



# CHAPTER - 23

## ETHICS Under GST

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## Important concept before going ahead...

<b>Meaning of Ethics</b>	<p>“Ethics” is the <b>moral principle</b> that governs a person's behaviour or how an activity is conducted. It provides a framework for distinguishing between right and wrong, guiding decision-making, and determining what is considered morally acceptable.</p>
<b>Benefits of ethics under GST</b>	<p>Ethics are fundamental to the <b>effective functioning of GST regime</b> in India. Ethical conduct leads to:-</p> <ul style="list-style-type: none"> <li>- increased regulatory compliance,</li> <li>- reduced tax evasion,</li> <li>- increased Govt. revenue collection that can be used for public welfare &amp; development projects,</li> <li>- reduce tax-related disputes &amp; litigations,</li> <li>- creates a fair, transparent, &amp; trustworthy tax environment and</li> <li>- reduces uncertainty that supports economic growth and development.</li> </ul>
<b>Effects of unethical practices</b>	<p>Unethical practices like bogus invoice issue without underlying supply, wrongful availment of ITC, etc.</p> <ul style="list-style-type: none"> <li>- undermine the tax revenues &amp;</li> <li>- create an uneven playing field for honest taxpayers.</li> </ul>
<b>Role of CA in ensuring ethics under GST</b>	<ul style="list-style-type: none"> <li>➤ A CA needs to follow <b>ethical conduct while discharging his professional duties under GST law</b> like compliance functions, furnishing certifications/reports and advisory roles, by adhering to a set of principles and practices that promote integrity, transparency, and compliance.</li> <li>➤ In case of any violation of law in performing these functions, he shall be liable to penalty and prosecution (in some cases) under GST law.</li> <li>➤ <b>CA play a crucial role under GST law as under:- They are responsible--</b> <ol style="list-style-type: none"> <li>a) for ensuring GST <b>compliance within their clients' organizations</b> by assisting to obtain registration, optimizing tax positions, ensures GST compliances for e-way bill, payment of taxes, TDS/TCS, anti-profiteering provisions and timely filing of periodic returns, etc.</li> <li>b) for ensuring the <b>maintenance of accurate and detailed records</b> of all GST-related transactions. This includes invoices, receipts, and other relevant documents. Such meticulous record-keeping is a legal requirement as well as an ethical duty of CA.</li> <li>c) to act as a <b>tax advisor</b> to their clients.</li> <li>d) to assess the <b>impact of GST on various aspects of business</b>, including supply chain, pricing strategies and financial reporting.</li> <li>e) to act as an <b>authorised representative</b> of client before GST officials, if he is a practicing CA.</li> <li>f) for providing certifications that affirm compliance with GST laws and regulations. to curb unethical practices and preventing the leakage of revenue.</li> </ol> </li> </ul>
<b>Certifications/ reports to be furnished under GST by CA</b>	<p>CA to exercise utmost care and due diligence while granting certifications by complying with ethical requirements of Code of Ethics issued by ICAI, Standard on Quality Control (SQC - 1), Quality Control for Firms that Perform Audits &amp; Reviews of Historical Financial Information, &amp; Other Assurance and Related Services Engagements.</p>

