

## **Power to grant exemption**

### **Section 11(1) of CGST Act / Section 6 of IGST Act**

- Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, **either absolutely or subject to such conditions**, goods or services or both.
- Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, **by special order**, under **circumstances of an exceptional nature** to be stated in such order, exempt from payment of tax any goods or services or both.
- The Government may, for **clarifying** the scope or applicability of any notification issued or order issued, insert an explanation at any time **within one year** of issue of the notification or order and every such explanation shall have effect as if it had always been the part of the first such notification or order.
- Where an exemption has been granted absolutely, the registered person shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

### **Section 25 of the Customs Act, 1962**

- General Exemption by Notification by Central Government
- Exemption by Special Order by Central Government
- Clarification by Central Government within one year of issue of the notification and every such explanation shall have effect as if it had always been the part of the first such notification or order.
- Form of exemption: It can be at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable. Duty chargeable on such goods shall in no case exceed the statutory duty.
- No duty shall be collected if the amount of duty leviable is equal to, or less than, Rs.100.

## **Assessment**

### **Section 59 of CGST Act: Self-assessment**

Every registered person shall self-assess the taxes payable and furnish a return for each tax period.

### **Section 60 of CGST Act: Provisional assessment**

- Where the taxable person is **unable to determine the value or determine the rate of tax**, he may request the proper officer for payment of tax on a provisional basis and the proper officer shall pass an order allowing such payment within **90 days** from the date of receipt of such request.
- Bond with such surety or security of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.
- The proper officer shall, within **6 months** from the date of the communication of the order issued, pass the final assessment order.
- This period may be extended by Joint or Additional Commissioner for a further period **not exceeding six months** and by the Commissioner for such further period **not exceeding four years**.
- The registered person shall be liable to pay interest on any tax payable at 18% p.a. from the first day after the due date till the date of actual payment.
- Where the registered person is entitled to a refund consequent to the order of final assessment, interest shall be paid on such refund 6% p.a. from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund of such tax.

**Section 61 of CGST Act: Scrutiny of returns**

- The proper officer may scrutinize the return to verify the correctness of the return and inform him of the discrepancies noticed and seek his explanation thereto.
- In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken.
- In case no satisfactory explanation is furnished within 30 days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

**Section 62 of CGST Act: Assessment of non-filers of returns**

- Where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgment and issue an assessment order within **5 years** from due date of the annual return.
- Where the registered person furnishes a valid return within **30 days** of the service of the assessment order, the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under section 50 or for payment of late fee under section 47 shall continue.

**Section 63 of CGST Act: Assessment of unregistered persons**

Where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within **5 years** from due date of the annual return.

**Section 64 of CGST Act: Summary assessment in certain special cases**

- The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue.
- Where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.
- On an application made by the taxable person within **30 days** from the date of receipt of order passed or on his own motion, if the Additional or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

**Types of Audits under GST**

Mandatory Audit by CA / CMA	Audit by Tax Authorities	Special Audit
-----------------------------	--------------------------	---------------

**Section 65 of CGST Act: Audit by tax authorities**

- The Commissioner or any officer authorised by him may undertake audit of any registered person.
- The officers may conduct audit at the place of business of the registered person or in their office.
- The registered person shall be informed by way of a notice not less than 15 working days prior to the conduct of audit.
- The audit shall be completed within **3 months** from the date of commencement of the audit.

- Commissioner may extend the period by a further period not exceeding **6 months**.
- On conclusion of audit, the proper officer shall, within **30 days**, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.
- Where the audit conducted results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or 74.

### **Section 66 of CGST Act: Special Audit**

- If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.
- The Chartered Accountant or Cost Accountant so nominated shall, within **90 days**, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner.
- The Assistant Commissioner may extend the said period by a further **90 days**.
- The expenses of the examination and audit of records, including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.
- Where the special audit conducted results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or 74.

### **Customs Act, 1962**

#### **Section 17: Self Assessment**

##### **1. Duty to be self- assessed by the importer/ exporter**

##### **2. Verification by proper officer**

The proper officer may verify the self-assessment of such goods and **examine or test** any imported goods or export goods. He may require the importer, exporter or any other person to **produce any contract, broker's note, insurance policy, catalogue or other document**, whereby the duty leviable can be ascertained, and to **furnish any information** required to such ascertainment.

3. **Calling for Information:** For verification of self-assessment, the proper officer may ask to produce any document or information, whereby the duty leviable on the imported goods or export goods can be ascertained. **(w.e.f. 31st March 2017)**

##### **4. If self-assessment not done correctly**

<b><u>Option 1: Reassessment of duty by the proper officer</u></b>	<b><u>Option 2: Audit</u></b>
Where any re-assessment done is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification and in cases other than those where he confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a <b><u>speaking order on re-assessment</u></b> , within <b>15 days</b> from the date of re-assessment of the bill of entry or the shipping bill.	Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported goods or export at his office or at the premises of the importer or exporter.

**Section 18: Provisional assessment of duty**

- Provisional assessment can be resorted to where
  - the importer or exporter is unable to make self-assessment under section 17 and makes a request in writing to the proper officer for assessment
  - the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test
  - where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry
  - where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry
- The proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer/exporter execute a **bonds** of an amount equal to the **difference between the duty that may be finally assessed and the provisional duty**
- When the duty leviable on such goods is assessed finally or re-assessed by the proper officer

Goods cleared for home consumption or export	Warehoused goods
Amount paid shall be adjusted against the final duty. If the amount so paid is short or in excess of final duty, he shall pay the deficiency or be entitled to a refund.	The Proper Officer may, where the final duty is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to <b>twice</b> the amount of the excess duty.

