CA Vishal Bhattad

Chapter 21 - Offences, Penalties and Prosecutions
(Sec 122 to Sec 138)

Power of Department

- **Administrative Power**
  - **Assessment**
    - Registered person
      - Filing the Return
        - Sec 59 : Self Assessment
        - Sec 60 : Provisional Assessment
        - Sec 61 : Scrutiny of returns
        - Sec 64: Summary Assessment
      - Sec 62 - Assessment of non filers of returns(BJA)
    - Sec 63 - Unregistered Person (Best Judgement Assessment)
  - **Audit**
    - Sec 65: Departmental Audit
    - Sec 66: Special Audit
  - **Access**
    - Sec 71 — Access to Business Premises
- **Investigative Power**
  - Sec 67(1) — Inspection of place of business
  - Sec 67(2) — Search & Seizure of any place or premises
  - Sec 68 — Inspection of goods in transit
    - Section 129
  - Sec 69 — Arrest
    - Sec 72 — officers who are required to assist proper officers

Adjudication Proceeding by Proper Officer

If Action is Initiated u/s

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

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

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

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

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

Civil Proceeding

- **Action on Person**
  - Sec 122 : Penalty for specified offences on TP/ RP/ any person
    - Sec 122(1) - Taxable person(TP)
    - Sec 122(2) - Registered Person
    - Sec 122(3) - Any Person
  - Sec 123 & 124 : Penalties on other agencies
    - Sec 123 : Failure to furnish info return
    - sec 124 : failure to furnish statistics u/s 151
  - Sec 125 - General Penalty - If no penalty any where
  - Sec 126 - General disciplines related to penalties
- **Action on goods**
  - Sec 67(2) — Detention, seize of goods in the premises [discussed above]
  - Sec 129 — Detention, seize & penalties on goods & conveyance in transit
  - Sec 130 — Confiscation of goods & the release on redemption fine (i.e fine in lieu of confiscation)

Criminal Proceeding against Person	Sec 132 :- Prosecution & Imprisonment

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Cognizance of Offences	Explanation to sec 132 & Sec 134

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Compounding of Offences	Sec 138: Compounding means granting of immunity from prosecution on payment of prescribed amount

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

SEC 122(1) TAXABLE PERSON

(A) INVOICE / BILL OF SUPPLY

(i) Supply of Goods & Services
- (a) without issue of invoice
- (b) issue of incorrect or false invoice

(ii) Issue of invoice or bill without supply of goods & services in violation of provisions of this act.

(iii) Issue of invoice using registration no. of another registered person.

(B) COLLECTION & PAYMENT

(i) Collects any amt as tax but fails to pay to Govt. beyond a period of 3 months from the due date of payment.

(ii) Collects any tax in contravention of the provision of the Act but fails to pay to Govt. beyond a period of 3 months from the due date of payment.

(iii) TDS
- (a) Fails to deduct tax u/s 51
- (b) Deducts an amt less than the amount required to be deducted.
- (C) Fails to pay to Govt amt deducted as tax.

(iv) TCS
- (a) Fails to collect tax u/s 52
- (b) Collects an amt less than the amt require to be collected.
- (C) Fails to pay to Govt amt collected as tax.

(C) ITC

(i) Takes or utilises ITC without actual receipt of goods & services (fully/ partially) in contravention of provisons of this act.

(ii) Takes or distributes ITC in contravention of Sec 20 (ISD).

(D) REGISTRATION

(i) Liable to get registered but fails to obtain registration.

(ii) Furnish false info with regard to registration.

(E) DOCUMENTS, RECORDS & INFORMATION

(i)
- (a) Falsifies financial records
- (b) Produce fake accounts/documents
- (c) Furnishes any false info in return with an intention to evade payment of tax.

(ii) Fails to keep, maintain or retain books of accounts.

(iii) Tampers with or destroys any material evidence/ document.

(F) TURNOVER

(i) Suppresses turnover leading to evasion of tax.

(G) TRANSPORT/ STORES

(i) Transport taxable goods without documents. (e.g. eway bill, challan etc.)

(ii) Supplies/transports/ stores any goods which he has reason to believe are liable to confiscation.

(H) REFUND

(i) Fraudulently obtains refund.

(I) PROPER OFFICER

(i) Obstructs/ Prevents any officer of his duties .

(ii) Fails to furnish info., documents called for by an officer.

(J) SEIZED GOODS

(i) Dispose off/ Tampers with any goods- detained, seized or attached.

