

Chapter XIX

Offences and Penalties

FAQ's

Penalty for certain offences (Section 122)

Section 122 of the CGST Act, 2017 made applicable to IGST *vide* Section 20 of the IGST Act, 2017 and UTGST *vide* Section 21 of the UTGST Act, 2017

Q1. What is meant by the term penalty?

Ans. The word "*penalty*" has not been defined in the CGST/SGST Act but judicial pronouncements and principles of jurisprudence have laid down the nature of a penalty as:

- (i) a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence;
- (ii) a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do.

Q2. What are the general disciplines to be followed while imposing penalties?

Ans. The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126 of the CGST Act, Accordingly—

- no penalty is to be imposed without issuance of a show cause notice and proper hearing in the matter, affording an opportunity to the person proceeded against to rebut the allegations levelled against him,
- the penalty is to depend on the totality of the facts and circumstances of the case,
- the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged,
- the nature of the breach is to be specified clearly in the order imposing the penalty,
- the provisions of the law under which the penalty has been imposed is to be specified.

Section 126 of the CGST Act further specifies that, in particular, no substantial penalty is to be imposed for —

- any minor breach (minor breach has been defined as a violation of the provisions in a case where the tax involved is less than Rs.5000), or
- a procedural requirement of the law, or
- an easily rectifiable mistake/omission in documents (explained in the law as an error apparent on record) that has been made without fraudulent intent or gross negligence.

Further, wherever penalty of a fixed amount or a fixed percentage has been provided in the CGST/SGST Act, the same shall apply.

Q3. Whether penalty is imposable for supply of goods or services without issue of any invoice or when an incorrect or false invoice is issued with regard to such supply?

Ans. Yes, in terms of Section 122(1)(i) of the CGST Act, 2017 the above supply of goods and services will be considered to be offence attracting penalty of ten thousand rupees or an amount equivalent to the tax evaded, whichever is higher.

Q4. I am collecting tax on supply of goods and services and did not remit the same within 3 months to the Government. Does the same attract penalty? If yes what is the amount of penalty?

Ans. Collection of tax and non-remittance of the same within 3 months to the Government from the due date for remittance is considered to be an offence under Section 122(1)(iii) of the CGST Act, 2017 attracting penalty of an amount equal to the tax so collected or an ` 10,000/- whichever is higher

Q5. Before imposing the penalty, is it mandatory required to give an opportunity of being heard personally?

Ans. Section 126(3) of the CGST Act provides that no penalty shall be imposed on any person without giving him an opportunity of being heard.

Q6. I have collected tax on supply of exempted goods and did not remit the tax so collected to the Government account. Would I be liable to penal and other consequences?

Ans. Yes, in terms of Section 122(1) (iv) of the CGST Act, 2017, collection of tax in contravention to the provisions of the CGST Act, 2017 and subsequent failure to remit the same to the credit of the Government beyond a period of 3 months from the date on which such payment becomes due is an offence attracting penalty of ` 10,000/- or amount equal to the amount of tax so collected, whichever is higher.

Further, in terms of Section 132(1) (d) read with Section 132(1) (l) of the CGST Act, 2017, the said offence attracts imprisonment which may extend from 1 year to 5 years based on the quantum of tax evasion.

Q7. What are the other activities which would be considered to be offences under section 122(1) attracting penalty?

Ans. The other activities which would be considered to be offences attracting penalty are as under:

- (a) failure to deduct tax in terms of provisions of Section 51 or short deduction of tax or failure to remit tax so deducted
- (b) failure to collect tax by an E commerce operator in terms of Section 52 or short collection of tax or failure to remit tax so collected within
- (c) taking or availment (or both) of input tax credit without actual receipt of goods or services in violation of the provisions
- (d) fraudulently obtaining refund of any CGST/SGST under this Act
- (e) takes or distributes input tax credit in violation of section 20, or the rules made thereunder;
- (f) falsifies or substitutes financial records or produces fake accounts and/or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
- (g) failure to obtain registration even though liable to registration;
- (h) furnishing of any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
- (i) Obstruction or prevention of any officer in discharge of his duties under the GST provisions;
- (j) Transports any taxable goods without the cover of documents as may be specified;
- (k) Suppression of turnover leading to evasion of tax under this Act;
- (l) Failure to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
- (m) Failure to furnish information and/or documents called for by a CGST/SGST officer in accordance with the provisions of this Act or rules made thereunder or furnishes false information and/or documents during any proceedings under this Act;
- (n) supplies, transports or stores any goods which he has reason to believe are liable to confiscation under this Act;
- (o) issues any invoice or document by using the identification number of another taxable person;

- (p) tampers with, or destroys any material evidence;
- (q) disposes off or tampers with any goods that have been detained, seized, or attached under this Act;

Q8. What is the penalty that is imposable for the offences referred to in Q4?