- Interest**

Amount is payable on finalization	Amount is refundable on finalization
Interest at the rate of <b>15% p.a.</b> from the first day of the month in which the duty is provisionally assessed till the date of payment.	Interest on Refund at <b>6% p.a.</b> from 3 months from the date of assessment till the date of refund. Refund shall be subject to doctrine of unjust enrichment

**Refunds****Situations leading to refund claims under GST**

- Goods or services or both are exported or, goods or services or both supplied to an SEZ developer/unit, on payment of IGST and refund of such IGST paid on goods or services or both supplied is claimed
- A registered person may claim refund of any unutilised input tax credit (ITC) at the end of any tax period in the following cases:
  - Zero rated supplies: Supply of goods/services/both to an SEZ developer/unit or export of goods or services or both, and
  - Accumulated ITC on account of inverted duty structure: Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

However, refund of unutilized ITC shall NOT be allowed if:

- the goods exported out of India are subjected to export duty;
- the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.

3. Tax paid on the supply of goods regarded as deemed exports may be claimed by recipient.
4. Refund of any balance in the electronic cash ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be claimed
5. Refund on account of issuance of refund vouchers for taxes paid on advances against which goods or services have not been supplied, may be claimed
6. Refund of tax wrongly collected and paid to the Government [i.e. CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa
7. The IGST paid by tourist leaving India on any supply of goods taken out of India by him
8. Tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court.
9. On finalization of provisional assessment, if any tax becomes refundable to assessee (on account of assessed tax on final assessment being less than the tax deposited by the assessee)
10. Refund of taxes on purchase made by UN bodies or embassies etc.

#### Section 54 of CGST Act: Refund of Tax

- Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of **two years from the relevant date**.

Case	Relevant Date
Goods exported out of India where a refund of tax paid is available in respect of goods themselves or the inputs or input services used in such goods	
a) by sea or air	date on which the ship or the aircraft in which such goods are loaded, leaves India
b) by land	date on which such goods pass the frontier
c) by post	date of dispatch of goods by the Post Office concerned to a place outside India
Supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods	date on which the return relating to such deemed exports is furnished
Services exported out of India where a refund of tax paid is available in respect of services themselves or the inputs or input services used in such services, the date of	
a) where the supply of services had been completed prior to the receipt of such payment; or	receipt of payment in convertible foreign exchange
b) where payment for the services had been received in advance prior to the date of issue of the invoice;	issue of invoice
Provisional assessment	date of adjustment of tax after final assessment
Tax becomes refundable as a consequence of judgement, decree, order or direction of appellate authority, Appellate Tribunal or any Court	date of such judgement, decree, order or direction

Refund of unutilised input tax credit	end of the financial year in which such claim for refund arises
Person other than the supplier	date of receipt of goods or services or both by such person
any other case	date of payment of duty

- The proper officer shall issue the order within **60 days** from the date of receipt of application complete
- No refund shall be paid to an applicant, if the amount is **less than Rs.1,000**.
- If refund is Rs. 2,00,000 or more, then it shall not be necessary for the applicant to furnish documentary and other evidences proving that the incidence of such tax and interest had not been passed on to any other person. In other cases, he may file a declaration, based on the documentary or other evidences available with him,

### **Notification no. 15/2017**

No Refund will be allowed in case of unutilised ITC in case of Construction Service.

### **Grant of provisional refund**

- The proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council,
- refund on a provisional basis, **90%** of the total amount so claimed, excluding the amount of ITC provisionally accepted
- thereafter make an order under section 56(5) for final settlement of the refund claim after due verification of documents furnished by the applicant.
- It shall be granted within period not exceeding 7 days from the date of the acknowledgement
- If the amount of tax evaded exceeds Rs. 2.5 crores, the provisional refund shall be granted subject to the condition that the person claiming refund has, during any period of 5 years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law.

### **Withholding of refund claim**

GST law provides that where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

However, it has been adequately safeguarded by provision for payment of interest @ 6% p.a, if, as a result of appeal, or further proceedings, the applicant becomes eligible for refund.

Where any refund is due in case of zero rated supplies or accumulated ITC on account of inverted duty structure, to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any Court, Tribunal or Appellate Authority by the specified date, the proper officer may:

- a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;
- b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

**Amount to be claimed as refund in case of zero rated supply of goods or services**

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) / Adjusted Total Turnover \* Net ITC

where

- A. "Refund amount" means the maximum refund that is admissible
- B. "Net ITC" means ITC availed on inputs and input services during the relevant period
- C. "Turnover of zero-rated supply of goods" means the value of zero rated supply of goods made during the relevant period without payment of tax under bond/LUT
- D. "Turnover of zero-rated supply of services" means the value of zero rated supply of services made without payment of tax under bond or LUT, calculated in the following manner, namely:-  
Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period.
- E. "Adjusted Total turnover" means the turnover in a State or a Union territory, as defined under section 2(112), excluding the value of exempt supplies other than zero-rated supplies, during the relevant period;

**Section 56 of CGST Act: Interest on Delayed Refunds**

- A. **Interest on amount refundable consequent to order passed by Proper Officer under section 54(5)**  
Where any tax ordered to be refunded under section 54(5) to any applicant is not refunded within 60 days from the date of receipt of application under section 54(1), interest shall be payable @ 6% p.a.
- B. **Interest on amount refundable consequent to order passed in an appeal or further proceedings**  
Where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court which has attained finality and the same is not refunded within 60 days from the date of receipt of application filed consequent to such order, interest @ 9% p.a. shall be payable on such refund.

**Section 27 of the Customs Act, 1962: Refund of Duty**

Refund shall be granted to the applicant only in the following cases:

1. Customs duty paid by the person and he has not passed on the incidence of such duty and interest to any other person
2. Person paid duty in excess

The refund claim can be filed **within one year from the relevant date.**

**Relevant Date**

Case	Relevant Date
Goods which are exempt from payment of duty by a special order	Date of issue of such order
Provisional assessment	Date of adjustment of duty after final assessment
Duty becomes refundable as a consequence of judgement, decree, order or direction of appellate authority, Appellate Tribunal or any Court	Date of such judgement, decree, order or direction
Other Cases	Date of payment of such duty / interest

- The period of limitation will not apply if duty is paid under protest.
- It is not applicable in case of refund of predeposit made during the course of investigation.

**Note**

Where the amount of refund of Customs Duty claimed is less than Rs. 100, the same shall not be refunded.

