II Shri Ganpatay Namah II
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FINAL – Nov 2020

[As per Revised Syllabus – Old & New Scheme]

GST (Vol 2) & Customs

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Law stated in this book is as amended upto 30th April, 2020

Preface

From "Indirect taxes" to "Indirect tax" – GST has been a paradigm shift in the field of Taxation. Indirect tax is often thought as one of the core branches of Taxation – specifically, after introduction of GST.

The current trend of evaluating the skills of the examinees is changing from theory - oriented questions to objective / scenario type questions, which tries to gauge the analytical and conceptual skills of the examinees.

One of the first things that attract everyone's attention is the excellent presentation in a clear logical and concise manner involving tabular summaries, charts. The present work is an extract of the knowledge gained by the experience of successful classroom teaching of this subject with utmost devotion. Students will find it highly useful as a comprehensive summary along with question manual. The objective of this book is to provide a fine balance between analytical abilities and quantitative skills. Simple language, systematic introduction of concepts, variety of solved problems and easy to grasp charts are some of the features of this book.

Your approach towards this book

You should first read the summary and the charts associated therewith and mark those charts which are important for you on the last day for revision.
Then, you should try and solve the questions (BEFORE reading the solutions). Mark those questions in which you make error.
It is also advisable to have an ABC approach while you are solving questions ["A" being easiest and "C" being toughest].
Re-do all "C" based questions in your revision and on last day.

Your approach towards studies

It is advisable that you refer Study Module and Bare Act before reading this book. This book is not a replacement for Study Module / Bare Act.
Students should study & prepare for the worst so that worse looks easy. Remember :: Success is sweet, but the secret is sweat.

Any suggestions towards further improvement of this book will be grateful acknowledged and highly appreciated.
Do connect with me on **+91-9664891716** for any queries.

I wish the students all the best !!

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हनुमान चालीसा

॥ दोहा ॥

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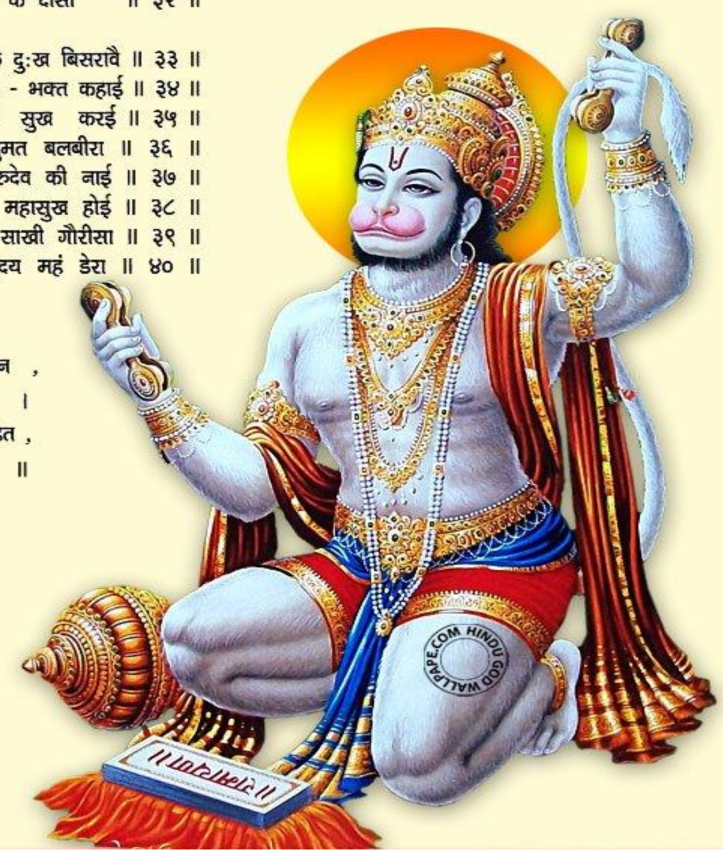
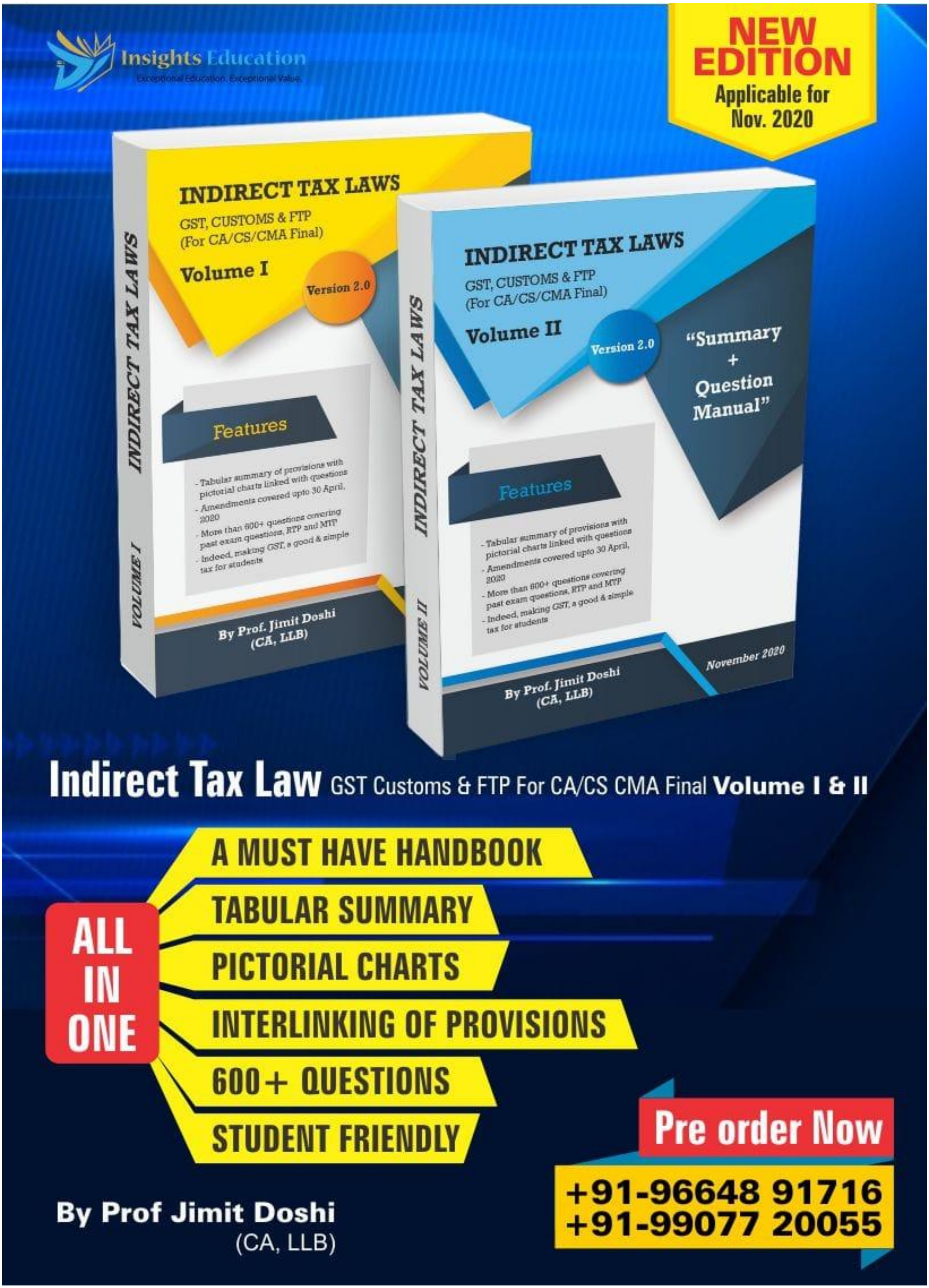
॥ दोहा ॥

