



CHAPTER -22

OFFENCES & PENALTIES

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Introduction

- ⇒ Penalty means money imposed by statute, to be paid as punishment for commission of an offence.
- ⇒ Offence means a violation/breach of law that is punishable under law with penalties, fines, imprisonment, or other legal actions based on the severity of the violation.
- ⇒ A person with fraudulent intention to evade payment of taxes will be subjected to higher penalty whereas relatively lesser penalty will be levied for non-fraudulent offences.
- ⇒ Prosecution means institution and carrying on of the legal proceedings against a person.
- ⇒ For prosecution, offences will be classified into Cognizable (serious) & non-cognizable offences (relatively less serious). The former will be non-bailable, latter will be bailable offence.
- ⇒ Confiscation means transfer of title in goods to Government.

Note:-

- ⇒ We are discussing penalties under CGST Act. Equal penalty is given under SGST/ UTGST Act. Penalty leviable under IGST Act shall be the sum total of penalties under CGST Act & SGST Act/ UTGST Act.
- ⇒ Provisions of offences & penalties under CGST Act are made applicable to IGST Act vide 20 therein.

Section 122:- Penalty for certain offences

Sub Sec	Legal Provision																																	
1	21 offences (Penalty leviable on Taxable Person)	<p>A. Offences related to invoice:-</p> <table border="1"> <tr> <td>1.</td> <td>Supply of goods &/or services without issue of invoice or issue of an incorrect/false invoice for supply.</td> </tr> <tr> <td>2.</td> <td>Issue of invoice or bill without supply in violation of GST law.</td> </tr> <tr> <td>3.</td> <td>Issues any invoice or document by using GSTIN of another registered person.</td> </tr> </table> <p>B. Offences related to tax evasion / relating to TCS/TDS:-</p> <table border="1"> <tr> <td>4.</td> <td>Collects any amount as tax but fails to pay Govt. beyond 3 months from due date of payment.</td> </tr> <tr> <td>5.</td> <td>Collects tax in contravention of GST Act but fails to pay Govt. beyond 3 months from due date of payment.</td> </tr> <tr> <td>6.</td> <td>Fails to deduct tax as per section 51 or deducts lesser amount than required to be deducted, or fails to pay amount deducted as tax to Govt.</td> </tr> <tr> <td>7.</td> <td>Fails to collect tax as per section 52 or collects lesser amount than required to be collected, or fails to pay amount collected as tax to Govt.</td> </tr> <tr> <td>8.</td> <td>Suppresses his turnover to evade tax.</td> </tr> </table> <p>C. Offences related to ITC:-</p> <table border="1"> <tr> <td>9.</td> <td>Takes or utilises ITC without actual receipt of goods &/or services either fully or partially.</td> </tr> <tr> <td>10.</td> <td>Takes or distributes ITC in contravention of section 20 & related rules (i.e. distribution of credit by ISD).</td> </tr> </table> <p>D. Offence related to refund:-</p> <table border="1"> <tr> <td>11.</td> <td>Fraudulently obtains refund of GST.</td> </tr> </table> <p>E. Offences related to records, documents, books of accounts etc.</p> <table border="1"> <tr> <td>12.</td> <td>Falsifies/ substitutes financial records or produces fake accounts/ documents or furnishes false information/ return to evade tax.</td> </tr> <tr> <td>13.</td> <td>Fails to keep, maintain or retain books of account & other documents as per GST law.</td> </tr> <tr> <td>14.</td> <td>Fails to furnish information/ documents called for by an officer or furnishes false information/ documents during any proceedings.</td> </tr> </table> <p>F. Offences related to registration:-</p> <table border="1"> <tr> <td>15.</td> <td>Fails to obtain GST registration though is liable to do so.</td> </tr> <tr> <td>16.</td> <td>Furnishes any false information in registration particulars while applying for it or subsequently.</td> </tr> </table>	1.	Supply of goods &/or services without issue of invoice or issue of an incorrect/false invoice for supply.	2.	Issue of invoice or bill without supply in violation of GST law.	3.	Issues any invoice or document by using GSTIN of another registered person.	4.	Collects any amount as tax but fails to pay Govt. beyond 3 months from due date of payment.	5.	Collects tax in contravention of GST Act but fails to pay Govt. beyond 3 months from due date of payment.	6.	Fails to deduct tax as per section 51 or deducts lesser amount than required to be deducted, or fails to pay amount deducted as tax to Govt.	7.	Fails to collect tax as per section 52 or collects lesser amount than required to be collected, or fails to pay amount collected as tax to Govt.	8.	Suppresses his turnover to evade tax.	9.	Takes or utilises ITC without actual receipt of goods &/or services either fully or partially.	10.	Takes or distributes ITC in contravention of section 20 & related rules (i.e. distribution of credit by ISD).	11.	Fraudulently obtains refund of GST.	12.	Falsifies/ substitutes financial records or produces fake accounts/ documents or furnishes false information/ return to evade tax.	13.	Fails to keep, maintain or retain books of account & other documents as per GST law.	14.	Fails to furnish information/ documents called for by an officer or furnishes false information/ documents during any proceedings.	15.	Fails to obtain GST registration though is liable to do so.	16.	Furnishes any false information in registration particulars while applying for it or subsequently.
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G. Offence related to transportation and storage:-

17.	Transports taxable goods without specified documents-tax invoice, bill of supply, E-way bill, etc.
18.	Supplies, transports or stores any goods that are liable to confiscation.

H. Other offences:-

19.	Obstructs or prevents any officer in discharge of his duties.
20.	Tampers with, or destroys any material evidence or document.
21.	Disposes off or tampers with any detained, seized, or attached goods.