		<p><b>Certifications/reports required to be furnished by a CA under GST law are as under:-</b></p> <p><b>1 Certification of amount of ITC claimed at time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status:-</b></p> <ul style="list-style-type: none"> <li>➤ Refer Sec 18(1) read with rule 40 for detailed provisions.</li> <li>➤ If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together exceeds ₹ 2,00,000, the declaration needs to be certified by a practicing CA or Cost Accountant.</li> <li>➤ CA is required to examine books of accounts and other relevant documents / records of taxpayer and to provide a reasonable assurance that the amounts declared in the Form GST ITC- 01 have been accurately drawn from such books of accounts and other relevant documents / records and is claimed as ITC.</li> </ul> <p><b>2 Certification that the sale, merger, demerger, amalgamation, lease or transfer of business done with a specific provision for the transfer of liabilities:-</b></p> <ul style="list-style-type: none"> <li>➤ Refer Sec 18(3) read with rule 41 for detailed provision.</li> <li>➤ Under such section, RP should furnish the details of change in constitution in Form ITC – 02 &amp; also needs to submit a certificate from practicing CA or Cost Accountant certifying that the change in constitution has been done with a specific provision for transfer of liabilities.</li> <li>➤ CA is required to examine books of accounts and other relevant documents / records of taxpayer and to provide a reasonable assurance that the sale, merger, demerger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.</li> </ul> <p><b>3 Certification that in case of refund claim exceeding ₹ 2 lakh by the applicant, there is no unjust enrichment:-</b></p> <ul style="list-style-type: none"> <li>➤ Refer Sec 54 read with rule 89(2)(m) for detailed provision.</li> <li>➤ A certificate in Annexure 2 of Form GST RFD-01 is to be issued by a CA or Cost Accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person (i.e., there is no unjust enrichment in the case of applicant) in a case where the amount of refund claimed exceeds ₹ 2 lakh.</li> <li>➤ The certification by CA should be based on meticulous examination of books of accounts and other relevant documents / records supporting the refund claim thereby providing a reasonable assurance that the incidence of tax, interest or any other amount claimed as refund, has not been passed on to any other person.</li> </ul> <p><b>4 Certification of the amount of ITC to be reversed on cancellation of registration (Sec 29(5) or on switching to composition levy/exit from tax-paying status (Sec 18(4)), in respect of inputs for which tax invoices are not available:-</b></p> <ul style="list-style-type: none"> <li>➤ Refer Sec 29(5)/sec 18(4) read with rule 44(5) for detailed provision.</li> <li>➤ Section 29(5) requires reversal of ITC on cancellation of registration of a RP. Similarly, section 18(4) requires reversal of ITC when a RP who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.</li> </ul>
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	<ul style="list-style-type: none"> <li>➤ ITC on inputs is to be reversed proportionately on invoices on which ITC was availed.</li> <li>➤ If invoices are not available, ITC can be reversed based on prevailing market price (MP) of such goods on date of switch over/exemption/cancellation of registration. Details so furnished based on prevailing MP is to be certified by practicing CA/CMA.</li> <li>➤ Certification by CA should be based on meticulous examination of books of accounts and other relevant documents / records of taxpayer providing a reasonable assurance on correctness of the quantum of ITC to be reversed in case where the tax invoices related to the inputs held in stock are not available.</li> </ul>
<p><b>Audit report u/s 66</b></p>	<p><b>Refer Sec 66 on Special Audit for detailed provisions.</b></p>
	<p><b>Role of CA relating to Audit:-</b></p> <ul style="list-style-type: none"> <li>➤ CA must approach the Special Audit with an unbiased and impartial mindset, free from any external influences or conflicts of interest.</li> <li>➤ This ensures that the audit findings are based on factual evidence and professional judgment, rather than personal biases.</li> <li>➤ <b>He shall follow the following steps:-</b> <ul style="list-style-type: none"> <li>➢ <b>go through the terms of reference</b> (i.e. a document stating the specific areas &amp; tax periods to be audited) provided by GST authorities,</li> <li>➢ understand the <b>scope and objectives</b> of special audit.</li> <li>➢ conduct <b>a comprehensive review</b> of all relevant documents, including financial statements, invoices, transaction records, &amp; other documentation provided by taxpayer, which ensures that the audit findings are based on accurate and reliable information.</li> <li>➢ take steps to <b>identify &amp; mitigate conflicts of interest</b> that may arise during special audit. This includes refraining from engaging in any activities or relationships that could compromise their objectivity or independence.</li> <li>➢ if a conflict of interest does arise, it should be <b>promptly disclosed</b> to the relevant parties.</li> </ul> </li> <li>➤ The attested documents, certificates issued by CA are <b>relied during proceedings</b> under GST Law by tax authorities &amp; also judicial forums, while dealing with the GST Law related disputes</li> </ul>

## Case studies

### Case study 1: Facts of the case

A partnership firm, M/s GreenEdge Partners, located in Kolkata, West Bengal, is specialized in supplying construction materials. The firm is a GST-registered entity with two partners, Mr. Alpha and Mr. Beta. Both partners also operate their individual sole proprietorship firms in the same industry, also registered under GST. The firm's tax consultant is Mr. Zeta.