पवनतनय संकट हरन ,
मंगल मूरति रुप ।
राम लखन सीता सहित ,
हृदय बसहु सुर भूप ॥





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Chapter 29 – Detention & Confiscation [Section 129 – 131]

Section	Particulars
129	Detention, seizure and release of goods and conveyances in transit
130	Confiscation of goods or conveyances and levy of penalty
131	Confiscation or penalty not to interfere with other punishments

Sec 129 - Detention, Seizure and release of goods and conveyance in transit

1) Goods / Conveyance violating law can be detained or seized

2) After detention or seizure they shall be released, on payment of -

Where the owner of the goods comes forward for payment of such tax & penalty	Payment = applicable tax + Penalty (= 100% of the tax) • in case of exempted goods, Payment = 2% of the value of goods or Rs 25,000 whichever is less
Where owner of goods does not come forward for payment of such tax & penalty	Payment = applicable tax + Penalty (= 50% of the **VALUE** of the goods - tax paid) • In case of exempted goods, Payment = 5% of the value of goods or Rs 25,000 whichever is less.
In both the cases	Upon furnishing a security equivalent to amount payable above

Circular No 76/50/2018:
- If the invoice or any other specified document is accompanying the consignment of goods, then, either the consignor or the consignee should be deemed to be the owner.
- If the Invoice or any other specified document is not accompanying the consignment of goods, then, the proper officer should determine who should be declared as the owner of the goods.

Note -
- ***Penalty under section 129 is an 'penalty in action', that is, penalty cannot be imposed after completion of movement in case goods are NOT intercepted during movement and found to be deficient on the prescribed documents.***
- ***If subsequent evidence is collected that clearly proves that goods have been moved without issuing EWB, even then penalty under section 129 CANNOT be imposed if such investigation is conducted after movement has ended.***

3) Detention / Seizure only after serving order of detention on transporter : Proper officer detaining or seizing goods or conveyances shall issue a notice specifying tax and penalty payable and thereafter, pass an order for payment of tax and penalty.

4) Provisions of section 67(6)[provisional release in case of seizure] shall, mutatis mutandis, apply for detention and seizure of goods and conveyance.

5) On payment of amount as referred above, all proceeding stands concluded.

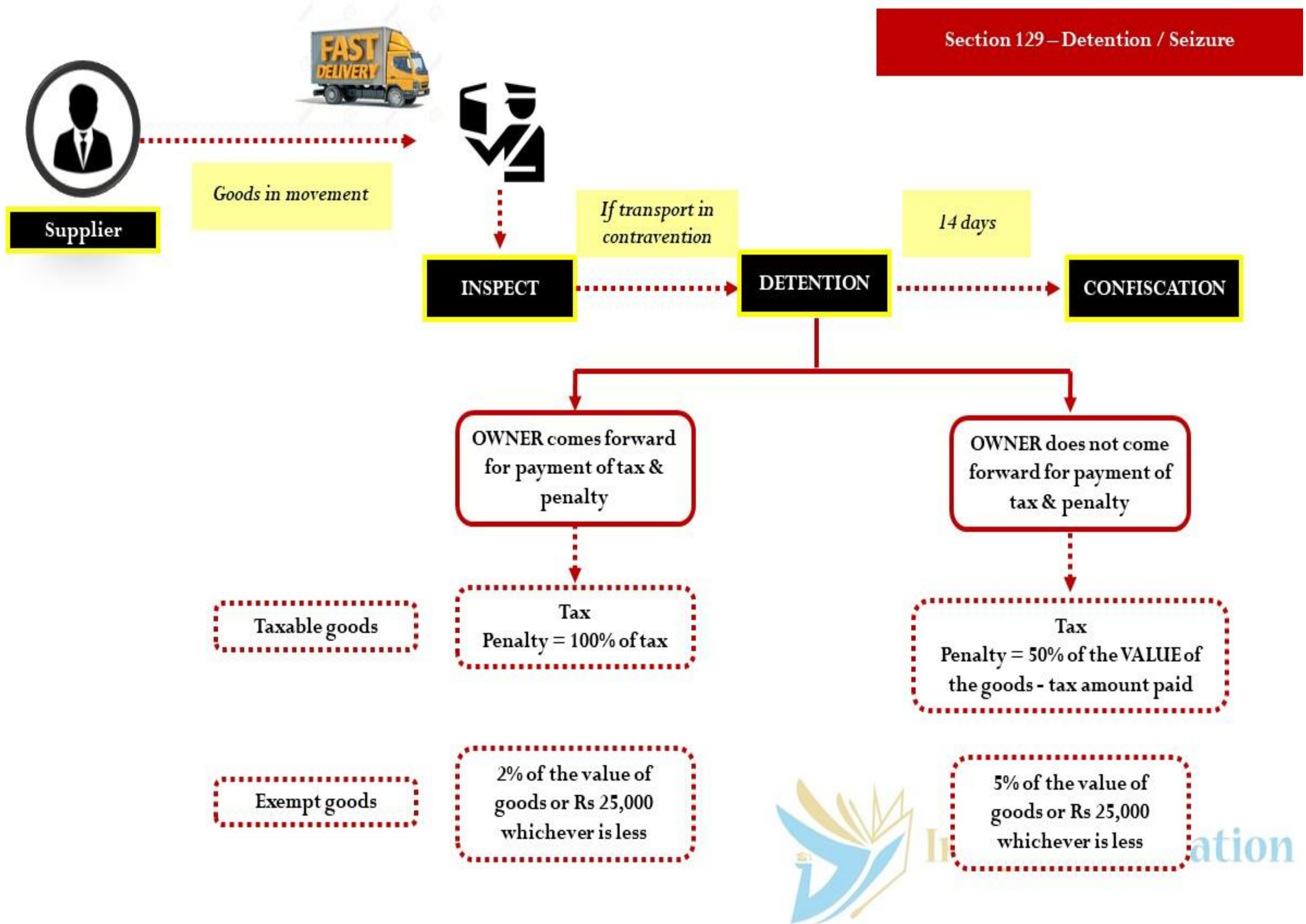
6) If the amount is not paid within 14 days of detention / seizure, Confiscation proceedings to be initiated
For perishable or hazardous in nature or are likely to depreciate in value with passage of time, the period of 14 days may be reduced by the Proper Officer.