PENALTY:-

HIGHER OF THE FOLLOWING:-

1. ₹ 10,000 (IGST: 20,000) OR
2. An amt equivalent to any of the following (i.e. 100%):-
   - (a) Tax evaded or
   - (b) Tax not deducted u/s 51 or short deducted or deducted but not paid to Govt or
   - (c) Tax not collected u/s 52 or short collected or collected but not paid to Govt or
   - (d) ITC availed or passed on or distributed irregularly or
   - (e) Refund claimed fraudulently

SEC 122(1A)

Any person who retains the benefit of a transaction covered under above clauses [A(i) & (ii)], [C(i)&(ii)] of Sec 122 (1) and at whose instance such transaction is conducted.	Penalty = tax evaded or input tax credit availed of or passed on

SEC 122(1B) Penalty for ECO

(i) ECO allows a supply through it by URP other than a person exempted from registration, (ii) ECO allows an inter-State supply through it by person who is not so eligible or (iii)ECO fails to furnish correct details in GSTR-8 u/s 52(4) of outward supply of goods effected through it by person exempted from obtaining registration.	Penalty is Higher of:- -₹10,000, or -tax involved if such supply was made by RP other than composition dealer

SEC 122A:-Penalty on manufacturer of goods for failure to register certain machines used in manufacture of goods as per special procedure u/s 148

₹1 lakh (CGST & SGST/UTGST each) or ₹2 lakh (IGST) per machine plus any other penalty under demand & recovery & GST law. Such machine is liable for seizure & confiscation unless penalties are paid & registration is done within 3 days of receipt of communication of order of penalty.

SEC 122(2) REGISTERED PERSON

(i) Supplies SOG or SOS on which
- (a) tax not /short been paid
- (b) erroneously refunded or

(ii) where ITC has been wrongly availed or utilised.

(i) For reason other than fraud, wilful misstatement or suppression of facts to evade tax, Higher of the following	(ii) For reason of fraud,wilful misstatement or suppression of facts to evade tax, Higher of the following
(a) 10,000-/ or (b) 10% of the tax due	(a) 10,000/- or (b) 100% of the tax due

SEC 122(3) OTHER PERSON (for which no penalty covered above)

Any person who-

(i)	aids or abets any of above 21 offences (Sec 122(1)).	Penalty extending to ₹25,000/-
(ii)	deals in goods liable to confiscation (whether receiving, supplying, storing or transporting).	
(iii)	receives or deals with SOS in contravention of this act.	
(iv)	fails to appear before authority who has issued summon.	
(v)	fails to issue/Accountd any invoice for supply in his bank of A/c.	

PENALTY ON OTHER AGENCIES

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

SEC 125 GENERAL PENALTY

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

SEC 126 GENERAL DISCIPLINES PENALTIES

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

SEC 127 CIRCUMSTANCES UNDER WHICH OFFICER MAY ISSUE ORDER OF PENALTY

Person not covered by following proceedings:-

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

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

1. Notwithstanding anything contained in this Act, where person:-
   a. Transport any goods
   b. Stores goods while in transit.

   in contravention of provision of this Act then:-

   (i) all such goods; (ii) conveyance;

   (iii) documents related to goods & conveyance "shall be liable to be detention or seizure".

RELEASE OF GOODS DETAINED OR SEIZED

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

In case of Taxable goods :	In case of exempted goods :
On payment of penalty equal to 200% of the tax payable on such goods	An amount equal to 2% (IGST:4%) of the value of goods; or ₹ 25,000 (IGST: ₹ 50,000) whichever is less

WHERE OWNER OF GOODS DOES NOT COME FORWARD FOR PAYMENT OF TAX & PENALTY

In case of Taxable goods	In case of exempted goods :
Penalty equal to higher of the following ➢ 50% of value of goods or ➢ 200% of the tax payable on such goods	An amount equal to 5% (IGST:10%) of the value of goods; or ₹ 25,000 (IGST: ₹ 50,000) whichever is less

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

2. Omitted 3. Notice to transporter. 4. Opportunity of being heard.
5. On payment of amount , all proceedings shall be deemed to be concluded.
6. Transporter/ Owner fails to pay the amt within 15 days so detained/seized shall be liable to be sold or disposed of to recover penalty payable as per order.

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

SEC 130 CONFISCATION OF GOODS OR CONVEYANCES & LEVY OF PENALTY

1. Where anything contained in this Act, if any person:-

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

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

A. FOR GOODS

a.	Fine shall not exceed Market value of goods confiscated less tax chargeable;
b.	Fine + Penalty shall not be less than Penalty equals to 100% of tax payable on such goods (Lower restriction)

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

a.	Fine equal to tax payable on goods being transported.

3. No order without opportunity of being heard.
4. "CONFISCATION= TITLE TO GOVT."
5. P.O. shall take & hold possession of things confiscated with assistance of officer of police if needed.
6. If redemption fine not paid within 3 months, P.O. dispose of goods/ conveyance & deposits sale proceeds with Govt.

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

PUNISHMENT FOR ABOVE OFFENCES

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

(A) INVOICE / BILL OF SUPPLY

(i)	Supply of Goods & Services without issue of invoice	In violation of law if the intention to evade the payment of Tax
(ii)	Issue of invoice or bill without supply of goods & services	In violation of law leading to wrongful availment or utilisation of ITC or refund.

(B) COLLECTION & PAYMENT

(i) Collects any amt as tax but fails to pay to Govt. beyond a period of 3 months from the due date of payment.