Mr. Alpha received a proposal from a customer, M/s BuildCo Pvt. Ltd. (BPL), to issue supply-related invoices to meet their allocated budget for civil works. He was offered a 20% commission on the invoice value accepted by BPL. Mr. Alpha agreed to share 50% of his commission with Mr. Beta for collaborating on this project.

To expand business operations, GreenEdge Partners needed a bank loan. The invoices issued to BPL would increase the firm's turnover, beneficial for their loan application. Mr. Alpha and Mr. Beta consulted their tax advisor, Mr. Zeta, for executing this project.

#### Execution Plan

- GreenEdge Partners issued supply bills totalling ₹280 lakh for steel, jelly stone, and cement to Mr. Alpha, specifying BPL's site as the delivery location (Bill to Ship to Model).
- Mr. Alpha, utilizing the input tax credit (ITC) from the ₹280 lakh bill, contracted with BPL to supply these materials for the construction of plant and machinery foundations.
- Additionally, Mr. Alpha issued separate labour work invoices of ₹40 lakh for assembly and erection at BPL's site, without actual service provision.
- BPL intended to utilize the ITC on both the ₹280 lakh and ₹40 lakh invoices.
- GreenEdge Partners updated all inventory registers and generated e-way bills for the supplies, despite no actual material movement.

#### Assurances by Mr. Zeta

- Inventory registers accurately reflected material movement.
- Compliance with e-way bill regulations.
- Assured realization of payments as per the issued invoices.

**Mr. Alpha sought advice from Mr. P, a Chartered Accountant, regarding the arrangement. Mr. P highlighted potential GST implications:**

#### GST Implication

1	Implications for M/s GreenEdge Partners
	<p><b>Issue of Invoice Without Supply:</b> Issuing tax invoices for steel, jelly stone, and cement without actual supply does not meet the criteria of "supply" under section 7 of GST. Hence, no tax liability arises for this specific transaction.</p> <p><b>Penalty for Issuing False Invoices:</b> Despite no tax liability, M/s GreenEdge Partners is liable for penal action under section 122(1)(ii) for issuing tax invoices without the actual supply of goods, which could lead to imprisonment up to 3 years and fines, as per section 132(1)(ii).</p>

<b>2</b>	<b>Implications for Mr. Alpha</b>
	<b>Fraudulent ITC and False Invoices:</b> Mr. Alpha availing and utilization of fraudulent ITC based on these invoices, without receiving the actual supply, violates section 16(2)(b). Furthermore, issuing invoices without actual supply of goods or services attracts penalties under sections 122(1)(ii) and 122(1)(vii), along with potential imprisonment up to 3 years and fines.
<b>3</b>	<b>Implications for M/s BuildCo Pvt. Ltd.</b>
	<b>Liability for Wrongful ITC Claims:</b> BuildCo Pvt. Ltd. is liable for demand and recovery of the ITC availed and utilized on the basis of these false invoices. They face penalties under section 74, along with applicable interest under section 50, for claiming ITC without actual receipt of goods or services.
<b>4</b>	<b>Implications for Mr. Zeta (Tax Consultant)</b>
	<b>Penalty for Aiding or Abetting:</b> As the advisor of this scheme, Mr. Zeta is liable for penalties under section 122(3) for aiding or abetting the offenses related to issuing false invoices and wrongful ITC claims. This may also lead to imprisonment under specified conditions.
<b>5</b>	<b>Implications for Chartered Accountants Advising Such Arrangements</b>
	<b>Professional and Legal Repercussions:</b> Any Chartered Accountant advising on such arrangements would face penalties under section 122(3) for aiding/abetting these offenses and might also face imprisonment. Additionally, they could be held guilty of professional misconduct.