When the goods are taxable and the owner comes forward to pay the tax and penalty – then the amount payable would be equal to: **Tax + Penalty equal to 100% of tax.**
Example ***If the taxable goods valued at Rs 100,000/- [tax rate 12% (CGST + SGST)] is being transported without documents and subject to detention, then if the owner of goods comes forward to pay tax and penalty, the amount payable would be equal to:*** ***Tax Rs 6,000 + Penalty Rs 6,000 = Rs 12,000 [Equal amount will be recovered under SGST Act also]***
➔ ***Please note that the taxes paid under this provision would not be eligible to be claimed as input taxes by the recipient – section 17(5).***

When the goods are exempt and the owner comes forward to pay the penalty – then the amount payable would be equal to: **Penalty at 2% of value of goods or Rs 25,000/-, whichever is lower.**
Example ***If the exempt goods valued at Rs 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods comes forward to pay the penalty the amount payable would be equal to:*** ***Rs 2,000/- or Rs 25,000/- whichever is lower, in this case it is Rs 2,000/-.***

When the goods are taxable and the owner does not come forward to pay the tax and penalty – then the amount payable would be equal to: **Tax + Penalty equal to 50% of the value of goods (as reduced by the tax amount paid thereon)**
Example ***If the taxable goods valued at Rs 1,00,000/- [tax rate 12% (CGST + SGST)] is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay tax and penalty the amount payable would be equal to:*** ***Tax Rs 6,000/- + Penalty Rs 44,000/- [i.e. 50% of value of goods less tax amount (Rs 50,000 – Rs 6,000)] in all = Rs 50,000/- [Equal amount will be recovered under SGST Act also.]***
➔ ***Please note that the taxes paid under this provision would not be eligible to be claimed as input taxes by the recipient – section 17(5).***

When the goods are exempt and the owner does not come forward to pay the penalty – then the amount payable would be equal to: **Penalty at 5% of value of goods or Rs 25,000/-, whichever is lower.**
Example ***If the exempt goods valued at Rs 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay the penalty the amount payable would be equal to: Rs 5,000/- or Rs 25,000/- whichever is lower, in this case it is Rs 5,000/-.***


Section 129 – Detention / Seizure
Supplier
Goods in movement
INSPECT
If transport in contravention
DETENTION
14 days
CONFISCATION
OWNER comes forward for payment of tax & penalty
OWNER does not come forward for payment of tax & penalty
Taxable goods
Tax
Penalty = 100% of tax
Tax
Penalty = 50% of the VALUE of the goods - tax amount paid
Exempt goods
2% of the value of goods or Rs 25,000 whichever is less
5% of the value of goods or Rs 25,000 whichever is less

Sec 130 - Confiscation of goods or conveyance and penalty

Circumstances when goods / conveyance can be confiscated	If any person – a) Supplies or receives any goods in contravention of any of provisions of this Act with intent to evade payment of tax; or b) Does not account for any goods on which he is liable to pay tax; or c) Supplies any goods without having applied for registration; or d) Contravenes any of the provisions with intent to evade payment of tax; or e) Uses any conveyance for tax evasion *(unless owner of the conveyance proves that it was so used without the knowledge or connivance of the owner)*
Option to pay fine in lieu of confiscation [Redemption fine]	⦿ Mandatory :: Officer adjudging it **SHALL** give owner of the goods an option to pay in lieu of confiscation in the confiscation order. ⦿ Fine cannot exceed 'Market Value – Tax' ⦿ Aggregate of fine & penalty shall not be less than 'penalty u/s 129' ⦿ Fine in lieu of confiscation of **conveyance** = tax payable on the goods being transported ⦿ Redemption Fine is in addition to Tax, interest, penalty payable ⦿ Personal hearing shall be provided before passing confiscation order ⦿ Time-limit to pay redemption fine = 3 months; else confiscated goods will be disposed of
On Confiscation	Goods become government property

Sec 131 - Confiscation or penalty not to interfere with other punishments

Prosecution proceedings may be continued along with confiscation and penalty. The net liability shall be: (a) tax, (b) interest, (c) penalty, (d) confiscation; and (e) punishment / imprisonment.

Other Miscellaneous Provisions

(a) Sec 168 – Power to issue Instructions or Directions :: CBIC may issue such Orders / Instructions / Directions [Circular] to the tax officer for the purpose of uniformity in the implementation of this Act. They are binding on the Officers. Circular is not binding on assessee/courts; Circulars contrary to judgement of High Court/SC are void.

(b) Sec 153 – Taking assistance from Experts :: Officer may take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him [having regard to the nature and complexity of the case and the interest of revenue]

(c) Sec 154 – Power to take Samples :: Commissioner may take samples of goods from the possession of any taxable person, where he considers it necessary, and provide a receipt for any samples so taken.

(d) Sec 156 - Persons discharging functions under this Act = PUBLIC SERVANTS.

(e) Sec 157 - Protection of action taken under Act ::
- Civil/Criminal proceeding cannot be initiated on members of Tribunal for act done in good faith
- Civil/Criminal proceeding cannot be initiated for act done in good faith by officers

(f) Sec 158 :: All particulars contained in any statement made, return furnished or accounts or in any record of proceedings should not be disclosed

Section 130 – Confiscation & Redemption fine

If any person –

a) Supplies or receives any goods in contravention of any of provisions of this Act with intent to evade payment of tax; or

b) Does not account for any goods on which he is liable to pay tax; or

c) Supplies any goods without having applied for registration; or

d) Contravenes any of the provisions with intent to evade payment of tax; or

e) Uses any conveyance for tax evasion (unless owner of the conveyance proves that it was so used without the knowledge or connivance of the owner)

Circumstances for Confiscation

CONFISCATION = Govt Property

mandatory

REDEMPTION FINE

3 months → **DISPOSED OF**

Goods

Max :	Market Value – Tax
Min :	Penalty u/s 129(1)

Conveyance

Tax payable on the goods being transported

CA Final – Nov 2019 (5 Marks)

Question - - -

Neurological Systems Private Limited has been subject to confiscation of goods on the ground that it has not accounted for the goods that are liable to tax under the CGST Act, 2017. The directors would like to know from you as to how such goods are to be released from the Department. You are required to advise the directors regarding the provisions of law on this matter.