(C) ITC

(i) Avails ITC using invoice or bill referred in (ii) above fraudulently avails input tax credit without any invoice or bill

(D) FRAUDULENT ACTIVITIES

(i) a) Evades Tax b) Fraudulently obtains refund [not covered above]

(E) DOCUMENTS, RECORDS & INFORMATION

(a) Falsifies/substitutes financial records

(b) Produce fake accounts/ documents

(c) Furnishes any false info/ return with an intention to evade payment of tax.

(F) ATTEMPT TO COMMIT OFFENCE (related to above(A)to (E))

(i) attempts to commit, or abets the commission of any of the offences mentioned above.

(G) DEAL IN GOODS LIABLE TO CONFISCATION

(i) Deals in supply of goods which he knows or has reasons to believe are liable to confiscation (whether by acquiring possession, transporting, removing, depositing, keeping, concealing, supplying or purchasing).

(ii) Deals in supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act (whether by receiving or concerned in any way)

(H) ATTEMPT TO COMMIT OFFENCE (related to above(G))

(i) attempts to commit, or abets the commission of any of the offences mentioned above.

PUNISHMENT FOR ABOVE OFFENCES (WITH PREVIOUS SANCTION OF COMMISSIONER)

Offence Involving	Amount Involved (in ₹)	Punishment
➲Tax evaded or ➲ ITC wrongly availed or utilised or ➲ Refund wrongly taken	> 5 crores	upto 5 Years and with fine
	Exceeds 2 crores but ≤ 5 crores (Note: If Amt below 1 Cr = No imprisonment)	upto 3 Years and with fine
	Exceeds 1 Cr but ≤ 2 Cr in offence specified in A00(ii) above	upto 1 Years and with fine
Commits or abets the commission of an offence specified E	No limit	6 months or fine or both
For second and every subsequent offence under section 132	No limit (even offence of ₹ 1)	upto 5 Years and with fine

(Imprisonment minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court)

COGNIZABLE & BAILABLE OFFENCE

COGNIZABLE & NON-BAILABLE	means serious category of offences where arrest can be done without a warrant and investigation with or without the permission of a court. accused person shall not be automatically entitled for bail. However, court may order him to be released on a suitable bail
NON-COGNIZABLE & BAILABLE	means relatively less serious offences where accused not be arrested without a warrant and an investigation cannot be initiated without a court order. accused shall be offered to be released on bail upon his arrest by the police or the court informing about his right to be so released

COGNIZANCE OF OFFENCES

COGNIZABLE & NON BAILABLE

Offences related to above (A) to (C) (of sec 132) where:-

(i) amount of tax evaded or
(ii) amt of ITC wrongly availed or
(iii) amt of refund wrongly taken

} Exceeds ₹ 5 Cr

"BAIL CAN BE CONSIDERED BY A JUDICIAL MAGISTRATE ONLY"

NON COGNIZABLE &BAILABLE

Other Offences

1) Offences related to above (A) to (C) of Sec 132 above, where tax or ITC or refund evaded is ₹ 5 crores or less

2) Offences related to above (D) to (H) of Sec 132 above [irrespective of amount involved]

"ARRESTED PERSONS SHALL BE RELEASED ON BAIL BY PO"

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

OMISSION/DEFAULT:- Wilfully discloses any info or contents of return otherwise than:-

1. in execution of his duties
2. for the purpose of prosecution for an offence

DEFAULT BY:-

1. Any person egaged in collection of Statistics u/s 151 or compilation or computerization or
2. Any officer of Central tax having access to info. u/s 150(1) or
3. Any person engaged in connection with the provsion of service on common portal or agent of common portal

PUNISHMENT:- Imprisonment upto 6 months or fine upto 25,000 or both.

COMPOUNDING OF OFFENCES (SEC 138)

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

1. Any Offence may be compounded by Commissioner 2. Either before or after the institution of prosecution 3. Upon payment of compounding amount.

NON COMPOUNDING

a)	Person who has been allowed to compound once earlier for offence under A to E
b)	Person who has been accused of Issuing invoice/bill without supply leading to wrongful availment/utilisation of ITC or tax refund
c)	Person convicted for an offence by a court.

COMPOUNDING

Other Offences

MONETARY LIMIT FOR COMPOUNDING AMOUNT:-
(Allowed Only After Payment of Tax, Interest & penalty)

i)	MINIMUM LIMIT = 25% of tax involved
ii)	MAXIMUM LIMIT = 100% of tax involved

Compounding amount

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

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

SECTION 137

OFFENCE COMMITTED BY	PERSON GUILTY
1. company	company & person in charge to conduct business when offence was committed, Director, Manager, Secretary or other person
2. partnership firm or LLP or trust or HUF	Partner, karta, member, trustee, manager, secretary or other officer

If it is proved that offence has been committed :-
a) with his consent/ connivance b) he is attributable to any negligence

Nothing contained in this section shall render any person liable to punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Sec 134: Cognizance of offences

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

Sec 135: Presumption of Culpable mental state

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

Sec 136: Relevance of Statements in Certain Cases

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

a)The person is dead, missing, unable to testify, kept away by the opposing party, or their presence is difficult or costly to obtain, or

b)The person has testified in court, and the court decides the statement is necessary for justice.