Ans. ` 10,000/- or an amount equivalent to the tax evaded or the tax not deducted or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, as the case may be, whichever is higher.

Q9. Whether failure to pay tax or short payment of tax or where refund has been erroneously granted, would also attract penalty even though there is no fraud or misrepresentation or suppression of facts on the part of the taxable person?

Ans. Yes. In terms of Section 122(2), the non-payment of tax or short payment of tax or erroneous refund without intention to evade (i.e. not involving fraud or any wilful misstatement or suppression of facts to evade tax) would attract a penalty of ` 10,000/- or 10% of the tax due, whichever is higher.

Q10. Is there any penalty on the persons who aids or abets in offences attracting penalty in terms of Section 122(1)?

Ans. Yes, any activity pertaining to aiding or abetting the offence would be an offence attracting a penalty to the extent of ` 25,000/-. Further, in terms of Section 122(3) following offences shall also be punishable with a penalty to the extent of ` 25,000/-:

- (a) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder;
- (b) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (c) fails to appear before the officer of Central Tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry;
- (d) fails to issue invoice in accordance with the provisions of this Act or rules made thereunder, or fails to account for an invoice in his books of account.

Q11. Is there any penalty prescribed for any person other than the taxable person?

Ans. Yes. Section 122(3) of the CGST Act provides for levy of penalty extending to ` 25,000/- for any person who-

- aids or abets any of the 21 offences,
- deals in any way (whether receiving, supplying, storing or transporting) with goods that are liable to confiscation,
- receives or deals with supply of services in contravention of the CGST Act,
- fails to appear before an authority who has issued a summon,
- fails to issue any invoice for a supply or account for any invoice in his books of accounts.

Q12. What is the penalty prescribed for a person who opts for composition scheme despite being ineligible for the said scheme?

Ans. Section 10(5) of the CGST Act provides that if a person who has paid under composition levy is found as not being eligible for compounding then such person shall be liable to penalty to an amount equivalent to the tax payable by him under the provisions of the Act i.e. as a normal taxable person and that this penalty shall be in addition to the tax payable by him

Penalty for failure to furnish information return; Fine for failure to furnish statistics (Section 123 and 124)

Section 123 and 124 of the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017

Q13. Whether non-filing of information return or furnish statistics as required would attract penalty and what is the quantum of penalty?

Ans. Yes, If a person who is required to furnish an information return under section 150 fails to do so within the stipulated period of not exceeding 90 days from the date of issue of show cause notice [section 150(3)], the proper officer may direct that such person shall be liable to pay a penalty of ` 100 for each day of the period during which the failure to furnish such return continues. However, the penalty imposed under this section shall not exceed ` 5,000/-.

Similarly, if any person who is required to furnish any information or return under section 151,—

- (a) without reasonable cause fails to furnish such information or return as may be required under that section, or
- (b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

then, he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may extend to ` 100 for each day after the first day during which the offence continues subject to a maximum limit of ` 25,000.

General Penalty; General disciplines related to penalty, Power to impose penalty in certain cases and Power to waive penalty or fee or both (Section 125-128)

Section 125 -128 of the CGST Act, 2017 made applicable to IGST *vide* Section 20 of the IGST Act, 2017 and UTGST *vide* Section 21 of the UTGST Act, 2017

Q14. What are the general guidelines to be followed while imposing penalties?

Ans. The general guidelines to be followed while imposing penalties are as under:

- Substantial penalties shall not be imposed for minor breaches of tax regulations or procedural requirements.
- No penalty in respect of any omission or mistake in documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.
- The penalty imposed shall depend on the facts and circumstances of the case and shall commensurate with the degree and severity of the breach

Q15. What are the acts which are considered as minor breach?

Ans. In terms of explanation to Section 126(1), a breach shall be considered a 'minor breach' if the amount of tax involved is less than five thousand rupees.

Q16. Is it mandatory for the officer before imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and amount of penalty for the breach?