Solution - - -

To get the confiscated goods released from the Department, the directors of Neurological Systems Private Limited are advised as under:-

- Neurological Systems Private Limited shall get an option to pay redemption fine in lieu of confiscation.
- Such fine should be less than or equal to ≤ [Market value of the goods confiscated – Tax chargeable thereon]
- Aggregate of such fine and penalty leviable should be more than or equal to ≥ Amount of penalty leviable under section 129(1) of the CGST Act, 2017.
- Neurological Systems Private Limited can get its confiscated goods released on payment of such redemption fine plus the tax, penalty and charges payable in respect of such goods.

RTP – Nov 2018

Question - - -

Radhaswamy owns and supplies certain goods costing Rs 30,00,000 in a conveyance hired from Manikaran Transporters. Market value of said goods is Rs 40,00,000 and tax chargeable thereon is Rs 4,80,000.

The goods supplied by Radhaswamy and the conveyance [owned by Manikaran Transporters] used for carriage of such goods are confiscated since Radhaswamy has supplied said goods in contravention of the provisions of the CGST Act, 2017 with an intent to evade payment of tax.

However, the proper officer intends to give an option to Radhaswamy and Manikaran Transporters to pay in lieu of confiscation, a fine leviable under section 130 of the CGST, Act, 2017.

Determine the maximum amount of the fine in lieu of confiscation on:

(a) the goods liable for confiscation.

(b) the conveyance used for carriage of such goods.

Solution - - -

(a) In case of goods liable for confiscation, the maximum amount of fine leviable in lieu of confiscation in terms of first proviso to section 130(2) of the CGST Act, 2017 is the market value of the goods confiscated, less the tax chargeable thereon.

Therefore, in the given case, maximum fine leviable:

= Rs 40,00,000 - Rs 4,80,000 = Rs 35,20,000

(b) In case where conveyance used for carriage of such goods is liable for confiscation, the maximum amount of fine leviable in lieu of confiscation in terms of third proviso to section 130(2) of the CGST Act, 2017 is equal to tax payable on the goods being transported thereon.

Therefore, in the given case, maximum fine leviable = Rs 4,80,000

CA Final – May 2018

Question - - -

From the details given below determine the maximum amount of fine in lieu of confiscation leviable under section 130 of CGST, Act, 2017 on: (i) The goods liable for confiscation. (ii) On the conveyance used for carriage of such goods. Details are as follows:

Cost of the goods for owner before GST	15,00,000
Market Value of Goods	20,00,000
GST on such goods	3,60,000

You are also required to explain relevant legal provisions in brief.

Solution - - -

a) As per section 130(2) of the CGST Act, 2017, in case of goods liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is the market value of the goods confiscated, less the tax chargeable thereon.
Therefore, the fine leviable = Rs 20,00,000- Rs 3,60,000 = Rs 16,40,000
The aggregate of fine and penalty shall not be less than the amount of penalty leviable under section 129(1).

b) In case of conveyance used for carriage of such goods and liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is equal to tax payable on the goods being transported thereon [Third proviso to section 130(2) of the CGST Act, 2017].
Therefore, the fine leviable = Rs 3,60,000

CA Final – May 2019

Question - - -

XYZ carries goods from Vadodara to Pune. The value of the goods is Rs 80,000 which are chargeable to tax @ 18% IGST and in transit, proper officer intercepted the same under section 68 of the CGST Act, and found contravention. Calculate the penalty payable under section 129 of CGST Act, 2017:

- If XYZ comes forward for payment of tax and penalty,
- If XYZ does not come forward for payment of tax and penalty.

Solution - - -

The penalty payable under section 129 of the CGST Act, 2017 is

a) 100% of the tax payable on goods detained or seized where the owner of the goods comes forward for payment of tax and penalty;
b) 50% of the value of the goods reduced by the tax amount paid thereon where the owner of the goods does not come forward for payment of tax and penalty.

By virtue of section 20 of the IGST Act, 2017 provisions of penalty payable under section 129 of the CGST Act, 2017 apply in case of IGST as well. However, where the penalty is leviable under the CGST Act, 2017 and the SGST/UTGST Act, 2017, the penalty leviable under the IGST Act, 2017 shall be the sum total of the said penalties. Therefore, penalty payable under IGST Act, 2017 is double the penalty payable under section 129 of the CGST Act, 2017.

Therefore, in the given case the penalty payable will be computed as under:

<u>If XYZ (assumed that XYZ is the owner of the goods) comes forward for payment of tax and penalty –</u>

= Rs 80,000 × 18% (9% CGST and 9% SGST/UTGST) × 100%
= Rs 14,400

<u>If XYZ does not come forward for payment of tax and penalty</u>

= [Rs 80,000 × 100% (50% under CGST plus 50% under SGST/UTGST)] – [Rs 80,000 × 18%] (assumed that tax has been paid on the goods)
= Rs 80,000 - Rs 14,400
= Rs 65,600
Note: In the above answer, the penalty payable has been computed in accordance with the provisions of the IGST Act, 2017 as tax chargeable on the goods is IGST. However, the question can also be answered on the basis of the provisions of section 129 of the CGST Act, 2017.

CA Final – May 2019

Question - - -
From the following details, calculate the amount to be paid, for release of goods detained or seized under section 129 of the CGST Act, 2017, if owner of the goods does not come forward for payment of applicable tax and penalty
Details are as follows:

Particulars	Amount (Rs)
Value of goods	30,00,000
Applicable GST on such goods	5,40,000
GST already paid on such goods	3,60,000

Would your answer be different if goods were exempted from GST and value remains the same namely Rs 30,00,000?

Solution - - -
If owner of the goods does not come forward for payment of applicable tax and penalty, the amount to be paid for release of goods detained or seized under section 129 of the CGST Act, 2017 is applicable GST and penalty equal to 50% of the value of the goods reduced by the tax amount paid thereon.
Therefore, in the given case, the amount payable = [Rs 5,40,000 + 50% of Rs 30,00,000] – Rs 3,60,000 = Rs 16,80,000
However, in case of exempted goods, amount to be paid for release of goods detained is equal to 5% of the value of goods or Rs 25,000, whichever is less.
= 5% of Rs 30,00,000 or Rs 25,000, whichever is less
= Rs 1,50,000 or Rs 25,000, whichever is less
= Rs 25,000

CA Final – Nov 2018

Question - - -
A show cause notice was issued demanding GST of Rs 1,80,180 for the month of July, 2017 on 1st October, 2017. However, adjudicating authority after the personal hearing found that there was a typographical error while mentioning the amount of GST and he confirmed the demand for Rs 10,80,180. Assessee seeks your advice. What would be your advice if:
(a) assessee comes to you after issue of order or
(b) a corrigendum revising the amount to Rs 10,80,180 on 15th November, 2017, is issued.

