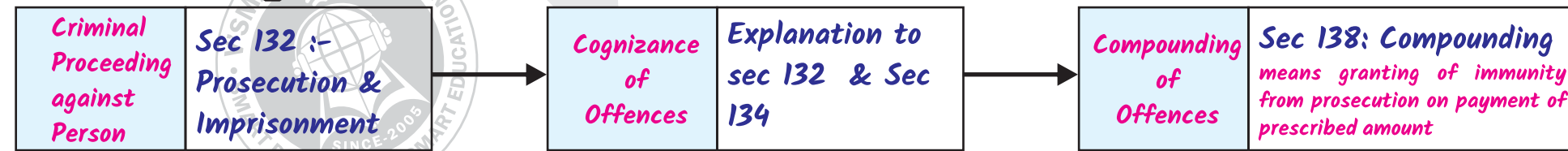
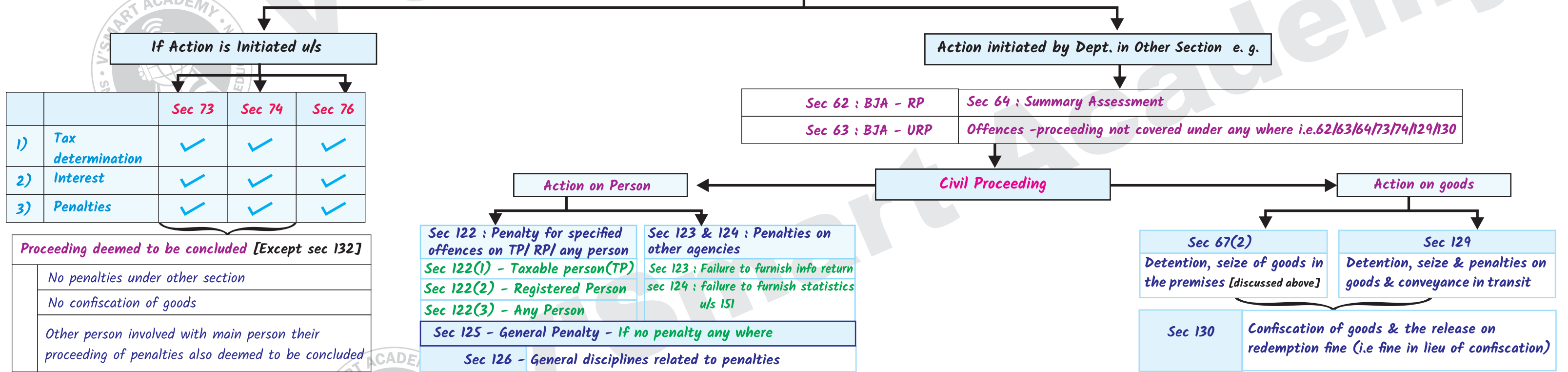
## Administrative Power