**Refund will be allowed in following cases**

1. if the importer has not passed on the incidence of such duty and interest to any other person
2. if imports were made by an individual for his personal use
3. if the buyer who has borne the duty and interest, has not passed on the incidence of such duty and interest to any other person
4. if amount found refundable relates to export duty paid on goods which has returned to exporter as specified in section 26
5. if amount relates to drawback of duty payable under section 74 and 75
6. if the duty or interest was borne by a class of applicants which has been notified for such purpose in the Official Gazette by the Central Government
7. **if the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where**
  - i. **such excess payment of duty is evident from bill of entry in the case of self-assessed bill of entry or**
  - ii. **the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment (w.e.f. 31<sup>st</sup> March 2017)**

**Consumer Welfare Fund**

- Assistant Commissioner shall make an order that the whole or any part of the duty is refundable and the amount so determined shall be credited to the "Consumer Welfare Fund".
- Any money credited to the Fund shall be utilized by the Central Government for the welfare of the consumers.
- Central Government shall maintain proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor- General of India

**Section 27A of the Customs Act: Interest on Delayed Refund**

- If any duty ordered to be refunded has not been refunded within 3 months from the date of receipt of the refund application, interest at **6% p.a.** shall have to be paid on such duty from the **date immediately after the expiry of three months from the date of receipt of application till the date of refund of such duty.**
- Where any order of refund is made by Commissioner (Appeals) or Tribunal or Court the said order shall be deemed to be a refund order.
- Interest is always with reference to date of application and not with reference to the date of passing of order.



## **Demand and Recovery**

**Section 73 of CGST Act: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts**

<b>Tax not paid voluntarily</b>	<b>Tax paid voluntarily</b>
The Officer shall, within <b>2 years 9 months</b> from the due date for furnishing of annual return, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice.	<ul style="list-style-type: none"> <li>Person chargeable with tax may, before service of notice pay on basis of               <ol style="list-style-type: none"> <li>his own ascertainment of such duty or</li> <li>duty ascertained by the Officer, the amount of duty along with interest payable thereon.</li> </ol> </li> <li>He shall inform the Officer of such payment in writing, who, on receipt of such information, <b>shall not serve any notice.</b></li> <li>If the Officer is of the opinion that the <b>amount paid falls short</b> of that actually payable, then, he shall <b>issue the notice</b> for such shortfall</li> </ul>

**Section 74 of CGST Act: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized due to fraud or wilful-misstatement or suppression of facts**

The Officer shall, **within 4 years 6 months from the due date for furnishing of annual return**, person requiring him to show cause why he should not pay the amount serve notice on such as per notice along with interest payable and a penalty = 100% of tax as per notice.

### **Time Limit to complete proceeding**

<b>No intention to evade payment of duty</b>	<b>Intention to evade payment of duty</b>
within <b>3 years</b> from the due date for furnishing of annual return	within <b>5 years</b> from the due date for furnishing of annual return

<b>Action by Taxpayer</b>	<b>Amount of penalty payable</b>	
	<b>Non Fraud Cases</b>	<b>Fraud Cases</b>
Tax along with Interest is paid before issuance of Show Cause Notice (SCN)	No Penalty and no Show Cause Notice	Penalty = 15% of Tax and no SCN shall be issued
Tax along with Interest is paid within 30 days of issuance of Show Cause Notice	No Penalty; All proceedings deemed to be concluded	Penalty = 25% of Tax All proceedings deemed to be concluded
Tax amount along with Interest, paid within 30 days of communication of adjudication order	Penalty = Higher of ➤ 10% of Tax amount ➤ Rs. 10,000	Penalty = 50% of Tax All proceedings deemed to be concluded
Tax amount along with Interest, paid after 30 days of communication of adjudication order		100% of Tax

**Section 28 of the Customs Act, 1962: Recovery of duties not levied or not paid or short-levied or short paid or erroneously refunded or any interest payable has not been paid, or erroneously refunded**

- A. Reasons other than fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder i.e. **no intention to evade payment of duty**

<b>Duty not paid voluntarily</b>	<b>Duty paid voluntarily</b>
The Central Excise Officer shall, within <b><u>two years from the relevant date</u></b> , serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice.	<ul style="list-style-type: none"> <li>The person chargeable with duty may, before service of notice pay on basis of               <ul style="list-style-type: none"> <li>c) his own ascertainment of such duty or</li> <li>d) duty ascertained by the Officer, the amount of duty along with interest payable thereon under section 28AA.</li> </ul> </li> <li>He shall inform the Officer of such payment in writing, who, on receipt of such information, <b><u>shall not serve any notice</u></b>.</li> <li>If the Officer is of the opinion that the <b><u>amount paid falls short</u></b> of that actually payable, then, he shall <b><u>issue the notice</u></b> for such shortfall and the period of two years for issue of notice shall be computed from the date of receipt of information.</li> </ul>

- B. Reasons of collusion or any wilful misstatement or suppression of facts i.e. **intention to evade payment of duty**

The Officer shall, **within five years from the relevant date**, person requiring him to show cause why he should not pay the amount serve notice on such as per notice along with interest payable and a penalty = 100% the duty as per notice.

**Section 114A read with section 28 of the Customs Act, 1962: Penalty for short-levy or non-levy of duty**

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts	Penalty = 100% of Duty / Interest
Such duty or interest is paid within 30 days from the date of receipt of the notice	Penalty = 15% of Duty if paid within 30 days (only duty)
Such duty or interest is paid within 30 days from the date of the communication of the order of the proper officer determining such duty	Penalty = 25% of Duty / Interest if paid within 30 days

**Notice not sustainable**

Where any appellate authority or Tribunal or court concludes that the notice issued is not sustainable for the reason that intent to evade payment of duty has not been established against the person to whom the notice was issued, the Officer shall determine the duty for two year, deeming as if the notice were issued.

**Relevant Date**

Particulars	Relevant Date
Duties not levied or short-levied or not paid or short paid	Date on which proper officer makes an order for clearance of goods
Duty / tax is provisionally assessed	Date of adjustment of duty/tax after the final assessment
Duty / tax erroneously been refunded	Date of such refund
Any other case	Date on which duty/tax is to be paid

**Time Limit to complete proceeding (where it is possible to do so)**

No intention to evade payment of duty	Intention to evade payment of duty
within six months from the date of notice	within one year from the date of notice

**Note**

The proper officer shall not serve such show cause notice, where the amount involved is **less than Rs.100**.

