CHAPTER X
REFUNDS

Section 38: Refund of tax

1. What is eligible for refund:
    a. Tax
    b. Interest on tax
    c. Any other amount paid
2. Time limit to claim refund:
    a. Refund shall be claim within 2 years from the **RELEVANT DATE**
    b. Limitation of 2 years not apply when duty is paid under protest
3. RELEVANT DATE means:

Situation	Relevant Date
Export of goods out of India	
a. By sea or air	Date on which goods are loaded, leave India
b. By land	Date on which goods pass the frontier
c. By post	Date of dispatch of goods by PO to a place outside India
Deemed Export	Date of filing of return relating to such transaction
Goods are returned for rework	Date of entry into place of business for rework
Export of Service out of India	
a. **Supply √ Receipt ×**	Date of receipt of payment in convertible Foreign Exch
b. **Invoice × Receipt √**	Date of issue of invoice
Tax become refundable by judgment/order	Date of communication of such judgment/order
Unutilized ITC	End of FY for which refund arises
Tax paid provisionally	Date of adjustment of tax after final assessment

4. To whom application is to be filed:
    a. To proper officer of IGST/CGST/SGST
    b. In the manner specified
5. When to claim refund:
    a. A taxable person may claim refund at the end of any unutilized input tax credit at the end of any tax period
6. Conditions for claiming refund:
    a. Unutilized input tax credit shall be w.r.t. export
    b. No refund of unutilized input tax credit shall be allowed when exports are subject to export duty
    c. Credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on outputs
7. Application should be accomplished by documentary evidence to establish that:
    a. Refund is due to the applicant
    b. Amount of tax & interest on tax if any is paid by applicant and same is not collected from him from any other person.

c. If amount claimed as refund is less than Rs. 5 Lakhs, then a declaration stating that such tax & interest has not been passed on to any other person

8. Determination of amount of refund

FULL REFUND → FULL REFUND ORDER

PART REFUND → PART REFUND ORDER

9. For refund claim of export of goods and/or service by specified person a proper officer may

Refund 80% → Except ITC provisionally accepted

Hold 20% → Shall be refunded after verification

10. Time limit to issue refund order:

Within 90 days from the date of application

11. In the following cases refund may be directly credited to applicants account:
    a. Refund of tax on goods and/or services exported out of India or used in goods and/or services exported out to India.
    b. Refund of unutilized input tax credit (SI 5)
    c. If burden is not passed to any other person
    d. Tax & interest borne by such other persons specified
12. When refund order is subject matter of an appeal or proceeding then refund may be withhold till such time as may be determine.
13. A taxable person is entitled to interest on amount of refund withheld if appeal is in favor of taxable person
14. No refund is allowed if amount of refund is less than Rs.1000/-

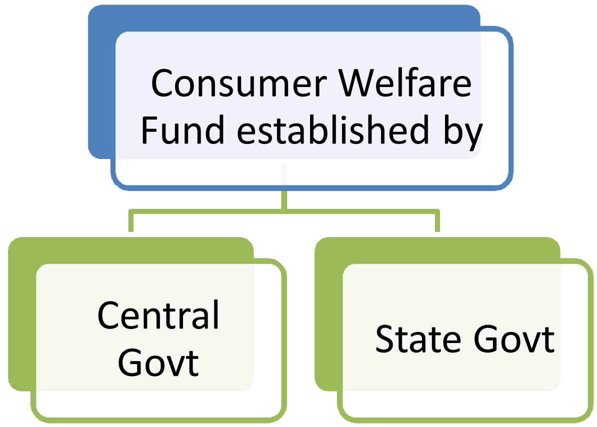
Section 39: Interest on delayed refund

1. **Rate of interest :** To be specified on the recommendations of GST Council
2. **Period :** Due Date of Refund **TO** Actual Date of Refund

Due Date of Refund → 3 months from date of refund application

Section 40: Consumer Welfare Fund

1. **Establishment of Fund**



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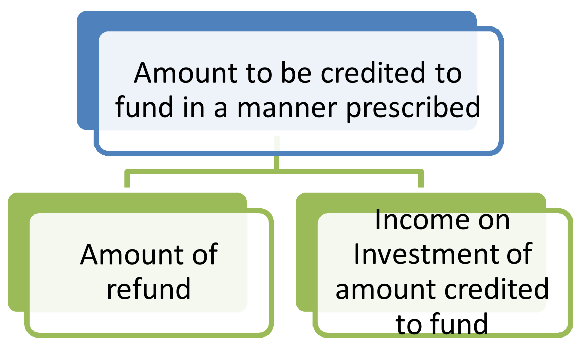


Section 41: Utilization of the fund

1. Amount credited to fund shall be used by Central Government/State Government for the welfare of consumers.
2. Central/State Government may specify the authority to maintain the fund with consultation of CAG.

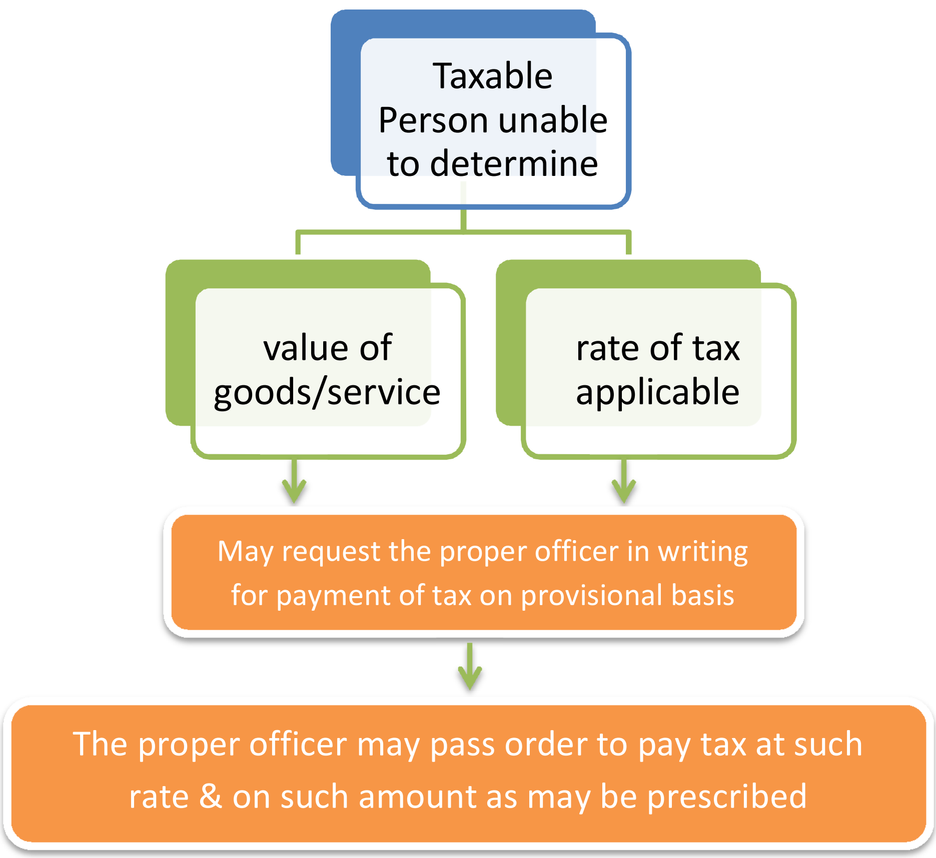
CHAPTER XII
ASSESSMENT

Section 44: Self-Assessment

1. Every taxable person shall self-assess taxes payable and furnish details in monthly return.
2. Inward Supply returned within six months from the date of invoice then tax payable on such return shall be equal to ITC availed on inward supply.

Section 44A: Provisional Assessment

1.



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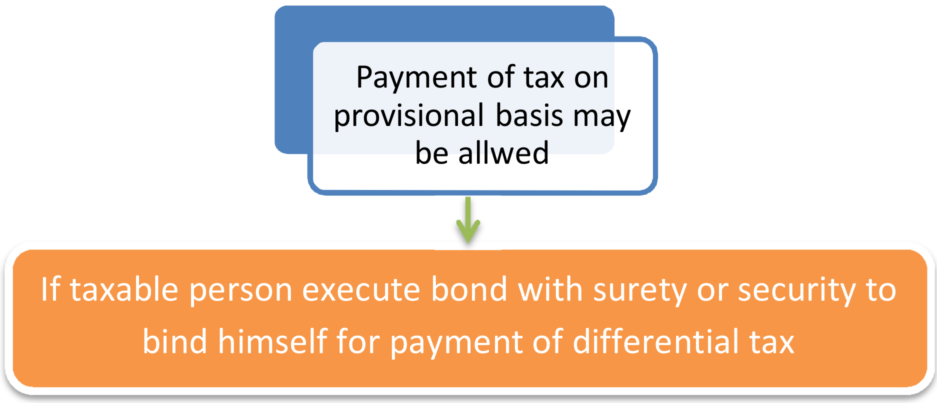
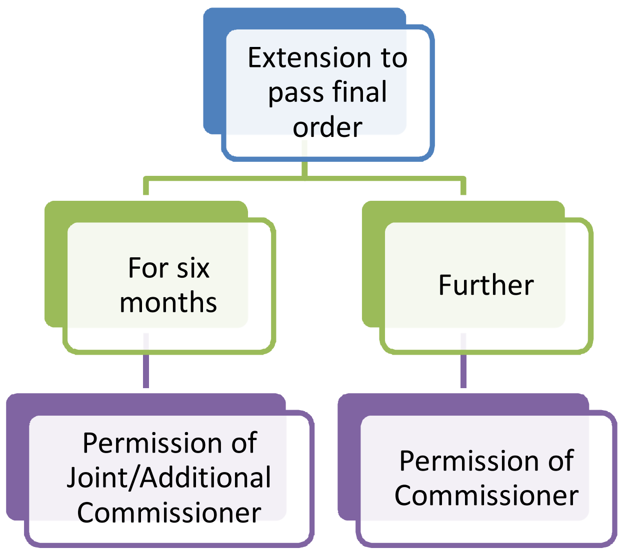