## Case study 2: Facts of the case

AlpineTech, a Germany-based online service provider, operates in various countries, including India, offering services that fall under the category of Online Information and Database Access or Retrieval (OIDAR) services, subject to GST in India. AlpineTech appointed Mr. X, a partner in Apex Consulting LLP, as their authorized representative in India for GST compliances and other regulatory matters. Mr. X is also a partner in XYZ & Associates

### Post appointment of Mr. X, following chain of events unfolded:

1. Mr X was paid a monthly fee for these services. Although appointed personally, Mr. X used his partnership firm, XYZ & Associates LLP, to issue 'export of services' invoices to AlpineTech and claimed input tax credit refunds for the firm based on these invoices.
2. AlpineTech appointed influencers in India to promote its services in India. The tax invoices of such influencers were received by Mr. X in name of XYZ & Associates LLP and input tax credit was availed by the partnership firm for such services. Said ITC was utilised for further supply of services. However, the actual service recipient in such case was AlpineTech.
3. AlpineTech needed to submit affidavits and accounting records to the Enforcement Directorate. Mr. X, as the authorized representative, hired Mr. P, a Chartered Accountant, to prepare these documents, including AlpineTech's critical financial data. Mr. X explained the relationships between AlpineTech, himself, and XYZ & Associates LLP to Mr. P, and asked him to certify and attest the records for submission.

**Mr. P apprised Mr. X of the following GST implications**

<b>GST Implication</b>	
<b>1</b>	<b>Incorrect issuance of invoice for export of services and claim of refund of input tax credit on the basis of such export of service related invoices</b>
	<p>Mr. X, appointed by AlpineTech for GST compliance in India, incorrectly issued 'export of service' invoices through his firm instead of personally, leading to wrongful input tax credit (ITC) claims. This act is punishable under GST law:</p> <ol style="list-style-type: none"> <li>Mr. X faces tax demand, recovery, and penalties under sec 74 of GST law for supplying services to AlpineTech without issuing an invoice. Invoices issued by his firm, XYZ &amp; Associates LLP, are invalid as Mr. X and his firm are distinct entities under GST law.</li> <li>Since both, Mr. X and XYZ &amp; Associates LLP are different persons, the invoice issued by the firm shall be construed as issuance of invoice without supply of services viz. an offence punishable under sec 122(1)(ii).</li> <li>Incorrect refund was claimed by XYZ &amp; Associates LLP for input tax credit on the basis of incorrect invoice for export of services to AlpineTech. This is an offence under sec 122(1)(viii).</li> <li>All the above offences may also be punishable with imprisonment and fine under sec 132(1) depending on the amount of default involved and subject to specified conditions.</li> </ol>
<b>2</b>	<b>Availment of input tax credit without actual receipt of services</b>
	<p>XYZ &amp; Associates LLP wrongly availed input tax credit (ITC) on invoices from influencers serving AlpineTech, violating sec 16. They face demand and recovery of this ITC, penalties under sec 74, and interest under section 50, as AlpineTech was the actual service recipient. This offense could lead to imprisonment and fines under sec 132(1), depending on the default amount and specific conditions.</p>
<b>3</b>	<b>GST implications on Mr. X</b>
	<p>Mr. X, deeply involved in AlpineTech's wrongful business transactions in India and acting as its authorized representative, is liable for penalties under sec 122(1A) and 122(3) for aiding and benefiting from these offenses. Depending on the default's severity and specific conditions, he may also face imprisonment and fines under sec 132(1).</p>
<b>4</b>	<b>Implication on Mr P Chartered Accountant</b>
	<p>If a Chartered Accountant takes up the assignment offered by Mr. X and also attests/certifies the AlpineTech's accounting records that would be prepared by him, for submission before the Enforcement Directorate in India, he may be held guilty of professional misconduct.</p>