Quantum of Penalty:-

CGST/SGST/UTGST law	IGST law
<p>Amount of Penalty is HIGHER of:- (a) ₹10,000/-; or (b) Amount equal to any of the following (applicable as the case may be) – i) Tax evaded, or ii) Tax not deducted u/s 51 or short deducted or deducted but not paid to Govt., or iii) Tax not collected u/s 52 or short collected or collected but not paid to Govt., or iv) ITC availed of or passed on or distributed irregularly, or v) Refund claimed fraudulently.</p>	<p>Amount of Penalty is HIGHER of:- (a) ₹20,000/-; or (b) Amount equal to any of the following (applicable as the case may be) – i) Tax evaded, or ii) Tax not deducted u/s 51 or short deducted or deducted but not paid to Govt., or iii) Tax not collected u/s 52 or short collected or collected but not paid to Govt., or iv) ITC availed of or passed on or distributed irregularly, or v) Refund claimed fraudulently.</p>

<p>1A Penalty leviable on Any Person for retaining benefits</p>	<p>Penalty is leviable on any person who retains benefit of any following transactions & at whose instance it is conducted:- (i) Supply of goods &/or services without issue of invoice or issue of an incorrect/ false invoice. (ii) Issue of invoice or bill without supply. (iii) Takes or utilises ITC without actual receipt of goods &/or services either fully or partially. (iv) Takes or distributes ITC in contravention of sec 20 & related rules (i.e. distribution of credit by ISD).</p>	<p>Quantum of Penalty:- ➔ tax evaded or ➔ ITC availed of or passed on</p>
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<p>1B Penalty leviable on ECO</p> <p style="background-color: red; color: white; padding: 5px; text-align: center;">Newly Inserted by F.A. 2023</p>	<p>ECO shall be liable to penalty who— (i) allows a supply of goods &/or services through it by an unregistered person other than a person exempted from registration by a notification to make such supply; (ii) allows an inter-State supply of</p>	Quantum of Penalty:-	
		CGST/SGST/UTGST law	IGST law
		<p>ECO shall be liable to pay a penalty HIGHER of:- ➔ 10,000, or ➔ tax involved had such</p>	<p>ECO shall be liable to pay a penalty HIGHER of:- ➔ 20,000, or ➔ tax involved had such</p>

		goods &/or services through it by a person who is not so eligible; or (iii) fails to furnish the correct details in statement (GSTR-8) to be furnished u/s 52(4) of any outward supply of goods effected through it by a person exempted from obtaining registration under GST,	supply been made by a RP other than a person paying tax u/s 10.	supply been made by a RP other than a person paying tax u/s 10.
2	Penalty leviable on RP	If a RP supplying goods &/or services on which tax has not been paid or short paid it or tax is erroneously refunded, or ITC has been wrongly availed or utilized,		
			Quantum of penalty	
			CGST/SGST/UTGST law	IGST law
	a.	for any reason other than reason of fraud or any wilful misstatement or suppression of facts to evade tax	It shall be HIGHER of:- - ₹10,000/- or - 10% of tax due from such person.	It shall be HIGHER of:- - ₹20,000/- or - 10% of tax due from such person.
	b.	for reason of fraud, or any wilful misstatement or suppression of facts to evade tax,	It shall be HIGHER of:- - ₹10,000/- or - tax due from such person.	It shall be HIGHER of:- - ₹20,000/- or - tax due from such person.
3.	Penalty leviable on Any Person for certain offences	Any person shall be liable to penalty who:- (a) Aids or abets any of the 21 offences specified in section 122(1). (b) Deals with goods liable to confiscation in any way by acquiring possession, transporting, removing, depositing, keeping, concealing, supplying or purchasing or in any other manner. (c) Receives or deals with supply of services in contravention of GST law. (d) Fails to appear before an authority who has issued a summon for appearance to give evidence or produce a document in an inquiry. (e) Fails to issue invoice for a supply or account for any invoice in his books of accounts.		Quantum of penalty:- upto ₹ 25,000 (each under CGST & SGST/ UTGST) or ₹50,000 (under IGST)
Note:- Sec 122 levy penalty under CGST Act. Equal penalty is given under SGST/ UTGST Act. Penalty leviable under IGST Act shall be sum total of penalties under CGST Act & SGST Act/ UTGST Act.				

Penalty in some other cases:-

Sec	Legal Provision	Quantum of penalty
123	Penalty for failure to furnish information return A person who is required to furnish an information return u/s 150 fails to furnish the same within 90 days from date of service of show cause notice (SCN) shall be liable to pay penalty .	It is LOWER of:- - ₹ 100 (each under CGST & SGST/ UTGST) or ₹ 200 (under IGST) for each day of period during which such failure continues or - ₹ 5,000 (each under CGST & SGST/ UTGST) or ₹ 1 0,000 (under IGST)

124	Fine for failure to furnish statistics	<p>A person required to furnish information or return u/s 151,</p> <ul style="list-style-type: none"> ➔ fails to furnish such information or return required without reasonable cause; or ➔ willfully furnishes or causes to furnish any information or return which he knows to be false, he shall be punishable with a fine. 	<p>Fine upto ₹ 10,000 (each under CGST & SGST/UTGST) or ₹20,000 (under IGST)</p>
		<p>In case of a continuing offence, he shall be punishable to a further fine.</p> <div style="border: 1px solid black; padding: 5px;"> <p>Sec 151: Commissioner/officer authorised by him may, by an order, direct any person to furnish information relating to any matter under CGST Act, in prescribed time, form, and manner.</p> </div>	<p>It is LOWER of:-</p> <ul style="list-style-type: none"> - upto ₹ 100 (each under CGST & SGST/UTGST) or ₹ 200 (under IGST) for each day after first day during which offence continues or - ₹25,000 (each under CGST & SGST/UTGST) or ₹50,000 (under IGST)
125	General Penalty	<p>A person contravenes any provisions of GST law for which penalty is not given separately, he shall be liable to a penalty</p> <div style="border: 1px solid black; padding: 5px;"> <p>Note:- General disciplines related to penalty given u/s 126 are to be considered by PO while imposing penalty u/s 125 as all contravention will not attract sec 125.</p> </div>	<p>upto ₹25000 (each under CGST & SGST/UTGST) or ₹ 50,000 (under IGST)</p>