## Power of Department

## Investigative Power



## Adjudication Proceeding by Proper Officer





**SEC 122 PENALTIES FOR OFFENCES ON TAXABLE PERSON/ REGISTERED PERSON/ ANY PERSON**

**SEC 122(1) TAXABLE PERSON**

<b>(A) INVOICE / BILL OF SUPPLY</b>	<b>(C) ITC</b>	<b>(F) TURNOVER</b>	<b>PENALTY:- HIGHER OF THE FOLLOWING:- 1. Rs.10,000/- OR 2. An amt equivalent to any of the following (i.e. 100%):- (a) Tax evaded or (b) Tax not deducted u/s S1 or short deducted or deducted but not paid to Govt or (c) Tax not collected u/s S2 or short collected or collected but not paid to Govt or (d) ITC availed or passed on or distributed irregularly or (e) Refund claimed fraudulently</b>
(i) Supply of Goods & Services (a) without issue of invoice (b) issue of incorrect or false invoice	(i) Takes or utilises ITC without actual receipt of goods & services (fully/partially) in contravention of provisions of this act.	(i) Suppresses turnover leading to evasion of tax. <b>(G) TRANSPORT/ STORES</b> (i) Transport taxable goods without documents. (e.g. away bill, challan etc.) (ii) Supplies/transports/ stores any goods which he has reason to believe are liable to confiscation.	
(ii) Issue of invoice or bill without supply of goods & services in violation of provisions of this act.	(ii) Takes or distributes ITC in contravention of Sec 20 (ISD).	<b>(H) REFUND</b> (i) Fraudulently obtains refund.	
(iii) Issue of invoice using registration no. of another registered person.	<b>(D) REGISTRATION</b> (i) Liable to get registered but fails to obtain registration. (ii) Furnish false info with regard to registration.	<b>(I) PROPER OFFICER</b> (i) Obstructs/ Prevents any officer of his duties. (ii) Fails to furnish info., documents called for by an officer.	
<b>(B) COLLECTION &amp; PAYMENT</b>	<b>(E) DOCUMENTS, RECORDS &amp; INFORMATION</b> (i) (a) Falsifies financial records (b) Produce fake accounts/ documents (c) Furnishes any false info/ return with an intention to evade payment of tax.	<b>(J) SEIZED GOODS</b> (i) Dispose off/ Tamper with any goods- detained, seized or attached.	
(i) Collects any amt as tax but fails to pay to Govt. beyond a period of 3 months from the due date of payment.	(ii) Fails to keep, maintain or retain books of accounts.		
(ii) Collects any tax in contravention of the provision of the Act but fails to pay to Govt. beyond a period of 3 months from the due date of payment.	(iii) Tampers with or destroys any material evidence/ document.		
<b>TDS</b> (iii) (a) Fails to deduct tax u/s S1 (b) Deducts an amt less than the amt reqd. (c) Fails to pay to Govt amt deducted as tax.			
<b>TCS</b> (iv) (a) Fails to collect tax u/s S2 (b) Collects an amt less than the amt reqd. (c) Fails to pay to Govt amt collected as tax.			

<b>SEC 122(1A)</b>	Any person who retains the benefit of a transaction covered under above clauses [A(i) & (ii)], [C(i)&(ii)] of sub-section (1) and at whose instance such transaction is conducted.	Penalty = tax evaded or input tax credit availed of or passed on
<b>SEC 122(1B)</b>	(i) ECO allows a supply through it by URP other than a person exempted from registration, (ii) ECO allows an inter-State supply through it by person who is not so eligible or (iii) ECO fails to furnish correct details in GSTR-8 u/s S2(4) of outward supply of goods effected through it by person exempted from obtaining registration. <b>Newly Inserted by F.A. 2023</b>	Penalty is Higher of:- - ₹10,000, or - tax involved if such supply was made by RP other than composition dealer

<b>SEC 122(2) REGISTERED PERSON</b>	
(i) supplies SOG or SOS on which (a) tax not /short been paid (b) erroneously refunded or	(ii) where ITC has been wrongly availed or utilised.
(i) For reason other than fraud, wilful misstatement or suppression of facts to evade tax, Higher of the following (a) 10,000/- or (b) 10% of the tax due	(ii) For reason of fraud, wilful misstatement or suppression of facts to evade tax, Higher of the following (a) 10,000/- or (b) 100% of the tax due

<b>SEC 122(3) OTHER PERSON (for which no penalty covered above)</b>	
Any person who-	
(i) aids or abets any of above 21 offences.	Penalty extending to ₹25,000/-
(ii) deals in goods liable to confiscation (whether receiving, supplying, storing or transporting).	
(iii) receives or deals with SOS in contravention of this act.	
(iv) fails to appear before authority who has issued summon.	
(v) fails to issue any invoice for supply.	

**PENALTY ON OTHER AGENCIES**

Sec 123 : failure to furnish info Return u/s 150 within 90 days of notice	Penalty = ₹100 for each day of failure (Maximum Rs.5000/-)
Sec 124 failure to furnish Statistics u/s 151	Penalty=(a) Fine upto ₹ 10,000 & (b) for continuing offence further fine upto ₹100 per day but maximum ₹25,000/-

**SEC 125 GENERAL PENALTY**

Any person who contravenes any of the provisions of this Act for which no penalty is separately provided,	Penalty = which may extend to ₹25,000/-
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**SEC 126 GENERAL DISCIPLINES PENALTIES**

- No penalty for:- (a) Minor breaches (tax < ₹5000) (b) Procedural requirements. (c) Any omission or mistake in document which is easily rectifiable. (Apparent on record & Made without fraudulent intent or gross negligence.)
- Penalty imposed depends on facts & circumstances & shall be commensurate with the degree & severity of the breach.
- Opportunity of being heard.
- Officer shall specify the nature of breach & applicable law.
- Person voluntarily discloses to an officer, P.O. may consider this as a mitigating factor when quantifying penalty.
- Provisions not applicable if:- Penalty specified either a fixed sum or fixed percentage.