3. Time limit to pass final order:

Six months from the date of passing provisional assessment order



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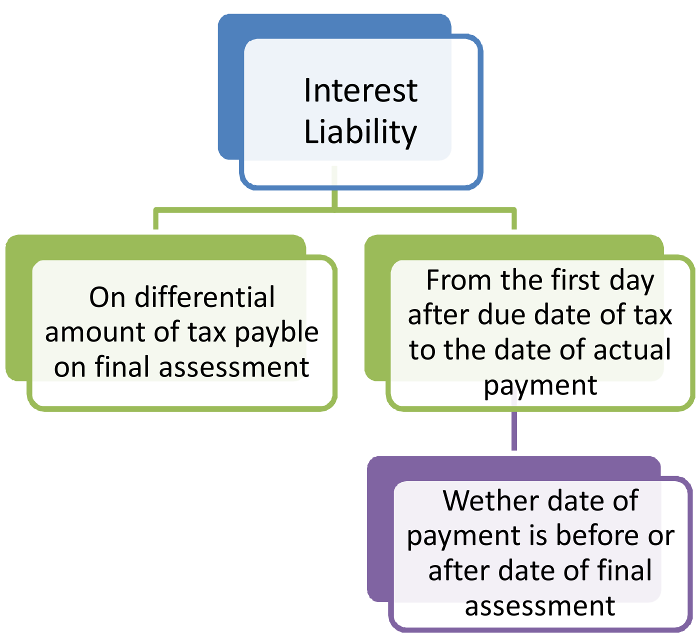
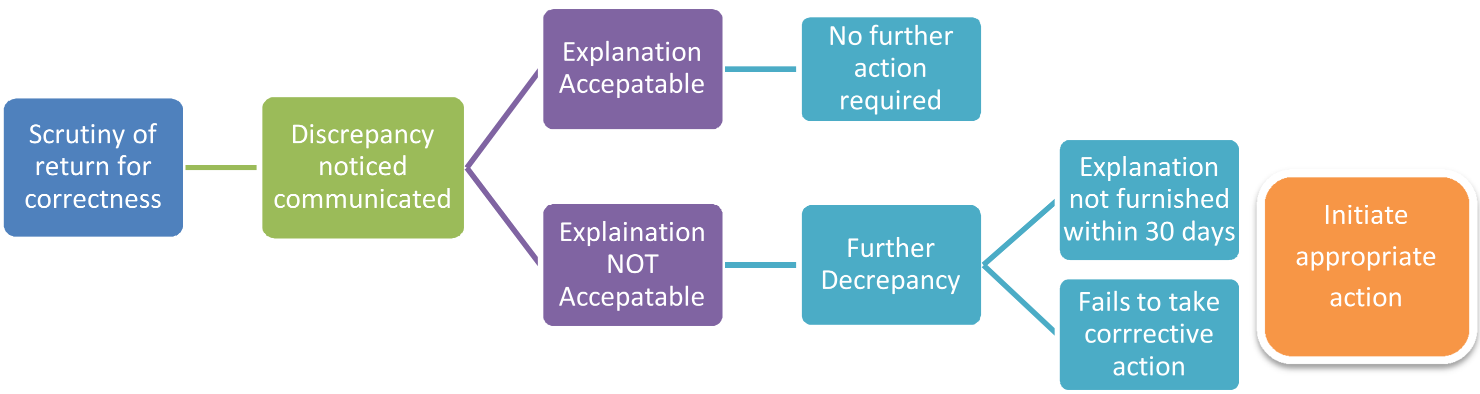
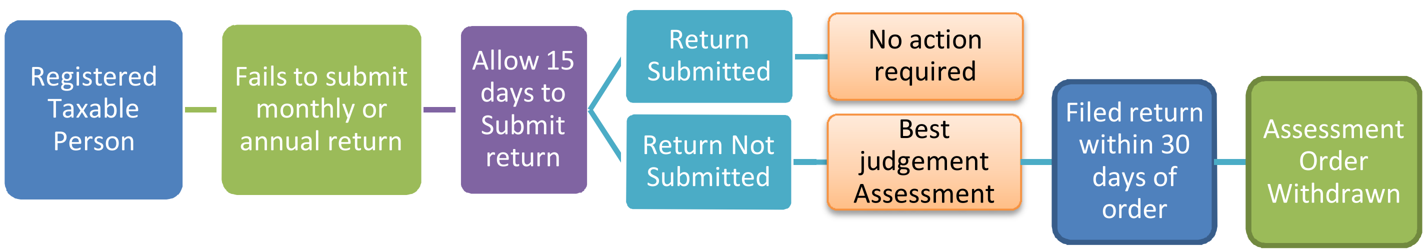


5. If taxable person is entitled to refund on final assessment then interest shall be paid on such refund as provided in section 39

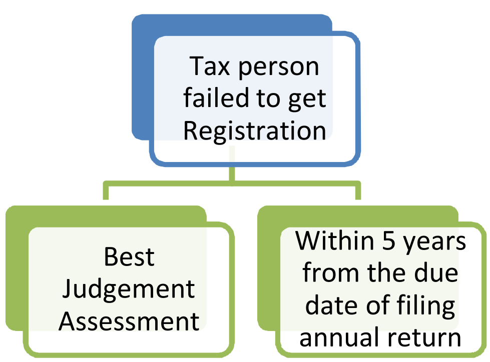
Section 45: Scrutiny of Returns



Section 46: Assessment of non-filers of returns

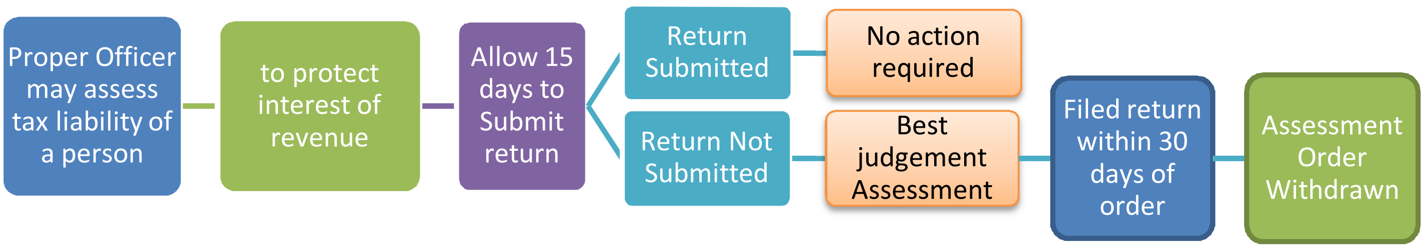


Section 47: Assessment of Non Registered Dealers



Condition: SCN shall be passed & a reasonable opportunity of being heard should be given.

Section 48: Summary Assessment in certain special cases

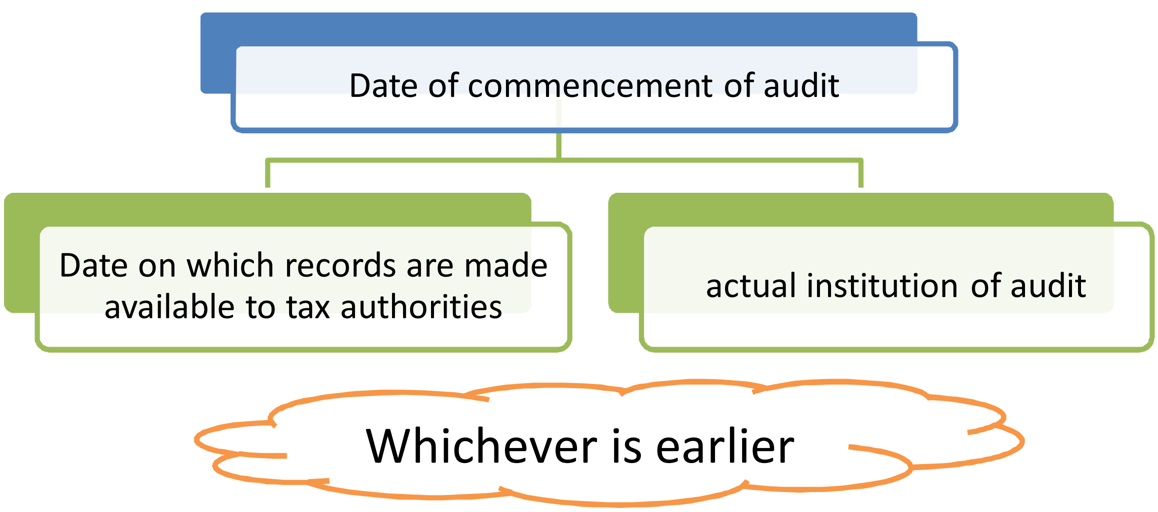


CHAPTER XIII

AUDIT

Section 49: Audit by Tax Authorities

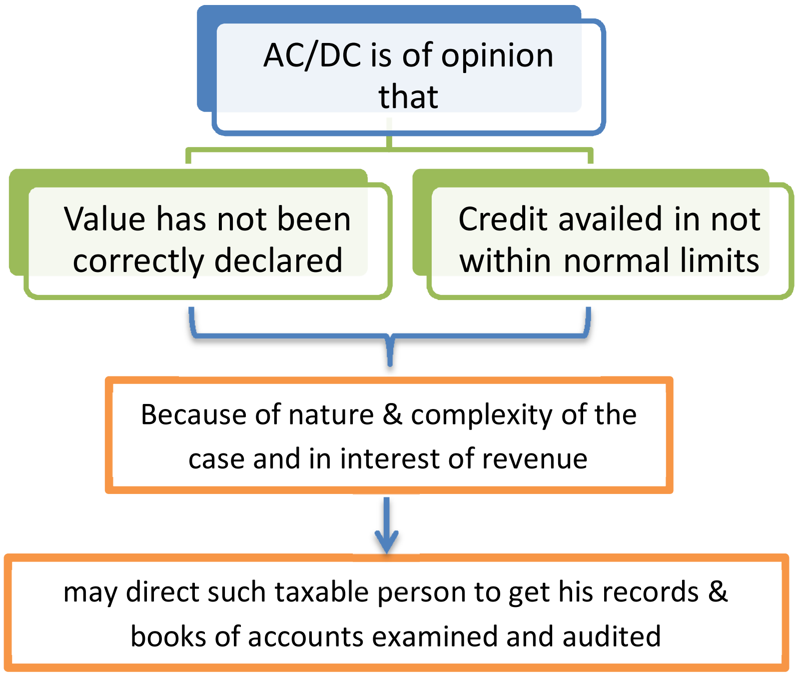
1. **Who will conduct audit?**
   Commissioner of CGST/SGST or any officer authorized by him
2. **Where?**
   At business place of assesse
3. **When?**
   At such frequency as may be prescribed
4. **Prior intimation to taxable person required?**
   Yes, at least before 15 days
5. **Time line for audit**
   Audit shall be completed within 3 months from the date of commencement of audit. However it may extend to six months also with the consent of commissioner.



6. **Responsibilities of taxable person**
   a. To afford necessary facility to verify books of accounts
   b. To furnish such information as require
   c. Assistance for timely completion of audit
7. **Auditors responsibilities**
   a. Communication of findings, taxable persons rights & obligations and reasons for the findings
   b. If there is revenue leakage initiation of action under Sec 51.

Section 50: Special Audit

1. Directions issued by Deputy/Assistant Commissioner based on:



2. **Who will conduct audit?**

   Chartered Accountant or Cost Accountant nominated by Commissioner.

3. **Time**

   Chartered Accountant or Cost Accountant nominated by Commissioner shall submit his report within 90 days to DC/AC.

   Extendable to further 90 days for material & sufficient reason with the approval of proper officer.

4. **Expenses of Audit**

   Expense of audit including fees of CA or CMA are determined & paid by Commissioner & such determination is final.