General disciplines & power to impose penalty:-

Sec	Legal Provision
126	<p>General disciplines related to penalty</p> <p>Levy of penalty is subject to a certain disciplinary regime as under, based on jurisprudence, principles of natural justice & principles governing international trade & agreements:-</p> <ol style="list-style-type: none"> 1. Penalty shall not be imposed by any officer for:- <ul style="list-style-type: none"> ➔ Minor breaches of tax regulations (i.e. tax involved < ₹5,000) or ➔ procedural requirements of law, ➔ Omission/mistake in documentation that is easily rectifiable (i.e. error apparent on face of record) & made without fraudulent intent/gross negligence. 2. Penalty is to depend on totality of facts & circumstances of the case & also commensurate with the degree & severity of breach. 3. Penalty can be imposed after issuing SCN & giving opportunity of being heard to person. 4. The nature of breach & applicable law, regulation or procedure under which penalty is specified has to be clearly stated in the order imposing penalty. 5. Voluntary disclosure of breach prior to its discovery by officer may be a mitigating factor to quantify penalty. 6. This section shall not apply in cases where fixed sum or fixed percentage of penalty is specified.

127	Power to impose penalty in certain cases	<p>After giving a reasonable opportunity of being heard to person, PO can impose penalty by issuing order, even if penalty is not covered under following proceedings:-</p> <p>a) Assessment of non-filers of Returns u/s 62, b) Assessment of unregistered persons u/s 63, c) Summary Assessment in certain special cases u/s 64, d) Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts u/s 73, e) Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts u/s 74, f) Detention, seizure & release of goods & conveyances in transit u/s 129, or g) Confiscation of goods or conveyances & levy of penalty u/s 130.</p>
128	Power to waive penalty or fee or both	<p>Penalty u/s 122/ 123/ 125 or late fee for delay in filing of return u/s 47 may be waived in part/ full by Govt.</p>

Section 129:- Detention, seizure & release of goods & conveyances in transit

Sub Sec	Legal Provision																									
1.	Penalty to release detained/ seized goods, conveyance & documents	<p>➔ If a person transports any goods or stores any goods while they are in transit in contravention of GST law, then</p> <ul style="list-style-type: none"> ➤ all such goods, ➤ conveyance used as means of transport for carrying the said goods & ➤ documents relating to such goods & conveyance shall be liable to detention or seizure. <p>➔ <u>The penalty to release the detained/ seized goods is as under:-</u></p> <table border="1" data-bbox="410 1361 1550 2169"> <thead> <tr> <th colspan="3" data-bbox="410 1361 1550 1407">If owner of goods COMES FORWARD to pay penalty [Sec 129(1)(a):-</th> </tr> <tr> <th data-bbox="410 1407 565 1448"></th> <th data-bbox="565 1407 1052 1448">CGST/SGST/UTGST law</th> <th data-bbox="1052 1407 1550 1448">IGST law</th> </tr> </thead> <tbody> <tr> <td data-bbox="410 1448 565 1591">Taxable Goods</td> <td data-bbox="565 1448 1052 1591">Penalty = 200% of tax payable on such goods</td> <td data-bbox="1052 1448 1550 1591">Penalty = 200% of IGST payable on such goods</td> </tr> <tr> <td data-bbox="410 1591 565 1733">Exempted Goods</td> <td data-bbox="565 1591 1052 1733">Penalty is LOWER of:- - 2% of value of goods or - ₹25,000.</td> <td data-bbox="1052 1591 1550 1733">Penalty is LOWER of:- - 4% of value of goods or - ₹50,000.</td> </tr> <tr> <th colspan="3" data-bbox="410 1733 1550 1832">If owner of goods DOES NOT COME FORWARD to pay penalty [Sec 129(1)(b):-</th> </tr> <tr> <th data-bbox="410 1832 565 1873"></th> <th data-bbox="565 1832 1052 1873">CGST/SGST/UTGST law</th> <th data-bbox="1052 1832 1550 1873">IGST law</th> </tr> <tr> <td data-bbox="410 1873 565 2022">Taxable Goods</td> <td data-bbox="565 1873 1052 2022">Penalty is HIGHER of:- - 50% of value of goods or - 200% of tax payable on such goods.</td> <td data-bbox="1052 1873 1550 2022">Penalty is HIGHER of:- - 100% of value of goods or - 200% of IGST payable on such goods.</td> </tr> <tr> <td data-bbox="410 2022 565 2169">Exempted Goods</td> <td data-bbox="565 2022 1052 2169">Penalty is LOWER of:- - 5% of value of goods or - ₹ 25,000.</td> <td data-bbox="1052 2022 1550 2169">Penalty is LOWER of:- - 10% of value of goods or - ₹ 50,000.</td> </tr> </tbody> </table>	If owner of goods COMES FORWARD to pay penalty [Sec 129(1)(a):-				CGST/SGST/UTGST law	IGST law	Taxable Goods	Penalty = 200% of tax payable on such goods	Penalty = 200% of IGST payable on such goods	Exempted Goods	Penalty is LOWER of:- - 2% of value of goods or - ₹25,000.	Penalty is LOWER of:- - 4% of value of goods or - ₹50,000.	If owner of goods DOES NOT COME FORWARD to pay penalty [Sec 129(1)(b):-				CGST/SGST/UTGST law	IGST law	Taxable Goods	Penalty is HIGHER of:- - 50% of value of goods or - 200% of tax payable on such goods.	Penalty is HIGHER of:- - 100% of value of goods or - 200% of IGST payable on such goods.	Exempted Goods	Penalty is LOWER of:- - 5% of value of goods or - ₹ 25,000.	Penalty is LOWER of:- - 10% of value of goods or - ₹ 50,000.
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		<p>Note:- Goods, conveyance and/or documents may also be released on furnishing security = amount payable in the above table [Sec 129(1)(c)].</p> <p>Note:- Sec 129 levy penalty under CGST Act. Equal penalty is given under SGST/UTGST Act. Penalty leviable under IGST Act shall be sum total of penalties under CGST Act & SGST Act/ UTGST Act.</p> <p>⇒ Goods or conveyance shall not be detained/seized without serving an order of detention or seizure on the person transporting the goods.</p> <p>⇒ CBIC clarification: If invoice/ other specified document is accompanying consignment of goods, consignor or consignee should be deemed to be owner. If not, PO should determine the owner.</p> <p>Difference between Seizure & detention:-</p> <p>i) Denial of access to owner of property/person who possesses property by a legal order/notice is called detention. Seizure is taking over of actual possession of goods.</p> <p>ii) Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief after inquiry/investigation that the goods are liable to confiscation.</p>
3.	Notice & Order	PO shall issue notice within 7 days of detention/ seizure, specifying the penalty payable, & pass order within 7 days from date of service of notice, to pay penalty u/s 129(1)(a)/(b).
4.	Person is to be heard	Order determining penalty can be passed only after giving opportunity of being heard to said person.
5.	Conclusion of notice	On payment of required penalty, all proceedings of notice shall be deemed to be concluded.
6.	Consequence of failure to pay penalty as per order & release of conveyance	<p>If transporter/owner of goods fails to pay required penalty within 15 days from date of receipt of copy of order, the goods or conveyance so detained/seized shall be liable to be sold or disposed of - to recover penalty payable as per order.</p> <p>Proviso:- Transporter can get conveyance released on payment of penalty which is LOWER of:-</p> <p>- penalty as per the order or</p> <p>- ₹100000 each under CGST & SGST/UTGST (i.e. ₹2 lakh under IGST)</p> <p>Proviso:- If Detained or seized goods are perishable or hazardous in nature or likely to depreciate in value with passage of time, the said 15 days may be reduced by PO.</p>
	Procedure for interception of conveyances for inspection of goods in	<p>⇒ During movement of goods, empowered PO may intercept any conveyance for verification of documents &/or inspection of goods.</p> <p>⇒ Person in charge of conveyance shall produce documents of goods & conveyance & PO shall verify such documents.</p> <p>⇒ If no discrepancies are found, conveyance shall be allowed to move further.</p> <p>⇒ If person in charge fails to produce any prescribed document or PO intends to undertake an inspection, he shall record a statement of person in charge & issue an</p>