**SEC 127 CIRCUMSTANCES UNDER WHICH OFFICER MAY ISSUE ORDER OF PENALTY**

- Person not covered by following proceedings:-
 

(a) BJA of non- filers of returns. (Sec 62)	} Sec 122
(b) BJA of unregistered person. (Sec 63)	
(c) Summary Assessment. (Sec 64)	
- Determination u/s 73. (e) Determination u/s 74.
- Detention, seizure & release of goods & conveyances in transit. (Sec 129)
- Confiscation of goods/conveyances & levy of penalty u/s 130.

**SEC 129 DETENTION , SEIZURE & RELEASE OF GOODS & CONVEYANCE IN TRANSIT**

- Notwithstanding anything contained in this Act, where person:-
  - Transport any goods
  - Stores goods while in transit.
  - in contravention of provision of this Act then:-
    - all such goods;
    - conveyance;
    - documents related to goods & conveyance "shall be liable to be detention or seizure".

**RELEASE OF GOODS DETAINED OR SEIZED**

**WHERE OWNER OF GOODS COME FORWARD FOR PAYMENT OF TAX & PENALTY**

<b>In case of Taxable goods :</b> (a) On payment of penalty equal to 200% of the tax payable on such goods	<b>In case of exempted goods :</b> (a) An amount equal to 2% of the value of goods; or ₹ 25,000 whichever is less
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**WHERE OWNER OF GOODS DOES NOT COME FORWARD FOR PAYMENT OF TAX & PENALTY**

<b>In case of Taxable goods</b> (a) Penalty equal to higher of the following ⇒ 50% of value of goods or ⇒ 200% of the tax payable on such goods	<b>In case of exempted goods :</b> (a) An amount equal to 5% of the value of goods; or ₹ 25,000 whichever is less
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"No such goods & conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods."

- Omitted
- Notice to transporter.
- Opportunity of being heard.
- On payment of amount , all proceedings shall be deemed to be concluded.
- Transporter/ Owner fails to pay the amt within 15 days so detained/seized shall be liable to be sold or disposed of to recover penalty payable as per order.

"Where detained/ seized goods are perishable/ hazardous/ likely to depreciate the period of 15 days may be reduced by P.O.."

**SEC 130 CONFISCATION OF GOODS OR CONVEYANCES & LEVY OF PENALTY**

- Where anything contained in this Act, if any person:-
  - Supplies or receives goods in contravention of provisions of this Act with intent to evade payment of tax; or
  - Doesn't account for goods on which he is liable to pay tax.
  - Supplies any taxable goods without applying for registration.
  - Contravenes any of provisions of this Act with intent to evade payment of tax;
  - uses any conveyance for transporting goods in contravention of provisions of this Act unless owner of conveyance proves that it was used without his knowledge/ connivance. then, all such goods/ conveyance are liable to confiscation and penalty u/s 122 be levied.

**2. REDEMPTION FINE (OPTION TO PAY IN LIEU OF CONFISCATION):-**(in addition to tax, penalty and charges payable)

<b>A. FOR GOODS</b>	
a. Fine shall not exceed M.V. of goods confiscated less tax chargeable;	b. Fine + Penalty shall not be less than Penalty equals to 100% of tax payable on such goods

**B. CONVEYANCE USED FOR CARRIAGE OF GOODS OR PASSENGERS:-**

- Fine equal to tax payable on goods being transported.