**Case study 3: Facts of the case**

ABC & Associates LLP, a Chartered Accountancy firm, was appointed as Special Auditor under sec 66 by the GST Commissioner for auditing X Ltd. This appointment was due to irregularities found in X Ltd.'s returns for a financial year. Assume that the following events unfolded in relation to the appointment and audit procedure:

- The appointment of special auditor was based on the undertaking furnished by the firm that the partners of the firm or any of their relatives are not directly or indirectly related to the auditee. However, while submitting the declaration in relation to such appointment, if ABC fails to disclose the fact that spouse of one of the partners

of ABC is working under full time employment as a Head of Tax Department of the auditee i.e. X Ltd., what will be its implications?

2. Material discrepancies in the valuation of stock transfer to related parties by the auditee were noticed by ABC. If ABC fails to disclose these material discrepancies in the audit report submitted to the Office of Commissioner, what will be its implications?
3. The input tax credit claim by X Ltd. i.e. the auditee, under Form GST ITC- 01, was certified by one of the associate firms of ABC in favour of X Ltd. Such certificate was based on incorrect facts and against the eligibility criteria for input tax credit as per sec 18. However, if ABC fails to exercise the due diligence and the certificate is taken on record by ABC as an audit procedure and is relied upon at the time of finalization of audit report and submission of findings, what will be its implications?
4. ABC receives a consideration of ₹ 5 lakh from X Ltd. in the name of special audit conducted.

## GST Implications

<b>1</b>	<b>False undertaking submitted before the Office of Commissioner GST and the audit engagement undertaken on the basis of such undertaking</b>
	Non-disclosure by ABC that a partner's spouse is X Ltd.'s Head of Tax, while accepting a special auditor role with a condition against such links, constitutes submission of a false undertaking to government authorities. This raises serious concerns about the audit team's independence, given the key position held by the partner's spouse in the auditee company.
<b>2</b>	<b>Non-reporting of material discrepancies noticed during the audit procedure and reliance upon incorrect certificates and information</b>
	ABC audit team failed to apply due diligence verify X Ltd.'s compliance with GST provisions for input tax credit and instead relied on a certificate from its associate firm, which incorrectly justified X Ltd.'s claim. This act of aiding and abetting X Ltd. in wrongful credit availment is punishable under sec 122(3), potentially leading to imprisonment and fines under section 132(1), depending on the default's severity. Additionally, both ABC and its associate firm may face charges of professional misconduct.
<b>3</b>	<b>Receiving consideration for special audit from the auditee</b>
	Receiving ₹5 lakh from X Ltd. by ABC for a special audit, which should be paid by the Commissioner's Office and not the auditee u/s 66, is an offense under GST provisions. It attracts a penalty under sec 125, among other GST penal provisions, and also compromises ABC's independence as an auditor.

## Case study 4: Facts of the case

A Ltd., a cotton yarn manufacturer with cotton as its main raw material, faces price fluctuations due to market conditions. Mr. X, their tax consultant, advises on GST compliance. A Ltd. sought term and working capital loans for expansion, but couldn't meet the bank's turnover and profitability criteria for loan approval. Accordingly, following actions were undertaken by Mr. X being the tax consultant of A Ltd.:

1. A separate entity i.e. B Ltd. was incorporated and the Directors of A Ltd. Were appointed as Directors in B Ltd. This ensured that the control of B Ltd. remains with the Directors of A Ltd. Further, B Ltd. obtained GST registration as a manufacturer of yarn wherein Mr. X assisted B Ltd. in obtaining such GST registration. Mr.