<p>movement, & detention & release of such goods & conveyances</p>	<p>order for physical verification/inspection of conveyance, goods and documents, requiring person in charge to station the conveyance at the place mentioned in such order and allow inspection of goods.</p> <ul style="list-style-type: none"> ➤ PO shall conclude inspection proceedings by himself/through PO authorised within 3 days (or extended time) from date of issue of order for inspection. ➤ On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a report of such physical verification and upload on common portal and serve a copy of the said report to the person in charge. ➤ If no discrepancies are found, PO shall issue release order & allow conveyance to move further, but if goods & conveyance are to be detained u/s 129, he shall issue an order of detention & serve a notice u/s 129(3) on person in charge, specifying the penalty payable. ➤ On payment of penalty u/s 129(1) or upon furnishing of security equal to said amount, goods & conveyance shall be released by a release order. ➤ If person transporting any goods or owner of such goods fails to pay penalty u/s 129(1) within 15 days from date of receipt of copy of order for detention, goods or conveyance so detained/seized shall be liable to be sold/disposed. 												
<p>Cases where detention/seizure may not be initiated</p>	<p>If consignment of goods is accompanied with invoice or specified document & e-way bill, proceedings u/s 129 may not be initiated, in the following situations:-</p> <table border="1" data-bbox="396 936 1544 1460"> <tr> <td>a.</td> <td>Spelling mistakes in name of consignor or consignee but GSTIN, wherever applicable, is correct</td> </tr> <tr> <td>b.</td> <td>Error in pin-code but address of consignor & consignee mentioned is correct, subject to condition that error in PIN code should not have the effect of increasing the validity period of e-way bill;</td> </tr> <tr> <td>c.</td> <td>Error in address of consignee but locality & other details of consignee are correct</td> </tr> <tr> <td>d.</td> <td>Error in 1 or 2 digits of document number mentioned in e-way bill;</td> </tr> <tr> <td>e.</td> <td>Error in 4 or 6 digit level of HSN where first 2 digits of HSN are correct & rate of tax mentioned is correct;</td> </tr> <tr> <td>f.</td> <td>Error in 1 or 2 digits/characters of the vehicle number</td> </tr> </table> <p>CBIC clarification:- Penalty in above situations = ₹ 500/- each u/s 125 of CGST Act (i.e. 1,000 under IGST)</p>	a.	Spelling mistakes in name of consignor or consignee but GSTIN, wherever applicable, is correct	b.	Error in pin-code but address of consignor & consignee mentioned is correct, subject to condition that error in PIN code should not have the effect of increasing the validity period of e-way bill;	c.	Error in address of consignee but locality & other details of consignee are correct	d.	Error in 1 or 2 digits of document number mentioned in e-way bill;	e.	Error in 4 or 6 digit level of HSN where first 2 digits of HSN are correct & rate of tax mentioned is correct;	f.	Error in 1 or 2 digits/characters of the vehicle number
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b.	Error in pin-code but address of consignor & consignee mentioned is correct, subject to condition that error in PIN code should not have the effect of increasing the validity period of e-way bill;												
c.	Error in address of consignee but locality & other details of consignee are correct												
d.	Error in 1 or 2 digits of document number mentioned in e-way bill;												
e.	Error in 4 or 6 digit level of HSN where first 2 digits of HSN are correct & rate of tax mentioned is correct;												
f.	Error in 1 or 2 digits/characters of the vehicle number												