5. If there is revenue leakage, proper officer may initiate action under section 51.

CHAPTER XIV

DEMANDS & RECOVERY

Section 51: Determination of tax not paid or short paid or erroneously refunded

A] By any reason other than fraud or any willful misstatement or suppression of facts.

1. Issue of SCN stating that why he should not pay the amount specified in notice along with interest u/s 36 & penalty.

2. The proper officer may serve a statement containing details of tax not paid, short paid, erroneously refunded or input tax credit wrongly availed or utilized.

3. The service of such statement shall be deemed to be service of notice on such person.

4. The proper officer shall not issue notice or statement for tax, interest & penalty in respect of amount of tax already paid by a taxable person along with interest & inform the officer in writing about such payment.

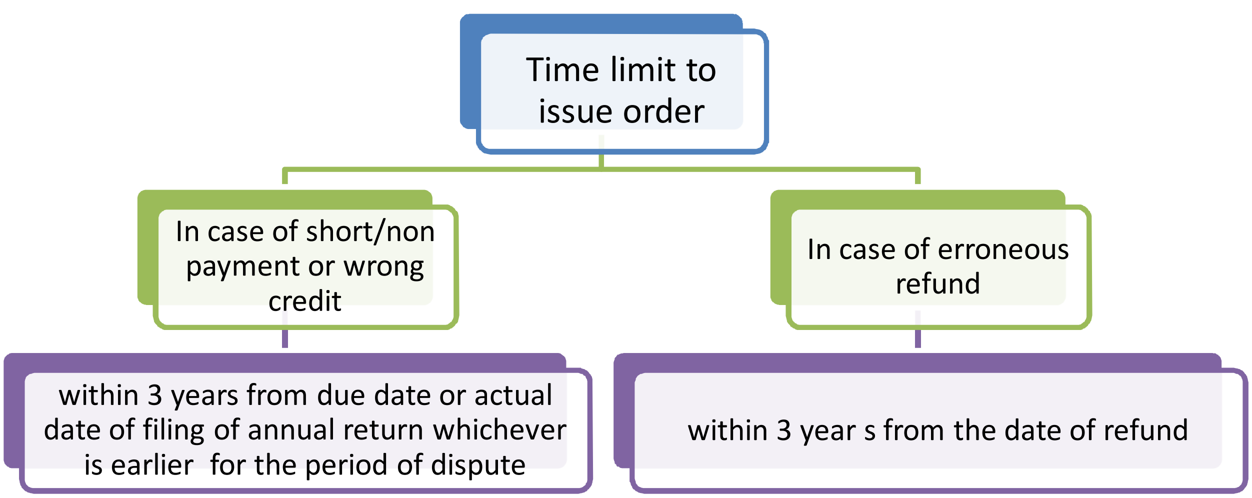
5. If amount of tax along with interest falls short in the opinion of proper officer then he shall proceed with issue of notice for short amount.

6. If taxable person paid amount demanded along with interest within 30 days from the date of issue of SCN then no penalty shall be payable & all proceedings deemed to be concluded.

7. Amount of Penalty = 10% of tax OR Rs.10000/-
(whichever is higher)

8. The proper officer shall determine tax, interest & penalty after considering representation made by taxable person.

9.



B] By reason of fraud or any willful misstatement or suppression of facts.

1. Issue of SCN stating that why he should not pay the amount specified in notice along with interest u/s 36 & penalty.

2. The proper officer may serve a statement containing details of tax not paid, short paid, erroneously refunded or input tax credit wrongly availed or utilized.

3. The service of such statement shall be deemed to be service of notice on such person.

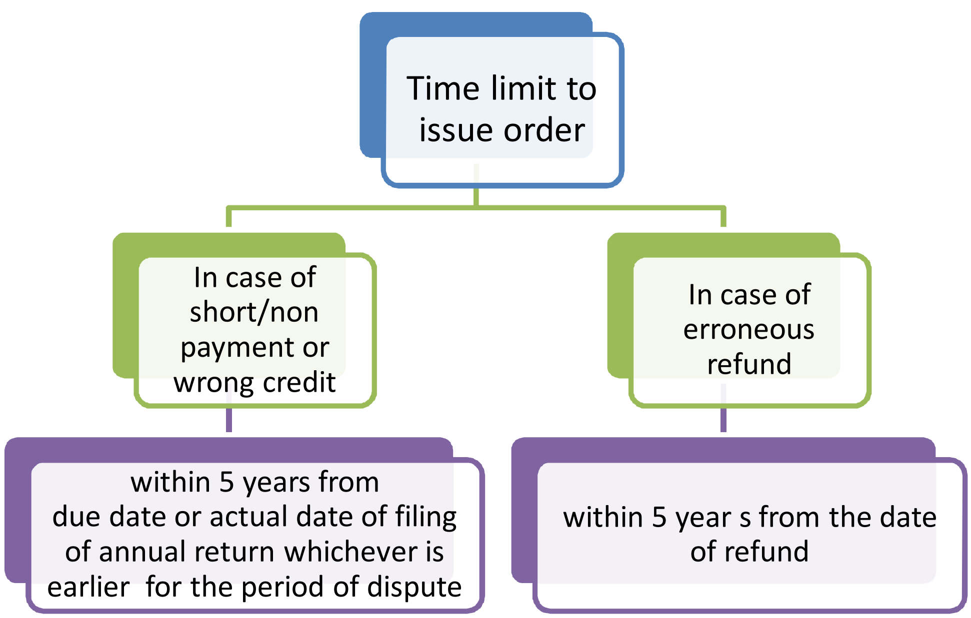
4. The proper officer shall not issue notice or statement for tax, interest & penalty in respect of amount of tax already paid by a taxable person along with interest & a penalty equivalent to 15% of tax amount and inform the officer in writing about such payment.

5. If amount of tax along with interest falls short in the opinion of proper officer then he shall proceed with issue of notice for short amount.

6. If taxable person paid amount demanded along with interest & penalty equivalent to 25% of tax amount within 30 days from the date of issue of SCN then all proceedings deemed to be concluded.

7. The proper officer shall determine tax, interest & penalty after considering representation made by taxable person.

8.



C] General Provisions relating to demand of tax

1. If the service of notice or issuance of order is stayed by Court or Tribunal then such stay period shall be excluded in computing the period of 3 years or 5 years.

2. If any Appellate Authority or Tribunal or Court concludes that the charges of fraud or any willful misstatement or suppression of facts under [B] are not sustainable then the proper officer shall initiate the proceedings deeming as if notice issued under [A].

3. An opportunity of personal hearing shall be granted on request on taxable person chargeable with tax or penalty or any adverse decision is contemplated against such person.

4. The proper officer shall for sufficient reason recorded in writing shown by a taxable person, grant time, extend and adjourn the hearing subject to maximum 3 times.

5. The proper officer shall set out relevant facts & the basis of his decisions in his order.

6. Amount of tax, interest & penalty shall not exceed the amount specified in the notice.

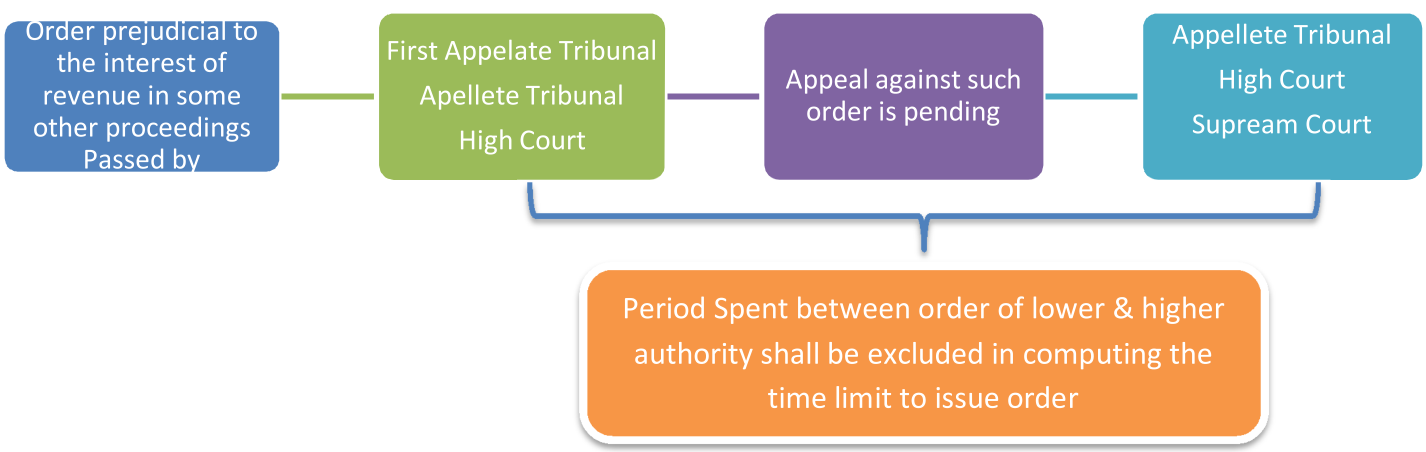
7. No demand shall be confirmed on the ground other than mentioned in the notice.

8. If Appellate Authority or Tribunal or Court modifies amount determined by proper officer then interest & penalty shall stand modified accordingly.

9. Interest on tax short paid or not paid shall be payable even if not specified in order determining tax liability.

10. The adjudication procedure shall deemed to be concluded if order not passed within time limit provided under [A] or [B].

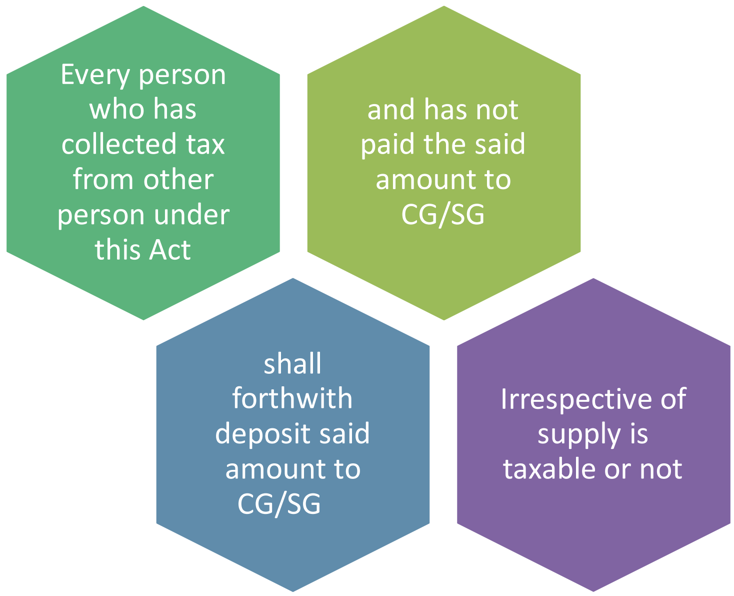
11.