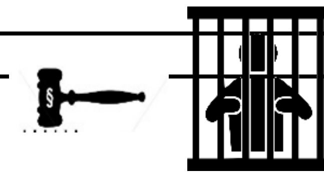
Solution - - -
a) Advice after issue of order :: As per section 75(7) of the CGST Act, 2017, inter alia, the amount of tax, interest and penalty demanded in the order cannot exceed the amount specified in the notice. Since, in the given case, the amount of tax demanded in the order exceeds the amount of tax demanded in the show cause notice, the assessee can file an appeal against the adjudication order within the prescribed time limit.
Assumption :: Order demanding higher tax has been made, but the rectification of show cause notice has not been done.

b) Advice after issue of corrigendum :: In the given case, since the corrigendum has been issued to rectify a typographical error in the show cause notice, which is an error apparent on the face of the record, the rectification is correct in law. Further, being rectification of a clerical error, the time limit of 6 months will not apply. Therefore, the assessee should reply to the show cause notice considering the revised amount of demand.
Assumption :: corrigendum has been issued in respect of show cause notice

Chapter 30 – Prosecution & Arrest [Section 132 – 138]

Section	Particulars
132	Punishment for certain offences
133	Liability of officers and certain other persons
134	Cognizance of offences
135	Presumption of culpable mental state
136	Relevancy of statements under certain circumstances
137	Offences by companies
138	Compounding of offences

Section 132 – PUNISHMENT FOR CERTAIN OFFENCES



List of Offences attracting IMPRISIONMENT ::

1) Whoever commits any of the following offences, namely:-

a.	Supplying without invoice
b.	Issuing invoice without Supply of goods / services (bogus invoices)
c.	Taking / Utilizing ITC without actual receipt of goods / services [penalty on recipient]
d.	Collecting amount as tax, but not making payment within 3 months
e.	Falsifies or substitutes financial records or produce fake accounts or documents
f.	Obstructing / preventing Officer from doing duty
g.	Helps in transporting, removing, depositing, keeping, concealing supplying, or purchasing or in any other manner deals with any GOODS liable to confiscation
h.	Receives or is in any way concerned with the supply of, or in any other manner deals with any supply of SERVICES which are in contravention
i.	Tampering / destroying material evidence Failure to furnish information / documents asked for by PO
j.	Attempts to commit, or abets the commission

shall be punishable –

In cases where the amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken	Punishment [Imprisonment + Fine]	
i. exceeds Rs 5 Crores	Min :: 6 months	Max :: 5 years
ii. exceeds Rs 2 Crore but not Rs 5 Crore	Min :: 6 months	Max :: 3 years
iii. exceeds Rs 1 Crore but not Rs 2 Crore	Min :: 6 months	Max :: 1 years
iv. In cases where he commits or abets commission of an offence specified in (f) or (g) or (j)	upto 6 months	
⦿ Tax shall include all taxes [CGST + SGST + IGST + Compensation Cess]		
⦿ Monetary limit – Aggregate GST pending as on date to be considered for determining whether offence is bailable or non-bailable etc		

2) Where any person is convicted again (second and subsequent offence) then he shall be punishable with imprisonment upto 5 years and fine (in all category of offences):

3) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.
[Such order is a non – appealable order]

Bail & Cognizance

Offence committed under Sec 132(1)(a) / (b) / (c) / (d)	Cognizable & Non – bailable [C + NB]
Other offences	Non – Cognizable & Bailable [NC + B]

Cognizable Offence	Non-cognizable Offence
Cognizable offence = Serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant from the Court (Magistrate).	Non-cognizable offence = relatively less serious offences in respect of which a Police Officer does not have the authority to make an arrest without a warrant
Eg – Theft, Robbery, Murder, Rape etc	Eg – Abusing each other, minor scuffles without injuries etc
Such offences are Non-Bailable [Non – Bailable = Offence where arresting officer cannot grant bail to accused; bail can be granted only by Court]  	Such offences are Bailable [Bailable = Offence where arresting officer can grant bail to accused] 
Following offences, where amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken > Rs 5 crores ➔ 132(1)(a) / (b) / (c) / (d)	All offences specified under section 132 except the offences that are cognizable and non-bailable offence

✪ Question :: What are cognizable and non-cognizable offences under section 132 of CGST Act, 2017?

Section 69 – Power to ARREST

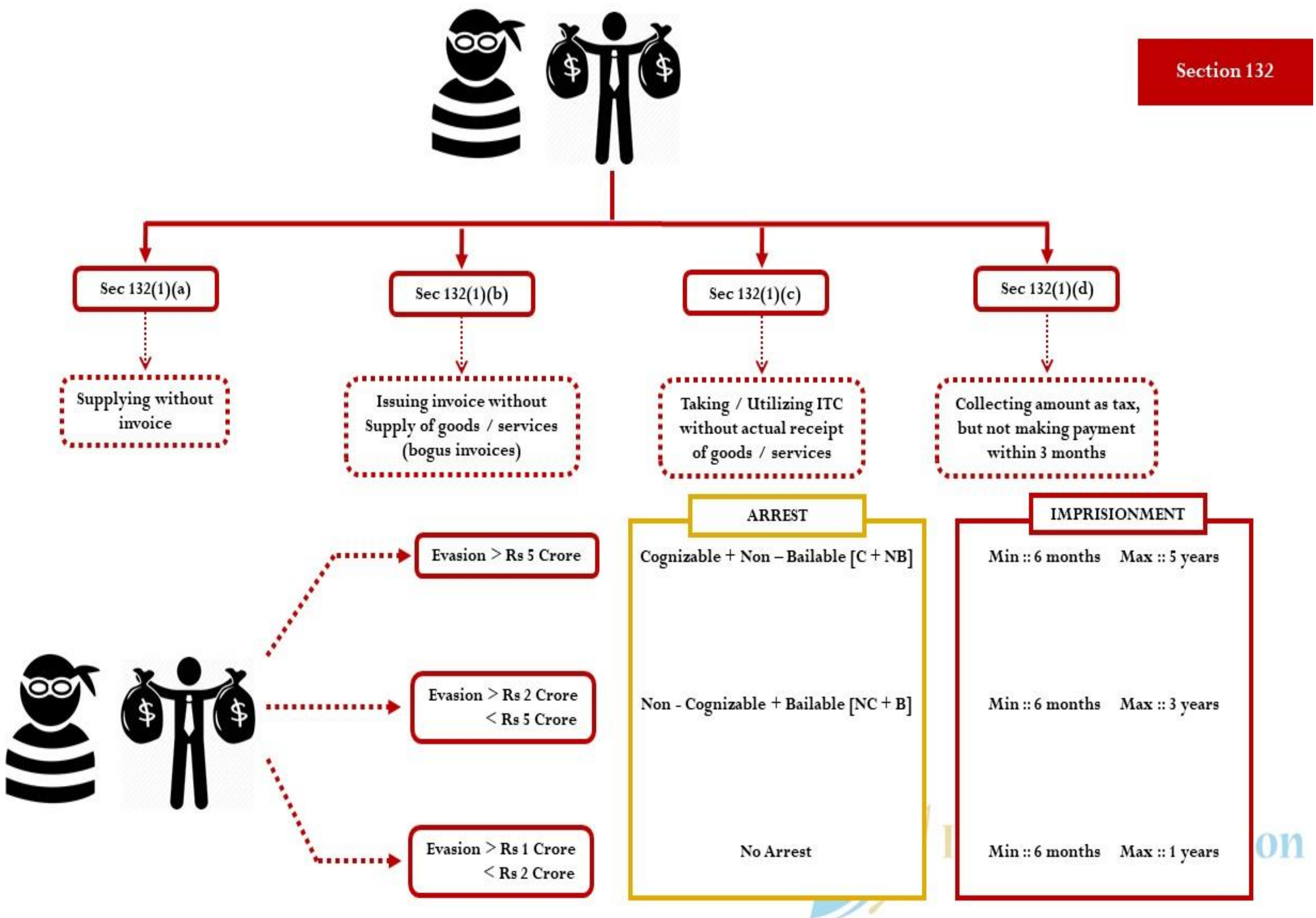
Commissioner to grant sanction for Arrest :