Section 130:- Confiscation of goods or conveyances and levy of penalty

Sub Sec	Legal Provision											
1.	<p>5 Circumstances under which goods or conveyance could be confiscated by PO & person shall be liable to penalty u/s 122</p>	<table border="1"> <tr> <td>i.</td> <td>Person supplies or receives any goods in contravention of GST law with intention to evade payment of tax,</td> </tr> <tr> <td>ii.</td> <td>Person does not account for any goods on which he is liable to pay GST,</td> </tr> <tr> <td>iii.</td> <td>Supplies any goods liable to tax without having applied for registration,</td> </tr> <tr> <td>iv.</td> <td>Person contravenes any provisions of GST law with intent to evade payment of tax or</td> </tr> <tr> <td>v.</td> <td>Person uses any conveyance to transport goods in contravention of GST law unless the owner of conveyance proves that it was so used without knowledge or connivance of owner himself, his agent, & person in charge of conveyance.</td> </tr> </table> <p>Comment:- Confiscation means transfer of title to goods to Government.</p>	i.	Person supplies or receives any goods in contravention of GST law with intention to evade payment of tax,	ii.	Person does not account for any goods on which he is liable to pay GST,	iii.	Supplies any goods liable to tax without having applied for registration,	iv.	Person contravenes any provisions of GST law with intent to evade payment of tax or	v.	Person uses any conveyance to transport goods in contravention of GST law unless the owner of conveyance proves that it was so used without knowledge or connivance of owner himself, his agent, & person in charge of conveyance.
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2.	Redemption fine in lieu of confiscation to get the goods or conveyance released by owner	<ul style="list-style-type: none"> ⇒ Person can get the confiscated goods released from Department on payment of redemption fine in lieu of confiscation. ⇒ This fine shall be in addition to tax & other charges payable on such goods. ⇒ Such fine should be \leq [Market value of goods confiscated – Tax chargeable thereon]. ⇒ Aggregate of such fine and penalty leviable shall not be less than the penalty equal to 100% of tax payable on such goods. ⇒ For conveyance used for carriage of goods or passengers for hire & liable for confiscation, maximum fine in lieu of confiscation = tax payable on goods being transported thereon.
4.	Issue of order after hearing	Order for confiscation of goods or conveyance or for imposition of penalty shall be issued only after giving an opportunity of being heard to the person.
5.	Transfer of title	The title of goods or conveyance which are confiscated shall vest in Government.
6.	Assistance of police officer	PO adjudging confiscation shall take & hold possession of things confiscated & Police officer shall assist him in the same on requisition of such PO.
7.	Disposal of goods or conveyance	After satisfying himself that confiscated goods or conveyance are not required in any other proceedings under GST & after giving reasonable time not more than 3 months to pay fine in lieu of confiscation, PO may dispose such goods or conveyances & deposit the sale proceeds with Govt.

Section 131:- Confiscation or penalty not to interfere with other punishments

Subject to Code of Criminal Procedure, 1973, confiscation made or penalty imposed under GST law shall not prevent infliction of any other punishment to which person is liable under any law in force including GST. Such other punishment can be arrest, prosecution, cancellation of registration, etc.

Section 132:- Punishments for certain offences

Sub Sec	Legal Provision
1.	<p>Person who commits or causes to commit & retain the benefits of any of the listed offences shall be liable to punishment</p> <ul style="list-style-type: none"> (a) Supplies goods &/or services without issue of invoice with intention to evade tax, (b) Issues invoice/bill without supply leading to wrongful availment/utilisation of ITC or tax refund, (c) Avails ITC using invoice/bill referred to in clause (b) or fraudulently avails ITC without invoice/bill, (d) Collects any amount as tax but fails to pay it to Govt. within 3 months from due date of payment, (e) Evades tax or fraudulently obtains refund & such offence is not covered under clauses (a) to (d), (f) Falsifies/substitutes financial records or produces fake accounts/documents or furnishes any false information to evade payment of tax due, (g) Obstructs or prevents any officer in the discharge of his duties.

