



Administering GST: Offence, Penalties, Prosecution and Compounding

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Genesis of GST

- Taxes are not a new phenomenon; they are as old as civilization itself.
- Reference of taxation in India is found in Kautilya's "Arthshastra".
- Indirect tax as we have seen in our times is mainly a three tier system which is administered by Center, State and Local bodies.
- The indirect taxes broadly administered by Central Government was Central Excise, Customs and Service Tax, Sales Tax by State Government and Octroi / Entry tax by the Local bodies.
- Genesis of Goods & Services tax can be broadly attributed to the above taxes which all got subsumed in GST, except Customs.

Background of Central Excise

- Excise duty is associated with the production of goods in India and is meant for domestic consumption. In the 1970s, the structure of excise duty was highly complex being a mix of Specific and Ad-Valorem taxes and exemptions .
- In many ways the economic reforms initiated since 1991 brought in emphasis on simplicity and efficiency in tax administration. It stressed on simplification of rules, regulations and procedures so as to reduce the compliance cost and to ensure a better and transparent tax system.
- By now, VAT system (Value Added Tax) had gained worldwide acceptance and India also decided in its favour. VAT was first introduced in India in Central Excise for selected commodities as MODVAT (Modified Value Added Tax) in 1986. This was extended in a phased manner to all commodities and finally emerged as CENVAT (Central Value Added tax) in the year 2001.

Background of Sales Tax

- The major source of garnering revenue for States in India was by way of Sales Tax. Each of the State had its own statute and was administering Sales Tax independently.
- Sale Tax was characterised by a multiplicity of tax rates, exemptions, concessions and differing procedures for tax collection. There was also an unhealthy competition among the States in terms of sales tax rates – so-called “rate war” – often resulting in, revenue-wise, a counter-productive situation.
- However, after introduction of CENVAT by Centre, many States modified their Sale tax regime to launch a State level VAT. Haryana was the first state in India to introduce State VAT in 2005.
- Under VAT, Tax rates were rationalized and the numbers of rates were also reduced by the States.

Background of Service Tax

- In 1992-93, contribution of Service sector in GDP was about 40%. Tax Reform Committee Chaired by Raja Chelliah had recommended taxing Services to widen the indirect tax base.
- Consequently, in Budget 1994-95, Service Tax at the rate of 5% was introduced on 3 services.
- Since then its scope has widened and during last year 2016-17, revenue generated through Service Tax stood at 2.47 lakh Crores.
- The concept of Negative List of Services and shifting the incidence of indirect taxes onto the recipient was introduced firstly in Service Tax .
- In the year 2005. liability of Service Tax on services received from Goods Transport Agency was put on the recipient.

Elements of Tax System

- Intricacies of fiscal offence can be better appreciated with a reference to salient features of tax laws. Broadly, these are:
 - Chargeability – Authority to tax
 - Tax Rates – Rates at which tax has to be paid
 - Tax Collection Mechanism
 - Tax compliance

Chargeability of Taxing Statute – C. Excise

- Section 3 of the Central Excise Act 1944 is the charging section which provides that there shall be levied and collected, in such a manner as may be prescribed, a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods which are produced or manufactured in India, as, and at the prescribed rates.
- SECTION 3A is the charging section to charge excise duty on the basis of capacity of production in respect of notified goods.

Chargeability of Taxing Statute – Service Tax

- The charging section for Service Tax is as under:
- Sec. 66B of the Finance Act is the main charging section under which Service Tax is levied on all “taxable service”.
- Sec. 66A levies Service tax on services received from outside India.
- Sec. 66D exempts services listed in Negative List from the charge of Service Tax
- Sec. 66E creates a charge of Service Tax on certain Declared Services.

Chargeability of Taxing Statute – GVAT

- Sec. 7. of Gujarat VAT Act 2005 is the charging section for levy of a tax on the turnover of sales of goods specified in Schedule II at the rate set out against each of them in the said Schedule.