**3. No order without opportunity of being heard.**

**4."CONFISCATION= TITLE TO GOVT."**

**5. P.O. shall take & hold possession of things confiscated with assistance of officer of police if needed.**

**6. If redemption fine not paid within 3 months, P.O. dispose of goods/ conveyance & deposits sale proceeds with Govt.**

"As per Sec 131, no confiscation made or penalty imposed above shall prevent the infliction of any other punishment to which the person affected is liable under provisions of this act or under any other law."



**PUNISHMENT FOR ABOVE OFFENCES**

**Sec 132: Prosecution and imprisonment - Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences**

<b>(A) INVOICE / BILL OF SUPPLY</b>	<b>(D) FRAUDULENT ACTIVITIES</b>	<b>(G) DEAL IN GOODS LIABLE TO CONFISCATION</b>	<b>PUNISHMENT FOR ABOVE OFFENCES (WITH PREVIOUS SANCTION OF COMMISSIONER)</b>
(i) Supply of Goods & Services without issue of invoice <i>In violation of law if the intention to evade the payment of Tax</i>	(1) a) Evades Tax b) Fraudulently obtains refund [not covered above]	(1) Deals in supply of goods which he knows or has reasons to believe are liable to confiscation (whether by acquiring possession, transporting, removing, depositing, keeping, concealing, supplying or purchasing).	
(ii) Issue of invoice or bill without supply of goods & services <i>In violation of law leading to wrongful availment or utilisation of ITC or refund.</i>	<b>(E) DOCUMENTS, RECORDS &amp; INFORMATION</b>	(ii) Deals in supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act (whether by receiving or concerned in any way)	
<b>(B) COLLECTION &amp; PAYMENT</b>	(1)(a) Falsifies/substitutes financial records (b) Produce fake accounts/documents (c) Furnishes any false info/ return with an intention to evade payment of tax.	<b>(H) ATTEMPT TO COMMIT OFFENCE (related to above(G))</b>	
(1) Collects any amt as tax but fails to pay to Govt. beyond a period of 3 months from the due date of payment.	<b>(F) ATTEMPT TO COMMIT OFFENCE (related to above(A) to (E))</b>	(1) attempts to commit, or abets the commission of any of the offences mentioned above.	<b>Offence Involving</b>
(c) ITC	(1) attempts to commit, or abets the commission of any of the offences mentioned above.		<b>Amount Involved (in ₹)</b>
(1) Avails ITC using invoice or bill referred in (ii) above fraudulently avails input tax credit without any invoice or bill			<b>Punishment</b>
<b>COGNIZABLE &amp; BAILABLE OFFENCE</b>			
<b>COGNIZABLE &amp; NON-BAILABLE</b>	means serious category of offences where arrest can be done without a warrant and investigation with or without the permission of a court. accused person shall not be automatically entitled for bail. However, court may order him to be released on a suitable bail		
<b>NON-COGNIZABLE &amp; BAILABLE</b>	means relatively less serious offences where accused not be arrested without a warrant and an investigation cannot be initiated without a court order. accused shall be offered to be released on bail upon his arrest by the police or the court informing about his right to be so released		



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**Following offences only subject to penalty u/s 122**

<b>(A) INVOICE / BILL OF SUPPLY</b>
(i) (a) issue of incorrect or false invoice (ii) Issue of invoice using registration no. of another registered person.
<b>(B) COLLECTION &amp; PAYMENT</b>
(ii) (a) Fails to deduct tax u/s 51 (b) Deducts an amt less than the amt reqd. (c) Fails to pay to Govt amt deducted as tax.
(iii) (a) Fails to collect tax u/s 52 (b) Collects an amt less than the amt reqd. (c) Fails to pay to Govt amt collected as tax.
<b>(C) ITC</b>
(1) Takes or utilises ITC without actual receipt of goods & services (fully/partially) in contravention of provisions of this act. (ii) Takes or distributes ITC in contravention of Sec 20 (ISD).
<b>(D) REGISTRATION</b>
(1) Liable to get registered but fails to obtain registration. (ii) Furnish false info with regard to registration.
<b>(E) DOCUMENTS, RECORDS &amp; INFORMATION</b>
(1) Fails to keep, maintain or retain books of accounts.
<b>(F) TURNOVER</b>
(1) Suppresses turnover leading to evasion of tax.
<b>(G) TRANSPORT/ STORES</b>
(1) Transport taxable goods without documents. (e.g. away bill, challan etc.) (ii) Supplies/ transports/ stores any goods which he has reason to believe are liable to confiscation.
<b>(J) SEIZED GOODS</b>
(1) Dispose off/ Tamper with any goods- detained, seized or attached.