Omitted by by F.A. 2023

<p>(i.e. Cases where prosecution can be initiated & punishment thereof):-</p>	<p>(h) Deals with goods liable to confiscation in any way by acquiring possession, transporting, removing, depositing, keeping, concealing, supplying or purchasing or in any other manner,</p> <p>(i) Receives or deals with supply of services in contravention of GST law, Omitted by F.A. 2023</p> <p>(j) Tamper with or destroys any material evidence or documents,</p> <p>(k) Fails to supply required information or (unless with a reasonable belief, burden of proving which shall be upon him, that information supplied by him is true) supplies false information or</p> <p>(l) Attempts to commit, or abets commission of any offences mentioned in clauses (a) to clauses (a) to (f) and clauses (h) and (i). Substituted by F.A. 2023</p>																				
<p>Prosecution & Punishment for above offences:-</p>	<p>Person covered above shall be punishable as under:-</p> <table border="1" data-bbox="391 622 1565 1294"> <thead> <tr> <th data-bbox="391 622 883 776"></th> <th data-bbox="883 622 1179 776">Cases where tax evaded or ITC wrongly availed/ utilised or refund wrongly taken:-</th> <th data-bbox="1179 622 1565 776">Punishment</th> <th data-bbox="1565 622 1572 776">In absence of special & adequate reasons to contrary to be recorded in judgment of Court [sec 132(3)]</th> </tr> </thead> <tbody> <tr> <td data-bbox="391 776 883 881">i.</td> <td data-bbox="883 776 1179 881">Exceeds ₹500 lakhs:-</td> <td data-bbox="1179 776 1565 881">Imprisonment upto 5 years & fine</td> <td data-bbox="1565 776 1572 881">Imprisonment of minimum 6 months</td> </tr> <tr> <td data-bbox="391 881 883 984">ii.</td> <td data-bbox="883 881 1179 984">Exceeds ₹200 lakhs but does not exceed ₹500 lakhs</td> <td data-bbox="1179 881 1565 984">Imprisonment upto 3 years & fine</td> <td data-bbox="1565 881 1572 984">Imprisonment of minimum 6 months</td> </tr> <tr> <td data-bbox="391 984 883 1134">iii.</td> <td data-bbox="883 984 1179 1134">Exceeds ₹100 lakhs but does not exceed ₹200 lakhs in an offence specified in clause (b),</td> <td data-bbox="1179 984 1565 1134">Imprisonment upto 1 years & fine</td> <td data-bbox="1565 984 1572 1134">Imprisonment of minimum 6 months</td> </tr> <tr> <td data-bbox="391 1134 883 1294">iv.</td> <td data-bbox="883 1134 1179 1294">Person commits or abets commission of an offence specified in clause (f) or (g) or (j):-</td> <td data-bbox="1179 1134 1565 1294">Imprisonment upto 6 months or fine or both</td> <td data-bbox="1565 1134 1572 1294">-</td> </tr> </tbody> </table>		Cases where tax evaded or ITC wrongly availed/ utilised or refund wrongly taken:-	Punishment	In absence of special & adequate reasons to contrary to be recorded in judgment of Court [sec 132(3)]	i.	Exceeds ₹500 lakhs:-	Imprisonment upto 5 years & fine	Imprisonment of minimum 6 months	ii.	Exceeds ₹200 lakhs but does not exceed ₹500 lakhs	Imprisonment upto 3 years & fine	Imprisonment of minimum 6 months	iii.	Exceeds ₹100 lakhs but does not exceed ₹200 lakhs in an offence specified in clause (b),	Imprisonment upto 1 years & fine	Imprisonment of minimum 6 months	iv.	Person commits or abets commission of an offence specified in clause (f) or (g) or (j):-	Imprisonment upto 6 months or fine or both	-
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<p>Substituted by F.A. 2023</p>																					
<p>Omitted by F.A. 2023</p>																					
<p>2. Repetition of offence u/s 132</p>	<p>⇒ If person is again convicted of an offence after being convicted earlier u/s 132, then punishment = imprisonment upto 5 years & fine.</p> <p>⇒ Imprisonment shall be for minimum 6 months in the absence of special & adequate reasons to the contrary to be recorded in judgment of Court.</p>																				
<p>4. Non-cognizable & bailable offence</p>	<p>All offences under GST Act shall be non-cognizable & bailable except the offences u/s 132(5) below.</p>																				
<p>5. Cognizable & non-bailable Offence</p>	<p>Offences in clause (a) or (b) or (c) or (d) of sub-section (1) & punishable under clause (i) of that sub-section [i.e. amount Involved > ₹ 5 crores] shall be cognizable and non-bailable.</p> <p>Note:- Following are the Cognizable & non-bailable offences, if tax evaded or ITC wrongly availed/ utilised or refund wrongly taken > ₹5 Crores:-</p> <ol style="list-style-type: none"> Supplies goods &/or services without issue of invoice with the intention to evade tax, Issues invoice/bill without supply leading to wrongful availment/ utilisation of ITC or tax refund, Avails ITC using invoice/bill referred to in clause (b) or fraudulently avails ITC without invoice/bill or Collects any amount as tax but fails to pay it to Govt. within 3 months from due date of payment. 																				

		<p>Meaning:-</p> <ol style="list-style-type: none"> Cognizable offence:- It is serious category of offences for which a police officer has authority to arrest without warrant & to start investigation with or without permission of court. Non-cognizable offence:- It is relatively less serious offences for which a police officer does not have authority to arrest without warrant & an investigation cannot be initiated without a court order.
6.	Sanction for prosecution	Person shall be prosecuted for an offence under this section with previous sanction of Commissioner.

Explanation:- Here, "tax" shall include tax evaded or ITC wrongly availed/ utilised or refund wrongly taken under CGST Act, SGST Act, IGST Act or UTGST Act & cess levied under GST (Compensation to States) Act.

Some other Sections:-

Sec	Legal Provision					
133	Liability of officers & certain other persons	<p>Following persons shall be punishable if they wilfully discloses information or contents of any return furnished otherwise than in execution of duties or for prosecution for offence under any law:-</p> <ul style="list-style-type: none"> ➤ person engaged in collection of statistics u/s 151 or its compilation or computerisation or ➤ officer of CGST having access to information specified u/s 150(1), or ➤ person engaged in provision of service on common portal or ➤ agent of common portal. <p>Punishment:- Imprisonment upto 6 months or with fine upto ₹25000, or with both</p> <p>Prosecution for any offence under this section shall be as under-</p> <table border="1"> <tr> <td>i) For Government Servant:-</td> <td>with previous sanction of Govt. only.</td> </tr> <tr> <td>ii) For person other than Government Servant:-</td> <td>with previous sanction of Commissioner only.</td> </tr> </table>	i) For Government Servant:-	with previous sanction of Govt. only.	ii) For person other than Government Servant:-	with previous sanction of Commissioner only.
i) For Government Servant:-	with previous sanction of Govt. only.					
ii) For person other than Government Servant:-	with previous sanction of Commissioner only.					
134	Cognizance of offences	<ul style="list-style-type: none"> ➤ Court shall take cognizance of any offence punishable under GST law only with previous sanction of Commissioner. ➤ Such offence shall not be tried by court inferior to that of a Magistrate of First Class 				
135	Presumption of culpable mental state	<ul style="list-style-type: none"> ➤ Court shall presume existence of culpable mental state of accused in any prosecution of an offence but it shall be a defence for accused to prove that he had no such mental state in such offence. ➤ "Culpable mental state" includes intention, motive, knowledge of a fact, & belief in, or reason to believe, a fact. <p>Comment:- While committing an act, a "culpable mental state" is a state of mind where:-</p> <ul style="list-style-type: none"> ➤ act is intentional, ➤ act & its implications are understood & controllable, ➤ person committing the act was not coerced & even overcomes hurdles to the act committed, ➤ person believes or has reasons to believe that the act is contrary to law. 				