**Interest on delayed payment of Duty (Section 28AA)**

The person, who is liable to pay duty, shall, in addition to the duty, be liable to pay interest at the rate of **15% p.a.**, whether such payment is made voluntarily or after determination of the amount of duty under section 28A. Interest shall be paid from the first day of the month succeeding the month in which such duty becomes due till the date of actual payment of amount due.

**No interest shall be payable**

- the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A
- such amount of duty is voluntarily paid in full, within 45 days from the date of issue of such order, instruction or direction,
- without reserving any right to appeal against the said payment at any subsequent stage of such payment.

**Section 78 of CGST Act: Initiation of recovery proceedings**

- Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:
- Where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

**Section 79 of CGST Act: Recovery of tax**

- Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes:
  - the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer

- b) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer
- c)
  - (i) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;
  - (ii) every person to whom the notice is issued shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;
  - (iii) in case the person to whom a notice has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;
  - (iv) the officer issuing a notice may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;
  - (v) any person making any payment in compliance with a notice issued shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;
  - (vi) any person discharging any liability to the person in default after service on him of the notice issued shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;
  - (vii) where a person on whom a notice is served proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;
- d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;
- e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

**Section 80 of CGST Act: Payment of tax and other amount in instalments**

- On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed.
- where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.
- The facility of payment in instalments shall not be allowed where -
  - (a) the taxable person has already defaulted on the payment of any amount under the CGST Act or IGST Act or UTGST Act or any of the SGST Act, for which the recovery process is on;
  - (b) the taxable person has not been allowed to make payment in instalments in the preceding financial year under the Act or the IGST Act or UTGST Act or any of the SGST Act;
  - (c) the amount for which instalment facility is sought is less than Rs. 25,000.

**Section 81 of CGST Act: Transfer of property to be void in certain cases.**

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

**Section 82 of CGST Act: Tax to be first charge on property**

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

**Section 83 of CGST Act: Provisional attachment to protect revenue in certain cases.**

- Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.
- Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made.

**Section 142A of the Customs Act: Liability under Act to be first charge**

- Notwithstanding anything to the contrary contained in any Central Act or State Act,
- any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act or the rules made thereunder shall be the first charge on the property of the assessee or the person,

- save as otherwise provided in
  - a) section 529A of the Companies Act, 1956
  - b) the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and
  - c) the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002

### **Section 28BA of the Customs Act: Provisional Attachment of Property**

- Where, during the pendency of any proceedings, the Officer is of the opinion that for protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Principal Commissioner or Commissioner, attach provisionally any property belonging to the person on whom notice is served.
- Every such provisional attachment shall cease to have effect after **six months from the date of the order.**
- The Principal Chief Commissioner or Chief Commissioner may extend by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed **two years.**
- Where an application for settlement of case is made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order is made shall be excluded from the period specified above.
- Where a property has been provisionally attached, the said person or his representative shall not mortgage, lease, transfer, deliver or deal with the attached property in any manner except with the previous approval of the Commissioner.

### **Officers under the Act**

#### **Section 3 of CGST Act: Officers under this Act**

The Government shall, by notification, appoint the following classes of officers for the purposes of this Act:

- a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax
- b) Chief Commissioners of Central Tax or Directors General of Central Tax
- c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax
- d) Commissioners of Central Tax or Additional Directors General of Central Tax
- e) Additional Commissioners of Central Tax or Additional Directors of Central Tax
- f) Joint Commissioners of Central Tax or Joint Directors of Central Tax
- g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax
- h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax
- i) any other class of officers as it may deem fit

#### **Section 3 : Classes of officers of customs**

- a) Principal Chief Commissioners of Customs
- b) Chief Commissioners of Customs
- c) Principal Commissioners of Customs
- d) Commissioners of Customs
- e) Commissioners of Customs (Appeals)
- f) Joint Commissioner of Customs
- g) Deputy Commissioners of Customs
- h) Assistant Commissioners of Customs
- i) such other class of officers of customs

**Appeals and Revision****Section 107 of CGST Act: Appeals to Appellate Authority**

- Any person aggrieved by any decision or order by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within **three months** from the date on which the said decision or order is communicated to such person.
- The Commissioner may, on his own motion, or upon request from the Commissioner, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority **within six months** from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.
- The Appellate Authority may, on sufficient cause, extend the period of three months or six months and allow it to be presented within a further period of one month.
- Appeal shall be filed to

<b>Decision / Order is passed by</b>	<b>Appeal to (Appellate Authority)</b>
Additional or Joint Commissioner	Commissioner (Appeals)
Deputy or Assistant Commissioner or Superintendent	Additional Commissioner (Appeals)

- No appeal shall be filed unless the appellant has paid
  - a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and
  - b) a sum equal to **ten per cent of the remaining amount** of tax in dispute arising from the said order, in relation to which the appeal has been filed.
- The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

**Section 108 of CGST Act: Powers of Revisional Authority.**

- Revisional Authority may, on his own motion, or upon information received by him or on request from the Commissioner, call for and examine the record of any proceedings, and if he considers that any decision or order passed is erroneous insofar as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.
- The Revisional Authority shall not exercise any power if
  - a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or
  - b) the period specified section 107(2) has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised or
  - c) the order has already been taken for revision under this section at an earlier stage; or
  - d) the order has been passed in exercise of the powers
- The Revisional Authority may pass an order on any point which has not been raised and decided in an appeal, before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years, whichever is later.