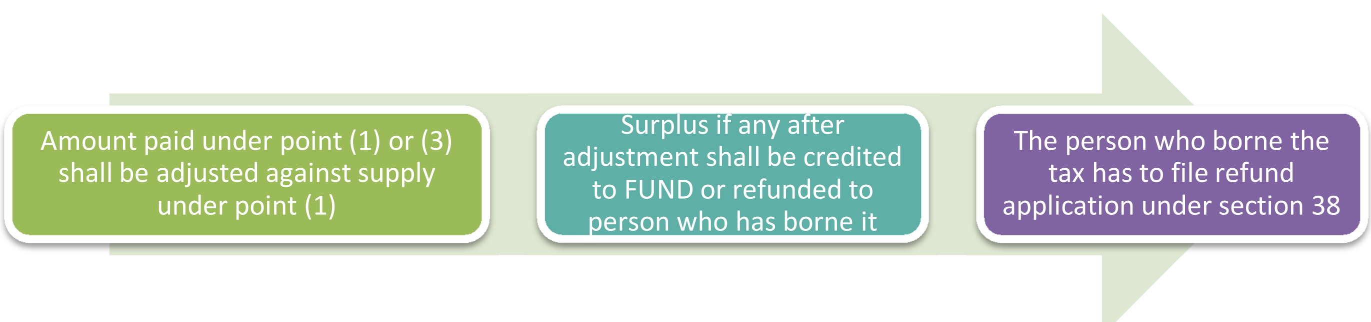
D. Provisions under [A], [B] & [C] shall apply *mutatis mutandis* for recovery of interest not paid, short paid or erroneously refunded.

Section 52: Tax collected but not deposited with the Central or a State Government

1.



2. Where amount required to be paid is not paid then proper officer may serve SCN stating that why he should not pay the amount specified in notice along equivalent penalty.
3. The proper officer shall determine tax, interest & penalty after considering representation made by taxable person.
4. Interest is payable under section 36 for a period from the date of collection to the date of payment.
5. An opportunity of personal hearing shall be granted on request on taxable person chargeable with tax or penalty or any adverse decision is contemplated against such person.
6. Limit to issue order → within 1 year from the date of issue of notice.
7. If the service of notice or issuance of order is stayed by Court or Tribunal then such stay period shall be excluded in computing the period of 1 year.
8. The proper officer shall set out relevant facts & the basis of his decisions in his order.
9.



Section 53: Tax wrongfully collected and deposited with the Central or a State Government

A taxable person who has paid

CGST & SGST wrongfully

by considering a transaction as intra state

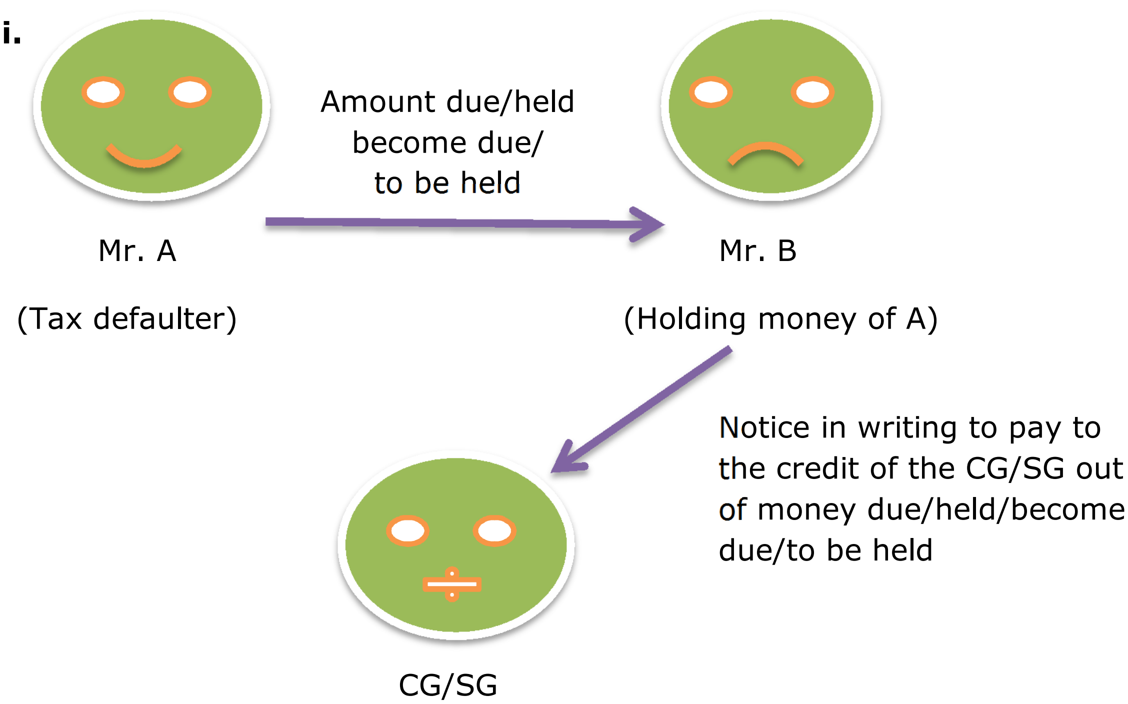
but subsequently it is considered as interstate

then

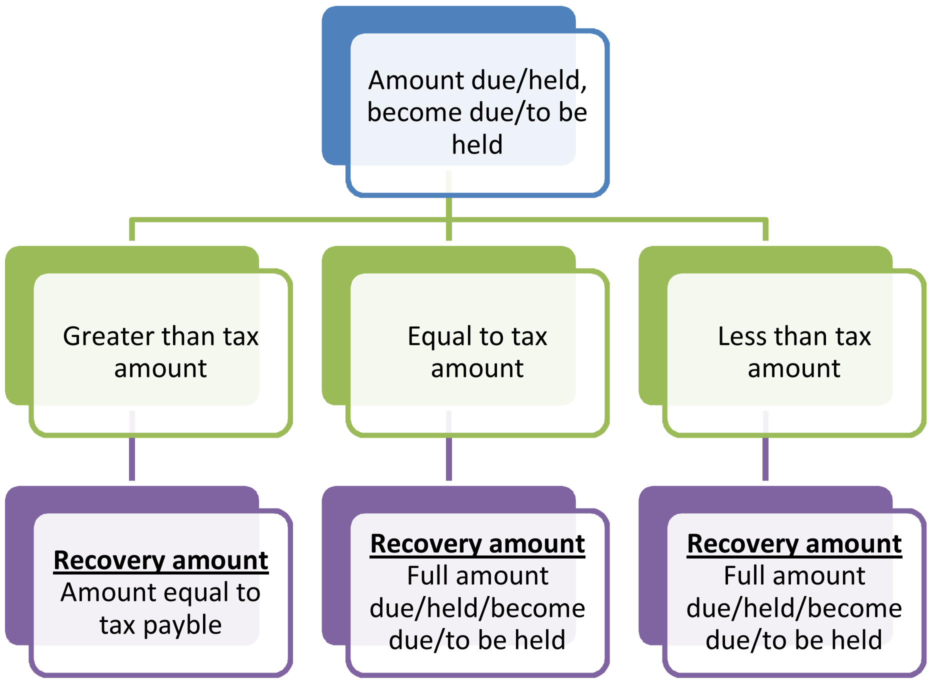
a taxable person is allowed to take amount of CGST & SGST so paid as refund u/s 38

Section 54: Recovery of tax

1. **Modes for recovery of tax due but not paid by a taxable person to the credit of Central or State government**
    - **a.** The proper officer may deduct or may require other specified officer to deduct amount payable by tax payer from any money owing to such person.
    - **b.** The proper officer may recover or may require other specified officer to deduct amount payable by tax payer from any money owing to such person.
    - **c.**
        - **i.**



ii.



TIME LIMIT FOR PAYMENT

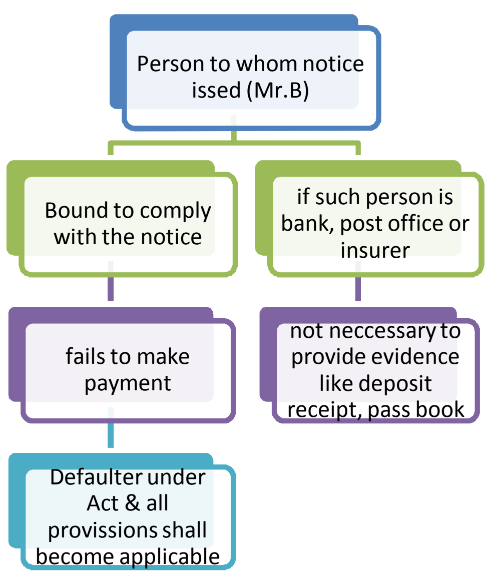
Date on which amount due/held/become due/to be held

Or

Date mentioned in notice

Whichever is later

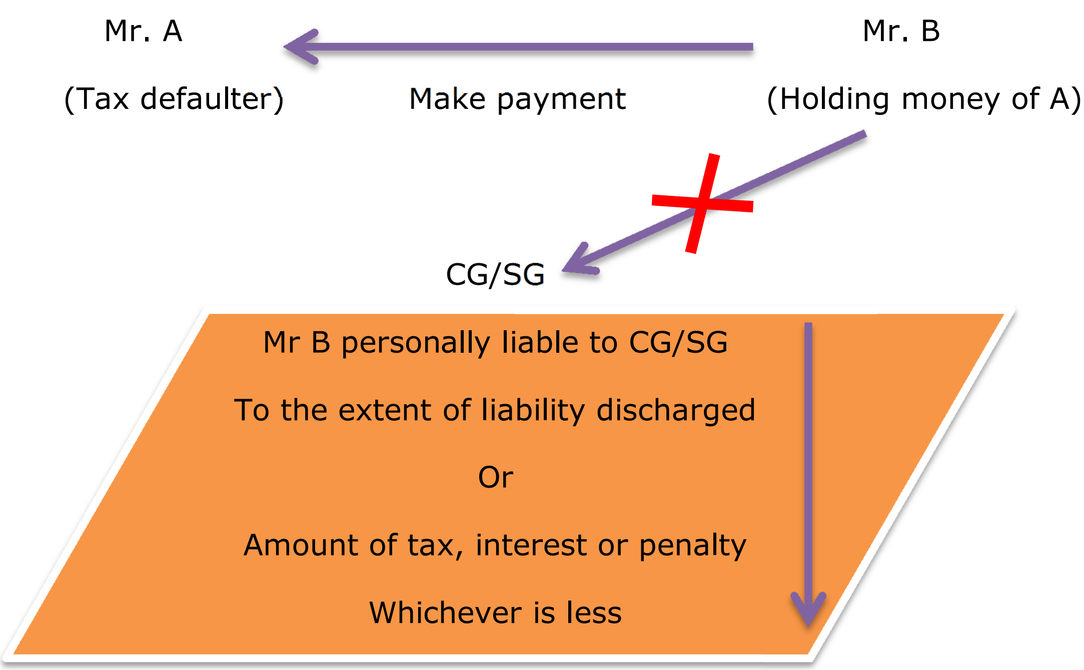
iii.



iv. Proper officer at any time or from time to time amend or revoke such notice or extend the time for making payment.

v. Person making payment in compliance with notice shall be deemed to constitute a good and sufficient discharge of liability of defaulter.

