**Bombay Chamber of Commerce and Industry**

**Suggestions on Decriminalisation of Offences**

**GST law**

1. The overall structure of criminal proceedings in the GST legislation is outlined below:

* Provisions dealing with offences and related consequences are contained in section 132 to 138[[1]](#footnote-1) (Chapter XIX) of Central Goods and Services Tax Act, 2017 (CGST Act).
* Section 132 stipulates various acts that are to be treated as an offence, triggering punishment by way of prosecution, arrest and imprisonment along with fine.
* The imprisonment term is based on numerical value of tax evaded, amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.

The said section further categorizes offences that are - cognizable and non-bailable and non-cognizable and bailable. *(Refer A1 of Annexure I)*

* Section 69 grants power to arrest (the person committing an offence). Commissioner who has reason to believe that a person has committed any offence can authorise any officer of central tax to arrest such person. *(Refer A2 of Annexure I)*
* Section 121 provides that no appeal shall lie against the order sanctioning the prosecution. *(Refer A3 of Annexure I)*
* Section 135 stipulates a presumption of culpable mental state in case of a prosecution for an offence under the Act and imposes the onus on the person to prove otherwise. *(Refer A4 of Annexure I)*
* Section 137 provides that where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such person shall also be deemed to be guilty of that offence. *(Refer A5 of Annexure I)*
* Section 138 provides for compounding of offence under different scenarios and prescribes quantum of compounding fees over and above the tax, interest and penalty involved in such offence. The ambit of compounding is restricted. *(Refer A6 of Annexure I)*
* Section 159 deals with the extensive provision of publication of information relating to tax defaulters in certain cases *(Refer A7 of Annexure I).*

1. **Submissions:**

In this regard, the following may be noted:

Prosecution provisions to be incorporated only upon stabilization of a tax legislation.

It needs to be appreciated that:

* + GST is entirely a new tax regime that incorporate several aspects that are globally unique and have no precedents. This makes the compliance and administration of the law uncertain and challenging.
  + The law is at a nascent stage and still evolving. There are instances of rulings and court judgements that are conflicting. The government continues to seek to provide clarifications.
  + The compliance process under GST is materially more onerous compared to pre-GST era with granular reporting and the reporting and health of compliances are intricately linked to external stakeholders.

Imposing prosecution provisions in this nebulous ecosystem materially increases uncertainty and risk perceptions for businesses, directly impacting ‘ease of doing business’.

Policy makers have recognised the merit of handling prosecution provisions sensitively especially in the nascent stages of implementation of tax legislations. In the most recent example, under Service tax, the offence provisions relating to false documents/ statements were implemented only after 2011 though the law had come into force from 1994.

Further, certain offences like obstructing an officer, tampering material evidence etc. were never made punishable. Furthermore, prosecution provisions were removed from the legislation in 1998 and inserted only in 2011 and made applicable only in very specific cases of blatant fraud.

It is submitted that Section 132 be re-casted to apply to only blatant specific fraudulent practices such as the issue of fake invoices alone and perhaps such other identified fraudulent activity with an intent to evade tax.

Specifically, a negative list of areas where prosecution provisions should not be made applicable be constructed to provide clarity. It is to be noted that there are adequate penal provisions under the legislation which will provide adequate deterrence against evasion of taxes.

Prosecution provisions should specifically exclude the following elements:

* + The relative quantum of tax allegedly short paid or not paid or credit allegedly incorrectly availed vis a vis the overall business conducted is relevant (for example for large taxpayer a tax of INR 1 crore amount will constitute a miniscule amount vis a vis the total tax paid and may arise out of actual clerical errors as against the same amount related to small businesses). Any dispute that constitutes less than 10-15 percent of taxes paid should not be considered for prosecution (the interest and other penal consequences are punitive enough)
  + Classification or valuation or other technical disputes related to applicability of tax or availment of credit should not trigger prosecution
  + Conduct such as alleged documentation errors, errors or delay in furnishing of information or tampering of evidences etc or subjective areas of mis-conduct such as obstructing or preventing an officer from discharging duties should not be subjected to the threat of prosecution. These provisions are draconian and can be abused. If at all these are to be applied, they should be sought to be applied under very specific and well-defined events such as events of issues related to fake invoices etc.

