CHAPTER 24

OFFENCES & PENALTIES

CHAPTER OVERVIEW

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1. GENERAL DISCIPLINES RELATED TO PENALTY [SECTION 126]

1) No penalty shall be imposed by any officer under this Act for
    - **“Minor breaches”** of tax regulations. [A breach shall be considered a ‘minor breach’ if the amount of tax involved is less than **₹ 5,000]**
    - procedural requirements of the law, or
    - any omission or mistake in documentation which is “**easily rectifiable**”. [An error is easily rectifiable if it is an error apparent on the face of record and made without fraudulent intent or gross negligence]
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 i.e. Issue of SCN and proper hearing in the matter**, affording an opportunity to the person proceeded against is must to rebut the allegations levelled against him,
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) **Non-Applicability:** 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 %.**

2. CATEGORIES OF OFFENCES AND RELATED PENALTIES

2.1. PENALTIES FOR CERTAIN OFFENCES [SECTION 122(1)] - CAT 1

A taxable person may be held liable to penalty for 21 specified offences mentioned below:

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

(ii) **Issue of 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;

(iii) **Collects any amount as tax but fails to pay the same to the Government beyond 3 months** from the date on which such payment becomes due;

(iv) **Collects any tax** in contravention of the provisions of this Act but fails to pay the same to the Government beyond **3 months** from the date on which such payment becomes due;

(v) **Fails to deduct the tax in accordance Section 51**, or deducts an amount which is less than the amount required to be deducted, or where he fails to pay to the Government, the amount deducted as tax;

(vi) **Fails to collect tax in accordance with Section 52,** or collects an amount which is less than the amount required to be collected or where he fails to pay to the Government the amount collected as tax under Section 52(3);

(vii) **Takes or utilises input tax credit without actual receipt of goods or services** or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

(viii) **Fraudulently obtains refund** of tax under this Act;

(ix) **Takes or distributes input tax credit in contravention of section 20,** or the rules made thereunder;

(x) **Falsifies or substitutes financial records 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;

(xi) Is liable to be registered under this Act but **fails to obtain registration;**

(xii) **Furnishes any false information with regard to registration particulars**, either at the time of applying for registration, or subsequently;

(xiii) **Obstructs or prevents any officer** in discharge of his duties under this Act;

(xiv) **Transports any taxable goods without the cover of documents** as may be specified in this behalf;

(xv) **Suppresses his turnover leading to evasion of tax** under this Act;

(xvi) **Fails to keep, maintain or retain books of account and other documents** in accordance with the provisions of this Act or the rules made thereunder;

(xvii) **Fails to furnish information or documents called for 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 are liable to confiscation** under this Act;

(xix) **Issues any invoice or document by using the registration number of another registered person**;

(xx) **Tampers with, or destroys** any material evidence or document;

(xxi) **Disposes off or tampers with any goods** that have been detained, seized, or attached under this Act.

Amount of Penalty

Higher of following amounts:

a) ₹ 10,000;

b) Amount equivalent to

- ✓ Tax evaded; or
- ✓ Tax not deducted u/s 51 or short deducted or deducted but not paid; or
- ✓ Tax not collected u/s 52 or short collected or collected but not paid; or
- ✓ Input tax credit availed of or passed on or distributed irregularly; or
- ✓ Refund claimed fraudulently

2.2. PENALTIES FOR CERTAIN OFFENCES [SECTION 122(1A)] - CAT 2

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

2.3. PENALTIES ON ELECTRONIC COMMERCE OPERATORS [Section 122(1B)] – CAT 3

Any electronic commerce operator who—

(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 u/s 52(4) 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 ₹ 10,000, 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