**Section 112 of CGST Act: Appeals to Appellate Tribunal**

- Any person aggrieved by an order passed against him under section 107 or section 108 may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.
- The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed **fifty thousand rupees**.
- The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed.
- The party against whom the appeal has been preferred may, file, within forty-five days of the receipt of notice, a memorandum of cross-objections.
- The Appellate Tribunal may admit an appeal within three months after the expiry of the period or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period if it is satisfied that there was sufficient cause for not presenting it within that period.
- No appeal shall be filed unless the appellant has paid
  - a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
  - b) a sum equal to **20%** of the remaining amount of tax in dispute, in addition to the amount paid under section 107, arising from the said order, in relation to which the appeal has been filed.
- The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

**Section 109 of CGST Act: Goods and Services Tax Appellate Tribunal**

- The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (Regional Benches), State Bench and Benches thereof (Area Benches).
- The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.
- The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred above.
- Any appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, **does not exceed five lakh rupees** and which does not involve any question of law may be heard by a bench consisting of a single member.

**Section 117 of CGST Act: Appeal to High Court.**

- Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.
- An appeal shall be filed within 180 days from the date on which the order appealed against is received by the aggrieved person and it shall be in such form, verified in such manner as may be prescribed.
- High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.



- Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

### **Section 118 of CGST Act: Appeal to Supreme Court**

An appeal shall lie to the Supreme Court

- a) from any order passed by the National Bench or Regional Benches of the Appellate Tribunal or
- b) from any judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

### **Section 119 of CGST Act: Sums due to be paid notwithstanding appeal, etc.**

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the National or Regional Benches of the Appellate Tribunal under section 113 or an order passed by the State Bench or Area Benches of the Appellate Tribunal under section 113 or an order passed by the High Court under section 117 shall be payable in accordance with the order so passed.

### **Section 121 of CGST Act: Non-appealable decisions and orders**

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters:

- a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- c) an order sanctioning prosecution under this Act; or
- d) an order passed under section 80.

### **Section 128 of the Customs Act: Appeals to Commissioner (Appeals)**

- The First Appeal lies to the Commissioner (Appeals) if the order or decision is of an officer lower in rank than the Principal Commissioner or Commissioner.
- Time limit: within **60 days** from the date of the communication of decision / order. This period can be extended by a further period of thirty days by Commissioner (Appeals) on sufficient cause being shown.
- He shall decide every appeal within **6 months** from the date on which it is filed, where it is possible to do so

### **Section 129A of the Customs Act: Appeals to Appellate Tribunal**

- Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order
  - a) a decision or order passed by the Commissioner as an adjudicating authority
  - b) an order passed by the Commissioner (Appeals)
- No appeal shall lie to the Appellate Tribunal any order of Commissioner (Appeals) if it relates to following. In such case, Revision application can be made to Central Government

- a) any goods imported or exported as baggage
- b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination
- c) payment of drawback as provided in Chapter X, and the rules made thereunder
- Tribunal **may refuse** to admit an appeal in respect of an order passed by the Commissioner (Appeals)
  - a) in any disputed case, (other than a case relating to the determination of rate of duty or valuation of goods) the difference in duty involved or the duty involved
  - b) the amount of fine or penalty determined by such order
  - c) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125  
**does not exceed Rs.2,00,000.**

### **Procedure**

- Every appeal shall be filed within **3 months** from the date on which the order sought to be appealed against is communicated to the Principal Commissioner or Commissioner or the other party preferring the appeal.
- Party against whom the appeal has been preferred may file a memorandum of cross-objections within **45 days** of the receipt of the notice.
- The Appellate Tribunal may admit an appeal or memorandum of cross-objections after the expiry of the relevant period if it is satisfied that there was sufficient cause for not presenting it within that period.
- Every appeal shall be decided within 3 years from the date on which such appeal is filed, if it is possible to do so.

### **Section 129C of the Customs Act: Procedure of Appellate Tribunal**

The President or any other member of the Appellate Tribunal authorised by the President may, **sitting singly**, dispose of any case which has been allotted to the Bench of which he is a member where

- a) in any disputed case, other than a case where the determination of any question relating to the rate of duty or to the value of goods for assessment is in issue, the difference in duty or the duty involved
- b) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125
- c) the amount of fine or penalty involved, does not exceed **fifty lakh rupees**.

### **Section 129E of the Customs Act: Deposit of certain percentage of duty demanded or penalty imposed before filing appeal**

Stage of Appeal	Appeal against which order	Appellate Authority	Quantum of Pre-deposit
First Appeal	Order by Officer lower than rank of Commissioner	Commissioner (Appeals)	7.5% of duty or 7.5% of duty when duty and penalty are in dispute or
	Order by Commissioner or higher authority	Appellate Tribunal	7.5% of penalty where penalty is in dispute
Second Appeal	Order by Commissioner (Appeals)	Appellate Tribunal	10% of duty imposed by Com (Appeals) or 10% of duty when both are in dispute or 10% of penalty where penalty is in dispute

**Note**

- The quantum of pre-deposit shall not exceed rupees ten crores
- Interest should not be included while calculating Quantum of Pre-deposit amount.
- Duty demanded shall include
  - a) amount determined under section 11D
  - b) amount of erroneous Cenvat credit taken
  - c) amount payable under rule 6 of the Cenvat Credit Rules, 2004.

**Section 129EE of the Customs Act: Interest on delayed refund of amount deposited u/s 129E**

Where an amount deposited by the appellant is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at **6% p.a.** on such amount from the date of payment of amount till, the date of refund of such amount.

**Sums due to be paid notwithstanding reference, etc.**

Even if appeal has been made to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the Appellate Tribunal shall be as per the order so passed.

**Section 130 of the Customs Act: Appeal to High Court**

- An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal if the High Court is satisfied that the case involves a substantial question of law.
- **Direct Appeal to Supreme Court** for order relating to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment
- The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal shall be-
  - filed within **180 days** from the date on which the order appealed against is received by the Principal Commissioner or Commissioner or the other party.
  - accompanied by a fee of Rs.200/- where such appeal is filed by the other party.
  - in the form of a memorandum of appeal precisely stating therein the substantial question of law involved
- The High Court has power to condone the delay if it is satisfied that there was sufficient cause for not filing the same within that period.

