

Inspection, Search, Seizure, Arrest and Prosecution

15

This Module Includes

- 15.1 Introduction**
- 15.2 Inspection, Search, Seizure (Section 67 of CGST Act, 2017)**
- 15.3 Arrest and Prosecution**
- 15.4 Compounding of Offences**

Inspection, Search, Seizure, Arrest and Prosecution

SLOB Mapped against the Module

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

Module Learning Objectives

After studying this module, the students will be able to:

- ⊙ Identify inspection, search and seizure under GST
- ⊙ Explain power to arrest under GST
- ⊙ Understand arrest and prosecution under GST

Inspection, Search and Seizure are provided to protect the interest of genuine taxpayers as the Tax evaders by evading the tax get an unfair advantage over the genuine taxpayers. These provisions are also required to safeguard and protect interest of revenue. It is well-settled law that search and seizure being an encroachment on the fundamental right of citizen which adversely affects his/her reputation and paralyze his/her business. Therefore, while exercising such powers, the authorities should be rather careful and cautious and must exercise it strictly under the authority of the law.

Thus, to ensure that these provisions are used very carefully, effectively and the rights of taxpayers are also protected, it is stipulated that Inspection, Search or Seizure can only be carried out by a proper officer, not below the rank of Joint Commissioner under GST law, only when such proper officer has 'reasons to believe' regarding the existence of such exceptional circumstances.

Inspection, Search, Seizure (Section 67 of CGST Act, 2017)

15.2

The term '**Inspection**' has not been specifically defined in GST. Inspection is a softer provision than search which enables officers to access any place of business of a taxable person or of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown,

The term '**Search**' has not been specifically defined in GST. Search in simple language, denotes an action of government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of an offence or a crime.

The term '**seizure**' has not been specifically defined in GST. In legal parlance, seizure is the act of taking over something or someone by force through legal process, such as the seizure of evidence found at the scene of a crime. It generally implies taking possession forcibly against the wishes of the owner.

Under GST, inspection, as well as search, can be carried out only after authorization by a proper officer not below the rank of Joint Commissioner and such proper officer must have reason to believe for the existence of exceptional circumstances to justify invoking provisions of Search and Seizure. Sections 67 to 72 of the CGST Act read with rules 139 to 141 of CGST Rules deal with powers and procedure of Inspection, Search & Seizure.

It is imperative to mention here that application of the provisions of the Code of Criminal Procedure arises only when the premises are searched and not inspected.

As per Section 67(1) of the CGST Act, 2017, Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that-

- (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or
- (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorize in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

section 67(1) read with Rule 139 of the CGST Rules envisage procedural aspects of Inspection, Search and Seizure. Rule 139 of the CGST Rules are as follows:

“(1) Where the proper officer not below the rank of a Joint Commissioner has reasons to believe that a place of business or any other place is to be visited for the purposes of inspection or search or, as the case may be, seizure in accordance with the provisions of section 67, he shall issue an authorisation in FORM GST INS-

01 authorising any other officer subordinate to him to conduct the inspection or search or, as the case may be, seizure of goods, documents, books or things liable to confiscation.

- (2) Where any goods, documents, books or things are liable for seizure under sub-section (2) of section 67, the proper officer or an authorised officer shall make an order of seizure in FORM GST INS-02.
- (3) The proper officer or an authorised officer may entrust upon the owner or the custodian of goods, from whose custody such goods or things are seized, the custody of such goods or things for safe upkeep and the said person shall not remove, part with, or otherwise deal with the goods or things except with the previous permission of such officer.
- (4) Where it is not practicable to seize any such goods, the proper officer or the authorised officer may serve on the owner or the custodian of the goods, an order of prohibition in FORM GST INS-03 that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.
- (5) The officer seizing the goods, documents, books or things shall prepare an inventory of such goods or documents or books or things containing, inter alia, description, quantity or unit, make, mark or model, where applicable, and get it signed by the person from whom such goods or documents or books or things are seized.”

It is pertinent to note that, section 67(1) categorically provides that Inspection can be at the place of business of the assessee. It further needs to be noted here that section 2(85) of the CGST Act defines the phrase ‘place of business’ which reads as follows:

“place of business” includes—

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called;”

Definition of the place of business is inclusive which includes godown or any other place where a taxable person stores his goods or maintains his books of accounts or place of agent. Accordingly, if books of accounts are being maintained or kept at residence of director or any other key managerial person the same may be treated as place of business and inspection can be carried out there as well.

The Hon’ble Gujarat High Court, in the case of **Patran Steel Rolling Mill** v. Assistant Commissioner of State Tax [2019] 101 taxmann.com 80 (Guj.) held that provision of section 67, should not be exercised as a matter of course, but only after due application of mind to the relevant factors.

