



CA Vishal Bhattad

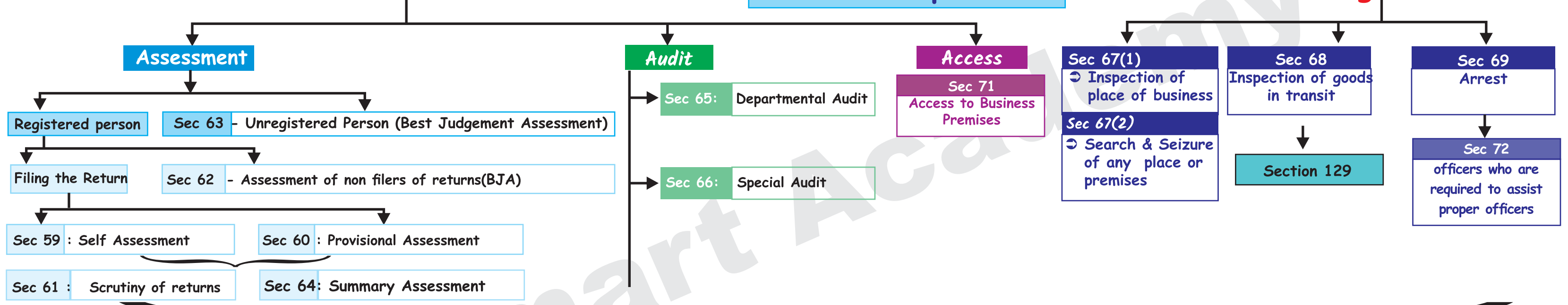
# Offences, Penalties and Punishment

(Sec 122 to Sec 138)

## Administrative Power

## Power of Department

## Investigative Power



## Adjudication Proceeding by Proper Officer

If Action is Initiated u/s

		Sec 73	Sec 74	Sec 76
1)	Tax determination	✓	✓	✓
2)	Interest	✓	✓	✓
3)	Penalties	✓	✓	✓

Proceeding deemed to be concluded [Except sec 129, 130,132]

- No penalties under other section
- Other person involved with main person their proceeding of penalties also deemed to be concluded

Action initiated by Dept. in Other Section e. g.

Sec 62 : BJA - RP	Sec 64 : Summary Assessment
Sec 63 : BJA - URP	Offences -proceeding not covered under any where i.e.62/63/64/73/74/129/130

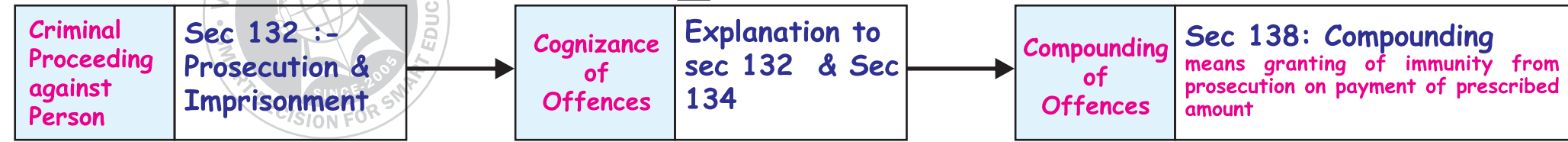
Action on Person

Civil Proceeding


Action on goods

Sec 122 : Penalty for specified offences on TP/ RP/ any person	Sec 123 & 124 : Penalties on other agencies
Sec 122(1) - Taxable person(TP)	Sec 123 : Failure to furnish info return
Sec 122(2) - Registered Person	sec 124 : failure to furnish statistics u/s 151
Sec 122(3) - Any Person	
Sec 125 - General Penalty - If no penalty any where	
Sec 126 - General disciplines related to penalties	

Sec 67(2)	Sec 129
Detention, seize of goods in the premises [discussed above]	Detention, seize & penalties on goods & conveyance in transit
Sec 130	Confiscation of goods & the release on redemption fine (i.e fine in lieu of confiscation)