Yes, under section 126(4) of the CGST Act specify that an officer before imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and amount of penalty for the breach in the order.

Q17. Where a person voluntarily disclosed information whether in such cases the same could be a factor to reduce the penalties?

Ans. In terms of Section 126(5) where a person voluntarily discloses to a tax authority the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the tax authority, the tax authority may consider this fact as a potential mitigating factor when quantifying a penalty for that person.

Q18. When general penalty under Section 125 of CGST Act could be imposed?

Ans. Section 125 of the CGST Act, provides for general penalty which may extend to ` 25,000/- on any person, who contravenes any of the provisions of this Act or any rules made thereunder. This penalty would be applicable only where no penalty is separately provided for in this Act.

Q19. Whether penalties imposed under this Act could be waived?

Ans. In terms of Section 128 the Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

Pursuant to power conferred under Section 128, the Central Government *vide Notification No 28/2017 –Central Tax, dated 1.09.2017* and *Notification No. 50/2017 – Central Tax, dated 24.10.2017*, waives the late fee payable under section 47 of the CGST Act, for all registered persons who failed to furnish the return in **FORM GSTR-3B** for the month of July 2017; August and September, 2017 respectively by the due date.

Further, by virtue power under section 128, the Central Government *vide Notification No 64/ 2017 Central Tax- dated 15.11.2017*, waives the amount of late fee payable by any registered person for failure to furnish the return in **FORM GSTR-3B** for the month of October 2017 onwards by the due date under section 47 of the said Act, which is in excess of an amount of ` 25,000/- for every day during which such failure continues. But, where the total amount of central tax payable in the said return is nil, the amount of late fee payable shall stand waived to the extent which is in excess of an amount of ` 10/- for every day during which such failure continues

Detention, seizure and release of goods and conveyances in transit (Section 129)

Section 129 of the CGST Act, 2017 made applicable to IGST *vide* Section 20 of the IGST Act, 2017 and UTGST *vide* Section 21 of the UTGST Act, 2017

Q20. Whether officer appointed under GST law has power to detain / seize the goods? When such detention or seizure could be undertaken?

Ans. Where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of the GST Act or rules made thereunder, all such goods and the conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyances shall be liable to detention or seizure.

Q21. Under what circumstances the detained goods and conveyance seized could be released?

Ans. The goods/ conveyance could be released under the following circumstances:

- (a) on payment of the applicable tax and penalty equal to 100% of the tax payable on such goods, and in case of exempted goods on payment of an amount equal to 2% of the value of goods or twenty-five thousand rupees, whichever is less where the owner of the goods comes forward for payment of such tax and penalty;
- (b) on payment of the applicable tax and penalty equal to the fifty percent of the value of the goods reduced by the tax amount paid thereon, and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, where the owner of the goods does not come forward for payment of such tax and penalty;
- (c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed.

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

Q22. What is the procedure to be followed for release of goods / conveyance or documents seized?

Ans. In order to release the goods / documents or conveyance the proper officer shall issue a notice specifying the tax payable and thereafter, pass an order for payment of tax and penalty as detailed above after giving reasonable opportunity of hearing to the concerned person.

On payment of the amount referred to above, all liabilities under this section shall stand discharged in respect of such goods and such conveyance.

Q23. Is there any time limit within which the release could be sought?

Ans. Tax and penalty as prescribed in Section 129(1) shall be paid within 7 days of the date of detention to get the goods released.

Q24. Is there any separate time limit for perishable goods?

Ans. Where the detained goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the proper officer may reduce the said time period to period less than 7 days.

Q25. What are the consequences for non-payment of the tax and penalty amount for detained or seized?

Ans. In case the proposed tax and penalty are not paid within fourteen¹ days from the date of the issue of the order of detention (in **FORM GST MOV-06**), action under section 130 of the CGST Act shall be initiated by serving a notice (in **FORM GST MOV10**), proposing confiscation of the goods and conveyance and imposition of penalty.

Confiscation of goods or conveyances and levy of penalty; Confiscation or penalty not to interfere with other punishments (Section 130-131)

Section 130 and 131 of the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017

Q26. What is meant by confiscation?

Ans. The word '*confiscation*' has not been defined in the CGST/SGST Act. The concept is derived from Roman law wherein it meant seizing or taking into the hands of emperor, and transferring to Imperial "*fiscus*" or Treasury. The word "*confiscate*" has been defined in Aiyar's Law Lexicon as to "*appropriate (private property) to the public treasury by way of penalty; to deprive of property as forfeited to the State.*"

In short it means transfer of the title to the goods to the Government.