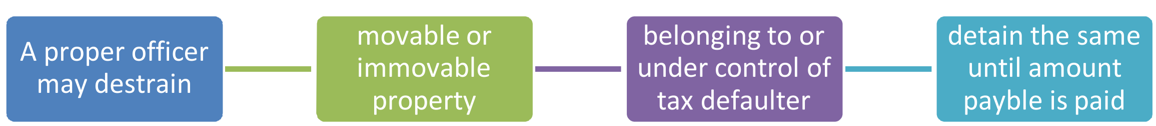
vi.



vii. A person to whom notice is served proves to the satisfaction of proper officer that no money due/held/become due/ to be held to/on behalf of tax defaulter then no liability under this section.

d. Subject to authorization from competitive authority & rules made in this behalf

i.



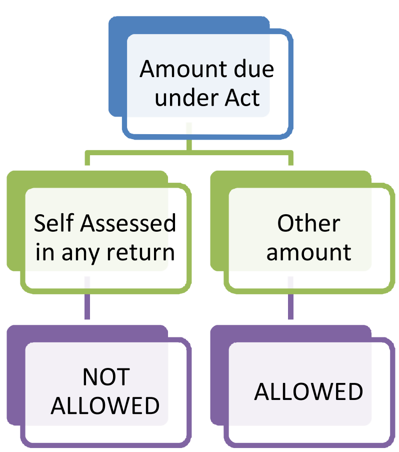
ii.

e.

f.

2. Where amount of tax, interest or penalty is payable to the credit of CG, then officer of SGST during the course of recovery of SGST arrears may recover such amount & credited to the account of CG.
3. Where amount of tax, interest or penalty is payable to the credit of SG, then officer of CGST during the course of recovery of CGST arrears may recover such amount & credited to the account of SG.

Section 55: Payment of Tax and other amount in installments



- Authority : Commissioner/Chief Commissioner
- No of installments : Maximum 24 (monthly) subject to interest u/s 36
- In case of default : Whole balance amount becomes due & payable and recovery shall be done without further notice.

Section 56: Transfer of property to be void in certain case

Mr. A (from whom tax become due) → ***transfer property to defrauding Govt revenue** → **Mr.B**

SUCH TRANSFER IS VOID

Exceptions:

a. Transfer is made for adequate consideration
b. Transfer is made without notice of tax or other sum payable
c. With prior permission of proper officer

*Transfer means transfer by way of sale, mortgage, exchange or any other mode.

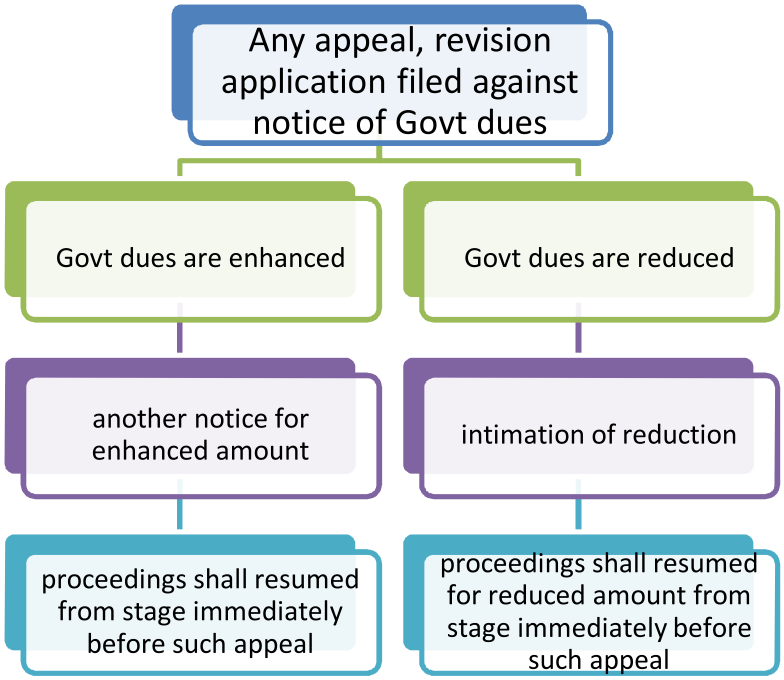
Section 57: Tax to be first charge on property

Tax, interest & penalty payable by taxable person or any other person shall be a first charge on the property of such person.

Section 58: Provisional attachment to protect revenue in certain cases

1. During pendency of proceedings under section 46, 47, 48 or 51, the commissioner for the purpose of protecting revenue by order in writing attach provisionally any property belonging to taxable person.
2. Such provisional attachment shall cease after expiry one year from date of provisional attachment order.

Section 59: Continuation of certain recovery proceedings



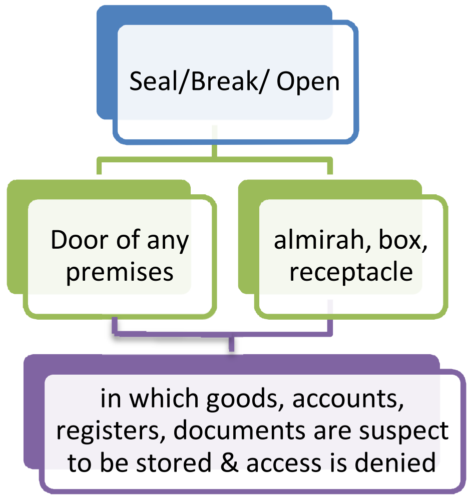
CHAPTER- XV

INSPECTION, SEARCH, SEIZURE AND ARREST

Section 60: Power of inspection, search & seizure

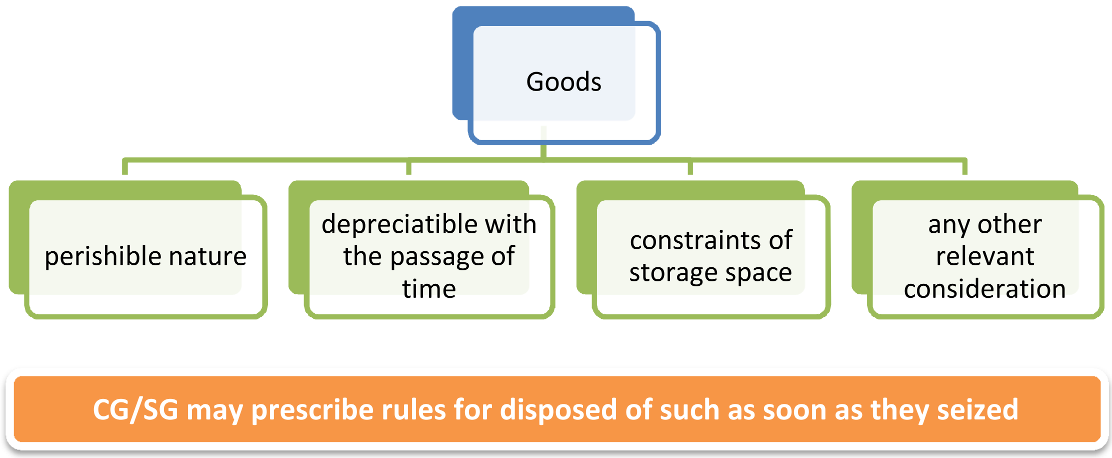
1. Officer of CGST/SGST (not below rank of Joint Commissioner) may authorize any other officer to inspect any places of business of a taxable person if has reasons to believe that a taxable person-
   - **a.** Has suppressed any transaction related to supply of goods and/or service
   - **b.** Has suppressed stock of goods in hand
   - **c.** Has claimed excess ITC
   - **d.** Has indulged in contravention of any of provision of the Act or rules to evade tax.
2.

3. **Powers of officer:**



4. A person from whose custody documents are seized shall be entitled to make copies thereof or take extracts therefrom in the presence of proper officer.
5. **Time limit for giving notice of seizure:** within 60 days from the date of seizure **Extension:** Further 60 days at a time subject to maximum six months **Failed to issue notice:** the goods shall be returned to the person from whose possession they were seized.

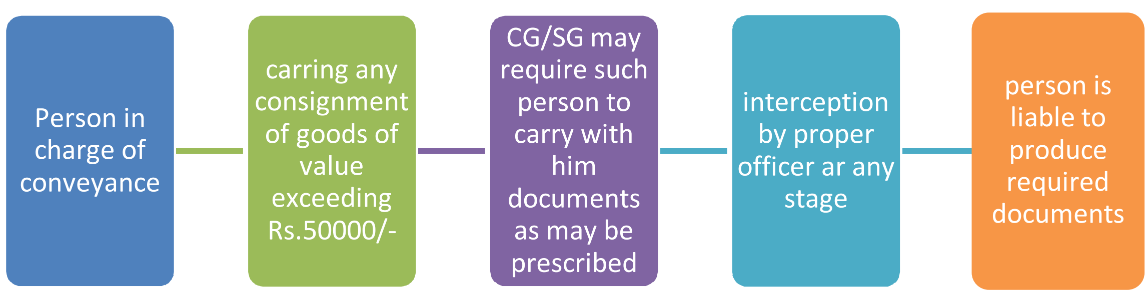
6.



7. Proper officer shall prepare an inventory of goods specified for disposal after seizure

8. Provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall apply here.

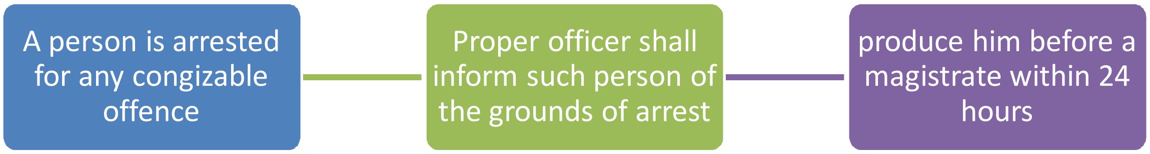
Section 61: Inspection of goods in movement



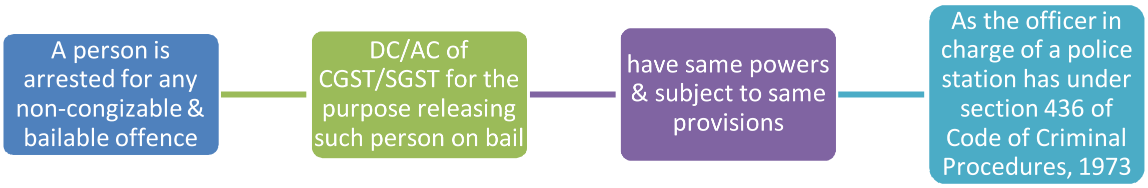
Section 62: Power to arrest

1.