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

SEC 122(1) TAXABLE PERSON				SEC 122(1A)		
<b>(A) INVOICE / BILL OF SUPPLY</b> (i) Supply of Goods & Services (a) without issue of invoice (b) issue of incorrect or false invoice (ii) Issue of invoice or bill without supply of goods & services in violation of provisions of this act. (iii) Issue of invoice using registration no. of another registered person.	<b>(C) ITC</b> (i) 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>(F) TURNOVER</b> (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.	<b>PENALTY:-</b> <b>HIGHER OF THE FOLLOWING:-</b> 1. ₹ 10,000 (IGST: 20,000) OR 2. An amt equivalent to any of the following (i.e. 100%):- (a) Tax evaded or (b) Tax not deducted u/s 51 or short deducted or deducted but not paid to Govt or (c) Tax not collected u/s 52 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	Any person who retains the benefit of a transaction covered under above clauses [A(i) & (ii)], [C(i)&(ii)] of Sec 122 (1) and at whose instance such transaction is conducted.	<b>Penalty = tax evaded or input tax credit availed or passed on</b>	
SEC 122(1B) Penalty for ECO						
<b>(B) COLLECTION &amp; PAYMENT</b> (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) 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) (a) Fails to deduct tax u/s 51 (b) Deducts an amt less than the amount required to be deducted. (c) Fails to pay to Govt amt deducted as tax. (iv) (a) Fails to collect tax u/s 52 (b) Collects an amt less than the amt required to be collected. (c) Fails to pay to Govt amt collected as tax.	<b>(D) REGISTRATION</b> (i) Liable to get registered but fails to obtain registration. (ii) Furnish false info with regard to registration.	<b>(H) REFUND</b> (i) Fraudulently obtains refund.	<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>SEC 122(1B) Penalty for ECO</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 52(4) of outward supply of goods effected through it by person exempted from obtaining registration.	<b>Penalty is Higher of:-</b> - ₹10,000 (IGST: 20,000), or - tax involved if such supply was made by RP other than composition dealer	
<b>(E) DOCUMENTS, RECORDS &amp; INFORMATION</b> (i) (a) Falsifies financial records (b) Produce fake accounts/documents (c) Furnishes any false info in return with an intention to evade payment of tax. (ii) Fails to keep, maintain or retain books of accounts. (iii) Tampers with or destroys any material evidence/ document.	<b>(J) SEIZED GOODS</b> (i) Dispose off/ Tampers with any goods- detained, seized or attached.	<b>SEC 122A:-Penalty on manufacturer of goods for failure to register certain machines used in manufacture of goods as per special procedure u/s 148</b> ₹1 lakh (CGST & SGST/UTGST each) or ₹2 lakh (IGST) per machine plus any other penalty under demand & recovery & GST law.		Such machine is liable for seizure & confiscation unless penalties are paid & registration is done within 3 days of receipt of communication of order of penalty.		
SEC 122(2) REGISTERED PERSON		SEC 122(3) OTHER PERSON (for which no penalty covered above)				
(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.	<b>Any person who-</b> (i) aids or abets any of above 21 offences (Sec 122(1)). (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/Accountd any invoice for supply in his bank of A/c.				
(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>Penalty extending to ₹25,000/- (IGST= 50,000)</b>
PENALTY ON OTHER AGENCIES						
Sec 123 : failure to furnish info Return u/s 150 within 90 days of service of SCN		<b>Penalty = ₹ 100 (IGST: ₹ 200) for each day of failure (Maximum ₹ 5,000 (IGST : 10,000))</b>				
Sec 124 failure to furnish Statistics u/s 151		<b>Penalty=(a)Fine upto ₹ 10,000 (IGST: ₹ 20,000) &amp; (b) for continuing offence further fine upto ₹ 100 (IGST: ₹ 200) per day but maximum ₹ 25,000 (IGST: ₹ 50,000)</b>				
<b>Student Notes:-</b> <div style="display: flex; justify-content: space-between; align-items: center;">  <div style="border: 1px solid #ccc; padding: 5px; width: 80%;"> <p style="font-size: small; margin: 0;">V'SMART ACADEMY • SMART EDUCATION • NO. 1 • SINCE 2005</p> </div> </div>						

**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 (IGST: ₹ 50,000)**

**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 after issuing SCN.
- 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**