Q27. What are the circumstances under which the goods or conveyances could be confiscated?

Ans. Under following circumstances, goods / conveyance could be confiscated by the proper officer under GST provisions:

- (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- (ii) where a person does not account for any goods on which he is liable to pay tax under this Act; or
- (iv) where a person supplies any goods which are liable to tax under this Act without having applied for registration; or
- (v) where a person contravenes any of the provisions of this Act or rules made thereunder with intent to evade payment of tax; or
- (vi) where a person uses any conveyance as a means of transport for carriage of taxable goods in contravention of the provisions of the Act or rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself his agent, if any, and the person in charge of the conveyance.

¹ Effective date yet to be notified. (Earlier- seven days)

Q28. Whether fine could be paid in lieu of confiscation of goods or conveyance for the purpose of release?

Ans. Under following circumstances, fine could be paid in lieu of confiscation of goods or conveyance:

- the officer adjudging the matter shall give to the owner of the goods an option to pay a fine in lieu of confiscation. The fine shall not exceed the market value of the goods confiscated, less the tax chargeable thereon
- where owner of goods is not known, such option could be given to the person from whose possession or custody such goods have been seized;
- The aggregate of such fine and penalty leviable shall not be less than the amount of penalty of 100% of the tax (if paid by owner) or 50% of the value of goods less tax (where it is paid by person other than owner in terms of Section 129(1))
- In case where conveyance is confiscated, and such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.
- Where any fine in lieu of confiscation of goods or conveyance is imposed, the person (owner or other person) shall be liable to pay any tax and charges payable in respect of such goods in addition to the fine.

Q29. How should the officer handle the goods / conveyance confiscated?

- Ans.
- The title of goods and/or conveyance which are confiscated under the CGST Act, shall vest in the Government.
 - The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.
 - The proper officer may, after satisfying himself that the confiscated goods and conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose such goods and/or conveyances and deposit the sale proceeds thereof with the Government.

Q30. Whether prosecution or other punishments could also be initiated along with confiscation or penalty?

Ans. In terms of section 131 confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall not prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

Punishment for Certain Offences; Liability of officers and certain other persons (Section 132 – 133)

Section 132 and 133 of the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017

Q31. What is Prosecution?

Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines "*prosecution*" as the institution and carrying on of the legal proceedings against a person.

Q32. Which are the offences which warrant prosecution?

Ans. Following are the offences which attract prosecution:

- (a) Supply of goods or services or both without the cover of invoice with an intent to evade tax;
- (b) If any person issues any invoice or bill without actual supply of goods or services or both leading to wrongful input tax credit or refund of tax;
- (c) Any person who avails input tax credit using invoice referred in point (b) above;
- (d) Collection of taxes without payment to the government for a period beyond 3 months of due date;
- (e) Evasion of tax, availment of credit or obtaining refund with an intent of fraud where such offence is not covered in clause (a) to (d) above.
- (f) Falsifying financial records or production of false records/ accounts/ documents/ information with an intent to evade tax;
- (g) Obstructs or prevents any officer from doing his duties under the act;
- (h) Acquires or transports or in any manner or deals with any goods which he knows or has reasons to believe are liable for confiscation under this Act or rules made thereunder;
- (i) Receives or in any way, deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this law;
- (j) Tamper with or destroys any material evidence or documents;
- (k) Fails to supply any information which he is required to supply under this law or supply false information;
- (l) Attempts or abets the commission of any of the offences mention above

Q33. What is the punishment prescribed on commission of offences which warrant prosecution?

Ans.

Offences	Punishment
Tax evaded / Wrong availment or utilisation of input tax credit / Amount of Refund wrongly taken exceeding ` 500 lakh	Five years imprisonment with Fine
Tax evaded / Wrong availment or utilisation of input tax credit / Amount of Refund wrongly taken exceeding ` 250 lakh but does not exceed ` 500 lakh	Three years imprisonment with Fine
Tax evaded / Wrong availment or utilisation of input tax credit / Amount of Refund wrongly taken exceeding ` 250 lakh but does not exceed ` 100 lakh.	One-year imprisonment with Fine
Commits or abets in <ul style="list-style-type: none"> • Falsification or substitution of financial records or producing fake accounts, documents or furnishes any false information with an intention to evade payment of tax; • Obstruction or prevention any officer in the discharge of his duties • Tampering with or destroying any material evidence or documents; 	Six months imprisonment or Fine or both

Q34. What is the scenario if a person convicted for an offence under section 132 is again convicted of an offence under the same section?