2.



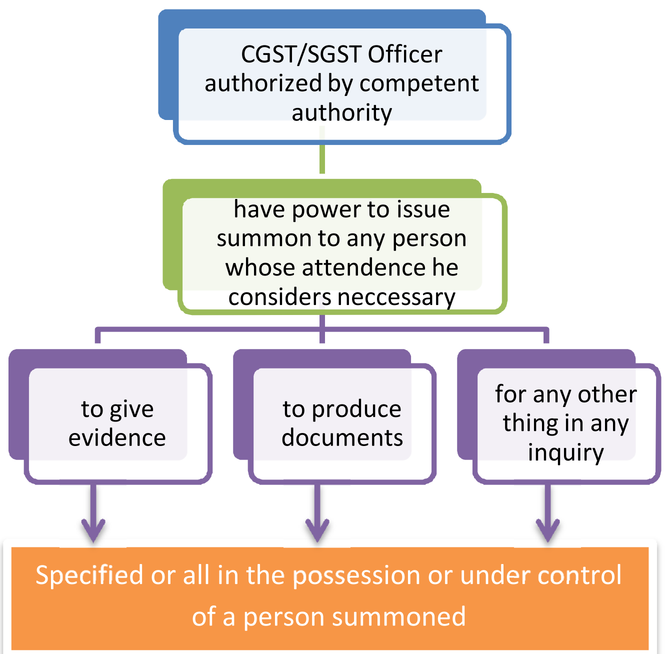
3.



4. All arrest under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

Section 63: Power to summon persons to give evidence and produce documents

1.

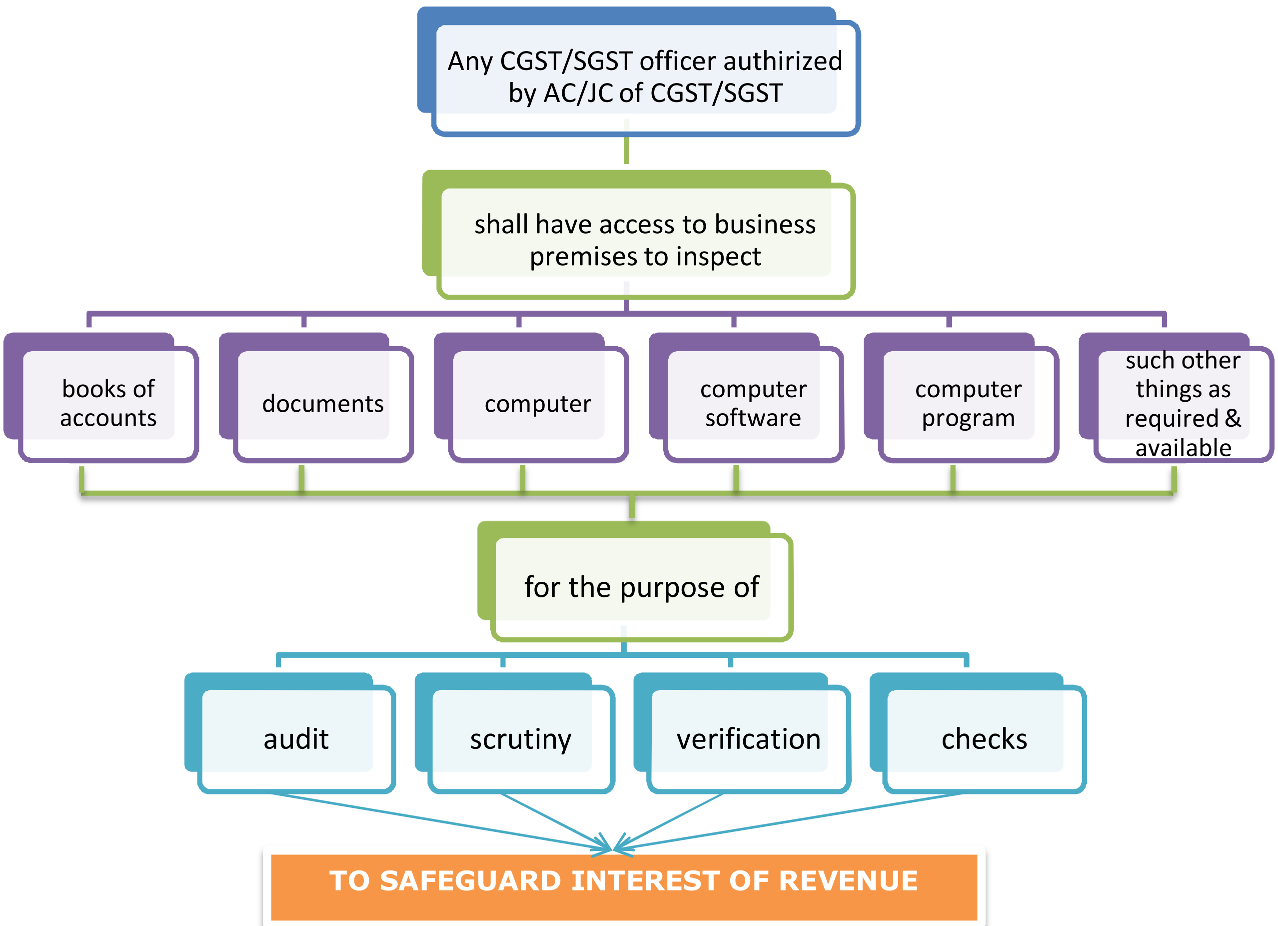


2. Person summoned shall be bound to attend in person or by authorized representative & to state truth upon the respective subject. Also required to make statements & provide documents as may be required.

3. Every such inquiry shall deemed to be a "Judicial Proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and also the exemptions under sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance.

Section 64: Access to business premises

1.



2. Every person in charge of business premised on demand, make available to authorized person under (1) or the audit party deputed by AC/JC of CGST/SGST/CAG or Cost Accountant or Chartered Accountant nominated under section 50
   a. the records as prepared or maintained by the registered taxable person and declared to the CGST/SGST officer
   b. trail balance or its equivalent
   c. Statements of annual financial accounts, duly audited, wherever required
   d. cost audit report, if any, under section 148 of the Companies Act, 2013
   e. the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961
   f. any other relevant record

   for the purpose of scrutiny within a reasonable time not exceeding 15 working days from the day when such demand is made or such further period as may be allowed.

Section 65: Officers required to assist CGST/SGST officers

1. Following officers are empowered & required to assist CGST/SGST officer in the execution of this Act
    a. All Police officers
    b. All Customs officers
    c. SG/CG officers engaged in collection of GST
    d. SG/CG officers engaged in collection of land revenue
    e. All village officers
2. CG/SG may by notification empower & require other class of officers to assist CGST/SGST officers in execution of this Act.

CHAPTER – XVI
OFFENCES AND PENALTIES

Section 66: Offences and penalties

1. Acts of taxable person which are offence & penalty shall be levied for the same.
   a. Supply of goods/services without issue of invoice
   b. Issue of incorrect/false invoice for supply of goods/services
   c. Issue invoice or bill without supply of goods/services
   d. Collect tax but fails to pay the same to appropriate Government beyond a period of 3 months from the due date
   e. Collect tax in contravention of the provisions of the Act but fails to pay the same to appropriate Government beyond a period of 3 months from the due date
   f. Fail to deduct/short deduct amount of TDS
   g. Fails to pay the TDS to appropriate Government beyond a period of 3 months from the due date
   h. Fail to collect/short collect amount of TCS by E commerce company
   i. Fails to pay the TCS to appropriate Government beyond a period of 3 months from the due date by e commerce company
   j. takes/utilizes input tax credit without actual receipt of goods/services either fully or partially
   k. fraudulently obtains refund of any CGST/SGST
   l. takes or distributes input tax credit in violation of section 17 by ISD
   m. falsifies/ substitutes/ produce fake accounts or documents, furnish false information or return with an intension to evade tax due
   n. liable to register but fails to obtain register
   o. furnish any false information w.r.t. mandatory particulars on registration or thereafter
   p. obstructs or prevent any officer in discharge of his duties
   q. transports any taxable goods without the cover of documents
   r. suppresses his turnover leading to evasion of tax
   s. fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act & rules thereunder
   t. fails to furnish information and/or documents called for by a CGST/SGST officer
   u. furnish false information and/or documents during proceedings under this Act
   v. supplies, transports or stores any goods which he has reason to believe are liable to confiscation under this Act
   w. issues any invoice or document by using the identification number of another taxable person
   x. tampers with, or destroys any material evidence; disposes off or tampers with any goods that have been detained, seized, or attached

Quantum of Penalty:

Rs.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 input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, as the case may be

whichever is higher

2. Penalty for a taxable person who repeatedly makes short payment

Rs.10000/-
Or
10% of tax short paid

Meaning of repeatedly: there were short payments in three returns during any six consecutive tax periods.

3. Any person who—

a. Aids or abets any above offence
b. Acquires possession of goods or concern 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
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 reason to believe are in contravention of any provisions of this Act or the rules made thereunder
d. fails to appear before the CGST/SGST officer, when issued with a summon for appearance to give evidence or produce a document in an enquiry
e. 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

shall be liable for a penalty of Rs.25000/-

Section 67: General Penalty

Penalty for contravening provisions of Act or any rules thereunder for which no specific penalty is provided then,

General Penalty =< Rs.25000/-

Section 68: General disciplines related to penalty

1. **No penalty → Minor breaches of tax regulation**

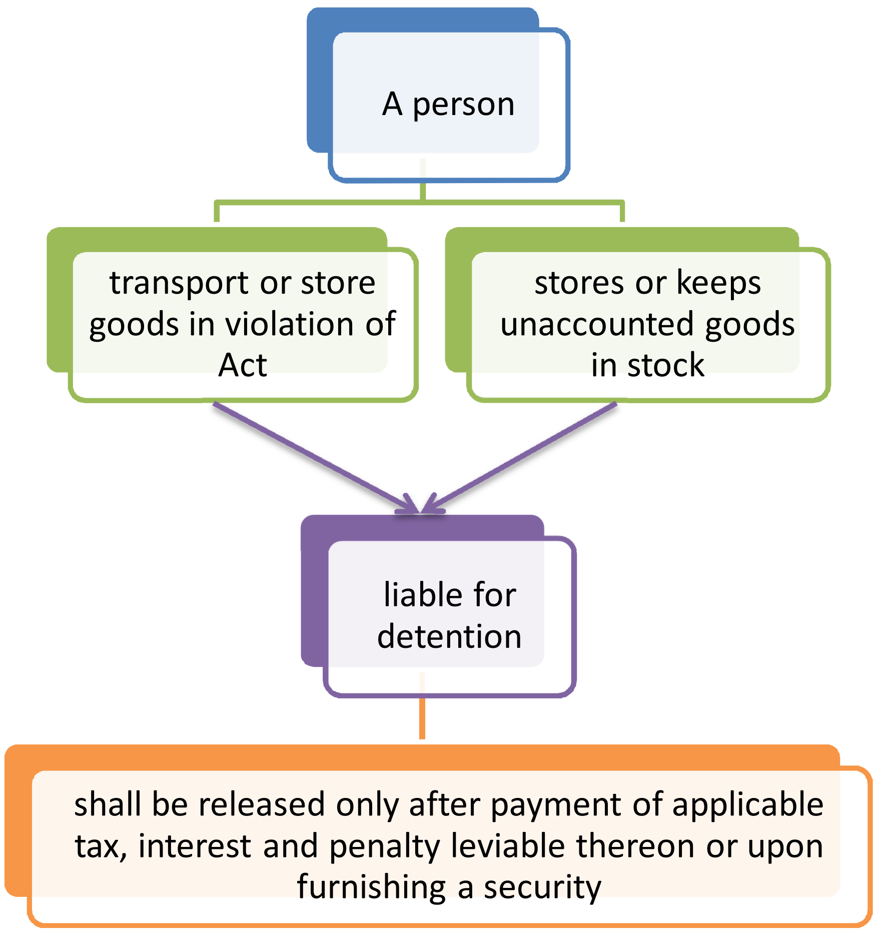
i.e. No penalty for omission or mistake in documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning

a. Minor Breach → Amount of tax involved is less than Rs.5000/-
b. omission or mistake in documentation which is easily rectifiable → an error apparent on record