As per Section 67(2) of the CGST Act, 2017, Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

As per Section 67(3) of the CGST Act, 2017, The documents, books or things referred to in sub-section (2) or

any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

As per Section 67(4) of the CGST Act, 2017, The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

As per Section 67(5) of the CGST Act, 2017, The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

As per Section 67(6) of the CGST Act, 2017, The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

As per Section 67(7) of the CGST Act, 2017, Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

As per Section 67(8) of the CGST Act, 2017, The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

As per Section 67(9) of the CGST Act, 2017, Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

As per Section 67(10) of the CGST Act, 2017, The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word “Magistrate”, wherever it occurs, the word “Commissioner” were substituted.

As per Section 67(11) of the CGST Act, 2017, Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

As per Section 67(12) of the CGST Act, 2017, The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

Section 68 of CGST Act, 2017, Inspection of goods in movement:

As per section 68(1) of CGST Act, 2017, The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

As per section 68(2) of CGST Act, 2017, The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

As per section 68(3) of CGST Act, Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

Section 68 of the CGST Act, 2017 mandates that the Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed (i.e. E-way Bill).

Section 69 of CGST Act, 2017 Power to arrest:

As per Section 69(1) of CGST Act, 2017, where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

As per section 69(2) of CGST Act, 2017, where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

As per Section 69(3) of CGST Act, 2017, Subject to the provisions of the Code of Criminal Procedure, 1973,—

- (a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;
- (b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

Monetary limit of ₹500 lakh is not applicable to prosecute a person:

- (i) Habitual evaders: A company/taxpayer would be treated as habitual evader, if it has been involved in two or more cases of confirmed demand (at the first adjudication level or above) of tax evasion/fraudulent refund or misuse of ITC involving fraud, suppression of facts etc. in past two years such that the total tax evaded and/or total ITC misused and/or fraudulently obtained refund exceeds Five Hundred Lakh rupees. DIGIT database may be used to identify such habitual evaders.
- (ii) Arrest Cases: Cases where during the course of investigation, arrests have been made under section 69 of the CGST Act.

Guidelines on issuance of summons under section 70 of the CGST Act, 2017:

(Instruction No. 03/2022-23 (GST-Investigation) dated 17.08.2022)

Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Deputy/ Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.



the officer issuing summons should record in file about appearance/ non-appearance of the summoned person



Issuance of summons may be avoided to call upon statutory documents which are digitally/ online available in the GST portal.



Summons should not issued in first instance to Senior management officials unless their involvement in the decision making leads to loss of revenue.



Generation and quoting of Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation.



The summoning officer must be present at the time and date for which summons is issued. In case of any exigency, the summoned person must be informed in advance in writing or orally.