Ans. Such person shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

Q35. What are cognizable and non-cognizable offences?

Ans.

Cognizable and Non-bailable	Non-cognizable
<p>Following offences which attract imprisonment which may extend to 5 years would be cognizable and non bailable in terms of Section 132(5):</p> <ol style="list-style-type: none"> 1) Making a supply without issue of an invoice or grossly mis-declaring the description of the supply on invoice, in contravention of this Act, to intentionally evade tax; 2) Issues any invoice or bill without supply in violation of the provisions of this Act/rules made thereunder leading to wrongful availment of credit or refund of tax 3) Avails input tax credit using such invoice or bill referred to above; 4) Collects any amount as tax but fails to pay the same to the credit of the Government beyond a period of three months from the date on which such payment becomes due; 	<p>All other offences specified under Sec 132 apart from those mentioned as cognizable/non bailable shall be non-cognizable/ bailable in terms of Section 132(4)</p>

Q36. Whether prior sanction of the designated authority is compulsory for prosecution?

Ans. Yes. No person shall be prosecuted for any offence under this section without prior sanction of the Commissioner

Q37. Whether tax evaded under State GST Act or IGST Act would also be taken in to account for the purpose of the prosecution?

Ans. Yes. In terms of explanation to Section 132 the term tax has been defined to include amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

Q38. Whether persons other than assessee could also be prosecuted under the CGST Act, 2017?

Ans. Yes. In terms of the Section 133, following persons would be liable for prosecution for the offences specified below:

Persons liable for prosecution	Nature of offence	Prosecution
Person engaged in connection with the collection of statistics under section 151	Wilfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force,	The guilty person shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to ` 25,000/, or with both
Person engaged in compilation or computerisation thereof or if any officer of central tax having access to information specified under section 150(1)		
If any person engaged in connection with the provision of service on the common portal or the agent of common portal		

Q39. Whether any prior sanction is required to initiate prosecution under the section 133?

Ans. Yes. No person (other than government servant) shall be prosecuted for any offence under this section except with the previous sanction of the Commissioner

Q40. Whether Government employee could also be prosecuted and punished under section 133?

Ans. Yes, Government servant could also be punished. However, where the person punishable is a Government servant he shall not be prosecuted for any offence under this section except with the previous sanction of the Government.

Cognizance of offences; Presumption of culpable mental state and Relevancy of statements under certain circumstances (Section-134-136)

Section 134-136 of the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017

Q41. Can inferior Courts take cognizance of any offence without prior sanction of the competent authority?

Ans. No Court shall take cognizance of any offence punishable except with the previous sanction of the Commissioner, and no Court inferior to that of a Magistrate of the First Class, shall try offence mentioned in Section 132.

Q42. What is culpable mental state?

Ans. "*THE CULPABLE MENTAL STATE*" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.

Q43. Is culpable mental state necessary for prosecution?

Ans. Yes. In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of culpable mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Q44. What constitutes Culpable mental state?

Ans. Culpable mental state includes

- (a) Intention
- (b) Motive
- (c) Knowledge of the fact
- (d) Belief in or reason to believe a fact

Q45. When is a fact said to be proved under presumption of culpable mental state?

Ans. A fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Q46. What is the relevancy of the statements made and signed before the GST officers?

Ans. A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains-

- (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or
- (b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of the opinion that, having regard to the

circumstances of the case, the statement should be admitted in evidence in the interests of justice.

Offences by Companies (Section 137)

Section 137 of the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017

Q47. What are the consequences of offences committed by Companies and certain other persons?

Ans. When an offence is committed by a Company, every person who at the time of offence was committed was in charge of or was responsible to the Company for the conduct of business of the Company as well as the Company shall be deemed to be guilty of the offence and shall be liable to be prosecuted against and punished accordingly

Q48. What are the consequences of an offence (under the CGST Act) has been committed by a Company and it is proved that the offence has been committed with the consent of any director, manager, secretary or other officers of the company?

Ans. If an offence under the Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officers of the Company, then such director, manager, secretary or other officers of the Company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Q49. What are the consequences of offences committed by taxable person being a partnership firm or a LLP or HUF or a trust?