2.4. PENALTIES FOR CERTAIN OFFENCES [SECTION 122(2)] - CAT 4

Any **registered person** who commits following offences:

a) who supplies any goods or services or both on which **any tax has not been paid or short-paid or erroneously refunded**, or

b) where the **input tax credit has been wrongly availed or utilised**

For any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax	For reason of fraud or any wilful misstatement or suppression of facts to evade tax
Amount equal to– (a) ₹ 10,000; or (b) **10% of the tax due** from such person ***Whichever is higher***	Amount equal to– (a) ₹ 10,000; or (b) Tax due from such person ***Whichever is higher***

2.5. PENALTIES FOR CERTAIN OFFENCES [SECTION 122(3)] - CATEGORY 4

Any person who commits following offences:

a) aids or abets any of the 21 offences specified in Section 122(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,

Amount of Penalty
Penalty is leviable for an amount which may extend to **₹ 25,000.**

3. PENALTIES FOR FAILURE TO FILE INFORMATION RETURN [SECTION 123]

If the person still fails to furnish the information return within the period specified in notice issued under section 150(3), the proper officer may direct that such person shall be liable to pay a penalty of **₹ 100** for **each day** of the period during which the failure to furnish such return continues, subject to a maximum of **₹ 5,000.**

4. FINE FOR FAILURE TO FURNISH STATISTICS [SECTION 124]

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

a) Fails to furnish such information or return as may be required under that section without reasonable cause; or

b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

Amount of Fine:

a) A fine which may extend to **₹ 10,000** and

b) Continuing offence extend to **₹ 100 for each day** after the first day during which the offence continues subject to a maximum limit of **₹ 25,000.**

5. GENERAL PENALTY [SECTION 125]

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 **₹ 25,000**.

Can proper officer impose penalty even if person is not covered by any proceedings? [Section 127]

The Proper Officer may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person in following cases:

- ✓ Assessment of non-filers of Returns, under section 62
- ✓ Assessment of unregistered persons, under section 63
- ✓ Summary Assessment under section 64
- ✓ Determination under section 73 of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts
- ✓ Determination under section 74 of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts
- ✓ Detention, seizure and release of goods and conveyances in transit under section 129
- ✓ Confiscation of goods or conveyances and levy of penalty under section 130

Can Government waive in part or full, any penalty or fees or both? [Section 128]

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.

6. DETENTION & SEIZURE OF GOODS & CONVEYANCE IN TRANSIT [SECTION 129]

(A) When the liability of detention and seizure of goods arises?

All goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to **detention or seizure**, when any person transports any goods or stores any goods while they are in **transit** in **contravention of the Act or rules.**

No such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(B) Release of goods after detention

The release of goods and/or conveyance shall be made on payment of applicable penalty

Particulars	**Owner comes forward for payment of penalty: -**	**Owner DOES NOT come forward for payment of penalty: -**
Taxable Goods	Payment of Penalty being **200% of the tax payable on such goods**	Payment of Penalty being **50%** of the v**alue of the goods** or **200%** of the **tax** payable on such goods whichever is **higher**
Exempted Goods	**2%** of value of goods or **₹ 25,000**, ***whichever is less or*** Furnishing a security equivalent to the amount payable mentioned above	**5%** of value of goods or **₹ 25,000**, ***whichever is less*** or Furnishing a security equivalent to the amount payable mentioned above

(C) Compliances and activities post detention

1) The proper officer detaining or seizing goods or conveyance shall issue a notice within 7 days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of 7 days from the date of service of such notice, for payment of penalty as above
2) No penalty shall be determined as mentioned above without giving an opportunity of being heard.
3) All proceedings deemed to be concluded on payment of penalty determined in notice.

4) In case of failure to pay penalty within **15 days** from the date of receipt of copy of detention order, the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable.