While guidelines have been issued for relaxing the thresholds for initiating prosecution proceedings (from INR 2 crore to INR 5 crore) and clarifying that such proceedings should not be launched in cases of technical or interpretational matters and *mens-rea* needs to be established, the same should be backed by suitable amendment in the GST law. Parallelly, the Government should bring Taxpayers’ Charter even under Indirect Taxes, covering GST, with a commitment that the tax department shall treat every taxpayer as honest and will provide prompt, courteous and professional assistance in dealing with taxpayer.

As per media reports, we understand that GST Council is also considering decriminalisation of offences under GST which would give a big reprieve to the businesses.

1. **Executive summary of suggestions:**

The initial part of this representation covers suggestions on offences specified under clause (f), (g), and (j) of section 132(1) of CGST Act and the later portion deals with the suggestions on other offence related provisions.

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|  | **Suggestions** | **Reference** |
| 3.1 | Deferring usage of punitive measures till the law is settled  At the outset, it is suggested that the punitive measures in the form of prosecution and imprisonment, which are in addition to other deterrent provisions like interest and penalty, should not be invoked till the time the GST law stabilises. | Para 4 |
| 3.2 | Producing false documents  This offence should be excluded from the scope of section 132 for the time being.  Notwithstanding above,     1. the Explanation may be inserted to define “Tax evasion” with appropriate guidelines. Tax evasion should exclude specific elements related to technical and procedural disputes.   (ii) without prejudice to the above, specific provisions should be included that prosecution should not be invoked in cases where the amount of tax allegedly sought to be evaded is less than 10% of the gross tax liability or credit availed and where there is neutrality. | Para 4.1.1  4.1.1(i)  4.1.1(ii)  4.1.1(iii) |
| 3.3 | Obstructing officer in discharge of his duties  Prosecution provision is not warranted and therefore, may be deleted.  The maximum term of imprisonment should be reduced to three months or a nominal fine, in line with the provisions under Indian Penal Code.  Further, notwithstanding and without prejudice to the above suggestion, prosecution provisions should exclude procedural elements of conduct such as furnishing of information or appearances. | Para 4.1.2 |
| 3.4 | Tampering or destroying evidence or documents  Prosecution provision is not warranted and therefore, may be deleted.  In the alternate, the prosecution provisions should be restricted only to cases where the intent behind tampering or destroying the evidence is to evade materially significant tax confined only to fake invoice issuance. | Para 4.1.3 |
| 3.5 | Prosecution and arrest  **Power to be exercised with adequate checks and balances and in rarest of rare cases:**  The prosecution, arrest and imprisonment should be initiated with adequate checks and balances, in the rarest of rare cases of hard, habitual and deliberate defaulters.  Such rare cases may cover instances where the fraudulent activity or the collusion between the supplier and recipient with a clear motive of evasion of tax (like clandestine removal of goods), wrong claim of ITC or refund claims (basis fake invoices), is blatant.  Further, the prosecution provisions, which are currently dictated by absolute amount of default, should be made applicable only in cases where the amount of default exceeds a prescribed percentage of the total tax paid by such taxpayer say 10% i.e. only where commitment of an offence is significantly and materially high compared to the overall taxes paid or credit availed.  **Power to authorise the arrest to be exercised by CBIC or Principal Chief Commissioner:**  Power to authorise any officer to prosecute and arrest any person under the GST law should be exercised by the Central Board of Indirect taxes and Customs (CBIC) or by the Principal Chief Commissioner and should not vest with any other official in the tax administration.  **Protection where there is a reasonable cause:**  With a view to protect bonafide and genuine cases, and to avoid indiscriminate use of prosecution powers by the tax authority, protection should be provided where there is a “reasonable cause” for default.  Requirement of evaluating reasonable cause should be made statutorily applicable at the stage of sanction of competent authority. | Para 4.2.1 |
| 3.6 | Appeal against order sanctioning prosecution  Appeal mechanism should be provided in cases where order is passed in relation to sanctioning of prosecution. | Para 4.2.2 |
| 3.7 | Culpable state of mind  **Onus to be on tax administration:**  The onus to prove commitment of offence with guilty mind, which is currently on the taxpayer, should be shifted to the tax administration.  Further, specific provisions be included to prescribe areas where culpable state of mind should not be presumed.  These should include technical and procedural disputes, disputes that involve alleged tax short payment of values less than a prescribed percent – say 10% etc. | Para 4.2.3 |
| 3.8 | Compounding of offences  **Reduction in compounding fees and expanding the scope:**  Since the compounding is over and above the tax, interest and penalty, the remedy of compounding becomes extremely expensive and hence should be reduced to minimum 25% and maximum 100% of the tax amount as against current 50% and 150% respectively.  Further, in order to reduce litigation, compounding should be allowed more than once for all offences. | Para 4.2.4 |
| 3.9 | Publication of information  Adequate checks and balances need to be incorporated in the legislation for exercising the power to publish the names of tax defaulters, as it can significantly damage reputation of the organisation resulting in erosion of value.  Such powers should be exercised by the Principal Chief Commissioner with prior approval of CBIC. | Para 4.2.5 |
| 3.10 | Offences by companies  The provision to treat “attribution to any negligence” on the part of director, manager, secretary, or other officer of the company, as offence punishable under the Act is very harsh and should be deleted. | Para 4.2.6 |