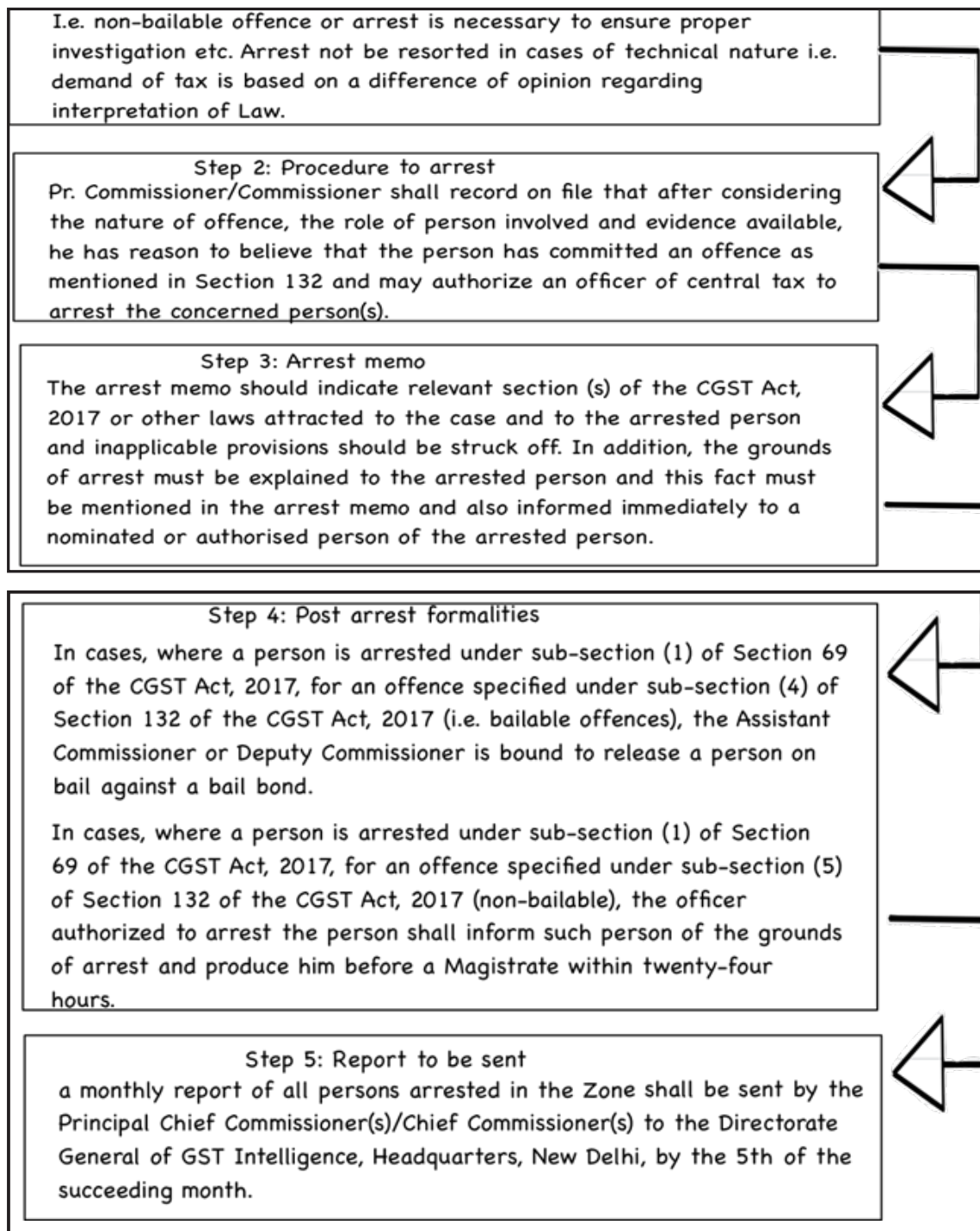


All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged persons.



Generally 3 summons at reasonable intervals will be issued in case summoned person does not join investigation. After that a complaint should be filed with jurisdictional magistrate. However, this does not bar to issue further summons to the said person under section 70 of the CGST Act, 2017.

Guidelines for arrest and bail in relation to offences punishable under the CGST Act, 2017 (Instruction No. 02/2022-23 (GST-Investigation), dated 17.08.2022):



Section 70 of CGST Act 2017 - Power to summon persons to give evidence and produce documents:

As per Section 70(1), The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

w.e.f. 1-11-2024, F.A 2024 dated 16-8-2024, the following sub-section shall be inserted, namely: —

[(1A) All persons summoned under sub-section (1) shall be bound to attend, either in person or by an authorised representative, as such officer may direct, and the person so appearing shall state the truth during examination or make statements or produce such documents and other things as may be required.]

As per Section 70(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code

Section 71 of CGST Act 2017 - Access to Business Premises:

- (1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
- (2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66-
 - (i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
 - (ii) trial balance or its equivalent;
 - (iii) statements of annual financial accounts, duly audited, wherever required;
 - (iv) cost audit report, if any, under section 148 of the Companies Act, 2013;
 - (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and
 - (vi) any other relevant record,

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

Section 72 of the CGST Act, 2017 – Officers to assist proper officers:

As per section 72(1), All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.

As per section 72(2), The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

Clarification on the legal position of voluntary payment of taxes during the course of inspection, search or investigation:

Under CGST Act, 2017, the taxpayers have an option to make voluntary payment of tax through Form DRC-03. Such voluntary payment of tax before issuance of show cause notice is permitted under section 73(5) and section

74(5) of the CGST Act, 2017. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under section 50 of CGST Act, 2017 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under section 73 or section 74, as the case may be.

Recovery of taxes not paid or short paid, can be made under the provisions of section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. Therefore, there may not arise any situation where “recovery” of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either before or during the course of such proceedings or subsequently. The tax officer should, however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03.

The Pr. Chief Commissioners/ Chief Commissioners, CGST Zones and Pr. Director General, DGGI are advised that in case, any complaint is received from a taxpayer regarding use of force or coercion by any of their officers for getting the amount deposited during search or inspection or investigation, the same may be enquired at the earliest and in case of any wrongdoing on the part of any tax officer, strict disciplinary action as per law may be taken against the defaulting officers. [Instruction No. 01/2022-23 [GST-Investigation] dt. 25.05.2022].

Arrest and Prosecution

15.3

The person committing the offence will be punishable depending on the amount involved which is as follows:

Prosecution is the conducting of legal proceedings against someone in respect of a criminal charge.

Any person committing the following offences (i.e., deliberate intention of fraud) becomes liable to prosecution, i.e., face criminal charges Section 132(1) of the CGST Act, 2017:

The following are cognizable offences if the tax evaded > ₹500 lakh (section 132(5) of the CGST Act, 2017):

Whoever commits any of the following offences (from the Finance Act, 2020, dated 27-3-2020 read as Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences), namely (Section 132(1) of the CGST Act, 2017):—

- (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 such invoice or bill referred to in clause (b), (this clause shall be substituted from the Finance Act, 2020 dated 27-3-2020 namely- 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;

Note: all the above offences shall be non-cognizable and bailable where tax evaded \leq ₹500 lakh (Section 132(4) of the CGST Act, 2017).