5) Provided that the conveyance shall be released on payment by the transporter of penalty or ₹ 1,00,000, whichever is less:

6) Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, **the said period of 15 days may be reduced by the proper officer.**

7. CONFISCATION OF GOODS OR CONVEYANCE [SECTION 130]

(A) Offences liable to confiscation of goods

A person is liable to confiscation of goods and conveyances and penalty leviable **u/s 122** in following cases:

1) supplies / receives any goods in contravention of any of Act / rules with intent to **evade payment of tax**;
2) does not **account for any goods** on which he is liable to pay tax under this Act; or
3) **supplies any goods** liable to tax under this Act **without having applied for registration;** or
4) **contravenes any provisions** of this Act / rules with intent to **evade payment of tax**; or
5) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act / rules unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance.

(B) Payment of Redemption Fine - An option to pay fine in lieu of confiscation

The proper officer adjudging any confiscation of goods/conveyance used for carriage of goods shall give to the owner of the goods/conveyance an option to pay redemption fine as follows:

Goods
• **Maximum Fine: Market value** of the goods confiscated <u>less</u> **tax** chargeable thereon • **Minimum Fine + Penalty:** Penalty equivalent to **100% of tax payable on such goods**
Conveyance
Tax payable on the goods being transported thereon.

(C) Other miscellaneous points

- No order for confiscation of goods / conveyance / penalty shall be issued **without giving an opportunity of being heard.**
- Upon confiscation, the title of such goods or conveyance shall **vest in the Government**

- Every officer of **Police,** on the requisition of such proper officer, shall assist him in taking and holding such possession.
- If confiscated goods are not required under any proceedings, and after giving reasonable time not exceeding **3 months** to pay redemption fine, the proper officer to dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.
- No confiscation made or penalty imposed 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. ***[Code of Criminal Procedure, 1973 to supersede]***

8. CONFISCATION OR PENALTY NOT TO INTERFERE WITH OTHER PUNISHMENTS [SECTION 131]

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, 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.

9. PUNISHMENTS FOR CERTAIN OFFENCES [SECTION 132]

The person committing the offence will be punishable depending on the amount involved. Prosecution is the conducting of legal proceedings against someone in respect of a criminal charge.

Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:

"COGNIZABLE OFFENCES" if tax evaded > ₹ 500 lakhs

a) supplies any goods or services **without issue of any invoice**, in violation of the Act /rules **with the intention to evade tax;**

b) issues any invoice / bill **without supply** of goods or services in violation of this Act / rules leading to wrongful availment / 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 tax but fails to pay the same to the Government beyond **3 months** from due date of payment;

Note: All the above offences shall be non-cognizable and bailable where tax evaded ≤ ₹ 500 lakhs

"NON - COGNIZABLE OFFENCES" irrespective of quantum of tax evaded

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;~~

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 / rules 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)~~ **clauses (a) to (f) and clauses (h) and (i)** of this section.

Section	Nature of Offence	Tax amount involved	Punishment by imprisonment	Cognizable/Non-cognizable	Bailable/Non-bailable
132(1)(i) & 132(5)	**Clause a to d**	**> ₹ 500 lakhs**	Upto 5 years with fine	Cognizable	Non- Bailable
132(1)(i)	**Offences other than Clause a to d**	**> ₹ 500 lakhs**	Upto 5 years with fine	Non-cognizable	Bailable
132(1)(ii)	**All offences**	**> ₹ 200 lakhs ≤ ₹ 500 lakhs**	Upto 3 years with fine	Non-cognizable	Bailable
132(1)(iii)	**Clause b**	**> ₹ 100 lakhs ≤ ₹ 200 lakhs**	Upto 1 years with fine		
132(1)(iv)	Commits or abets commission of offence specified in clause **(f)**		Upto 6 months or fine or both		

Second and subsequent offence:

Where any person convicted of an offence is **again convicted** of an offence, 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.**

Minimum imprisonment is 6 months: [Section 132(3)]

The imprisonment referred to in **clauses (i), (ii) and (iii)** and subsequent offences shall, in the "*absence of special and adequate reasons"* be recorded in the judgment of the Court, be for a term **not less than six months. A person shall not be prosecuted for any offence except with the previous sanction of the Commissioner.**

Illustration 1:

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

(i) 'Ram' avails input tax credit of ₹ 162 lakh without actual receipt of excisable goods. However, he is yet to utilize the same (i.e. Yet to confirm this credit in his GSTR-2A return).