Tax Rates in a Taxing Statute

- ❑ Tax rates in each of the taxing statutes is different but is usually charges at ad-valorem rate. In Central Excise duty can also be charged at specific rate like in the case of Cigarettes.
- ❑ Tax rate may vary from one item/service to other.
 - C. Excise was levied @ 12.5%
 - Service Tax was levied @ 15%
 - VAT was levied at multiple rates in Gujarat

Tax Collection Mechanism

- ❑ Taxing statute requires specific compliance of following areas:
 - Registration
 - Classification
 - Valuation
 - Self-assessment
 - Tax payment Tax Credit/Cash
 - Reporting
 - Record keeping

Registration

- ❑ Registration is required to be taken if the person is engaged in activity liable to tax:
 - Manufacture/Importer/Dealer/Private Warehouse keeper storing excisable goods in the case of Central Excise;
 - Providing taxable service/Importer of service in case of Service Tax;
 - Sale of goods by any Dealer in the case of State VAT;
- ❑ Registration under C. Excise / Service Tax / VAT is subject to attaining minimum threshold.

Self-assessment

- ❑ Ascertainment of tax liability under a given statute is Assessment.
- ❑ Assessment by Department was the norm till early Nineties. Some commodities were subjected to physical control.
- ❑ Self-assessment requires the registrant to assess his tax liability .
 - Rule 6 CER 2002 prescribes Self-assessment in Central Excise.
 - Sec. 70 Finance Act 1994 prescribes Self-assessment by Service providers
 - Sec. 33 of GVAT Act prescribes Self-assessment by VAT Dealers

Classification

- Tax rates may vary product-wise / Service-wise
- For determining the rate of tax, classification of product/service is prerequisite
- Classification means identifying the appropriate classification code, which is applicable to the taxable goods/service.
- All indirect taxes have prescribed Tariff containing therein, the classification code of product/service and the applicable tax rate

Valuation

- Where rate of tax is dependent on the value of goods/service (where ad-valorem rate is prescribed), the taxable value has to be determined.
- Valuation under Indirect Tax Laws has been a highly controversial subject and prone to extensive litigations having significant financial implication.
- The concept of Transaction value is prevalent in Indirect taxes.

Valuation

- **Landmark judgments on Valuation:**
- UOI vs. Bombay Tyre International (1983) [14 ELT 1896 (SC)]
- MRF Ltd. vs. Collector of Central Excise, Madras (1997) 92 ELT 309 (SC)
- Guru Nanak Refrigeration Corporation vs. CCE (1996) 81 ELT 290 (Tri.-Del.) affirmed by SC in (2003) 153 ELT 249 (SC).
- Maruti Suzuki India Ltd. vs. Commissioner of C. Ex., Delhi – III (2010) 257 ELT 226 (Tri.-LB) which was affirmed by SC in (2013) 291 ELT A81 (SC)
- Escorts JCB Ltd. vs. Commissioner of Central Excise, Delhi – II (2002) 146 ELT 31 (SC)
- Pepsi Foods Ltd. vs. Collector of C. Ex., Chandigarh (2003) 158 ELT 552 (SC)
- CCE vs. Fiat India Pvt. Ltd (2012) [283 ELT 161 (SC)],

Manner of Payment of Taxes

- Manner of payment includes
 - Due date of payment
 - Methodology of payment i.e. by cash/credit
 - Electronic / Manual payment/ Adjustment
- Rule 8 of CER prescribes payment method for Excise
- Rule 6 of STR prescribes payment method for Service Tax
- Sec. 30 prescribes payment method for VAT

Reporting

- ❑ Periodical Reports provide opportunity to the assessee to declare before the Department about the status of various compliance requirement.
- Rule 12 of CER prescribes Returns in Excise
- Rule 7 of STR prescribes Returns in S.Tax
- Sec. 29 of GVAT Act prescribes Returns in VAT

Recording Keeping

- Record keeping is an essential part of any taxing statute as all post-facto verifications of taxable transactions can only be undertaken on the basis of records maintained by assessee.
 - Rule 10 CER requires Excise assessee to preserve the records for 5 years
 - Rule 5 STR requires assessee to preserve the records for 5 years
 - Sec. 64 GVAT Act requires assessee to preserve the records for 8 years

Ensuring Tax Compliance

Department undertakes various role to ensure that assessee is complying with the prescribed formalities of the respective law like that of an Auditor, Investigator and Adjudicator.

➤ Audit:

- Under Excise & Service Tax, Department initiates selective Audit of the records of the assessee identified on the basis of certain risk parameters.
- VAT law requires the assessee who have exceeded prescribed threshold, to get his books of accounts audited from VAT perspective.