Penalty is 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)                                 |   |
| (d) Determination u/s 73.  | (e) Determination u/s 74.   |
| (f) Determination u/s 74A  | (g) Detention, seizure & release of goods & conveyances in transit. (Sec 129) |
| (h) 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> On payment of <b>penalty equal to 200% of the tax</b> payable on such goods	<b>In case of exempted goods :</b> An amount equal to <b>2% (IGST:4%) of the value of goods; or ₹ 25,000 (IGST: ₹ 50,000) whichever is less</b>
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**WHERE OWNER OF GOODS DOES NOT COME FORWARD FOR PAYMENT OF TAX & PENALTY**

<b>In case of Taxable goods</b> 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> An amount equal to <b>5% (IGST:10%) of the value of goods; or ₹ 25,000 (IGST: ₹ 50,000) whichever is less</b>
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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 within 7 days specifying the penalty & order with 7 days of notice..
- 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.
- Transporter can get conveyance released on payment of penalty which is lower of: Penalty in the order or ₹ 1,00,000 (IGST: ₹ 2,00,000).

**"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 Notwithstanding to not withstand to 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.
  - REDEMPTION FINE (OPTION TO PAY FINE IN LIEU OF CONFISCATION):-**(in addition to tax, penalty and charges payable) If goods are confiscated by Govt. If goods are confiscated by Dept.
    - FOR GOODS**
      - Fine shall not exceed Market value of goods confiscated less tax chargeable;
      - Fine + Penalty shall not be less than Penalty equals to 100% of tax payable on such goods (Lower restriction)
    - CONVEYANCE USED FOR CARRIAGE OF GOODS OR PASSENGERS:-**
      - Fine equal to tax payable on goods being transported.
  - No order without opportunity of being heard.
  - "Confiscation= title to govt."
  - P.O. shall take & hold possession of things confiscated with assistance of officer of police if needed.
  - 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

<p><b>(A) INVOICE / BILL OF SUPPLY</b></p> <p>(i) Supply of Goods &amp; Services without issue of invoice <b>In violation of law if the intention to evade the payment of Tax</b></p> <p>(ii) Issue of invoice or bill without supply of goods &amp; services (fake invoices) <b>In violation of law leading to wrongful availment or utilisation of ITC or refund.</b></p>	<p><b>(C) ITC</b></p> <p>(i) Avails ITC using invoice or bill referred in (ii) above fraudulently avails input tax credit without any invoice or bill</p> <p><b>(D) FRAUDULENT ACTIVITIES</b></p> <p>(i) a) Evades Tax b) Fraudulently obtains refund [not covered above]</p>	<p><b>(E) DOCUMENTS, RECORDS &amp; INFORMATION</b></p> <p>(a) Falsifies/substitutes financial records</p> <p>(b) Produce fake accounts/ documents</p> <p>(c) Furnishes any false info/ return with an intention to evade payment of tax.</p> <p><b>(F) ATTEMPT TO COMMIT OFFENCE (related to above(A) to (E))</b></p> <p>(i) attempts to commit, or abets the commission of any of the offences mentioned above.</p>	<p><b>(G) DEAL IN GOODS LIABLE TO CONFISCATION</b></p> <p>(i) Deals in <b>supply of goods</b> which he knows or has reasons to believe are liable to confiscation (whether by acquiring possession, transporting, removing, depositing, keeping, concealing, supplying or purchasing).</p> <p>(ii) Deals in <b>supply of services</b> 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)</p> <p><b>(H) ATTEMPT TO COMMIT OFFENCE (related to above(G))</b></p> <p>(i) attempts to commit, or abets the commission of any of the offences mentioned above.</p>
<p><b>(B) COLLECTION &amp; PAYMENT</b></p> <p>(i) Collects any amt as tax but fails to pay to Govt. beyond a period of 3 months from the due date of payment.</p>			