The following are non-cognizable and bailable offences irrespective of the tax amount evaded (Section 132(4) of the CGSG Act, 2017):

Whoever commits any of the following offences, namely (Section 132(1) of the CGST Act, 2017):—

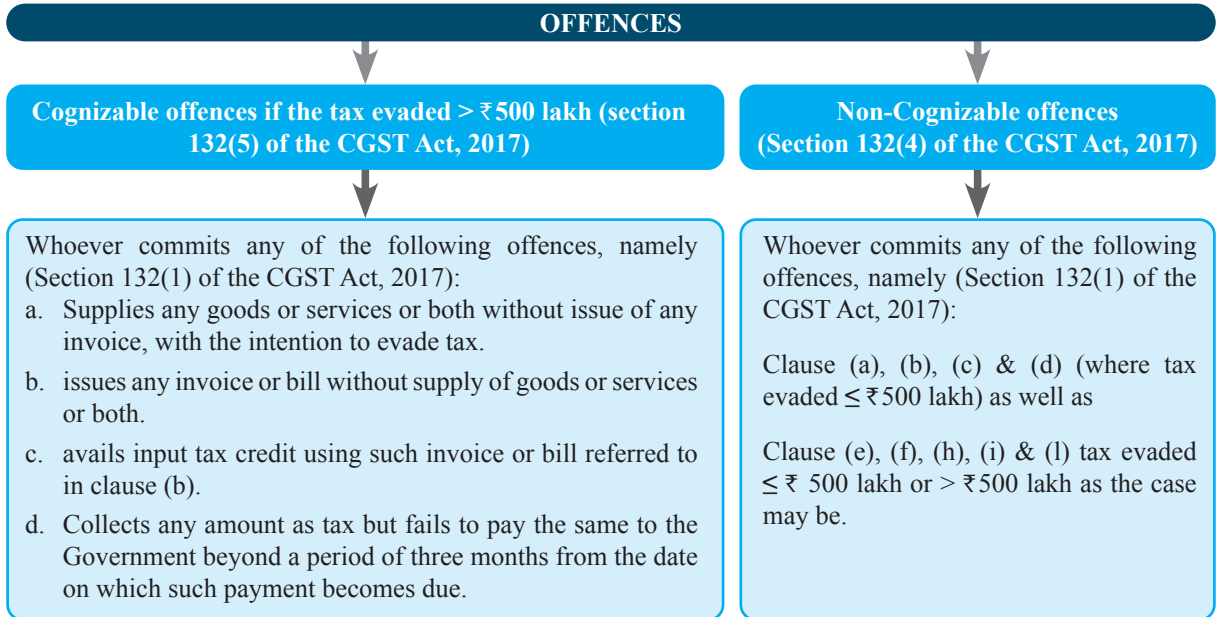
- (e) evades tax, (fraudulently avails input tax credit omitted from the Finance Act, 2020, dated 27-3-2020) or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- (g) Omitted w.e.f. 1st October 2023, 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) Omitted w.e.f. 1st October 2023, tampers with or destroys any material evidence or documents;
- (k) Omitted w.e.f. 1st October 2023, 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) (W.e.f. 1st October 2023, read as) 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,

Cognizable or non-cognizable:

Section	Tax amount involved	Quantum of punishment by imprisonment	Cognizable or non-cognizable	Bailable or non-bailable
132(1)(i)	> ₹ 500 lakhs	Upto 5 years with fine	Cognizable	Non-bailable
132(1)(ii)	> ₹ 200 lakhs ≤ ₹ 500 lakhs	Upto 3 years with fine	Non-cognizable	Bailable
132(1)(iii)	> ₹ 100 lakhs ≤ ₹ 200 lakhs	Upto 1 years with fine	Non-cognizable	Bailable
132(1)(iv)	w.e.f. 1st October 2023, Offence specified in clause (f), of Section 132(1) of the CGST Act, 2017	Upto 6 months or with fine or with both	Non-cognizable	Bailable

Section 132(1)(iii), in case of [w.e.f. 1st October 2023 an offence specified in clause (b)], (prior to 1st October 2023 “any other offence”) where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds ₹100 lakh but does not exceed ₹200 lakh with imprisonment for a term which may extend to one year and with fine.

Simplified approach:



Second and subsequent offence

Section 132(2) of the CGST Act, 2017 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.**

Minimum imprisonment is 6 months

Section 132(3) of the CGST Act, 2017 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.

Prior permission from the Commissioner

Section 132(6) of the CGST Act, 2017 a person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

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.