Ans. If offences are committed by taxable person being a partnership firm or a LLP or HUF or a trust, the partner or Karta or managing trustee respectively shall deemed to be guilty of offence and shall be liable to be proceeded against and punished accordingly.

Further, If offences are committed by partnership firm or a LLP or HUF or a trust and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, the partner or Karta or managing trustee respectively, then such partner or Karta or managing trustee shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Q50. What would be the situation if the person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence?

Ans. Such person shall not be liable to any punishment.

Compounding of offences (Section-138)

Section 138 of the CGST Act, 2017 made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017

Q51. What is meant by compounding of offences?

Ans. Section 320 of the Code of Criminal Procedure defines "*compounding*" as to forbear from prosecution for consideration or any private motive.

Q52. Can offences under this Act be compounded?

Ans. Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence to the Central Government or the State Government, of such compounding amount in such manner as may be prescribed. As per Rule 162 of the CGST Rules,2017 [Chapter-XIX - Offences and Penalties of the CGST Rules,2017], the application of compounding of an offence shall be filed in **FORM GST-CPD-01**.

Q53. What are the offences that cannot be compounded?

Ans. The following offences may not be compounded:

- (a) A person who has been allowed to compound earlier in respect of any offences described as follows:
 - (i) Making a supply without issue of any invoice or grossly mis-declares the description of the supply on invoice, in contravention of this Act, to intentionally evade tax
 - (ii) Issues any invoice or bill without supply in violation of the provisions of this Act/rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax
 - (iii) Collects any amount as tax but fails to pay the same to the credit of the appropriate Government beyond a period of 3 months from the date on which such payment becomes due
 - (iv) Collects any tax in contravention of the provisions of this Act but fails to pay the same to the credit of the appropriate government from the date on which such payment becomes due
 - (v) Availing/utilizing input tax credit without actual receipt of goods and/or services either fully or partially in violation of the provisions of this Act or the rules made thereunder
 - (vi) Fraudulently avails input tax credit or evades tax or obtains refund
 - (vii) Falsification or substitution of financial records or producing fake accounts,

documents or furnishes any false information with an intention to evade payment of tax

(viii) Attempts to commit or abets the commission of any of the offences mentioned above

(b) A person who has been allowed to compound earlier in respect of any offences described as above in clause (A) under this Act or under any provisions of any other SGST Act or IGST Act in relation to supplies of value exceeding one crore rupees

(c) Any offence which is also an offence under any other law for time being in force

(d) A person who has been convicted for an offence under this act by a court

(e) A person who has been accused of committing an offence as under:

(i) Obstruct or prevents any officer in the discharge of his duties

(ii) Tamper with or destroys any material evidence or documents

(iii) Fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information.

Q54. Is compounding of offence made after making payment of tax, interest and penalty involved in such offences?

Ans. Yes, compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

Q55. Are there any monetary limits prescribed for compounding amount?

Ans. Yes.

The minimum limit for compounding amount is to be the higher of the following amounts:-

- ₹ 10,000. Or
- 50% of tax involved,

The upper limit for compounding amount is to be higher of the following amounts:-

- ₹ 30,000 or
- 150% of tax involved.

Q56. What happens after the offence has been compounded?

Ans. On payment of compounding amount, no further proceeding shall be initiated under the CGST Act, 2017 against the accused person in respect of the same offence and any

criminal proceedings, if already initiated in respect of the said offence shall stand abated.

Q57. State the procedure for compounding of offences?

Ans. Rule 162 of the CGST Rules, 2017 provides the procedure for compounding of offences as:

- An applicant may, either before or after the institution of prosecution, make an application under section 138 (1) in **FORM GST CPD-01** to the Commissioner for compounding of an offence.
- On receipt of the application, the Commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application or any other relevant information for the examination of such application

After providing opportunity of being heard to the applicant and taking into account the contents of the application, if satisfied that the applicant has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case, the Commissioner may by order in **FORM GST-CPD-02** allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within 90 days of the receipt of the application stating the grounds of rejection.

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

- The applicant shall, within a period of 30 days from the date of the receipt of the order of compounding, pay the compounding amount and furnish the proof of such payment to the Commissioner, otherwise such order shall be vitiated and be void.
- Immunity granted to a person may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence. Thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provisions the Act shall apply as if no such immunity had been granted.