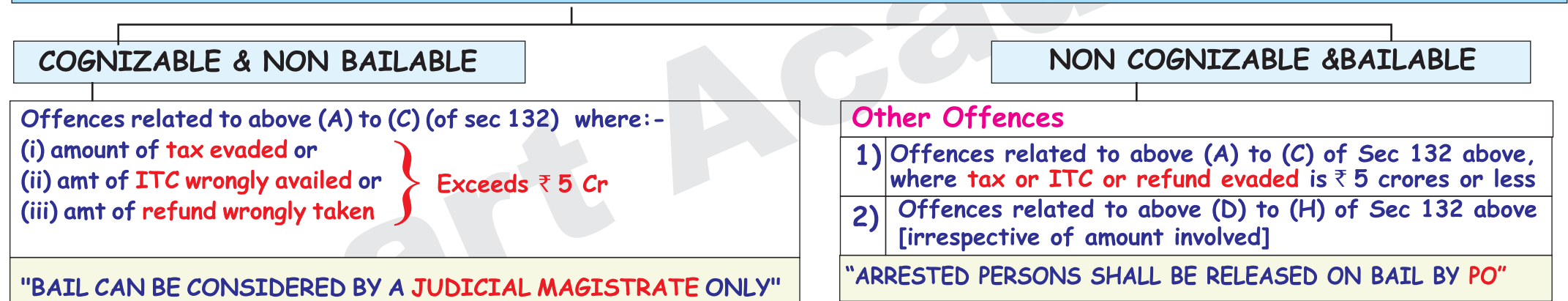
### PUNISHMENT FOR ABOVE OFFENCES (WITH PREVIOUS SANCTION OF COMMISSIONER)

Offence Involving	Amount Involved (in ₹)	Punishment	
<ul style="list-style-type: none"> <li>➤ Tax evaded or</li> <li>➤ ITC wrongly availed or utilised or</li> <li>➤ Refund wrongly taken</li> </ul>	> 5 crores	upto 5 Years and with fine	
	Exceeds 2 crores but ≤ 5 crores	(Note: If Amt below 1 Cr = No imprisonment)	upto 3 Years and with fine
	Exceeds 1 Cr but ≤ 2 Cr in offence specified in A00(ii) above		upto 1 Years and with fine
Commits or abets the commission of an offence specified E (above)	No limit	6 months or fine or both	
For second and every subsequent offence under section 132	No limit (even offence of ₹ 1)	upto 5 Years and with fine	
(Imprisonment minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court)			

#### COGNIZABLE & BAILABLE OFFENCE

<b>COGNIZABLE &amp; NON-BAILABLE</b>	<ul style="list-style-type: none"> <li>➤ means serious category of offences where arrest can be done without a warrant and investigation with or without the permission of a court.</li> <li>➤ accused person shall not be automatically entitled for bail. However, court may order him to be released on a suitable bail</li> </ul>
<b>NON-COGNIZABLE &amp; BAILABLE</b>	<ul style="list-style-type: none"> <li>➤ means relatively less serious offences where accused not be arrested without a warrant and an investigation cannot be initiated without a court order.</li> <li>➤ accused shall be offered to be released on bail upon his arrest by the police officer or the court informing about his right to be so released</li> </ul>

#### COGNIZANCE OF OFFENCES



#### Sec 133: Liability of Officers & Others

Persons liable	Punishment	Prosecution Requirement
1. Person handling statistics u/s 151	Up to 6m imprisonment or ₹ 25,000 fine, or both	<b>Govt. servant:</b> Sanction of Govt.
2. CGST officer with access to information u/s		<b>Non-govt. servant:</b> Sanction of Commissioner
3. Person providing services on common portal		
4. Agent of common portal		

#### Sec 134: Cognizance of offences

- can only take action on GST offences with prior approval from the Commissioner.
- Such offences must be tried by a Magistrate of First Class or higher.

#### Sec 135: Presumption of Culpable mental state

- The court will **assume** the accused had a guilty mind, but the accused can prove otherwise.
- "**Culpable mental state**" includes intention, motive, knowledge, or belief in a fact.
- A fact is **considered proved** only if the court is convinced beyond reasonable doubt, not just by probability.

### Sec 136: Relevance of Statements in Certain Cases

A statement made and signed by a person in response to a summons can be used as evidence in a prosecution if:

- The person is dead, missing, unable to testify, kept away by the opposing party, or their presence is difficult or costly to obtain, or
- The person has testified in court, and the court decides the statement is necessary for justice.