(ii) 'Rahim' wilfully evades payment of tax of ₹ 275 lakh.

(iii) 'Robert' fails to supply information sought by the Central Tax Officer. The amount of GST involved is ₹ 8 lakh.

(iv) 'Lakshman' collects ₹ 585 lakh as tax from its clients but deposits only ₹ 25 lakh with the Central Government.

(v) 'Karthik' collects ₹ 265 lakh as IGST from its clients and deposits ₹ 261 lakh with the Central Government by falsifies or substitutes financial records or produces fake accounts or documents.

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

Solution:

Person	Offence	Prosecution	Arrest	Bail
Ram	No offence. Because utilization of ITC not confirmed in his return GSTR-2A	Not applicable	Not applicable	Not applicable
Rahim	Non-cognizable offence [Section 132(1)(e)]	Upto 3 years with fine [Section132(1)(ii)]	Arrest can be ordered by Commissioner	Bailable offence [Section 132(4)]
Robert	Non-cognizable offence [Section 132(1)(k)]	Not applicable [since, tax evasion not exceeds ₹ 100 lakhs]	No Arrest can be ordered by Commissioner	Not applicable
Lakshman	Cognizable offence [Section 132(1)(a)]	Upto 5 years with fine [Section 132(1)(i)]	Arrest can be ordered by Commissioner without arrest warrant	Non-Bailable Offence [Section 132(5)]
Karthik	Non-cognizable offence [Section 132(1)(f)]	Upto 6 months or with fine or with both [section 132(1)(iv)]	Arrest can be ordered by Commissioner	Bailable Offence [Section 132(4)]

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

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

10. COMPUNDING OF OFFENCES [SECTION 138]

A. Offences that cannot be compounded

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 section 132(1) ***[Without any value limit]***

> **a)** supplies any goods or services **without issue of any invoice**, in violation of the Act /rules **with the intention to evade tax;**
>
> **b)** issues any invoice / bill **without supply** of goods or services in violation of this Act / rules leading to wrongful availment / 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 tax but fails to pay the same to the Government beyond **3 months** from due date of payment;
>
> **e)** evades tax, fraudulently avails input tax credit / 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;
>
> **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;
>
> **(l)** attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (f) and clauses (h) and (i) of this section,

b) A person who has been accused of committing an offence under **clause (b) of sub-section (1) of section 132**

c) A person who has been **convicted** for an offence under this Act **by a court;**

d) Any other class of persons or offences as may be prescribed:

B. Amount of Compounding Fees

Minimum	Maximum
Higher of following: **a)** 25% of tax	Higher of following: **a)** 100% of tax

C. Activities after payment of compounding fees:

No further proceedings shall be initiated 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.**

D. Other miscellaneous points

a) Compounding shall be allowed **only after making payment of tax, interest and penalty** involved in such offences.

b) Any compounding allowed shall not affect the proceedings, if any, "**instituted under any other law**".

Procedure for compounding of offences [Rule 162]

(1) An applicant may, either before or after the institution of prosecution, make an application under sub-section (1) of section 138 in FORM GST CPD-01 to the Commissioner for compounding of an offence.

(2) On receipt of the application, the Commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, or any other information, which may be considered relevant for the examination of such application.

(3) The Commissioner, after taking into account the contents of the said application, may, by order in FORM GST CPD-02, on being satisfied that the applicant has made full and true disclosure of facts relating to the case, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application.