1) Where the Commissioner has reasons to believe *that a person has committed any offence specified in section 132 (1) (a) / (b) / (c) / (d)* which is punishable
➔ Where the amount exceeds Rs 2 crore, or
➔ It is a subsequent offence
he may, by order, authorise any officer of central tax to arrest such person.


2) When a person is arrested for amount exceeding Rs. 5 crore [C + NB],
⇒ Officer authorised to arrest person shall inform such person of grounds of arrest and
⇒ Produce him before a Magistrate within 24 hours.

Release on bail : If the offence is bailable offence

(3) Where a person is arrested for bailable offence, he shall be admitted to bail or in default of bail forwarded to the custody of the Magistrate;


Section 132
Sec 132(1)(a)
Supplying without invoice
Sec 132(1)(b)
Issuing invoice without Supply of goods / services (bogus invoices)
Sec 132(1)(c)
Taking / Utilizing ITC without actual receipt of goods / services
Sec 132(1)(d)
Collecting amount as tax, but not making payment within 3 months
Evasion > Rs 5 Crore
Evasion > Rs 2 Crore < Rs 5 Crore
Evasion > Rs 1 Crore < Rs 2 Crore
ARREST
Cognizable + Non – Bailable [C + NB]
Non - Cognizable + Bailable [NC + B]
No Arrest
IMPRISIONMENT
Min :: 6 months Max :: 5 years
Min :: 6 months Max :: 3 years
Min :: 6 months Max :: 1 years

Section 132

Sec 132(1)(f)
Sec 132(1)(g)
Sec 132(1)(j)

- Falsifies or substitutes financial records or produce fake accounts or documents
- Obstructing / preventing Officer from doing duty
- Tampering / destroying material evidence

IMPRISIONMENT

Max :: 6 months

Sec 132(1)(e)
Sec 132(1)(h) / (i)
Sec 132(1)(k) / (l)

- evades tax, other than clauses (a) to (d);
- Helps in transporting, removing etc of GOODS liable to confiscation
- Receives or deals with any supply of SERVICES which are in contravention
- Failure to furnish information / documents asked for by PO

IMPRISIONMENT

Min :: 6 months Max :: 1/3/5 years
As per earlier chart

Section 133 – LIABILITY OF OFFICERS AND CERTAIN OTHER PERSONS

Disclosure of information by departmental officers:

When –

- any person engaged in connection with the collection of statistics u/s or complication or computerisation thereof or
- if any officer of central tax having access to information specified u/s 150(1) [Annual Information Return] or
- if any person engaged in connection with the provision of service on the common portal or the agent of common portal,

wilfully –

⇒ discloses any information or contents of any return furnished otherwise than in execution of his duties or for the purposes of prosecution for an offence

➔ he shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs 25,000 or with both.

⇒ ***Sanction of Govt is necessary for prosecution of Government Servant***

⇒ ***For prosecution of other officers, sanction of Commissioner is mandatory***

Section 134 – COGNIZANCE OF OFFENCES

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

Section 135 – PRESUMPTION OF CULPABLE MENTAL STATE

In GST, 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 w.r.t. the act charged as an offence in that prosecution.

- *Culpable Mental State refers to the state of mind of an individual while committing a crime. Generally, a crime requires that a guilty act or omission be committed with the required degree of guilty mind.*
- *The presumption of 'Culpable Mental State' operates only in criminal proceedings conducted before Court. It is not invokable in Civil Proceedings conducted at level of Adj Authority.*

Section 136 – RELEVANCY OF STATEMENTS IN CERTAIN CIRCUMSTANCES

A statement –

- made and signed by a person
- on appearance in response to any summons issued u/s 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, the truth of the facts which it contains –

a) When the person who made the statement is –
   - dead or
   - cannot be found, 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 circumstances of the case, 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 interest of justice.

Section 137 – OFFENCES BY COMPANIES/FIRM/HUF/AOP/BOI [Corporate Offences]

Offence committed by	Person deemed to be guilty and can be punished
Company	Company and Officers-in-charge *[Director, Manager, Secretary or other Officer, if it is proved that offence has been committed with the consent of them / attributable to any negligence on their part]*
Partnership firm or LLP	Partner
Hindu Undivided Family	Karta
Trust	Managing Trustee

No punishment if person did not have knowledge or had exercised due diligence

- **Section 137 is based on "Principle of Vicarious Liability". Section 137 makes person in control of conduct of company vicarious liable for offences committed by company.**

Section 138 – COMPOUNDING OF OFFENCES
[Immunity from Prosecution]

Specified offences are compoundable, even if prosecution has been launched in Court

Compounding of offence is permitted by Commissioner on payment of Compounding fee:

Non-compoundable matters:
Nothing contained in this section shall apply to –

a) a person who has been allowed to compound once
... in respect of any of the offence specified in Sec 132 (1) (a) to (f) and the offences which are reliable to these offences
b) a person who has been allowed to compound once
... in respect of any offence, other than those in clause (a) under this Act or under the provisions of any SGST Act or the UTGST Act or the IGST Act in respect of supplies of value exceeding Rs 1 Crore.
c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force
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 specified in clause (g) or clause (i) or clause (k) of sub-section (1) of section 132; and
[i.e obstructed Officer / temper or destroy evidence / supplies false information or false to supply information]
f) any other class of person or offences as may be prescribed;

Any compounding allowed under provisions of this section shall not affect the proceedings, if any, instituted under any other law.