2. Penalty impose shall depend upon:
   a. Facts & circumstances of case
   b. degree and severity of the breach
3. No penalty shall be imposed without SCN & without giving opportunity of being heard.
4. Explanation for imposing penalty shall be provided by tax authority to a person on whom penalty is imposed.
5. A person voluntarily disclosed → to tax authority→ circumstances of breach of law→ prior to discovery by tax authority → tax authority may consider this fact as a potential mitigating factor
6. Provisions of this section not applicable in the cases where penalty is fixed (either in amount or in percentage) in the Act.

Section 69: Detention of goods & conveyance and levy of penalty

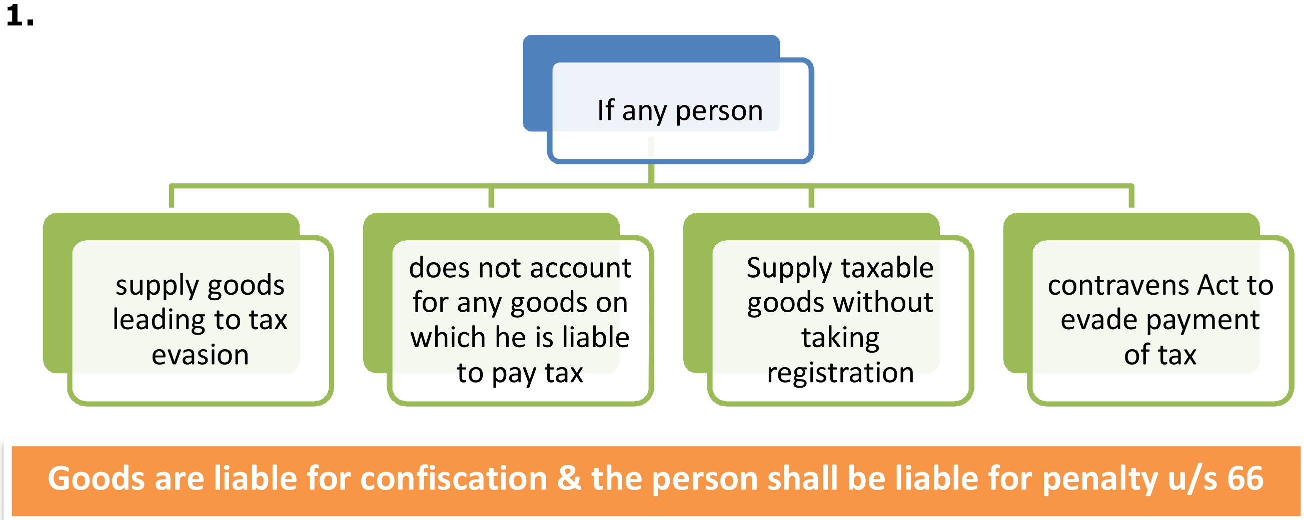
1.



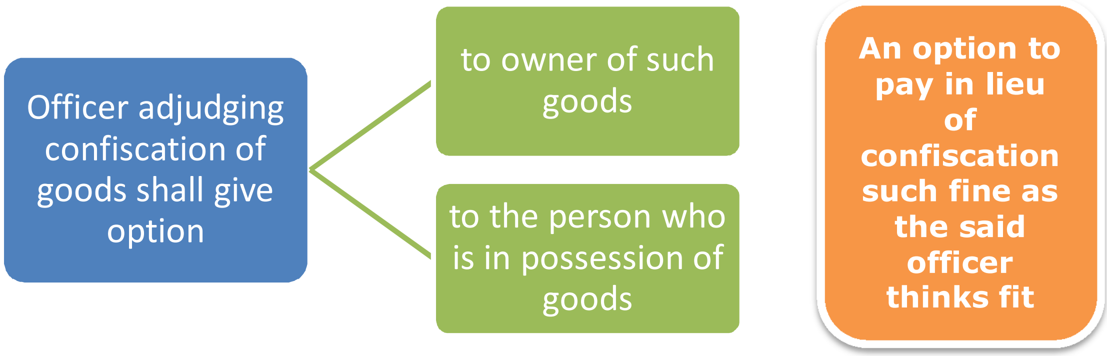
2. No penalty shall be levied without issue of SCN & giving opportunity of being heard.

Section 70. Confiscation of goods and levy of penalty

1.



2.

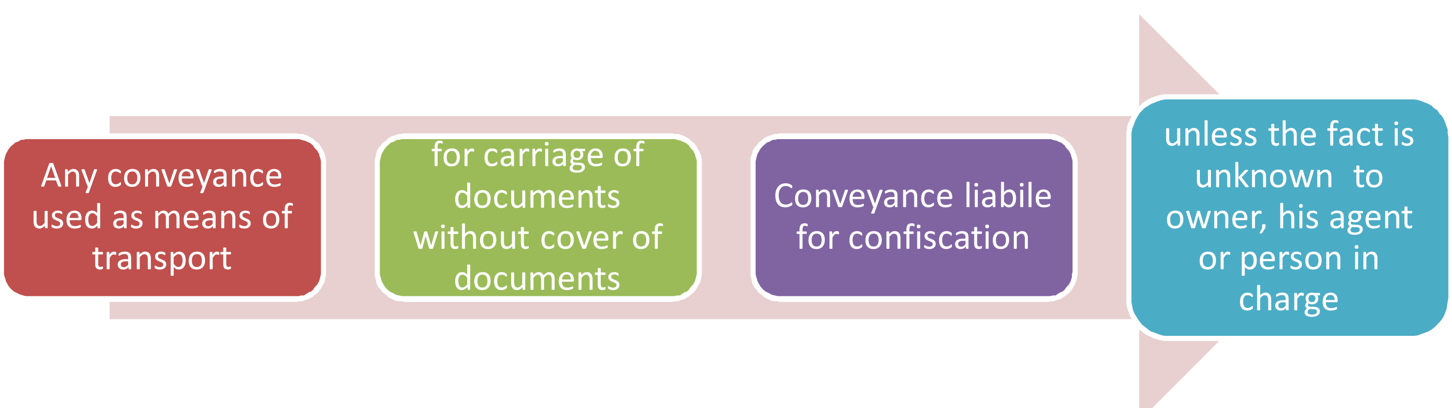


Amount of penalty =< Market value of goods confiscated less tax

3. In addition to penalty, a person shall be liable to any tax and charges payable in respect of such goods.
4. No confiscation → without issuance of SCN & opportunity of being heard
5. After confiscation of goods → title of goods vest with appropriate Govt
6. Officer adjudging confiscation → shall take & hold possession of confiscated goods
Every Police Officer → on requisition shall assist him in taking & holding possession.

Section 71: Confiscation of conveyances

1.



2. Penalty in lieu of confiscation = Tax payable on goods being transported

Section 72: Confiscation or penalty not to interfere with other punishments

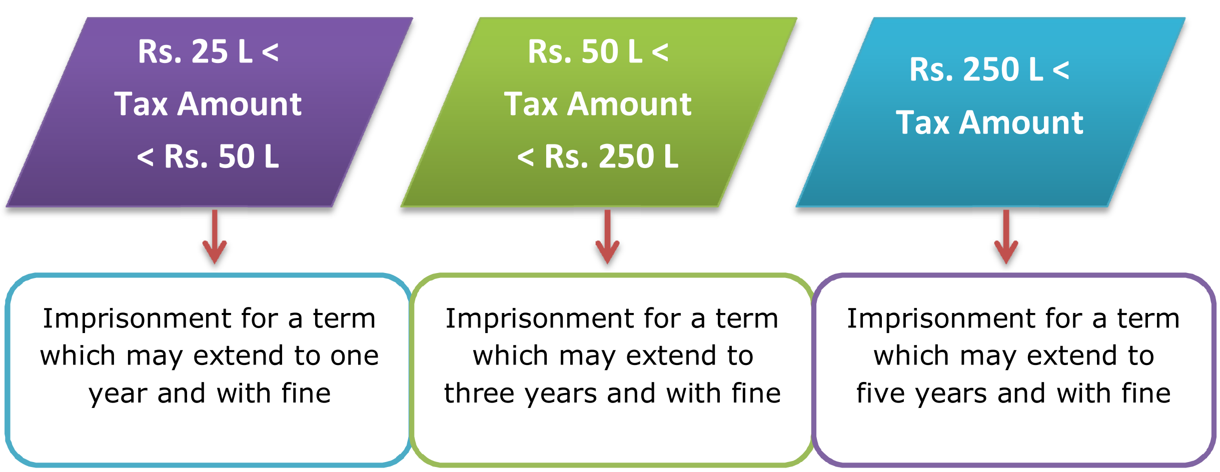
No Confiscation → If it prevents the infliction of any other punishment to which the person affected thereby is liable

CHAPTER – XVII
PROSECUTION AND COMPOUNDING OF OFFENCES

Section 73: Prosecution

1. Whoever commits the following offences namely-
   a. Supply of goods/services without issue of invoice
   b. Issue of incorrect/false invoice for supply of goods/services
   c. Issue invoice or bill without supply of goods/services
   d. Collect tax but fails to pay the same to appropriate Government beyond a period of 3 months from the due date
   e. Collect tax in contravention of the provisions of the Act but fails to pay the same to appropriate Government beyond a period of 3 months from the due date
   f. takes/utilizes input tax credit without actual receipt of goods/services either fully or partially
   g. fraudulently obtains refund of any CGST/SGST
   h. falsifies/ substitutes/ produce fake accounts or documents, furnish false information or return with an intension to evade tax due
   i. obstructs or prevent any officer in discharge of his duties
   j. supplies, transports or stores any goods which he has reason to believe are liable to confiscation under this Act
   k. receive or concerned with or deals with supply of taxable goods which he knows or reasons to believe are in contravention of provision of Act & rules made thereunder
   l. Fails to supply or supply false information which he requires to provide under the Act or rules made thereunder.
   m. Attempt to commit or abets the commission of any above offence