➤ Investigation:

Investigation of tax evasion cases, are booked on the basis of intelligence / information.

➤ Adjudication:

Show Cause Notices issued pursuant to Audit / Investigation are adjudicated and corresponding fiscal penalties are awarded wherever applicable .

Offence - An Overview

Broadly, offence under indirect taxes can be categorized in two types:

I) Offences attracting Fiscal penalties

- Proceeding dealing with fiscal penalties are Quasi-judicial in nature and are carried out by Departmental officers.

II) Offences attracting Prosecution

- Proceeding dealing with prosecution are judicial in nature and hence, dealt by Courts
- It may lead to Imprisonment and / or Fine

Offences attracting Fiscal penalties

- Offences attracting fiscal penalty can be further bifurcated into:
- Revenue issues
 - Involves demand and recovery of amount due to Government (tax/interest/penalty/fine)
- Procedural issues
 - Contravention of prescribed procedures/modalities not involving revenue

C. Excise Revenue issues

Sec. 11 CEA 1944 - Offence liable for fiscal penalty

Offence	Penalty
<p>Duty of Excise not levied or paid or short levied or short paid or erroneously refunded. For any <u>reason other than</u> fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Act with the intent to evade</p>	<ul style="list-style-type: none">a. Not exceeding 10% of the duty or R. 5000/- whichever is higher (however, if duty and interest is paid before or within thirty days of issue of show cause notice, no penalty shall be payable)b. Dues paid within 30 days of OIO will attract 25% of the penalty.
<p>Duty of Excise not levied or paid or short levied or short paid or erroneously refunded <u>by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention</u> of any of the provisions of this Act <u>with the intent to evade</u></p>	<ul style="list-style-type: none">a. Penalty equal to the duty so determined (if details relating to such transactions are recorded in the specified record for the period 8th April, 2011 to 14th May 2015, the penalty shall be fifty per cent. of the duty so determined;)b. Dues paid within 30 days of SCN, will attract 15% penaltyc. Dues paid within 30 days of OIO will attract 25%

Procedural issues Central Excise Rules 2002

Offence	Penalty
Rule 8(3) Late payment of duty	Penal Interest @ 15%
Rule 8(3A) Non-payment of declared duty	1% of such duty not paid
Rule 12(6) Late filing of returns	pay an amount calculated at the rate of one hundred rupees per day subject to a maximum of twenty thousand rupees for the period of delay in submission of each such return or statement.
<p>Rule 25 (1)</p> <p>a) Removes excisable goods in contravention of Rules;</p> <p>b) Does not account excisable goods;</p> <p>c) Manufactures/stores goods without applying for registration;</p> <p>d) Contravenes any provision of Rules with intent to evade payment of duty</p>	<p>i) such goods are liable for confiscation</p> <p>ii) Person liable to a penalty not exceeding duty applicable on such goods</p>
Rule 26 Person acquires possession or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act	Person liable to a penalty not exceeding duty applicable on such goods or Two Thousand whichever is greater.
Rule 27 Breach of Rules where no penalty is specifically provided	Person liable to a penalty not exceeding five thousand.

Cognizance of an offence

In OM PRAKASH Versus UNION OF INDIA 2011 (272) E.L.T. 321 (S.C.) following issue came up for decision:

- Offence under erstwhile Section 9(d)(i) of Central Excise Act, 1944, with leviable duty exceeding one lakh of rupees, was punishable with imprisonment upto seven years
- Item 2 of Second Schedule of Cr. P.C. stipulates that offences under laws other than IPC with imprisonment upto seven years, were cognizable and non-bailable
- However, erstwhile Section 9A of Central Excise Act, 1944, stipulated that, “offence under section 9 shall be deemed to be non-cognizable within the meaning of that Code”.

Supreme Court Bench held as under:

- In view of non-obstante clause of Section 9A ibid, offences under Section 9(d)(i) ibid were non-cognizable, such offences cannot be equated with offences under IPC cognizable and non-bailable.
- To overcome the above order, Government brought in Sec. 9A in CEA 1944 in 2013 through Finance Act 2013 w.e.f. 10.05.2013.
- Through Finance Act, 2013, new provisions were inserted in Chapter-V to make certain offences cognizable and certain others as non-cognizable and bailable. Above Sec. 9A of CEA 1944 has been made applicable to Service Tax vide Sec. 83 of Chapter-V of Finance Act 1994.