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

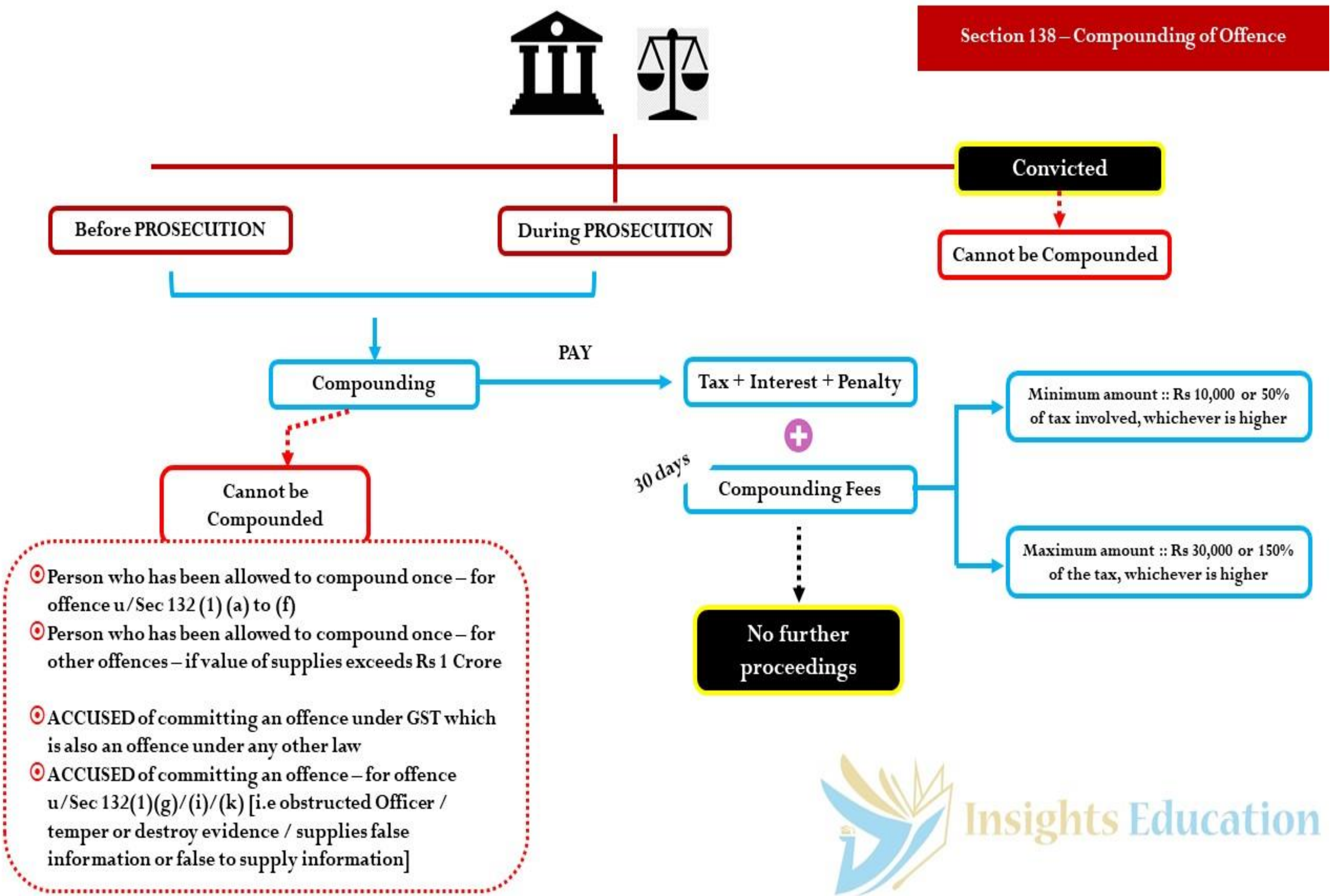
Compounding fee:

- ➔ **Minimum amount :: Rs 10,000 or 50% of tax involved, whichever is higher, and**
- ➔ **Maximum amount :: Rs 30,000 or 150% of the tax, whichever is higher.**

No further proceedings after making payment of compounding fee. All proceedings (including criminal proceedings) shall stand abated

Immunity granted to assessee will be withdrawn, if Commissioner finds that any material particulars were concealed or had given false evidence

Compounding amount to be paid within 30 days of receipt of order, else order becomes void


Section 138 – Compounding of Offence
Convicted
Cannot be Compounded
Before PROSECUTION
During PROSECUTION
Compounding
PAY
Tax + Interest + Penalty
30 days
Compounding Fees
Minimum amount :: Rs 10,000 or 50% of tax involved, whichever is higher
Maximum amount :: Rs 30,000 or 150% of the tax, whichever is higher
No further proceedings
Cannot be Compounded
Person who has been allowed to compound once – for offence u/Sec 132 (1) (a) to (f)
Person who has been allowed to compound once – for other offences – if value of supplies exceeds Rs 1 Crore
ACCUSED of committing an offence under GST which is also an offence under any other law
ACCUSED of committing an offence – for offence u/Sec 132(1)(g)/(i)/(k) [i.e obstructed Officer / temper or destroy evidence / supplies false information or false to supply information]
Insights Education

CA Final – May 2018

Question - - -

Examine whether the offences committed in each of the following independent cases are bailable. Further, determine the quantum of punishment on prosecution under the CGST Act, 2017, in each of these cases:

a) 'Homi Gabha' collects Rs 240 lakh as tax from its clients and deposits Rs 150 lakh with the Central Government. Balance amount of tax is not paid to the Central Government. It is found that he has falsified financial records and has not maintained proper records, to evade the tax.

b) 'Datukeshwar Dutt' collects Rs 630 lakh as tax from its clients, but deposits only Rs 120 lakh with the Central Government. Balance amount of tax is not paid to the Central Government.

What would be the implications in above cases if 'Homi Gabha' and ' Datukeshwar Dutt' repeat the offences?

Note - It may be assumed that offences are proved in the court.

Solution - - -

(a) As per section 132(1)(d)(iii) of the CGST Act, 2017, failure to pay any amount collected as tax beyond 3 months from due date of payment is punishable with specified imprisonment and fine provided the amount of tax evaded exceeds at least Rs 100 lakh. Therefore, failure to deposit Rs 4 lakh collected as tax by 'X' will not be punishable with imprisonment.

Sr	Offence	Amount of Evasion	Threshold for imprisonment	Remarks	Bailable / Non Bailable
a)	Failure to pay any amount collected as tax beyond 3 months from due date of payment [Sec 132(1)(d)]	Rs 90 Lakhs (Rs 240 lakh - Rs 150 lakh)	Rs 100 Lakhs	No imprisonment	
	Falsification of financial records [Sec 132(1)(f)]	N.A	N.A	Imprisonment up to 6 months or with fine or both	Bailable [Sec 132(4)]
b)	Failure to pay any amount collected as tax beyond 3 months from due date [Sec 132(1)(d)]	Rs 510 Lakhs (Rs 630 lakh - Rs 120 lakh)	Rs 100 Lakhs	Imprisonment + Fine Min : 6 months Max : 5 years	Non – bailable [Sec 132(5)]

.