1. **Detailed discussion:**

*Certainty and fair and benign prosecution provisions essential for ‘Ease of Doing business’ especially for new laws*

“Ease of doing business” has been one of the biggest agenda of the present Government. The uncertainty in the legal processes and the time consumed by the courts in resolving disputes has been a major challenge in the ease of doing business. The fear of attracting criminal implications for small, minor and petty matters also act as deterrence for the investors, before undertaking any business activity or making investments. Decriminalization of such matters will essentially encourage such investors to undertake business activity and to make investments, without fearing of any criminal consequences.

Any move towards ease of doing business and decriminalising offences would prevent harassment and will be welcomed by the trade and industry.

Initiation of criminal actions due to minor offences and/or non-compliances results into increase in the pendency and huge backlog of cases. There may be instances where such non-compliance may be inadvertent omission, negligence and such matters can also be put to an end by imposing fines and penalties. Under such circumstances, commencement of criminal proceedings may not be considered as prudent and the matter can be effectively disposed-off, without taking it to the courts.

GST is entirely a new tax regime and is a completely new law which incorporate several aspects that don’t have any precedents. The law is at a nascent stage and still evolving. The compliance process under GST is materially more onerous compared to pre-GST era.

When it comes to understanding the nuances and interpreting the law, there are several open issues and ambiguities which are posing tremendous challenges to the taxpayers who have to acclimatise with the new requirement of tax compliances. Government has time and again, through amendment, notifications, circulars and press release, clarified litigious issues under GST. Even the rulings pronounced by Courts and AARs on certain open matters are contrary, posing further challenges to both, taxpayer as also the tax administration.

GST law contains specific provisions which deal with different kind of offences, triggering punishment by way of prosecution, arrest and imprisonment along with fine. The imprisonment term is based on the absolute amount of tax evaded, ITC wrongly claimed or refund wrongly taken.

In the past, Courts have ruled that prosecution proceedings are supposed to be initiated only where the intention of the registered person is very blatantly and habitually *malafide.* Non-compliance of provisions by taxpayer may not always be intentional but can be due to misinterpretation of law. Therefore, tax evasion generally should not include the following cases:

1. genuine wrong classification of goods or services;
2. valuation;
3. wrong claim of ITC not involving collusion between supplier and recipient
4. issues involving interpretation of law;
5. matters where tax amount is insignificant or non-material, and
6. those where there is no loss to the Revenue (revenue neutral);
7. furnishing of wrong information due to clerical errors

While guidelines have been issued to clarify that prosecution proceedings should not be launched in cases of technical/ interpretational matters and *mens-rea* needs to be established, the same should be backed by suitable amendment in the GST law.

In the initial stages of the implementation of new legislation, the policy makers have always recognized the fact that implementation of the same would pose tremendous difficulties and therefore, did not incorporate any harsh punitive measures such as prosecution, arrest etc. Under Service tax, the offence provisions relating to false documents/ statements were implemented only after 2011 though the law had come into force from 1994. Further, certain offences like obstructing an officer, tampering material evidence etc. were also not punishable.

At the outset, it is suggested that the punitive measures in the form of prosecution and imprisonment, which are in addition to other deterrent provisions like interest and penalty, should not be invoked as the GST law is not yet settled and is still evolving.

* 1. **Offences under clause (f), (g) and (j) of section 132(1) of CGST Act:**

As per section 132 (1) of CGST Act, whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences:

1. …. (e) ….
2. 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 GST;
3. obstructs or prevents any officer in the discharge of his duties under this Act;
4. tampers with or destroys any material evidence or documents;

shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

* + 1. **Producing false information / documents etc:**

1. **Deferring implementation:**

Considering the nuances of the GST regime, it could be imperative to defer implementation of prosecution provisions at present. Even under the erstwhile Service tax, the offence provisions relating to false documents/ statements were implemented only after 2011 though the law had come into force from 1994.