**Section 130E of the Customs Act: Appeal to Supreme Court**

An appeal shall lie to the Supreme Court from

- a) any judgment of the High Court delivered in an appeal made under section 35G
- b) if the High Court certifies the case to be fit for appeal to the Supreme Court. The High Court can certify any case on its own motion or on an oral application made by or on behalf of the aggrieved party, immediately after passing of the judgement.
- c) any order of the Appellate Tribunal passed having relation to the determination of rate of duty or value of goods, among other things.

**Revision Application****A. Suo Moto Revision or Revision on application by Central Government**

**Section 129DD** of the Customs Act gives the power of revision to the Central Government in case of order of Commissioner (Appeals) relating to

- a) Any goods imported or exported as baggage

- b) Any goods loaded in conveyance which are not unloaded in India or goods unloaded fall short of quantity
- c) Payment of Duty Drawback

Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty **does not exceed Rs.5,000/-**

An application shall be made **within 3 months** from the date of the communication to the applicant of the order against which the application is being made. (Further extension of 3 months if applicant prevented by sufficient cause)

Principal Commissioner / Commissioner may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 35A is not legal or proper, direct the proper officer to make an application to the Central Government for revision of such order.

## B. Review by Department

### a) **Appeal by Department to Appellate Tribunal against order of Commissioner**

Committee of Principal Chief Commissioners or Chief Commissioner may of its own motion, call for and examine the record of any proceeding in which a Principal Commissioner or Commissioner has passed any order so as to satisfy itself upon the legality or propriety of the order.

Committee may direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal to determine such points as may be specified by it.

### b) **Appeal by Department to Commissioner(Appeals) against order of Adjudicating Authority lower than the rank of Commissioner**

Principal Commissioner or Commissioner may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order for satisfying himself as to the legality or propriety of any such decision or order

He may, by order, direct to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by Principal Commissioner or Commissioner in his order.

## Common Points for (a) and (b)

- Every order shall be made within a period of **3 months** from the date of communication of the decision or order of the adjudicating authority.
- Board may, on sufficient cause being shown, extend the said period by another thirty days.
- The time period available to the adjudicating authority or the authorised officer to make an application to the Appellate Tribunal or the Commissioner (Appeals) is 1 month from the date of communication of the order.

## Advance Ruling

### Section 97 of CGST Act: Application for Advance Ruling

An applicant desirous of obtaining an advance ruling may make an application to Advance Ruling Authority stating the question on which the advance ruling is sought. The question on which the advance ruling is sought under this Act, shall be in respect of

- a. classification of any goods or services or both
- b. applicability of a notification issued under the provisions of this Act
- c. determination of time and value of supply of goods or services or both
- d. admissibility of input tax credit of tax paid or deemed to have been paid

- e. determination of the liability to pay tax on any goods or services or both
- f. whether applicant is required to be registered
- g. whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term

### **Section 98 of CGST Act: Procedure on receipt of application**

- Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records.
- The Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:
- Where an application is admitted, the Authority shall pronounce its advance ruling on the question specified in the application within **ninety days** from the date of receipt of application.

### **Section 100 of CGST Act: Appeal to Appellate Authority (AAAR)**

- The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced, may appeal to the Appellate Authority.
- Every appeal under this section shall be filed within thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant
- The Appellate Authority may allow it to be presented within a further period not exceeding thirty days.

### **Section 101 of CGST Act: Orders of Appellate Authority**

The order shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under section 98.

### **Section 102 of CGST Act: Rectification of advance ruling**

The Authority (AAR) or the Appellate Authority (AAAR) may amend any order passed within a period of six months from the date of the order.

### **Section 103 of CGST Act: Applicability of advance ruling**

The advance ruling pronounced by the Authority or the Appellate Authority shall be binding only

- a) on the applicant who had sought it in respect of any matter referred to in section 97 for advance ruling
- b) on the concerned officer or the jurisdictional officer in respect of the applicant.

The advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

### **Section 104 of CGST Act: Advance ruling to be void in certain circumstances**

Where the Authority or the Appellate Authority finds that advance ruling pronounced by it has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio.

### **Advance Ruling in Customs**

Advance Ruling means the determination, by the Authority, of a question of law or fact specified in the application regarding the **liability to pay duty in relation to an activity which is proposed** to be undertaken, by the applicant

**Activity** means import or export and includes any new business of import or export proposed to be undertaken by the existing importer or exporter.

**Applicant** means

1.
  - a) a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident
  - b) a resident setting up a joint venture in India in collaboration with a non-resident
  - c) a wholly owned subsidiary Indian company, of which the holding company is a foreign company, who or which **proposes** to undertake any business activity in India
2. Joint Venture in India: means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or an equity holder is a non-resident having substantial interest in such arrangement. Thus, an application for advance ruling can be made only when one of the partners is non-resident.
3. a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette
  - a) Any Public Sector Company
  - b) Residents proposing to import goods under the project import facility (heading 9801 of the Customs Tariff) for seeking rulings under the Customs Act, 1962
  - c) Residents proposing to import goods from Singapore under the Comprehensive Economic Co-operation Agreement for seeking rulings on origin of goods under the Customs Act, 1962
  - d) Resident Public Limited Company (It includes a private company which is a subsidiary of a public company)
  - e) Resident Private Limited Company
  - f) Resident firm
    - Partnership Firm
    - LLP which has no company as its Partner
    - Sole proprietorship
    - One Person Company

### **Section 28H of Customs Act: Questions/Matters on which an Advance Ruling can be sought**

- a) Classification of goods under the Customs Tariff Act, 1975
- b) applicability of a notification issued under section 25, having a bearing on the rate of duty
- c) the principles to be adopted for the purposes of determination of value of the goods
- d) applicability of notifications issued in respect of duties under this Act, the Customs Tariff Act, 1975 and any duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable
- e) determination of origin of the goods in terms of the rules notified under the Customs Tariff Act, 1975 and matters relating thereto.