If 'Homi Gabha' and 'Datukeshwar Dutt' repeat the offence, they shall be punishable for second and for every subsequent offence with imprisonment upto 5 years and with fine in terms of section 132(2) of the CGST Act, 2017. Such imprisonment shall also be for minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment.

CA Final – Nov 2019 (4 Marks)

Question - - -

Ganesh Enterprises, a registered supplier under the GST law, has committed an offence that is compoundable. The Department has instituted prosecution against the proprietor of Ganesh Enterprises and he is of the opinion that he shall not be able to apply for compounding of the offence as the prosecution has been launched. He seeks your advice whether he has the opportunity to apply for compounding of the offence and the consequences arising therefrom.

Solution - - -

⇒ A person accused of an offence is permitted to make an application for compounding of an offence even after the institution of prosecution against him.

⇒ Therefore, in the given case, Ganesh Enterprises can apply for compounding of offence even though prosecution has been instituted/launched against him.

⇒ On payment of compounding amount determined by the Commissioner, the criminal proceedings which have been initiated against Ganesh Enterprises in respect of the said offence, shall stand abated.

⇒ The lower limit for compounding amount is to be the greater of the following amounts: -

- 50% of tax involved, or
- Rs 10,000.

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

- 150% of tax involved or
- Rs 30,000.

CA Final – May 2018

Question - - -

Department initiated prosecution proceedings against a taxable person who had evaded GST of (Rs 4.2 crores. He has approached the Commissioner with a request for compounding the offence. After considering the request, the Commissioner has directed him to pay an amount of Rs 2.5 crores as compounding amount.

a) Indicate the minimum and maximum limits for compounding amount.
b) Is the amount fixed by the Commissioner in this case within the limits prescribed under the law?
c) What is the consequence of the decision of the commissioner allowing the request for compounding the offence?

Solution - - -

Minimum limit for compounding is Rs 2.10 crores. [Rs 2.10 crores (50% x Rs 4.2 crores) or Rs 10,000, whichever is higher].

Maximum limit for compounding is Rs 6.3 crores [Rs 6.3 crore (150% x Rs 4.2 crores) or Rs 30,000, whichever is higher].

Thus, the amount fixed by the Commissioner at Rs 2.5 crores is within the limits prescribed under the law.

If the taxable person pays the compounding amount decided by the Commissioner, no further proceedings shall be initiated under GST law 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.

ICAI – Practice Questions

Question - - -

Where an offence under the GST law is committed by a taxable person being a trust, who are deemed to be guilty of the offence and under what circumstances? When do the relevant provisions become inapplicable in respect of individuals concerned with the trust?

Solution - - -

Section 137 of the CGST Act, 2017 stipulates that where an offence under the GST law is committed by a taxable person being a trust, the managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Further, where it is proved that the offence committed by the trust has been committed –

- with the consent or connivance of, or
- is attributable to any negligence on the part of any other individual concerned with the trust,

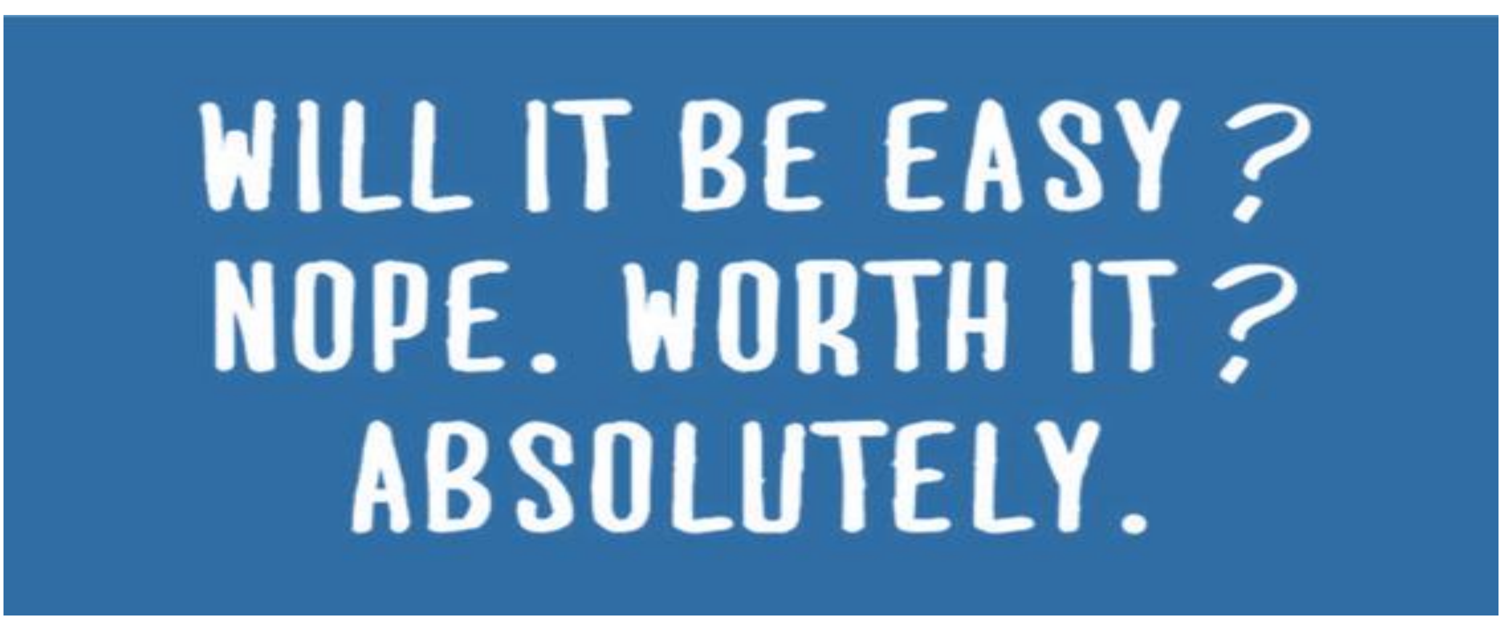
he shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The relevant provisions will become inapplicable in respect of individuals concerned with the trust, if they prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent the commission of such offence.


"YOUR FUTURE IS CREATED BY WHAT
YOU DO { TODAY }
~~NOT~~ ~~TOMORROW~~"


STAY
Positive
WORK HARD
Make It
HAPPEN


We are what we do. Excellence, therefore is not an act, but a habit.
Aristotle


WILL IT BE EASY ?
NOPE. WORTH IT ?
ABSOLUTELY.