		<p>⇒ A fact is said to be proved only when court believes it to exist beyond reasonable doubt & not merely when its existence is established by a preponderance of probability.</p>
136	Relevancy of statements under certain circumstances	<p>A statement made and signed by a person on appearance for any summons issued (u/s 70) in inquiry/ proceedings shall be relevant for proving the truth of facts it contains, in any prosecution for an offence when:-</p> <p>a) person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of way by adverse party, or whose presence cannot be obtained without an amount of delay or expense which court considers unreasonable or</p> <p>b) person who made statement is examined as witness before court & court is of opinion that statement should be admitted in evidence in interest of justice.</p>
137	Offences by Companies, Firm, LLP, HUF or Trust	<p>Who shall be guilty & punished?</p> <p>If offence is committed by company or taxable person being partnership firm/LLP/ HUF/ trust,</p> <p>⇒ company & person in charge who was responsible to conduct its business, at the time offence was committed, or</p> <p>⇒ the partner/ karta/ managing trustee, shall be deemed to be guilty & proceeded against & punished.</p>
		<p>Other persons liable to be punished?</p> <p>If it is proved that offence is committed with consent or connivance of, or due to negligence of any:-</p> <p>⇒ director, manager, secretary or other officer of company, or</p> <p>⇒ partner, member, trustee, manager, secretary or other officer, then such person shall also be deemed to be guilty & proceeded against & punished.</p>
		<p>Persons shall not be punished in certain cases</p> <p>Concerned persons shall not be liable to punishment, if they prove that:-</p> <p>⇒ offence was committed without their knowledge or</p> <p>⇒ they had exercised all due diligence to prevent commission of such offence.</p>
		<p>Explanation</p> <p>i) "Company" means a body corporate & includes a firm or other association of individuals; and</p> <p>ii) "Director", in relation to a firm, means a partner in the firm.</p>

Section 138 read with Rule 162:- Compounding of offences

Sub Sec	Legal Provision
1.	<p>Compounding of offence</p> <p>Before or after institution of prosecution, Commissioner may compound any offence if person accused of offence pays the compounding amount to CG/SG.</p> <p>Note:- Compounding means payment of money instead of undergoing prosecution</p>
	<p>Proviso :- Offences that shall not be compounded</p> <p>a. a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section; a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of section 132(1); (Substituted by F.A.2023)</p> <p>b. 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 SGST Act or UTGST Act or IGST Act in respect of supplies of value exceeding 1 crore; (Omitted by F.A.2023)</p> <p>c. A person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force; a person who has been accused of committing an offence under u/s 132(1)(b); (Substituted by F.A.2023)</p> <p>d. a person who has been convicted for an offence under this Act by a court;</p> <p>e. a person who has been accused of committing an offence specified u/s 132(1)(g)/(j)/(k); (Omitted by F.A.2023) and</p> <p>f. any other class of persons or offences as may be prescribed:</p>
	<p>Proviso: Other proceedings to continue</p> <ul style="list-style-type: none"> ⇒ Compounding allowed under GST shall not affect the proceedings instituted under any other law. ⇒ Compounding is allowed only after payment of tax, interest & penalty involved in such offences
2.	<p>Minimum & maximum compounding amount</p> <ul style="list-style-type: none"> ⇒ The minimum limit for compounding amount is 25% of tax involved to be the higher of 50% of tax involved or ₹10,000. ⇒ The maximum limit for compounding amount is 100% of tax involved to be higher of 150% of tax involved or ₹30,000. <p style="text-align: right;">Substituted by F.A. 2023</p>
3.	<p>Consequences of paying compounding amount</p> <ul style="list-style-type: none"> ⇒ No further proceedings shall be initiated under GST law against accused person for same offence. ⇒ Any criminal proceeding already initiated for said offence shall stand abated

<p>Application & order for compounding of offence</p>	<p>⇒ On receipt of application, commissioner shall call for a relevant report from concerned officer.</p> <p>⇒ Rule 162(3):- Omitted by N/No. 38/2023-</p> <p>If Commissioner is satisfied that applicant has cooperated in the proceedings before him & has made full & true disclosure of facts relating to the case, he may, by order:-</p> <ul style="list-style-type: none"> ➤ allow application indicating the compounding amount & grant him immunity from prosecution or ➤ reject application within 90 days of receipt of application, after giving opportunity of being heard & recording grounds of rejection. <p>⇒ Compounding amount shall be paid within 30 days from date of receipt of order, failing which the order of compounding shall be vitiated & be void.</p>																					
<p>Withdrawal of immunity granted by commissioner</p>	<p>⇒ If person had concealed any material particulars or given false evidence in compounding proceedings, then commissioner may withdraw the immunity granted at any time.</p> <p>⇒ GST Act shall apply as if no immunity had been granted & person may be tried for said offence.</p>																					
<p>Determination of compounding amount:- Rule 162(3A) (Newly inserted by N/No. 38/2023)</p>	<p>The Commissioner shall determine the compounding amount as per the Table below:-</p>																					
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">S. No.</th> <th style="width: 40%;">Offence</th> <th style="width: 25%;">Compounding amount if offence is punishable u/s 132(1)(i)</th> <th style="width: 30%;">Compounding amount if offence is punishable u/s 132(1)(ii)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Offence specified in sec 132(1)(a) of the Act</td> <td rowspan="4">Up to 75% of tax evaded or ITC wrongly availed or utilised or refund wrongly taken, subject to minimum of 50% of such tax evaded or ITC wrongly availed or utilised or refund wrongly taken.</td> <td rowspan="4">Up to 60% of tax evaded or ITC wrongly availed or utilised or refund wrongly taken, subject to minimum of 40% of such amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken.</td> </tr> <tr> <td>2.</td> <td>Offence specified in sec 132(1)(c) of the Act</td> </tr> <tr> <td>3.</td> <td>Offence specified in sec 132(1)(d) of the Act</td> </tr> <tr> <td>4.</td> <td>Offence specified in sec 132(1)(e) of the Act</td> </tr> <tr> <td>5.</td> <td>Offence specified in of sec 132(1)(f) of the Act</td> <td rowspan="3">Amount equivalent to 25% of tax evaded.</td> <td rowspan="3">Amount equivalent to 25% of tax evaded.</td> </tr> <tr> <td>6.</td> <td>Offence specified in sec 132(1)(h) of the Act</td> </tr> <tr> <td>7.</td> <td>Offence specified in sec 132(1)(i) of the Act</td> </tr> </tbody> </table>	S. No.	Offence	Compounding amount if offence is punishable u/s 132(1)(i)	Compounding amount if offence is punishable u/s 132(1)(ii)	1.	Offence specified in sec 132(1)(a) of the Act	Up to 75% of tax evaded or ITC wrongly availed or utilised or refund wrongly taken, subject to minimum of 50% of such tax evaded or ITC wrongly availed or utilised or refund wrongly taken.	Up to 60% of tax evaded or ITC wrongly availed or utilised or refund wrongly taken, subject to minimum of 40% of such amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken.	2.	Offence specified in sec 132(1)(c) of the Act	3.	Offence specified in sec 132(1)(d) of the Act	4.	Offence specified in sec 132(1)(e) of the Act	5.	Offence specified in of sec 132(1)(f) of the Act	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.	6.	Offence specified in sec 132(1)(h) of the Act	7.	Offence specified in sec 132(1)(i) of the Act
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		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 sub-section (1) of section 132 of the Act	Amount equivalent to 25% of such tax evaded or ITC wrongly availed or utilised or refund wrongly taken.	Amount equivalent to 25% of such tax evaded or ITC wrongly availed or utilised or refund wrongly taken.
<p>Proviso:- If offence committed by person falls under more than one category specified in Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.</p>				