### **Section 28I of the Customs Act, 1962: Procedure**

1. An application fee of **Rs. 10,000/-** is payable along with the application.
2. The applicant may withdraw the application within 30 days from date of application.
3. The Authority has the sole discretion to accept or reject the application. However, a hearing has to be given before rejection. Application is liable to be rejected in the following cases:

- a) where the question raised in the application is already pending before any Central Excise Officer, the Appellate Tribunal or any court or
  - b) where the question raised is the same as in a matter already decided by any Appellate Tribunal or any court.
4. The Authority should pronounce the final order within **6 months of receipt of application.**

### **Section 28J/K of the Customs Act, 1962: Applicability of Advance Ruling**

- The advance ruling pronounced by the Authority under section 23D shall be binding only
  - a) on the applicant who had sought it;
  - b) in respect of any matter referred to
  - c) on the Principal Commissioner or Commissioner and the Central Excise authorities subordinate to him, in respect of the applicant.
- Change in the law or facts may however make the advance ruling obsolete.
- Advance ruling will be void if, on a representation from Commissioner or otherwise, it can be proved that it was obtained by fraud or misrepresentation of facts.

### **Section 28F of the Customs Act, 1962: Authority for Advance Rulings.**

Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 shall be the Authority for giving advance rulings for the purposes of this Act and the said Authority shall exercise the jurisdiction, powers and authority conferred on it by or under this Act:

### **Settlement Commission (only in Customs)**

### **Section 127A of the Customs Act, 1962: Case**

- Case is any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, **pending before an adjudicating authority** on the date on which an application is made.
- When any proceeding is ~~referred back in any appeal or revision~~ by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, then such proceeding shall **not be deemed to be a proceeding pending** within the meaning of this clause.
- Thus, Settlement Commission can only be approached when original adjudication is pending.

### **Section 127B of the Customs Act, 1962: Application**

An assessee may, in respect of a case relating to him, make an application, before adjudication, to the Settlement Commission to have the case settled, containing a **full and true disclosure of his duty liability which has not been disclosed.**

### **Conditions to be fulfilled before filing application**

- a) the applicant has filed a bill of entry / shipping bill / bill of export / made a baggage declaration / label or declaration accompanying the goods imported or exported through post or courier and in relation to such document or documents
- b) a show-cause notice for recovery of duty issued by the Officer has been received by the applicant
- c) the additional amount of duty accepted by the applicant in his application exceeds **Rs.3,00,000** and
- d) the applicant has paid the additional amount of duty accepted by him along with interest due
- e) **Any person, other than an applicant referred above, may also make an application to the Settlement Commission in respect if a show- cause notice issued to him in a case relating to the applicant which has been settled or is pending before the Settlement Commission and such notice is pending before an adjudicating authority (w.e.f. 31st March 2017)**

**Application shall not be allowed in following cases**

- Cases which are pending in the Appellate Tribunal or any court
- In relation to goods to which section 123 applies or to goods in relation to which any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 has been committed
- For the interpretation of the classification of the goods under the Customs Tariff Act, 1975

**Section 127C of Customs Act, 1962: Procedure on receipt of an application under section 127B**

It shall issue a notice to the applicant requiring him to explain as to why the application be allowed to be proceeded with	<b>7 days</b> from the date of receipt of the application
It shall reject or allow the application (If no order passed, the application shall be deemed to have been allowed) If the application is rejected, then the proceedings before the Settlement Commission shall abate on the date of rejection	<b>14 days</b> from the date of the application
Settlement Commission shall call for a report from Principal Commissioner or Commissioner of Customs having jurisdiction	<b>7 days</b> from the date of application
Principal Commissioner or Commissioner of Customs shall furnish the report (If the Report is not furnished, Settlement Commission shall proceed further without such Report)	<b>30 days</b> of the receipt of communication from the Settlement Commission.
It can ask Commissioner (Investigation) to make enquiry or investigation.	<b>15 days</b> of receipt of Report from Principal Commissioner or Commissioner
Commissioner (Investigation) shall furnish the Investigation Report within (If Commissioner (Investigation) has not furnished the Report, Settlement Commission shall proceed further without such Report)	<b>90 days</b> of receipt of communication of Settlement Commission
Where any duty, interest, fine and penalty as per the order has to be paid (If not paid, unpaid amount shall be recovered along with interest due thereon, as the sums due to the Central Government by the proper officer as per the provisions of section 142)	<b>30 days</b> of receipt of copy of order of Settlement Commissioner

**Settlement becomes void**

- The order shall also provide that the settlement shall be void if it is subsequently found by SET COM that it has been obtained by fraud or misrepresentation of facts.
- The Central Excise Officer having jurisdiction may complete such proceedings at any time before the expiry of 2 years from the date of the receipt of communication that the settlement became void.

**Power to rectify mistake apparent from record (w.e.f. 31st March 2017)**

The Settlement Commission may, at any time within three months from the date of passing of the order, amend such order to rectify any error apparent on the face of record, either suo motu or when such error is brought to its notice by the jurisdictional Principal Commissioner / Commissioner of Customs or the applicant.

**Powers of Settlement Commission**

- to grant immunity from prosecution and penalty
- to send a case back to the Central Excise Officer
- to order provisional attachment to protect revenue



**Section 67 of CGST Act: Power of inspection, search and seizure**

- Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that
  - a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or
  - b) a taxable person has claimed input tax credit in excess of his entitlement under this Act or
  - c) a taxable person has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act or
  - d) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act, he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.
- Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:
- Where it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:
- The documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.
- The documents, books or things or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.
- The officer authorised shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.
- The person from whose custody any documents are seized shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.
- The goods so seized shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable.
- Where any goods are seized and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized.
- The period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.
- The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure, be disposed of by the proper officer in such manner as may be prescribed.

- Where any goods have been seized by a proper officer, or any officer authorised by him, he shall prepare an inventory of such goods in such manner as may be prescribed.
- The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section. Commissioner shall have the powers of Magistrate.
- Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.
- The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.

### **Section 69 of CGST Act: Power to arrest**

- 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 under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.
- Where a person is arrested for an offence specified under section 132(5), the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty four hours.
- Subject to the provisions of the Code of Criminal Procedure, 1973
  - a) where a person is arrested for any offence specified under section 132(4), he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate
  - b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

### **Section 70 of CGST Act: Power to summon person to give evidence and produce documents.**

- The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908
- Every such inquiry shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code.