**Suggestion:**

This offence should be excluded from the scope of section 132 for the time being and only penal provisions should continue for this offence.

1. **Set out parameters of Tax evasion:**

There have been several instances under tax statutes where genuine tax planning had been alleged as tax evasion and courts had to intervene and settle such cases. Since clause (f) can be invoked only in cases where the intent of taxpayer is to evade tax due under GST, it would be imperative to specify the parameters of tax evasion in order to eliminate any subjectivity in the provisions and thereby avoid unwarranted litigation on this count.

**Suggestion:**

Explanation may be inserted to define Tax evasion with appropriate guidelines. Procedural lapses and scenarios mentioned in para 4 above, should be considered while defining the term “Tax evasion”.

1. **Materiality**

Invoking the offence provision for falsification of records to cases which are not materially significant when compared with the overall quantum of tax liability discharged by the taxpayer could result in higher tax administration cost. This could be unintentional and the onus to prove the same under the law could be burdensome for the taxpayer.

**Suggestion:**

Offence provision may be invoked only in cases where the amount of tax intended to be evaded is significantly high if compared to total tax outflow of the taxpayer, say more than 10% of the total tax.

* + 1. **Obstructing or preventing officer in discharge of his duties [Sec. 132(1)(g)]**

Such offence was not punishable by prosecution under Excise and Service tax. Under the Indian Penal Code, 1860, the offence of obstructing any public servant in the discharge of his public functions is punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both *(Refer B1 of Annexure I).* Under GST law, it is punishable with imprisonment for a term which may extend to six months or with fine or with both.

**Suggestion:**

Since there is a penalty imposed under the provisions of section 122(1)(xiii), the prosecution provision may be deleted.

The maximum term of imprisonment should be reduced to three months or a nominal fine, in line with the provisions under Indian Penal Code.

Further, notwithstanding and without prejudice to the above suggestion, prosecution provisions should exclude procedural elements of conduct such as furnishing of information or appearances.

* + 1. **Tampering or destroying evidence or documents [Sec. 132(1)(j)]**

While penalty for such an offence is totally warranted, the provision of prosecution in such cases may be omitted. There are chances that the evidence got destroyed unintentionally without any intent to evade the tax. In those scenarios, invoking prosecution provisions can be harsh. Such offence is not punishable by prosecution under Customs, Excise, Service tax or VAT laws.

**Suggestion:**

Prosecution provision is not warranted and therefore, may be deleted.

In the alternate, the prosecution provisions should be restricted only to cases where the intent behind tampering or destroying the evidence is to evade materially significant tax confined only to fake invoice issuance.

* 1. **Other offences**
     1. **Prosecution and arrest**

Under section 132(1)(a), prosecution in all the cases of supply without issuance of invoice could be worrisome as it could entail imprisonment even in scenarios where there is an ambiguity on a transaction qualifying as a supply or not.

The supplier is liable to be prosecuted under section 132(1)(b), where it has raised invoice without supplying goods or service. As GST law is not yet settled, there can be cases where the supplier has treated an activity as supply and issued an invoice (credit on which is claimed by the recipient) but the department takes the contrary view by not treating such activity as a supply. In these cases, prosecuting the supplier may not be proper.

Further, there could be cases where the recipient has not paid the tax amount to the supplier and hence the supplier is unable to pay the tax due to financial reasons. Imprisonment in such cases may be fatal to businesses.

**Suggestion:**

1. Prosecution should be restricted only to cases where there is an intention to evade tax. Thus, cases like genuine wrong classification of goods or services, valuation and those where there is no loss to the Revenue (revenue neutral) should be excluded from the provisions of section 132.
2. There are penal provisions under section 122 and hence, prosecution, arrest and imprisonment provisions should be initiated with adequate checks and balances, in the rarest of rare cases of hard, habitual and deliberate defaulters. Such rare cases may cover instances where the fraudulent activity or the collusion between the supplier and recipient with a clear motive of evasion of tax, wrong claim of ITC or refund claims, is blatant.
3. The clause (c) of section 132(1) covers the case where ITC is claimed basis the invoice issued by the supplier without supply of goods or services. The ambit of this provision is very wide and vague in as much as it can cover even the genuine cases of ITC claim by the recipient without there being any fraud or *malafide* reasons.