**COGNIZANCE OF OFFENCES**

<b>COGNIZABLE &amp; NON BAILABLE</b>	<b>NON COGNIZABLE &amp; BAILABLE</b>
Offences related to above (A) to (C) of sec 132) where- (i) amount of tax evaded or (ii) amt of ITC wrongly availed or (iii) amt of refund wrongly taken exceeds 5 crore. "BAIL CAN BE CONSIDERED BY A JUDICIAL MAGISTRATE ONLY"	<b>Other Offences</b> 1) Offences related to above (A) to (C), where tax or ITC or refund evaded is ₹ 5 crores or less 2) Offences related to above (D) to (J) [irrespective of amount involved] "ARRESTED PERSONS SHALL BE RELEASED ON BAIL BY AC/DC"

**COMPOUNDING OF OFFENCES (SEC 138)**

compounding means granting of immunity from prosecution on payment of prescribed amount  
1. Any Offence may be compounded by Commissioner  
2. Either before or after the institution of prosecution  
3. Upon payment of compounding amount.

<b>NON COMPOUNDING</b>	<b>Compounding amount</b>		
a) Person who has been allowed to compound once earlier for offence u/s 132(1)(a) to (f), (h), (i) & (l)	<b>Offence</b>	<b>if offence is punishable u/s 132(1)(i)</b>	<b>if offence is punishable u/s 132(1)(ii)</b>
b) Person who has been accused of Issuing invoice/ bill without supply leading to wrongful availment/ utilisation of ITC or tax refund	SOG or SOS without invoice to evade tax, ITC on fake invoice or without invoice Fails to pay to Govt. after collection within 3 months Evades tax or fraudulently obtains refund not covered above.	Up to 75% of tax / ITC / refund wrongly taken, Minimum = 50%	Up to 60% of tax / ITC / refund wrongly taken, Minimum = 40%
c) Person convicted for an offence by a court.	Falsifies financial records or produces fake accounts/documents Deals with goods liable to confiscation Receives or deals with supply of services in contravention of GST law	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
<b>COMPOUNDING</b>			
<b>Other Offences</b>			
<b>MONETARY LIMIT FOR COMPOUNDING AMOUNT:- (Allowed Only After Payment of Tax, Interest &amp; penalty)</b>			
i) <b>MINIMUM LIMIT = 25% of tax involved</b>	Attempt to commit or abets any of the above offences	25% of tax evaded / ITC wrongly availed/ utilised / refund wrongly taken.	25% of tax evaded / ITC wrongly availed/ utilised / refund wrongly taken.
ii) <b>MAXIMUM LIMIT = 100% of tax involved</b>			
<b>Proviso:-</b> If 2 or more offence are committed, compounding amount shall be higher of those prescribed.			

**OFFENCES COMMITTED BY GST OFFICERS AND CERTAIN OTHER PERSONS (SEC 133)**

**OMISSION/DEFAULT:-** Wilfully discloses any info or contents of return otherwise than:-  
1. in execution of his duties  
2. for the purpose of prosecution for an offence  
**DEFAULT BY:-**  
1. Any person engaged in collection of Statistics u/s 151 or compilation or computerization or  
2. Any officer or Central tax having access to info. u/s 150(1) or  
3. Any person engaged in connection with the provision of service on common portal or agent of common portal  
**PUNISHMENT:-** Imprisonment upto 6 months or fine upto 25,000 or both.

**SECTION 137**

<b>OFFENCE COMMITTED BY</b>	<b>PERSON GUILTY</b>	Nothing contained in this section shall render any person liable to punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
1. company	Director, Manager, Secretary or other person if it is proved that offence has been committed :- a) with his consent/ connivance b) he is attributable to any negligence	
2. partnership firm or llp or trust	Partner OR Karta Or Managing Trustee	