Illustration 1

Discuss the prosecution, arrest and bail implications, if any, in respect of the following cases pertaining to the period April 2024:

- (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-2B 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/ Imprisonment	Arrest	Bail
'Ram'	No offence. Because utilization of ITC not confirmed in his return GSTR-2B	Not applicable	Not applicable	Not applicable
'Rahim'	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)]
'Robert'	Non-cognizable offence [omitted w.e.f. 1-10-2023 Section 132(1)(k)]	not an offence u/s 132		Not applicable
'Lakshman'	Cognizable offence Section 132(1)(d)	Upto 5 years with fine [Section 132(1)(i)]	Arrest can be ordered by Commissioner of Central Tax 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 of Central Tax.	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]
'Rahim'	Imprisonment upto 5 years with fine
'Robert'	Imprisonment upto 5 years with fine
'Lakshman'	Imprisonment upto 5 years with fine
'Karthik'	Imprisonment upto 5 years with fine

Illustration 2

M/s X Pvt Ltd., issued invoice without supply of goods for ₹20 crore. Central Tax Authority issued a show cause notice by demanding following:

CGST & SGST 18% = ₹3.60 crore

Penalty 100% of tax due = ₹3.60 crore

Interest 24% p.a

You are required to answer the following:

- (a) Is it cognizable offence?
- (b) Quantum of punishment if M/s X Pvt Ltd., has been convicted.

Solution:

- (a) It is non-cognizable Offence.
- (b) Quantum of punishment:

Section	Tax amount involved	Quantum of punishment by imprisonment	Cognizable or non-cognizable	Bailable or non-bailable
132(1)(ii)	> ₹200 lakhs ≤ ₹500 lakhs	Upto 3 years with fine	Non-cognizable	Bailable

Note:

- (i) Minimum imprisonment is 6 months unless special or adequate reasons are noticed by the Judiciary.
- (ii) If the assessee committed second and subsequent time then irrespective of evasion of tax, maximum imprisonment upto 5 years.

Compounding of Offences

15.4

Compounding of offences under GST [Section 138 of the CGST Act, 2017]

Compounding of offences is a short cut method to avoid litigation. In the case of prosecution for an offense in a criminal court, the accused has to appear before the Magistrate at every hearing through an advocate. Court proceedings are time-consuming and expensive. In compounding, the accused is not required to appear personally and can be discharged on payment of compounding fee which cannot be more than the maximum fine leviable under the relevant provisions.

Section 138(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:

w.e.f. 1st October 2023, Compounding will not be available for—

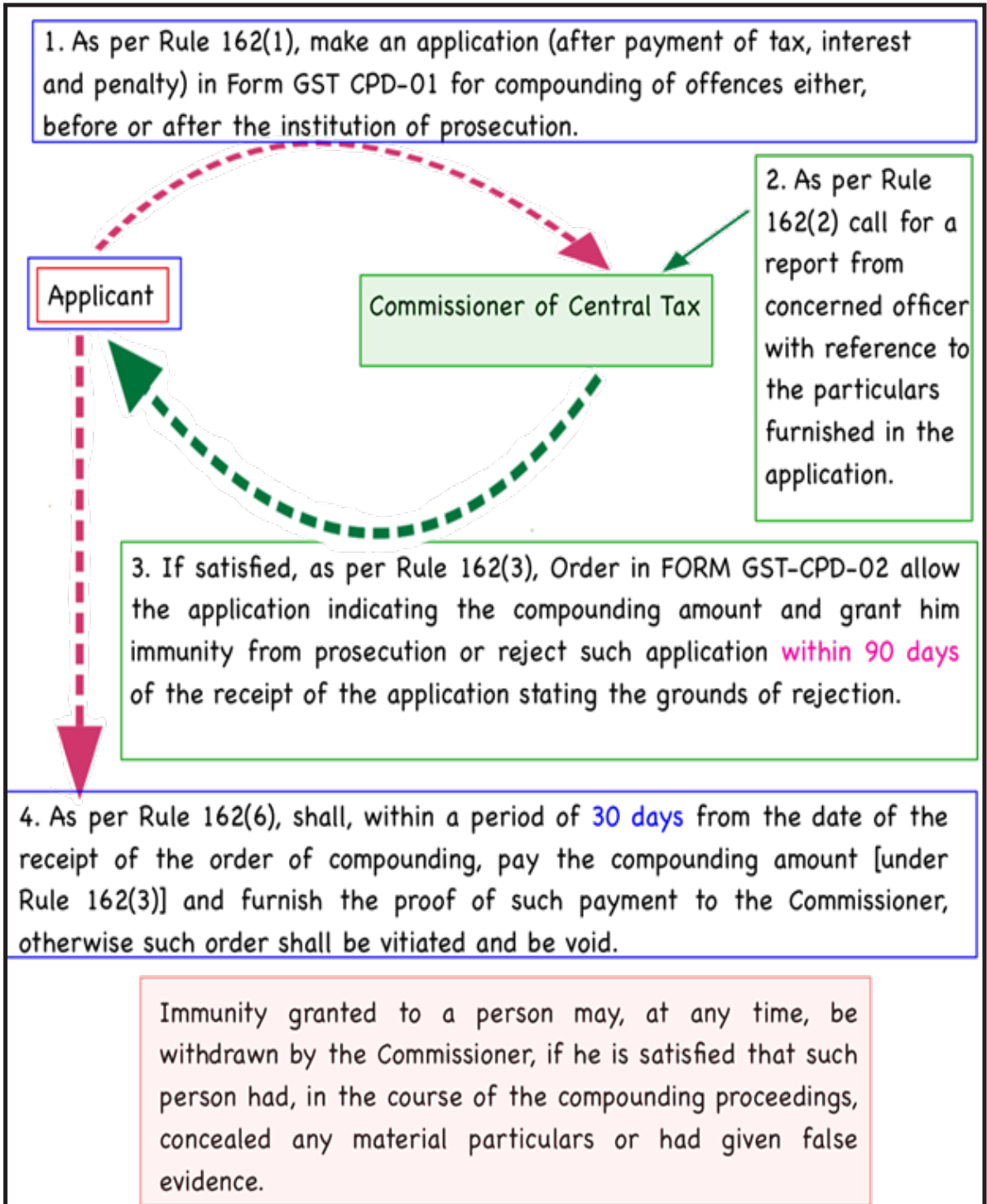
- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132;
- (b) (omitted – a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under 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;
- (d) a person who has been convicted for an offence under this Act by a court;
- (e) (omitted - 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 of the CGST Act, 2017; and)
- (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:

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

Section 138(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 25% of the tax involved and the maximum amount not being more than 100% of the tax involved.

Section 138(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.



w.e.f. 1st October 2023, Rule 162(3A) of the CGST Rules, 2017, The Commissioner shall determine the compounding amount under sub-rule (3) of Rule 162 of the CGST Rules, 2017 as per the Table below:-

S. No.	Offence	Compounding amount if offence is punishable under clause (i) of subsection (1) of Section 132 (i.e. tax amount involved > ₹500 lakhs)	Compounding amount if offence is punishable under clause (ii) of subsection (1) of Section 132 (i.e. tax amount involved > ₹200 lakhs ≤ ₹500 lakhs)		
(1)	(2)	(3)	(4)		
1	Offence specified in clause (a) of subsection (1) of section 132 of the Act	Up to 75% of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 50% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.	Up to 60% of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 40% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.		
2	Offence specified in clause (c) of subsection (1) of section 132 of the Act				
3	Offence specified in clause (d) of subsection (1) of section 132 of the Act				
4	Offence specified in clause (e) of subsection (1) of section 132 of the Act				
5	Offence specified in clause (f) of subsection (1) of section 132 of the Act			Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
6	Offence specified in clause (h) of subsection (1) of section 132 of the Act				
7	Offence specified in clause (i) of subsection (1) of section 132 of the Act				
8	Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and (i) of subsection (1) of section 132 of the Act			Amount equivalent to 25% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.	Amount equivalent to 25% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.

Provided that 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.”.

Rule 162(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.

Rule 162(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.

Rule 162(6) The applicant shall, within a period of thirty 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.

Rule 162 (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.

Rule 162 (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.

Summary: w.e.f. 1-10-2023, the prescribed fees for compounding of GST offences have been reduced to the range of 25% to 100% of the tax amount involved (as opposed to the earlier 50 to 150%). However, option of compounding has been taken away for cases of fake invoicing.

Example 1:

Are there any monetary limits prescribed for compounding of offence?

Answer:

As per Section 138(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 25% of the tax involved and the maximum amount not being more than 100% of the tax involved.

Example 2:

What happens after the offence has been compounded?

Answer:

On payment of compounding amount, no further proceeding shall be initiated under the CGST Act, 2017 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.

Example 3:

Answer whether the following offences are compoundable as per section 138 of CGST Act, 2017 read with Rule 162 of the CGST Rules, 2017.

Particulars	Compoundable –Yes/No	Reason
X Pvt Ltd is making taxable supplies and not issuing tax invoice with the Intention to evade tax	Yes	This offence falls in Section 132(1)(a). Such offence is compoundable once. If X Pvt Ltd commits it for Second time, then it is not compoundable
2. (a) X firm issued tax invoice to few customers without actually making supply in order to give input tax benefit to customers (b) Customers availed Input tax credit with the above said Invoices issued by X Firm Case A: where the ITC wrongly availed or utilised is ₹300 lakh. Case B: where the ITC wrongly availed or utilised is ₹150 lakh.	In case of X Firm- (a) Committed offence for First time or Second time as the case may be. In case of customers- (b) Committed offence for First time – Yes Committed offence for Second time – No	In case of X Firm- This offence falls in Section 132(1)(b). Not Punishable under Section 132(1)(iii) because not tax is involved. Since, it is not a supply. Penalty can be imposed under section 122(1)(ii) of the CGST Act, 2017 for issuing tax invoice without supply of goods or services or both (vide CBIC Circular No. 171/03/2022 dated 6th July 2022). However, option of compounding has been taken away for cases of fake invoicing irrespective of value.