CBIC Clarification

Clarification on various issues relating to applicability of demand and penalty provisions under the CGST Act in respect of transactions involving fake invoices: Circular No 171/03/2022

1) Fact:-	In case where a registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both,
Issue	<p>1. whether such transaction will be covered as "supply" under section 7 of CGST Act</p> <p>2. whether any demand and recovery can be made from 'A' in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act.</p> <p>3. whether any penal action can be taken against registered person 'A' in such cases.</p>
Clarification	<p>1) Is it supply under section 7</p> <ul style="list-style-type: none"> ⇒ Registered person 'A' has only issued a tax invoice to registered person 'B' without any underlying supply of goods or services. ⇒ As there is no supply involved from 'A' to 'B', therefore, such an activity does not satisfy the criteria of 'supply' under section 7 of the CGST Act.
	<p>2) penal action under section 73/74</p> <ul style="list-style-type: none"> ⇒ no tax liability arises against 'A' for such transaction, and therefore, no demand and recovery can be made against 'A' under section 73 or section 74 of the CGST Act. ⇒ Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against 'A' in respect of the said transaction.
	<p>3) penal action under section 122</p> <p>'A' shall be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.</p>
2) Fact:-	<p>A registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice.</p> <p>B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies.</p>
Issue	Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.

Clarification	1) penal action under section 73/74
	<ul style="list-style-type: none"> ⇒ Registered person 'B' has availed and utilized fraudulent ITC on the basis of the fake invoices without receiving the goods or services. ⇒ ITC is availed in contravention of section 16(2)(b) of the CGST Act. ⇒ Therefore, "B" shall be liable for the demand and recovery of such ITC along with penal action under section 74 of the CGST Act. ⇒ Interest shall also apply under section 50 of the said Act.
Clarification	2) penal action under section 122
	<p>as per section 75(13) of CGST Act, if penal action is taken against 'B' under Section 74 for fraudulent availment or utilization of ITC</p> <p style="text-align: center;">then no penalty for the same act, i.e. wrong availment or utilization of ITC, can be imposed on 'B' under any other provisions of CGST Act, including section 122.</p>
3) Fact:-	A registered person 'A' has issued tax invoice to another registered person 'B' without any underlying supply of goods or services or both. 'B' avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person 'C' by issuing invoices without underlying supply of goods or services or both.
Issue	Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.
Clarification	1) Is it supply under section 7
	<ul style="list-style-type: none"> ⇒ In this case, 'B' has availed ITC in his electronic credit ledger on the basis of fake invoices without actual receipt of goods or services. ⇒ Further, 'B' has utilized such ITC for payment of output liability on fake invoices issued to 'C' without any underlying supply of goods or services. ⇒ With respect to supply made by 'B' to 'C', there is no supply of goods or services. Accordingly, no tax is payable by 'B' on such a transaction. ⇒ ITC availed by "B" on the basis of a fake invoice issued by 'A' is ineligible as per section 16(2)(b) of the CGST Act. ⇒ With respect to the transaction of supply from 'B' to 'C', no tax is payable as there is no supply.
	2) penal action under section 73/74
	In these specific cases, no demand and recovery of either ITC wrongly/ fraudulently availed by 'B' or output liability on a supply made by 'B' to 'C' is required to be made from 'B' under section 73 or section 74 of CGST Act.
	3) penal action under section 122
	<ul style="list-style-type: none"> ⇒ 'B' shall be liable for penal action both under sec 122(1)(ii) and sec 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods or services, and for taking/ utilizing ITC without actual receipt of goods or services. ⇒ Under Sec 122(1)(ii), a penalty is imposed for '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' ⇒ Under Sec 122(1)(vii), a penalty is imposed for 'takes or utilizes input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;'

The circular also clarifies that proceeding under **sec 122(1A)** can be initiated against any person who has retained the benefit of the transactions specified therein or at whose instance such transactions are conducted.

It has also been clarified that provisions of **sec 132** of the CGST Act may also be invocable in cases of

- ⇒ wrongful/ fraudulent availment or utilization of input tax credit, or
- ⇒ in cases of issuance of invoices without supply of goods or services or both,

leading to wrongful availment or utilization of input tax credit or refund of tax.

The provisions of **sec 132** would be invocable subject to the satisfactions of conditions specified therein and based on facts and circumstances of each case.