For instance, supplier may issue invoice basis supplies made but not reckoned as such by the tax department. The recipient would also account for such supply based on the invoice raised by the supplier and accordingly claim ITC after making the payment of consideration and tax thereon to the supplier. The reading of the provisions suggest that the department has the power to invoke the prosecution proceedings treating such claim of ITC by the recipient as an offence. This could create tremendous hardship considering the fact that the onus would then be on the person to prove the genuineness of the transaction/ non-commitment of the offence.

It is, therefore, suggested that the clause (c) should be modified to cover only the cases where the *malafide* intent by way of collusion is proved beyond doubt.

1. The prosecution provisions, which are currently dictated by absolute amount of default, should be made applicable only in cases where the amount of default exceeds a prescribed percentage of the total tax paid by such taxpayer i.e. only where commitment of an offence is significantly and materially high compared to the overall taxes paid.

For instance, a large taxpayer who pays GST of say, INR 10,000 crore annually, may not have any intent to evade tax of INR 1 crore. This non- payment of tax may be due to various genuine reasons like system failure for one hour in a year, which could result in a tax discrepancy of more than a crore.

Thus, in such cases, the applicability of provisions should not be based on absolute amount of tax default but should be basis some percentage (which should be material) of tax paid by the person.

In other words, the term of imprisonment should be dependent on evasion amount being the percentage (to be prescribed) of tax paid.

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| **Tax evaded/ ITC wrongly claimed (as a percentage of total tax outflow in a year)** | **Imprisonment term** |
| 10% or more but less than 25% | 1 year |
| 25% or more but less than 50% | 3 years |
| 50% or more | 5 years |

1. Instead of Commissioner, the power to authorise the arrest should lie with CBIC or the Principal Chief Commissioner.

1. With a view to protect bonafide and genuine cases and to avoid indiscriminate use of prosecution power by tax authorities, there is need for providing protection where there is ‘reasonable cause’ for default.
2. It is true that taxpayer is punishable only if there is ‘wilful’ default, but taxpayer can discharge such onus only during the stage of trial before the Magistrate. Taxpayer cannot take up such defence at the stage of sanction of prosecution by the Commissioner since, as per section 135, there is presumption of presence of culpable mental state of taxpayer while committing offence.

It is suggested that requirement of evaluating ‘reasonable cause’ be made statutorily applicable at the stage of sanction of competent authority itself so that lesser number of cases (which are actually hard cases) travel to Magistrate’s court.

* + 1. **Non-appealable order**

Generally, a taxpayer has a right to appeal against an order passed under the provisions of GST law before the appellate forum. However, appeal against an order sanctioning prosecution is specifically prohibited. In such cases, the only recourse available with taxpayer is to approach the Court by filing Writ petition.

**Suggestion:**

Provision under the GST law, which prohibits the appeal against the order sanctioning prosecution, should be relaxed and appeal mechanism should be prescribed in such cases.

* + 1. **Removal of deemed presumption of culpable state of mind**

There is a deemed presumption of culpable state of mind on part of accused for any offence under the Act and the burden of proof is on the accused to prove the fact beyond ‘reasonable doubt’ that he had no such mental state with respect to alleged offence. This is a very onerous provision and creates opportunities for using the provisions against the taxpayer.

**Suggestion:**

Considering the paradigm shift desired in tax administration through decriminalisation of tax defaults, the provision should be deleted and the onus should be shifted to the tax administration to prove that the offence was committed with guilty mind. This will ensure that prosecution is invoked only in hard cases of grave default.

* + 1. **Compounding of offences**

An offence may be compounded by the Commissioner on payment of compounding amount.  The provisions relating to compounding are restrictive and not available for certain subsequent offences.

**Suggestion:**

As the compounding amount is over and above the tax, interest and penalty, the remedy of compounding is extremely expensive and should be reduced to minimum 25% and maximum 100% of tax amount as against current 50% and 150% respectively.

Further, in order to reduce litigation and as a part of settlement mechanism, the provisions relating to compounding should not be restrictive and may be allowed for repetitive offences also.

* + 1. **Publication of information in respect of persons in certain cases**

Publication of the taxpayer details have a significant impact on the organisation. In the past, it is seen that even unfounded rumours have damaged the reputation of the organisation which can have an exponential impact on the business and can lead to substantial erosion of value.

**Suggestion:**

1. Such powers should be exercised in rarest of rare cases and by the Principal Chief Commissioner with prior approval of CBIC.