- X obtained registration providing fake documents for registration.
2. A Ltd. issued tax invoices for yarn supply to B Ltd. without actual goods movement, reporting these in GST returns. B Ltd. availed input tax credit on these invoices. The finished goods related to such tax invoices were sold in the local market by A Ltd. in cash without charging any GST and without issuance of tax invoice
  3. B Ltd. issued tax invoices to A Ltd. for services like cotton testing and machinery maintenance, but no actual services were provided. B Ltd. used the input tax credit, obtained from fake yarn invoices, to discharge its GST liabilities on these alleged service invoices to A Ltd.
  4. B Ltd. issued tax invoices for yarn sales to group entities, claiming to have bought from A Ltd., to zero out year-end stock. These invoices were at 90% lower rates, citing yarn quality deterioration during storage.
  5. Mr. X was aware of the aforesaid actions of A Ltd. and B Ltd. Further, the GST returns were filed by Mr. X for both the companies.
  6. Ltd. approached Mr. P, a practicing Chartered Accountant to issue relevant certificates to the bank certifying the turnover of A Ltd. and B Ltd. as genuine turnover to ensure that the required loan amount is sanctioned to A Ltd. A Ltd. elaborated the entire arrangement made by it with regard to B Ltd.

**Mr. P apprised A Ltd. of the following GST implications that may arise in the given case:**

## GST Implications

<b>1</b>	<b>GST registration of B Ltd. sought on the basis of fake documents</b>
	As per section 122(1)(xii), furnishing of false information with regard to registration particulars is an offence liable to penalty under GST Law. Thus, B Ltd is liable to penalty under section 122(1)(xii).
<b>2</b>	<b>Issuance of tax invoice without actual supply of goods or services</b>
	<p><b>Following instances happened wherein there was no actual supply of goods or services, however, tax invoice was issued:</b></p> <ul style="list-style-type: none"> <li>- Fake issuance of tax invoice for supply of yarn by A Ltd. to B Ltd. (Para2)</li> <li>- Fake issuance of tax invoice for supply of services by B Ltd. to A Ltd. (Para 3)</li> <li>- Fake issuance of tax invoice for supply of goods by B Ltd to group entities (Para 4)</li> </ul> <p>The aforesaid actions are liable for penal action under sec 122(1)(ii) for issuing tax invoices without actual supply of goods and services. This offence may also be punishable with imprisonment and fine under sec 132(1) depending on the amount of default involved and subject to specified conditions.</p>
<b>3</b>	<b>Fraudulent input tax credit availment</b>
	<p>B Ltd. fraudulently availed and utilized input tax credit (ITC) for yarn it never received, violating sec 16(2)(b). They issued invoices without actual goods or services supply, misusing ITC. In this scenario, as there was no actual supply from B Ltd. to A Ltd., and no tax was due for this transaction, there's no demand and recovery of either the wrongly or fraudulently availed input tax credit by B Ltd., or tax liability for the outward transaction from B Ltd. to A Ltd. under sec 74.</p> <p>However, B Ltd. faces penalties under sections 122(1)(ii) and 122(1)(vii) for these actions. This could also lead to imprisonment and fines under section 132(1), depending on the default's magnitude and specific conditions.</p>

<b>4</b>	<b>Incorrect information in GST returns and falsification of books of accounts</b>
	<p>A Ltd. and B Ltd. filed GST returns with incorrect information on goods and services supply, knowing no actual supply occurred and input tax credit was inapplicable. They also falsified their books and financial records regarding sales and inventory.</p> <p>Such acts, providing false information in GST returns and records, are offenses under section 122(1)(x) and may lead to imprisonment and fines under section 132(1), based on the default's severity and specific conditions.</p>
<b>5</b>	<b>GST implications on Mr. X</b>
	<p>Mr. X, aware of A Ltd.'s fraudulent activities and misrepresentations in financial records and GST returns, and actively filing these returns with knowledge of fake invoices and ineligible tax credits, is liable for penalties under section 122(3) for aiding or abetting these offenses. This could also result in imprisonment and fines under section 132(1), based on the default amount and specific conditions.</p>
<b>5</b>	<b>Implication on Mr P Chartered Accountant</b>
	<p>A Chartered Accountant certifying the turnover of A Ltd. and B Ltd. for bank purposes, while aware of their misconduct, risks professional misconduct charges, penalties under section 122(3), and potentially imprisonment and fines under section 132(1), contingent on the default amount and specific conditions.</p>