### Sec 137: Offences by Companies and Other Entities

<b>Who is Guilty &amp; Punished</b>	<ul style="list-style-type: none"> <li>Company &amp; the person in charge responsible for business at the time of offence</li> <li>Partner, karta, managing trustee of firm/LLP/HUF/trust</li> </ul>
<b>Other Persons Liable to Be Punished</b>	Director, manager, officer of the company or partner/ member/ trustee/ manager of other entities
<b>Persons Not Liable to Punishment</b>	If the offence was committed without their knowledge or they exercised due diligence to prevent it.

## COMPOUNDING OF OFFENCES (SEC 138)

compounding means granting of immunity from prosecution on payment of prescribed amount

- Any Offence may be compounded by Commissioner
- Either before or after the institution of prosecution
- Upon payment of compounding amount.

#### NON COMPOUNDING

- Person who has been allowed to compound once earlier for offence under A to E
- Person who has been accused of Issuing invoice/bill without supply leading to wrongful availment/utilisation of ITC or tax refund
- Person convicted for an offence by a court.
- Any other class of persons or offences as may be prescribed

#### COMPOUNDING

##### Other Offences

**MONETARY LIMIT FOR COMPOUNDING AMOUNT:-**

(Allowed Only After Payment of Tax, Interest & penalty)

- MINIMUM LIMIT = 25% of tax involved**
- MAXIMUM LIMIT = 100% of tax involved**

**Compounding Amt by 38/2023. (Commissioner shall determine the compounding amount below:-**

Offence	if offence is punishable u/s 132(1)(i) (1st time)	if offence is punishable u/s 132(1)(i) (Repeat)
SOG or SOS without invoice to evade tax,	Up to 75% of tax / ITC / refund wrongly taken, <b>Minimum = 50%</b>	Up to 60% of tax / ITC / refund wrongly taken, <b>Minimum = 40 %</b> <small>(Note: If compounding not allowed: its not relevant)</small>
ITC on fake invoice or without invoice		
fails to pay to Govt. after collection within 3 months	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
Evades tax or fraudulently obtains refund not covered above & also where invoice without SOS /SOG leading to wrong ITC or refund.		
Falsifies financial records or produces fake accounts/documents		
Deals with goods liable to confiscation	25% of tax evaded / ITC wrongly availed/ utilised / refund wrongly taken.	25% of tax evaded / ITC wrongly availed/ utilised / refund wrongly taken.
Receives or deals with supply of services in contravention of GST law		
Attempt to commit or abetsany of the above offences		

**Proviso:-** If 2 or more offence are committed, compounding amount shall be higher of those prescribed.

### Circular No 171/03/2022: Clarification on Demand & Penalty for Fake Invoices under CGST

1. If A issues a tax invoice to B without actual supply.

Cases	Clarification
Is it a supply u/s 7 of the CGST Act?	No, because no goods or services were actually supplied.
Can demand/recovery be made from A u/s 73 or 74 of CGST Act?	No tax liability arises, so no demand or recovery can be made u/s 73 or 74.
Can penal action be taken against A?	No penalty u/s 73 or 74. However, penalty u/s 122(1)(ii) may apply for issuing invoices without actual supply.

2. A issues a tax invoice to B without supply. B claims ITC on it and uses it to pay tax on his own supplies to buyers.

Cases	Clarification
Liability for ITC Demand & Penalty	<ul style="list-style-type: none"> <li>B wrongly availed &amp; utilized ITC on fake invoices.</li> <li>Liable for demand, recovery, penalty u/s 74 &amp; interest u/s 50.</li> </ul>
Penal Action u/s 122	No additional penalty u/s 122 if penalty is imposed u/s 74.

3. A issues a tax invoice to B without supply. B claims ITC and passes it to C through similar invoices.

Cases	Clarification
Is it a supply u/s 7?	<ul style="list-style-type: none"> <li>No actual supply of goods or services.</li> <li>B availed ineligible ITC on fake invoices from A.</li> <li>No tax payable on B's supply to C due to lack of actual supply.</li> </ul>
Penal Action u/s 122	<ul style="list-style-type: none"> <li>B is liable for penalty u/s 122(1)(ii) for issuing fake invoices without supply.</li> <li>B is also liable u/s 122(1)(vii) for utilizing ITC without actual receipt of goods or services.</li> </ul>

**Student Notes:-**