Change in monetary limit for Prosecution

Subsequent to OM PRAKASH judgment:

Government revised the monetary limits for initiating prosecution (CBEC Circular No. 1009/16/2015-CX dtd. 23/10/2015)

Prosecution should normally not be launched unless evasion of Central Excise duty or Service Tax, or misuse of Cenvat credit in relation to offences specified under sub-section (1) of Section 9 of the Central Excise Act, 1944 or sub-section (1) of section 89 of the Finance Act, 1994 is equal to or more than **Rs. One Crore**.

For habitual offenders prosecution could be invoked if found involved in three or more cases of confirmed demand of Central Excise duty or Service Tax or misuse of Cenvat credit involving fraud, suppression of facts etc. in past five years from the date of the decision such that the total duty or tax evaded or total credit misused is equal to or more than **Rs. One Crore**

The above monetary limits were further enhanced to **Rs. Two Crores** vide CBEC Circular No. 201/11/2016-ST dtd. 30/09/2016.

Central Excise offences liable for Prosecution

Sec	Offences under Central Excise Act 1944	Monetary limit for prosecution	Cognizable	Punishment
9(1)				
(a)	Restriction on prohibition of goods, Prohibition on transition of goods or Person required to get registered	Where offence is related to goods and where duty leviable exceeds Rs. 2 Crores.	9(A) Offences under 9 (1) (b),(bbbb) are Cognizable.	Imprisonment upto 7 years and with fine.
(b)	Evades payment of duty			
(bb)	Removes goods in contravention of provisions	In any other cases	Others Non-Cognizable	Imprisonment upto 3 years or with fine or with both.
(bbb)	Possess or concerns himself or deals with goods liable for confiscation			
(bbbb)	Contravenes any provision related to Cenvat Credit	In case of conviction again of an offence (Sec.9(2))		Imprisonment upto 7 years and with fine.
(c)	Fails to supply any information or supplies false information			
(d)	Attempts to commit or abets the commission of above			

Central Excise offences by Companies liable for Prosecution

Sec	Offences under Central Excise Act 1944	Monetary limit for prosecution	Cognizable	Punishment
9AA (1)	Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Company includes anybody corporate and includes a firm or other association of individuals;	Where offence is related to goods and where duty leviable exceeds Rs. 2 Crores.	Offences under 9 (1) (b), (bbbb) are Cognizable. Others Non-Cognizable	Imprisonment upto 7 years and with fine.
9AA (2)	Where an offence under this 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 neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.	In any other cases		Imprisonment upto 3 years or with fine or with both.
		In case of conviction again of an offence (Sec.9(2))		Imprisonment upto 7 years and with fine.

Service Tax Revenue issues

Sec. 73 FA 1994 - Offence liable for fiscal penalty

Offence	Penalty
Service tax not levied or paid or short levied or short paid or erroneously refunded	Not less than ` 100/- per day during which default continues or 1% of the service tax per month, whichever is higher but restricted to 50% of the amount of service tax.
Service tax not levied or paid or short levied or short paid or erroneously refunded. by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made there under with the intent to evade payment of service tax	If tax and interest is paid: within 30 days of issue of SCN: 15% within 30 days of issue of OIO: 25% after 30 days of issue of OIO: 100%

Procedural issues - Service Tax

Offence	Penalty
Sec. 75 Late payment of tax	Penal Interest @ 15%
Sec. 70 Late filing of returns	Delay upto 15 days: Rs. 500/- Delay of 15 to 30 days: 1000/- Delay beyond 30 days: Rs. 1000/- plus Rs. 00 for every day beyond 30 days, so however, that the total amount payable under this slab shall be restricted to Rs.20,000/-
Sec. 77 (i) Failure to register within the due date (ii) Failure to keep, maintain and retain books of accounts and other documents (iii) Failure to appear in response to a summon or furnish information/ produce documents (iv) Failure to make e-payment where mandatory (v) Failure to issue invoices in the prescribed format (vi) Failure to account for an invoice (vii) Contravention of the Act or Rules for which there is no separate penalty	Rs. 10000/- or Rs. 200 per day during which the failure continues, whichever is higher; Maximum Rs. 10000/- Higher of – Rs. 10,000/-; or Rs. 200/- per day during which the default continues Maximum Rs. 10000/- Maximum Rs. 10000/- Maximum Rs. 10000/-

