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Section 132 of CGST Act, 2017

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Section 132: Punishment for certain offences

Section 132(1)

Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:—

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
- (c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill.
- (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;
- (e) evades tax, or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- (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 due under this Act;
- (g) obstructs or prevents any officer in the discharge of his duties under this Act;
- (h) 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;
- (i) 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;
- (j) tampers with or destroys any material evidence or documents;
- (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

shall be punishable—

- (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;
- (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term

- which may extend to three years and with fine;
- (iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;
- (iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Section 132(1)
Interpretation

Punishment for certain offences

This sub-section talk about cases of tax evasion and penal actions applicable on specific events subject to amount of tax sought to be evaded. This provision provides for prosecution of offenders and the punishment initiated on them.

In this sub-section, the law makers have identified situations whereby, there can be a leakage of Government revenue and have thus, penned down 12 such situations of mala-fide intent which are as follows:

1. Supply of goods/services without the cover of invoice with an intent to evade tax;
2. If any person issues any invoice or bill without actual supply of goods/services leading to wrongful input tax credit or refund of tax;
3. Any person who avails input tax credit using invoice referred in point (2) above;
4. Collection of taxes without payment to the Government beyond 3 months of due date;
5. Evasion of tax, availment of credit or obtaining refund with intent of fraud where such offence is not covered in points 1 to 4 above;
6. Falsifying financial records or production of false records/ accounts/ documents/ information with an intent to evade tax;
7. Obstructs or prevents any officer from doing his duties under this Act;
8. Acquires or transports or in any other manner deals with any goods which he knows or has reasons to believe are liable for confiscation under this Act or rules;
9. Receives or in any way, deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this law;
10. Tamper with or destroys any material evidence or documents;
11. Fails to supply any information which he is required to supply under this law or supply false information;
12. Attempts or abets the commission of any of the offences mentioned above.

This sub-section enables institution of prosecution proceedings against the offenders and the period of imprisonment and quantum of fine varies depending on the amount of tax evaded or seriousness of the offence as listed below:

Amount of Tax evaded/ erroneous refund/ wrong ITC availed or utilized	Fine	Imprisonment
Exceeding 5 Crores	Yes	Upto 5 years
2 Crores – 5 Crores	Yes	Upto 3 years
1 Crores – 2 Crores	Yes	Upto 1 years

If any person commits below mentioned offences, then he shall be punishable with **imprisonment** for a term which may extend to **6 months or with fine or with both**.

- Falsifying financial records or production of false records/ accounts/ documents/ information with an intent to evade tax;
- Obstructing or preventing any officer from doing his duties under this Act;
- Tampering with or destroying any material evidence or documents.

Section 132(2)

Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

Section 132(2) Interpretation	<u>Penalty for Repetitive Offence</u> In case of repetitive offences, the person shall be punishable for the second and for every subsequent offence with minimum imprisonment term of 6 months, which could extend to 5 years plus with a fine.
Section 132(3)	The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.
Section 132(3) Interpretation	<u>Minimum Imprisonment period</u> Without any specific/ special reason which is recorded in the judgment of the Court, the minimum imprisonment term shall be of 6 months for the convicted person.
Section 132(4)	Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non- cognizable and bailable.
Section 132(4) Interpretation	<u>Offence to be non-cognizable & Bailable</u> All offences mentioned in this section are non-cognizable and bailable except the following: <ol style="list-style-type: none"> 1. Supply of goods/services without the cover of invoice with an intent to evade tax; 2. If any person issues any invoice or bill without actual supply of goods/services leading to wrongful input tax credit or refund of tax; 3. Any person who avails input tax credit using invoice referred in point (2) above; 4. Collection of taxes without payment to the Government beyond 3 months of due date; <p style="text-align: center;">AND</p> Where the amount involved in such cases exceeds Rs 5 Crores.
Section 132(5)	The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.
Section 132(5) Interpretation	<u>Offence to be cognizable & non-bailable</u> The following offences are cognizable and non-bailable : <ol style="list-style-type: none"> 1. Supply of goods/services without the cover of invoice with an intent to evade tax; 2. If any person issues any invoice or bill without actual supply of goods/services leading to wrongful input tax credit or refund of tax; 3. Any person who avails input tax credit using invoice referred in point (2) above; 4. Collection of taxes without payment to the Government beyond 3 months of due date; <p style="text-align: center;">AND</p> Where the amount involved in such cases exceeds Rs 5 Crores.
Section 132(6)	A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.
Section 132(6) Interpretation	<u>Prior sanction is a must before prosecution</u> Every prosecution proceeding initiated requires prior sanction of the Commissioner.
Explanation	For the purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.
Explanation Interpretation	The explanation to this section states that “tax” includes the amount of tax evaded, amount of input tax credit wrongly availed/utilized or refund wrongly taken under CGST, SGST, UTGST, and cess levied under GST (Compensation to States) Act.