(3A) The Commissioner shall determine the compounding amount under sub-rule (3) as per the Table below

<table>
<tr><th>Offence</th><th>Compounding amount if offence is punishable u/s 132(1)(i)</th><th>Compounding amount if offence is punishable u/s 132(1)(ii)</th></tr>
<tr><td>Offence specified in section 132(1)(a)</td><td rowspan="4">(i) Up to 75% of the amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken
OR
(ii) 50% of such amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken
whichever is higher</td><td rowspan="4">(i) Up to 60% of the amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken
OR
(ii) 40% of such amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken
whichever is higher</td></tr>
<tr><td>Offence specified in section 132(1)(c)</td></tr>
<tr><td>Offence specified in section 132(1)(d)</td></tr>
<tr><td>Offence specified in section 132(1)(e)</td></tr>
<tr><td>Offence specified in section 132(1)(f)</td><td rowspan="2">Amount equivalent to 25% of tax evaded.</td><td rowspan="2">Amount equivalent to 25% of tax evaded.</td></tr>
<tr><td>Offence specified in section 132(1)(h)</td></tr>
</table>

Offence specified in clause (i) of section 132(1)		
Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and (i) of section 132(1)	Amount equivalent to **25%** of such amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken.	Amount equivalent to **25%** of such amount of tax evaded or ITC wrongly availed/utilised or refund wrongly taken.

However, where the offence committed by the person falls under more than one category specified in the Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed

(4) The application shall not be decided under sub-rule (3) without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.

(5) The application shall not be allowed unless the tax, interest and penalty liable to be paid have been paid in the case for which the application has been made.

(6) The applicant shall, within **30 days** from the date of the receipt of the order under sub-rule (3), pay the compounding amount as ordered by the Commissioner and shall furnish the proof of such payment to him.

(7) In case the applicant fails to pay the compounding amount within the time specified in sub-rule (6), the order made under sub-rule (3) shall be vitiated and be void.

(8) Immunity granted to a person under sub-rule (3) may, at any time, be **withdrawn** by the Commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence. Thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provisions the Act shall apply as if no such immunity had been granted.

11. OFFENCES BY COMPANIES [SECTION 137]

Offence committed by a taxable person being a company (means a body corporate and includes a firm or other association of individuals)	Every person who, (at the time the offence was committed) was in charge of, and was responsible for the conduct of business of the company, and Company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
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 / karta / managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly

Offences committed with consent and attributable to

a) any director manager, secretary or other officer of the company:

b) any partner/member/trustee, manager, secretary or other officer of the partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust,

Respective persons shall also be deemed to be guilty of that offence and **shall be liable to be proceeded against and punished accordingly.**

No punishment would be applicable if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent commission of such offence

12. MISCELLANEOUS TOPICS

COGNIZANCE OF OFFENCES [SECTION 134]

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.

PRESUMPTION OF CULPABLE MENTAL STATE [SECTION 135]

The court shall presume the existence of "**culpable mental state**" in any prosecution.

Meaning of **culpable mental state**: It is a state of mind wherein:

a) the act is intentional;
b) the act and its implications are understood and controllable;
c) the person committing the act was not coerced and even overcomes hurdles to the act committed;
d) the person believes or has reasons to believe that the act is contrary to law.

Defence available with accused:

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.

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.

LIABILITY OF OFFICERS AND CERTAIN OTHER PERSONS [SECTION 133]

(A) Applicability on following persons:

a) Any person engaged in connection with the collection of statistics under Section 151 or

b) Any officer of central tax having access to information specified under Section 150 (1),

c) Any person engaged in connection with the provision of service on the common portal or the agent of common portal

(B) Nature of offence

Wilfully discloses any information or the contents of any return furnished under this Act/rules "**otherwise than" –**

a) in execution of his duties under the said sections; or

b) for purposes of prosecution for an offence under this Act or under any other Act for the time being in force,

(C) Penalty and Punishment

Imprisonment for **6 months** or with fine which may extend to ₹ 25,000, or with both. ***[Previous sanction of Government required in case of Govt. employee and Commissioner in case of others].***

RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES [SECTION 136]

A statement made and signed by a person on appearance in response to any summons issued u/s 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.