		<p>In case of Customers-</p> <p>This offence falls in Section 132(1)(c). Such offence is compoundable once. If X Firm commits it for Second time, then it is not compoundable.</p> <p>Case A: Compounding amount as per Rule 162(3A) of the CGST Rules, 2023 is as follows</p> <p>Up to 60% of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 40% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken</p> <p>Maximum Compounding amount $\text{₹}300 \text{ lakh} \times 60\% = \text{₹}180 \text{ lakh}$</p> <p>And</p> <p>Minimum Compounding amount $\text{₹}300 \text{ lakh} \times 40\% = \text{₹}120 \text{ lakh}$</p> <p>Note: Compounding amount if offence is punishable under clause (ii) of sub-section (1) of Section 132.</p> <p>Case B: Compounding amount as per Rule 162(3A) of the CGST Rules, 2023 is as follows</p> <p>No compounding is allowed. Since, the offence covered under Section 132(1)(iii) where the ITC credit wrongly availed or utilised does not exceeds ₹200 lakh.</p> <p>Note: Compounding of amount is allowed if the offence is punishable under Section 132(1)(i) or Section 132(1)(ii).</p>
--	--	--

<p>Z LLP has a tax liability of ₹510 Lakhs for the month of December 2023. Z LLP failed to pay till 30th April 2024. Due date of payment for Z LLP is 20th January 2024.</p>	<p>Committed offence for First time – Yes Committed offence for Second time – No</p>	<p>This offence falls in Section 132(1)(d). Such offence is compoundable once. If Z LLP commits it for Second time, then it is not compoundable. The Maximum Compounding amount if offence is punishable under clause (i) of sub-section (1) of Section 132 is ₹382.5 lakh (i.e. ₹510 lakh x 75%). The Minimum Compounding amount if offence is punishable under clause (i) of sub-section (1) of Section 132 is ₹255 lakh (i.e. ₹510 lakh x 50%).</p>
<p>Y, an exporter availed excess refund of Input Tax credit of ₹600 lakh</p>	<p>Committed offence for First time – Yes Committed offence for Second time – No</p>	<p>This offence falls in Section 132(1)(e). Such offence is compoundable once. If Y commits it for Second time, then it is not compoundable. The Maximum Compounding amount if offence is punishable under clause (i) of sub-section (1) of Section 132 is ₹450 lakh (i.e. ₹600 lakh x 75%). The Minimum Compounding amount if offence is punishable under clause (i) of sub-section (1) of Section 132 is ₹300 lakh (i.e. ₹600 lakh x 50%).</p>
<p>F a dealer has furnished wrong information in return in order to evade or minimize tax outflow to the extent of ₹700 lakh.</p>	<p>Committed offence for First time – Yes Committed offence for Second time – No</p>	<p>This offence falls in Section 132(1)(f). Such offence is compoundable once. If Y commits it for Second time, then it is not compoundable. Compounding Amount equivalent to 25% of tax evaded. Therefore, compounding amount is ₹175 lakh (i.e. ₹700 lakh x 25%)</p>
<p>T Ltd manufacturer of Chemicals has not allowed an officer to allow the business premises wherein it the duty of the officer to visit the premises and also given moneys to officer not to investigate company as order in the Act.</p>	<p>NOT COMPOUNDABLE</p>	<p>Such offence is not compoundable</p>
<p>ABC Ltd have tampered or destroyed material evidence under this Act for Assessment Z Pvt Ltd company Intentionally fails to provide information or supplied wrong information to the officer</p>	<p>NOT COMPOUNDABLE</p>	<p>Such offence is not compoundable</p>

Mr.A being a GTA knowingly transported drugs or goods without proper Invoice to other place. Such goods are liable to confiscation. Case A: Tax evasion quantified by the Proper Officer of ₹150 lakh. Case B: Tax evasion quantified by the Proper Officer of ₹250 lakh. Case C: Tax evasion quantified by the Proper Officer of ₹550 lakh.	Compoundable where tax evasion is more than ₹200 lakh. Committed offence for First time – Yes Committed offence for Second time – No	This offence falls in Section 132(1)(h). Case A: Not compoundable. Since, amount of tax evasion not exceed ₹200 lakh. Case B: compounding amount is ₹62.50 lakh (i.e. ₹250 lakh x 25%) Case C: compounding amount is ₹137.50 lakh (i.e. ₹550 lakh x 25%)
Mr. B is committed an offence for which court has convicted him.	NOT COMPOUNDABLE	This offence falls in Section 138(d) which is not compoundable.

Amendment of section 151, Power to collect statistics: w.e.f. 1-1-2022, Section 151 of the CGST Act has been substituted to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.

Earlier, Commissioner was required to issue a notification to call for information from the concerned persons relating to any matter in respect of which statistics were to be collected.