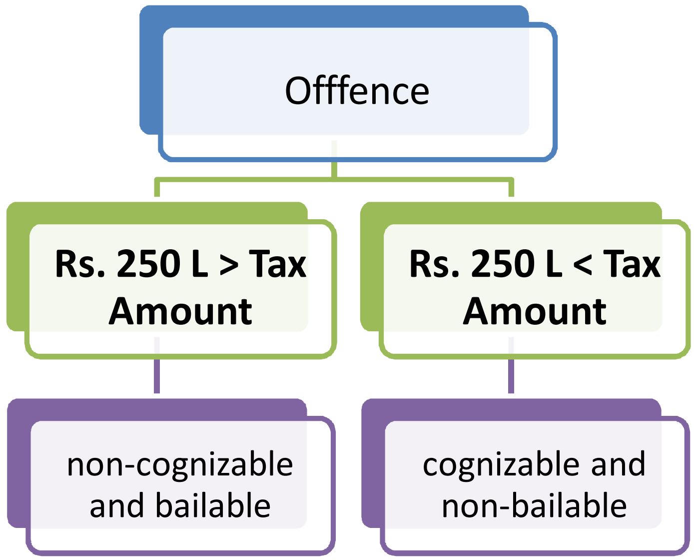
Shall be punishable



2. If any person convicted an offence again then, for second & every subsequent offence punishable with imprisonment for a term that may extend to five years and with fine.

In the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, the imprisonment referred above shall not be for a period less than six months

3.



4. A person shall not be prosecuted except with the previous sanction of the designated authority

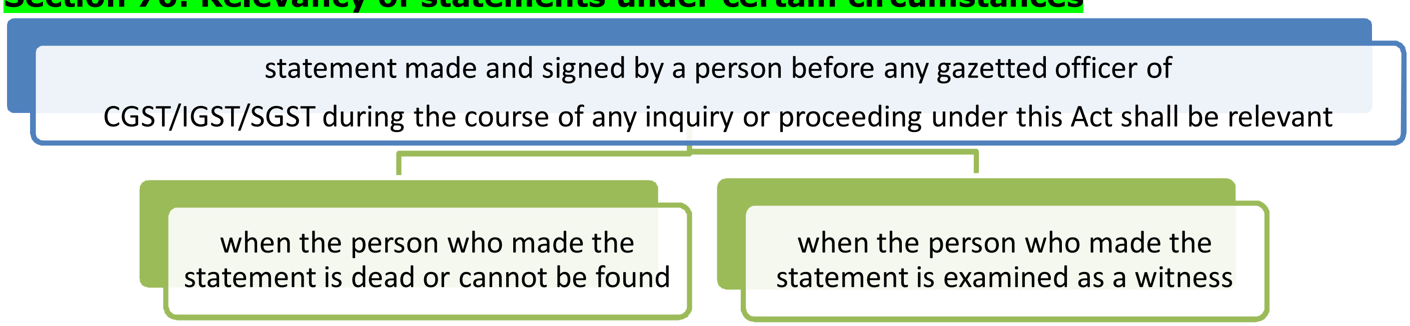
Section 74: Cognizance of offences

No Court shall take cognizance of any offence punishable except with the previous sanction of the designated authority, and no Court inferior to that of a Magistrate of the First Class, shall try any such offence.

Section 75: Presumption of culpable mental state

In any prosecution under the Act, the court shall presume existence of culpable mental state. It is responsibility of accused to prove that he had no such mental state.

Section 76: Relevancy of statements under certain circumstances



Section 77: Offences by Companies and certain other persons

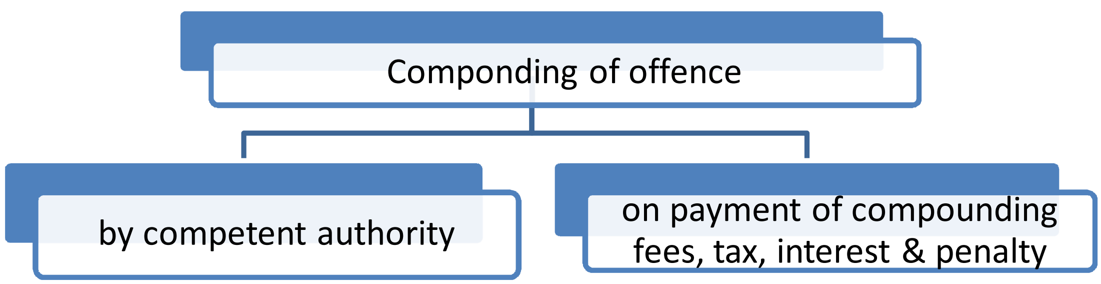
Offence by	Person deemed to be guilty
1. Company	a. Person in charge & responsible for company for the conduct of business b. company
2. Company with the consent/ connivance/ negligence of any director/ manager/ secretary or other officer	a. Such director/ manager/ secretary or other officer
3. Partnership Firm or LLP	a. Partners
4. HUF	a. Karta
5. Trust	a. Managing Trustee

Notes:

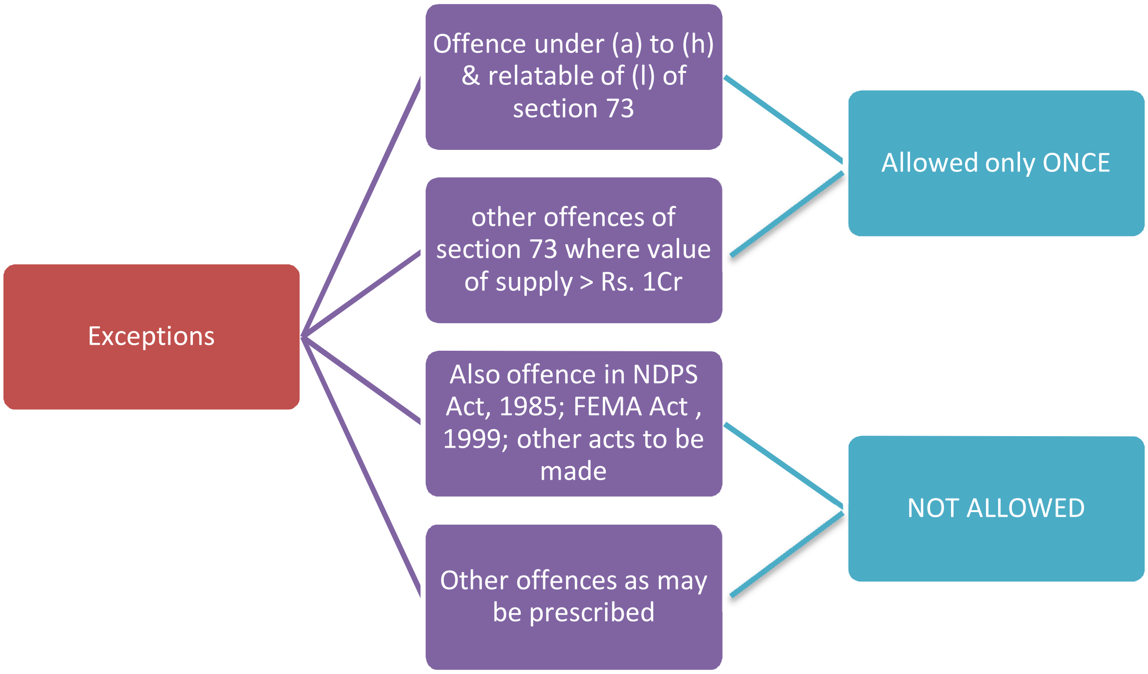
1. If offence is done by company, partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust with the consent/ connivance/ negligence of any director/ manager/ secretary or other officer then such director/ manager/ secretary or other officer is deemed to be guilty.
2. Person shall not deemed to be guilty if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Section 78: Compounding of Offence

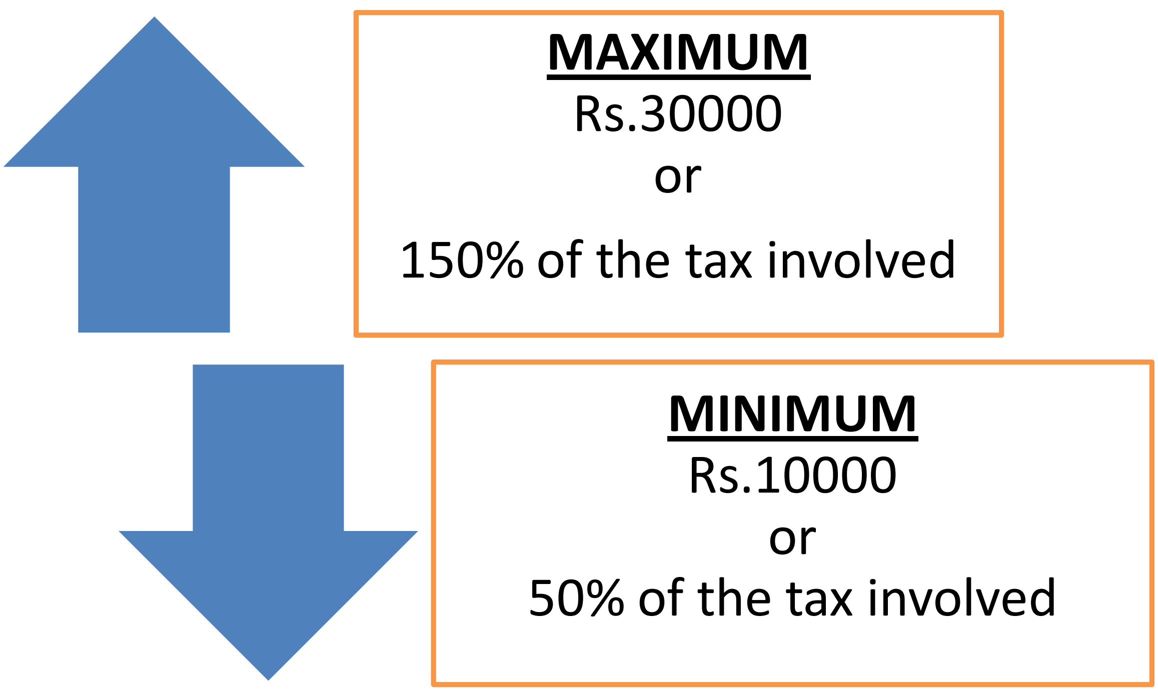
1.



2.



3. Limit of amount for compounding of offence



4. After compounding → no further proceedings shall be initiated → against the accused person → in respect of the same offence