Service Tax Sec. 89/90 - Offences liable for Prosecution

Sec	Offences under Chapter-V of FAI 1994	Monetary limit for prosecution	Cognizable	Punishment
i)	Knowingly evading payment of service tax.	For 'amounts' up to Rs.2 Crore.	Offences at i) to iv) are non-cognizable.	From 6 months up to 3 years for offences specified in (i) to (iv) above;
ii)	Availment and utilisation of credit without actual receipt of taxable service or excisable goods either fully or partially in violation of the Act or Credit Rules;	Where 'amount' exceeds Rs. 2 Crores.		From 6 months to 7 years for offence specified in clause (v)]
iii)	Maintenance of false books of accounts;	Second and subsequent offence	Only offence at v) is Cognizable Sec. 90	Up to 3 years for offences specified in Sl. no. (i) to (iv) and up to 7 years for offence specified in clause (v).
iv)	Failure to supply information or supply of false information;			
v)	Failure to pay to the Government any amount collected as service tax beyond a period of six months from the date on which such payment became due.			

Service Tax –Companies liable for Prosecution

Sec	Offences under Chapter-V of FA 1994
83	<p>Application of certain provision of Central Excise Act 1944 in relation to service tax as they apply in relation to excise duty</p> <p>Provision of Sec. 9AA of CEA 1944 has been made applicable to Service Tax as regards offence by Companies which are liable to prosecution.</p>

Gujarat VAT Act - Offences liable for Prosecution

Sec	Offences under Gujarat VAT 2005	Cognizable	Punishment
85(1)	not being a registered dealer, falsely represents that he is or was a registered dealer at the time when he sells or purchases goods Evades payment of duty	All offences punishable under this Act or the rules shall be cognizable and bailable.	Imprisonment not be less than six months but which may extend to three years and with fine of rupees twenty thousand
(a)	knowingly furnishes a false return where the amount of tax evaded exceeds Rs. 1000/-		
(b)	knowingly produces before the Commissioner, false tax invoice, bill, voucher, cash-memorandum, declaration, certificate or other document		
(c)	fails to pay tax as per the returns filed by him		
(d)	knowingly keeps or produces false account		
(e)	issues false certificate or declaration under this Act, or a invoice, bill, cash-memorandum, voucher or other document		
(f)	willfully attempts, in any manner whatsoever, to evade tax leviable under this Act		
(g)			

Gujarat VAT Act - Offences liable for Prosecution

Sec 85(2)	Offences under Gujarat VAT 2005	Cognizable	Punishment
(a)	carries on business as a dealer without being registered	All offences punishable under this Act or the rules shall be cognizable and bailable.	Imprisonment for a term which may extend to one year and with fine of rupees twenty thousand.
(b)	fails without sufficient cause to furnish any information required by section 26; or		
(c)	fails to surrender his certificate of registration		
(d)	fails without sufficient cause to furnish any returns as required by section 29		
(e)	without reasonable cause, contravenes any of the provisions of section 31		
(f)	fails without sufficient cause, to keep any accounts or record, in accordance with the directions;		
(g)	fails without sufficient cause, to comply with any requirements or obstructs any officer making inspection or search or seizure under that section;		
(h)	obstructs or prevents any officer performing any function under this Act;		
(i)	being owner or in-charge of a goods vehicle fails, neglects or refuses to comply with any of the requirements		
(j)	issues to another registered dealer tax invoice, retail invoice, bill or cash memorandum with the intention to defraud the Government revenue		

GST - Offences liable for fiscal penalties

Sec 122	Offences related to Invoices	Penalty
1	Making a supply without invoice or with false / incorrect invoice	Ten thousand rupees or an amount equivalent to the tax evaded, whichever is higher.
2	Issuing an invoice without making supply	
19	Issuing an invoice using registration number of other person	

GST - Offences liable for fiscal penalties

Sec 122	Fraudulent / Falsification offences	Penalty
8	Fraudulently obtaining any refund	Ten thousand rupees or an amount
10	Falsification of Financial records or furnishing of false information, documents, etc.	equivalent to the tax evaded, whichever is higher.
12	Furnishing false particulars related to registration, either at the time of application for registration or subsequently	