1. Adequate checks and balances need to be incorporated in the legislation to ensure that such powers are exercised in cautious manner.
   * 1. **Offences by companies**

As per section 137(2) of CGST Act, where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of any director, manager, secretary or other officer of the company, then such persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Currently, the provision covers negligence on the part of the specified persons even if the same is not intentional but could be due to mere oversight or any other similar reason. Thus, initiation of prosecution proceedings by treating negligence as punishable offence in cases where it is caused due to mere negligence could be very harsh.

**Suggestion:**

The provision should be restricted only to cases where the offence is committed with the knowledge of the specified persons, i.e. with consent or connivance, and exclude the situations where it is attributable to negligence on the part of persons specified.

**Annexure I**

1. **Central Goods and Services Tax Act, 2017**

**A1. Section 132 – Punishment for certain offences**

132(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences:

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| **Offence** | **Type of offence** | **Imprisonment term** |
| 1. Supply of goods or services without issue of any invoice with the intention to evade tax | Cognizable and non-bailable –  if the amount of tax evasion or ITC or tax refund exceeds INR 5 crore  In all other cases it shall be non-cognizable and bailable | Amount of tax evaded or amount of ITC wrongly availed or utilized or refund wrongly taken:   1. Exceeds INR 5 crore-   **imprisonment up to 5 years**   1. Between INR 2 crore and INR 5 crore-**imprisonment up to 3 years** 2. Between INR 1 crore and INR 2 crore– **imprisonment up to 1 year**   Committing an offence specified in clause (f), (g) or (j) – **imprisonment up to 6 months**  Second or subsequent conviction for any offence –  **imprisonment up to 5 years** |
| 1. Issuance of invoice or bill without supply of goods or services leading to wrongful availment or utilisation of ITC or refund of tax |
| 1. avails input tax credit using such invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill; |
| 1. 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 |
| 1. evades tax or fraudulently obtains refund and where such offence is not covered above | Non-cognizable and bailable |
| 1. 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 |
| 1. obstructs or prevents any officer in the discharge of his duties |
| 1. acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing any goods which he knows or has reasons to believe are liable to confiscation. |
| 1. receives or is in any way concerned with the supply of services which he knows or has reasons to believe are in contravention of any provisions |
| 1. tampers with or destroys any material evidence or documents |
| 1. fails to supply any information which he is required to supply or supplies false information |
| 1. attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) |

**A2. Section 69 - Power to arrest**

The Commissioner may authorise any officer of central tax to arrest a person in the following cases:

1. the person has committed any of the following offence and the amount involved is more than INR 2 crore:

* supplies any goods or services or both without issue of any invoice with the intention to evade tax;
* issues any invoice or bill without supply of goods or services leading to wrongful availment or utilisation of input tax credit or refund of tax;
* avails input tax credit using such invoice or bill;
* 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;

1. it is a second/ subsequent offence by such person.

Cognizable and non-bailable offence

In case a person is arrested for an offence which is cognizable and non-bailable, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within 24 hours.

Non-cognizable and bailable offence

Subject to the provisions of Code of Criminal Procedure, 1973, where a person is arrested for non-cognizable and bailable offence, he shall be admitted on bail or in default of bail, forward to the custody of the Magistrate. The Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers ad be subject to the same provisions as an officer-in-charge of a police station.

**A3. Section 121 – Non-appealable order**

No appeal shall lie against any order passed in relation to sanctioning of prosecution.

**A4. Section 135 – Presumption of culpable mental state**

The court shall presume the existence of such mental state unless the accused proves the fact (beyond reasonable doubt) that he had no such mental state with respect to the act charged as an offence in that prosecution.

**A5. Section 137(2) – Offences by companies**

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 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.

**A6. Section 138 – Compounding of offences**

Any offence may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence of compounding amount.

Compounding provision is not applicable in certain cases which, *inter alia*, includes:

* A person who has been allowed to compound once (with certain exceptions)
* A person accused of committing an offence under GST law which is also an offence under any law for the time being in force
* A person who has been convicted for an offence under GST law by a court

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

Further, the compounding amount shall be minimum 50% of tax involved (or INR 10,000 whichever is higher) and can be maximum up to 150% of tax (or INR 30,000 whichever is higher).

**A7. Section 159 – Publication of information**

If the Commissioner is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution in respect of such person, it may cause to be published such name and particulars in such manner as it thinks fit.

In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association may also be published.

1. **Indian Penal Code, 1860**

**B1. Section 186 – Obstructing public servant in discharge of public functions**

Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

1. The sections referred relates to CGST Act and SGST Act. The said provisions are mutatis mutandis applicable to IGST Act, 2017. [↑](#footnote-ref-1)