Amendment of section 152, Bar on disclosure of information: w.e.f. 1-1-2022, Section 152 of the CGST Act has been amended so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

w.e.f. 1st October 2023 New Section 158A: Consent based sharing of information furnished by taxable person:

(1) Notwithstanding anything contained in sections 133, 152 and 158, the following details furnished by a registered person may, subject to the provisions of subsection (2), and on the recommendations of the Council, be shared by the common portal with such other systems as may be notified (w.e.f 1st October 2023 vide Notification No. 33/2023 dt. 31-7-2023 notifies “Account aggregator” as the system with which information may be shared by common portal based on consent u/s 158A) by the Government, in such manner and subject to such conditions as may be prescribed, namely:-

- (a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;
- (b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;
- (c) such other details as may be prescribed.

(2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of –

- (a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of subsection (1); and
- (b) the recipient, in respect of details furnished under clause (b) of subsection (1), and under clause (c) of subsection (1) only where such details include identity information of the recipient,

in such form and manner as may be prescribed.

(3) Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.

Consent based sharing of information furnished by taxable person {vide NOTIFICATION No. 06/2024 – Central Tax dated 22nd February 2024):

the Central Government, on the recommendations of the Council, hereby notifies “Public Tech Platform for Frictionless Credit” as the system with which information may be shared by the common portal based on consent under subsection (2) of Section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017).

Explanation.— For the purpose of this notification, “Public Tech Platform for Frictionless Credit” means an enterprise-grade open architecture information technology platform, conceptualised by the Reserve Bank of India as part of its “Statement on Developmental and Regulatory Policies” dated the 10th August, 2023 and developed by its wholly owned subsidiary, Reserve Bank Innovation Hub, for the operations of a large ecosystem of credit, to ensure access of information from various data sources digitally and where the financial service providers and multiple data service providers converge on the platform using standard and protocol driven architecture, open and shared Application Programming Interface (API) framework.

Insertion of new Rule 163 (w.e.f. 01-10-2023):

New provision prescribing rules for consent based sharing of information with respect to particulars furnished in registration applications, returns filed etc. by a registered person with “Account Aggregator” [a NBFC which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI and defined as such in the NBFC Aggregator (Reserve Bank) Directions, 2016] (“requesting system”) as a consequence of insertion of section 158A vide Finance Act, 2023.

“Account Aggregator” [a NBFC which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI and defined as such in the NBFC Aggregator (Reserve Bank) Directions, 2016] **as the systems with which information may be shared by the common portal based on consent under the newly inserted Section 158A**

[Notification No 33/2023-CT dt 31-07-2023 w.e.f. 01-10-2023]

Amendment of section 168, Power to issue instructions or directions: w.e.f 1-1-2022, Section 168 of the CGST Act has been amended to enable the jurisdictional commissioner to exercise powers under section 151 to call for information.

Exercise

A. Theoretical Questions

⊙ Multiple Choice Questions

- Under GST, inspection, as well as search, can be carried out only after authorization by a proper officer not below:
 - the rank of Commissioner
 - the rank of Assistant Commissioner
 - the rank of Principal Commissioner.
 - the rank of Joint Commissioner.
- The documents, books or things referred to in sub-section (2) of section 67 or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding _____ of the issue of the said notice:
 - 60 days
 - 180 days
 - 30 days.
 - 14 days.
- As per Section 67(7) of the CGST Act, 2017, where any goods are seized under sub-section (2) and no notice in respect thereof is given within _____ of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:
 - sixty months
 - sixteen months
 - sixty six months
 - six months
- As per section 69(2) of CGST Act, 2017, where a person is arrested under sub-section (1) for an offence specified under sub- section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within _____ hours:
 - four hours
 - twenty-four hours
 - twenty-five hours
 - twenty-six hours

5. Are there any monetary limits prescribed for compounding amount? If so, how much?
- (a) (i) The minimum limit for compounding amount is to be the higher of the following amounts:—
- ₹5,000; or
 - 50% of tax involved,
- (ii) The upper limit for compounding amount is to be higher of the following amounts:—
- ₹30,000; or
 - 50% of tax involved.
- (b) (i) The minimum limit for compounding amount is to be the higher of the following amounts:—
- ₹1,00,000; or
 - 150% of tax involved,
- (ii) The upper limit for compounding amount is to be higher of the following amounts:—
- ₹25,000; or
 - 150% of tax involved.
- (c) (i) The minimum limit for compounding amount is to be the higher of the following amounts:—
- ₹10,000; or
 - 150% of tax involved,
- (ii) The upper limit for compounding amount is to be higher of the following amounts:—
- ₹30,000; or
 - 150% of tax involved.
- (d) (i) The minimum limit for compounding amount not being less than 25% of the tax involved and _____
- (ii) The upper limit for compounding amount is not being more than 100% of the tax involved.

Answer:

1.	2.	3.	4.	5.
d	c	d	b	d