GST - Offences liable for fiscal penalties

Sec 122	Tax evasion related offences	Penalty
3	Not paying tax collected for a period exceeding three months	Ten thousand rupees or an amount
4	Not paying tax collected in contravention of the provisions of the Act for a period exceeding a period of three months	equivalent to the tax evaded, whichever is higher.
15	Suppressing turnover leading to tax evasion	

GST - Offences liable for fiscal penalties

Sec 122	TDS / TCS related offences	Penalty
5	Non deduction or short deduction of tax at source or failure to pay the same to the government	Ten thousand rupees or an amount equivalent to the tax evaded, whichever is higher.
6	Non collection or short collection of tax at source or failure to pay the same to the government	

GST - Offences liable for fiscal penalties

Sec	ITC related offence	Penalty
122		
7	Availing / utilizing input tax credit without actual receipt of goods and/or services	Ten thousand rupees or an amount equivalent to the tax evaded, whichever is higher.
9	Taking / distributing input tax credit in contravention of provisions of the Act	

GST - Offences liable for fiscal penalties

Sec 122	Failure amounting to an offence	Penalty
11	Failure to apply for registration by a person liable to be registered	Ten thousand rupees or an amount equivalent to the tax evaded, whichever is higher.
16	Failure to maintain accounts / documents in the manner prescribed	
17	Failure to furnish accounts /records when called for	

GST - Offences liable for fiscal penalties

Sec 122	Offence related to Transportation/Storage	Penalty
14	Transportation of goods without the cover of a document	Ten thousand rupees or an amount equivalent to the tax evaded, whichever is higher.
18	Supplying / Storing or in any way dealing with goods liable for confiscation	

GST - Offences liable for fiscal penalties

Sec 122	Misc. offences	Penalty
13	Preventing an officer from discharging his duties	Ten thousand rupees or an amount equivalent to the tax evaded, whichever is higher.
20	Tampering / destroying any material evidence	
21	Disposing off / tampering with detained / seized / attached goods.	

GST - Offences liable for fiscal penalties

Sec	Non / Short payment of tax related offences	Penalty
122 (2)	<p>Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized:</p> <p>For any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax,</p> <p>For reason of fraud or any willful misstatement or suppression of facts to evade tax,</p> <p>Remark: Graded penalties are prescribed Sec. 73 and 74 of CGST Act 2017 similar to provisions applicable to Central Excise & Service Tax</p>	<p>Ten Thousand rupees or Ten per cent. of the tax due from such person, whichever is higher</p> <p>Penalty equal to ten thousand rupees or the tax due from such person, whichever is higher</p>

GST - Offences liable for fiscal penalties

Sec	Misc. offences	Penalty
122 (3)	<p><i>Any person</i></p> <p>a) aids or abets any of the offences specified in clauses (i) to (xxi) of subsection (1);</p> <p>b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;</p>	<p>Penalty which may extend to twenty-five thousand rupees.</p>

GST - Offences liable for fiscal penalties

Sec	Misc. offences	Penalty
122 (3)	<p><i>Any person</i></p> <p>(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;</p> <p>(d) 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 inquiry;</p> <p>(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account,</p>	<p>Penalty which may extend to twenty-five thousand rupees.</p>

GST - Offences liable for fiscal penalties

Sec	Offences – Failure to furnish information return	Penalty
123	<p>A person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof,</p> <p>Sec. 150: A taxable person, a local authority or other public body or association, an authority of the Central Government (Excise, Customs, Income Tax, State VAT, a banking company, a State Electricity Board or an electricity distribution or transmission licensee, Registrar or Sub-Registrar under Registration Act, 1908, Companies Act, 2013;, RTO, Collector under Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, recognised stock exchange, a depository, an officer of the Reserve Bank of India, the Goods and Services Tax Network, a person to whom a UIN and any other person as may be specified by the Government:</p>	<p>Penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues</p>

GST - Offences liable for fiscal penalties

Sec	Offences – Failure to furnish information return	Penalty
124	<p>A person required to furnish any information or return under section 151,—</p> <p>(a) without reasonable cause fails to furnish such information or return as may be required under that section, or</p> <p>(b) wilfully furnishes or causes to furnish any information or return which he knows to be false,</p> <p>Sec. 151: The Commissioner may, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act. Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected.</p>	<p>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 one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twentyfive thousand rupees.</p>

GST - Offences liable for fiscal penalties

Sec	General offences	General Penalty
125	Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act,	General penalty which may extend to twenty-five thousand rupees.

CGST have prescribed guidelines for imposing fiscal penalty

□ Section 126 of CGST Act 2017 prescribes general disciplines of imposing penalty:

- No penalty for minor breaches

- Imposition of substantial penalties for minor breaches of tax regulations or procedural requirements has been restricted, i.e., a breach where amount of tax involved is less than Rs. 5,000.

- No penalty in respect of any omission or mistake in documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence, i.e., errors apparent on record

– Penalty to be commensurate with severity of breach

- penalty imposed shall depend on the facts and circumstances of the case

- Penalty shall be commensurate with the degree and severity of the breach

– No penalty without notice and hearing

- No penalty without giving a notice to show cause and

- reasonable opportunity of being heard

CGST have prescribed guidelines for imposing fiscal penalty

□ Section 126 of CGST Act 2017 prescribes general disciplines of imposing penalty:

- Reason to be given for imposing penalty
- The tax authority shall ensure provision of an explanation to the persons upon whom the penalty is imposed
- nature of breach and the laws, regulations or procedural requirements to be informed
- applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed
- Lower penalty if breach voluntarily disclosed
- On voluntary disclosure to 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 establishing a penalty for that person
- Provisions not applicable when law specifies fixed penalty

GST - Cognizable offences liable for Prosecution (if involving >5cr, balance non cognizable)

Sec 132	Offences under CGST Act 2017	Monetary limit for prosecution	Punishment
a)	supplies without issue of any invoice, in violation of the provisions, with the intention to evade tax; issues any invoice or bill without	where the amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken - exceeds 5 Crores	imprisonment for a term which may extend to 5 years and with fine;
b)	supply in violation of the provisions leading to wrongful availment or utilisation of input tax credit or refund of tax;	where the amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken – between 2 Crores to 5 Crores	imprisonment for a term which may extend to 3 years and with fine;
c)	avails input tax credit using such invoice or bill referred to in clause (b);	where the amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken – between 1 Crores to 2 Crores	imprisonment for a term which may extend to 1 year and with fine;
d)	collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;		

GST - Non-Cognizable offences liable for Prosecution

Sec 132	Offences under CGST Act 2017	Monetary limit for prosecution	Punishment
e)	evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);	where the amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken - exceeds 5 Crores	imprisonment for a term which may extend to 5 years and with fine;
f)	falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax;	where the amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken – between 2 Crores to 5 Crores	imprisonment for a term which may extend to 3 years and with fine;
g)	obstructs or prevents any officer in the discharge of his duties;		
h)	acquires possession, or concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with goods liable to confiscation;	where the amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken – between 1 Crores to 2 Crores	imprisonment for a term which may extend to 1 year and with fine;

GST - Non-Cognizable offences liable for Prosecution

Sec 132	Offences under CGST Act 2017	Monetary limit for prosecution	Punishment
i)	receives or is concerned with the supply of, or in any other manner deals with any supply of services in contravention of any provisions of this Act	where the amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken - exceeds 5 Crores	imprisonment for a term which may extend to 5 years and with fine;
j)	<u>tampers with or destroys any material evidence or documents;</u>	where the amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken - between 2 Crores to 5 Crores	imprisonment for a term which may extend to 3 years and with fine;
k)	<u>fails to supply any information or supplies false information; or</u>	where the amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken - between 1 Crores to 2 Crores	imprisonment for a term which may extend to 1 year and with fine;
l)	attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section;		

GST - Non-Cognizable offences liable for Prosecution

Sec 132	Offences under CGST Act 2017	Monetary limit for prosecution	Punishment
(1)IV	in cases where person commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j)	where the amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken - exceeds 5 Crores	imprisonment for a term which may extend to 5 years and with fine;
f)	Clause (f), (g) & (j) are as under: falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax;	where the amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken – between 2 Crores to 5 Crores	imprisonment for a term which may extend to 3 years and with fine;
g)	obstructs or prevents any officer in the discharge of his duties;	where the amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken – between 1 Crores to 2 Crores	imprisonment for a term which may extend to 1 year and with fine;
J)	tampers with or destroys any material evidence or documents;		

GST - Prosecution for repeat offenders

Sec	Offences under CGST Act 2017	Punishment
132 (2)	For repeat offenders in respect of all offences mentioned in Sec. 132.	For the second and for every subsequent offence with imprisonment for a term which may extend to 5 years and with fine.
132 (6)	A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.	
135	<p>In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, <u>the court shall presume the existence of such mental state</u> but it shall be a defense 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.</p> <p>(i) the expression “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;</p>	

GST - Prosecution for offences by Companies

Sec	Offences under CGST Act 2017
137 (1)	In Offence committed by a company, every person who, at the time the offence was committed was in charge of, and 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 proceeded against and punished accordingly.
137 (2)	Where 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 officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly
137 (3)	Where an offence is committed by a taxable person being a Partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a Trust, the Partner or <i>Karta</i> or Managing Trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly

Compounding of Tax offence

- Compoundable offences are those offences where, the complainant accepting anything of value under an agreement and agrees to have the charges dropped against the accused.
- Under the common law, compounding a crime is punishable as a misdemeanor.
- All Tax Laws have the provisions for compounding of offence.
- It is a short cut method to avoid litigation but at the same time recover the entire dues with penalty.
- In case of compounding, the accused can be discharged on payment of compounding amount leviable under the relevant provision.
- The CGST Act 2017 also contains the provisions for compounding of offences and the rules made there under prescribe the procedure of compounding.

Compounding of offence – C. Excise

- **Section 9A(2)** provides that any offence under this Chapter may, either before or after institution of prosecution be compounded by the Principal Chief Commissioner / Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government of such compounding amount in such manner of Compounding as prescribed.
- Compounding shall not be applicable in following cases:
 - a person who has been allowed to compound once in respect of any of the offences specified in clauses (a), (b), (bb), (bbb), (bbbb) or (c) of sub-section (1) of section 9;
 - a person who has been accused of committing an offence under this Act which is also an offence under the NDPS Act 1985;
 - a person who has been allowed to compound once in respect of any offence under this chapter for goods of value exceeding one crore rupees;
 - a person who has been convicted by the Court under this Act on or after the 30th day of Dec 2005
- Central Excise (Compounding of offences) Rules, 2005 have been notified vide notification No. 37/2005-C.E. (N.T.), dated 30-12-2005 as amended]

Compounding of offence – S. Tax

- The provision of Section 9A of the Central Excise Act, 1944 has been made applicable to Service Tax matters vide section 83 of the Finance Act, 1994. Further, clause (i) of sub-section (2) of Section 94 of the Finance Act, 1944 empowers Central Government to make rules, which may provide for “the amount to be paid for compounding and the manner of compounding of offences”.
- Service Tax (Compounding of offences) Rules, 2012 have been notified vide notification No. 17/2012-Service Tax, dated 29-05-2012.

Compounding of offence – VAT

- **Sec. 89 of Gujarat Value Added Tax Act 2003**
- (1) The Commissioner may, either before or after the institution of proceedings for any offence punishable under section 85 or under any rules accept from any person charged with such offence, by way of composition of offence a sum of rupees five thousand or where the offence charged is under section 85 not exceeding double the amount of tax, but not less than the amount of tax, which would have been payable on the turnover of sale or purchase to which the said offence relates, whichever is greater.
- (2) On payment of such sum as may be determined by the Commissioner under sub-section (1), no further proceedings shall be taken against the accused person in respect of the same offence and any proceedings, if already taken, shall stand abated.

Compounding of offence – GST

- **Section 138(1)** provides that any offence under this Act may, either before or after institution of prosecution be compounded by the Commissioner on payment, by the person accused of the offence to the Central Government of such compounding amount in such manner as prescribed.
- Compounding shall not be applicable in following cases:
 - 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 offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;
 - 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 convicted for an offence under this Act by a court;
 - a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and
 - any other class of persons or offences as may be prescribed;
- **Section 138(2)** provides that the amount for compounding of offences shall be such as may be prescribed, subject to the minimum amount not being less than Rs. 10,000/- or 50% of the tax involved, whichever is higher and the maximum amount not being less than Rs. 30,000/- or 150% of the tax whichever is higher.



THANK YOU