### **Section 70 of CGST Act: Power to summon person to give evidence and produce documents.**

- The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.
- Every such inquiry shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code.

**Section 71 of CGST Act: Access to business premises.**

- Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
- Every person in charge of place shall, on demand, make available to the officer authorised or the audit party deputed by the proper officer / cost accountant / chartered accountant nominated u/s 66
  - a) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed
  - b) trial 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 and
  - f) any other relevant record, for the scrutiny by the officer or audit party or the Chartered Accountant or Cost Accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

**Section 72 of CGST Act: Officers to assist proper officers**

- All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act.
- The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

**Section 104 of Customs Act: Power of Arrest**

- If an officer of Customs empowered in this behalf by general or special order of the Commissioner of Customs has reason to believe that any person in India or **within the Indian customs waters** has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.
- Every person arrested shall, without unnecessary delay, be taken to a magistrate.
- Where an officer of customs has arrested any person, he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has and is subject to under the Code of Criminal Procedure, 1898

**Section 105 of the Customs Act, 1962: Power of search and seizure**

If Joint/ Additional Commissioner or such other Officer has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any Central Excise Officer to search and seize or may himself search and seize such documents or books or things.

The provisions of the Code of Criminal Procedure, 1973 relating to search and seizure shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Commissioner of Central Excise" were substituted

**Penalties under GST**

Offences related to Invoices, Transportation, payment of tax, ITC, Refund of tax, TDS, TCS, furnishing of false records, information	Tax not paid, short paid or erroneously refunded or ITC has been wrongly availed or utilised	<ul style="list-style-type: none"> <li>➤ Aids or abets offences</li> <li>➤ acquires possession / concerns in dealing with goods which he knows or has reasons to believe are liable to confiscation</li> <li>➤ Fails to appear when summons issued to give evidence or produce a document</li> <li>➤ Fails to issue Invoice or Account in accordance with provision</li> </ul>	Fails to furnish Information Return within time specified in the notice	Fails to furnish Statistics without reasonable cause / willfully furnishes false information
Higher of a) Rs. 10,000 b) Tax evaded / not deducted / not collected / not paid to Government / ITC availed, passed or distributed irregularly/ claimed Refund	<b><u>Fraud Cases:</u></b> Higher of Rs. 10,000 or 100% of Tax  <b><u>Non Fraud Cases:</u></b> Higher of Rs. 10,000 or 10% of Tax	Rs. 25,000	Rs. 100 per day for which failure continues subject to maximum Rs. 5,000	Rs. 10,000  Continuing offence Rs. 100 per day Maximum Rs. 25,000

**Section 128 of CGST Act: Power to waive penalty or fee or both.**

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

**Section 129 of CGST Act: Detention, seizure and release of goods and conveyances in transit**

- Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released
  - a) on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;
  - b) on payment of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

- c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:
- Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.
- The provisions of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.
- The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty.
- No tax, interest or penalty shall be determined without giving the person concerned an opportunity of being heard.
- On payment of amount referred above, all proceedings in respect of the notice shall be deemed to be concluded.
- Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130.
- Where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.

### **Section 130 of CGST Act: Confiscation of goods or conveyances and levy of penalty**

- Notwithstanding anything contained in this Act, if any person
  - i. supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax or
  - ii. does not account for any goods on which he is liable to pay tax under this Act or
  - iii. supplies any goods liable to tax under this Act without having applied for registration or
  - iv. contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax or
  - v. uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.
- Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:
- Such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:
- The aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under section 129:
- Where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.
- Where any fine in lieu of confiscation of goods or conveyance is imposed, the owner of such goods or conveyance or the person, shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.
- No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

- Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.
- The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.
- The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

### **Section 131 of CGST Act: Confiscation or penalty not to interfere with other punishments.**

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

### **Section 132 of CGST Act: Punishment for certain offences**

Whoever commits any of the following offences:

- 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 such 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, fraudulently avails input tax credit 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
- 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

<b>Tax evaded / ITC wrongly availed or utilised or the amount of refund wrongly</b>	<b>Punishment / Imprisonment</b>	<b>Cognizable / Non Bailable?</b>
i. exceeds Rs. 500 Lakhs	Upto 5 years and with fine	Cognizable / Non Bailable – (a)/(b)/(c)/(d); Others - Non Congizable / Bailable
ii. exceeds Rs. 200 Lkhs but does not exceed Rs. 500 Lakhs	Upto 3 years and with fine	Non Congizable / Bailable
iii. exceeds Rs. 100 Lkhs but does not exceed Rs. 200 Lakhs	Upto 1 year and with fine	Non Congizable / Bailable
iv. he commits or abets the commission of an offence specified in clause (f) or (g) or (j)	Upto 6 months and with fine	Non Congizable / Bailable

**Note**

- Where any person convicted of an offence is again convicted of an offence, 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. It cannot be for a term less than six months.
- The imprisonment referred to in clauses (i), (ii) and (iii) 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 133 of CGST Act: Liability of officers and certain other persons.**

- Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof or if any officer of central tax having access to information specified under section 150, 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 the contents of any return furnished under this Act or rules made thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.
- Any person
  - who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;
  - who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

**Section 138 of CGST Act: Compounding of offences**

- Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed.
- Nothing contained in this section shall apply to
  - a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section
  - a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the

Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees

- 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 (j) or clause (k) of sub-section (1) of section 132
  - f) any other class of persons or offences as may be prescribed:
- Any compounding allowed under the 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.
- The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent of the tax, whichever is higher.
- On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act 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.

### Section 135 of the Customs Act, 1962

Non Bailable Offence	Bailable Offence
<ul style="list-style-type: none"> <li>evasion or attempted evasion of duty exceeding <b>Rs.50 Lakhs</b></li> <li>prohibited goods</li> <li>import or export of any goods which have not been declared as per the Act and the market price of which exceeds <b>Rs.1 crores</b></li> <li>fraudulent drawback or any exemption from duty if the drawback or exemption exceeds <b>Rs.50 Lakhs</b></li> </ul>	All other offences
First Time Imprisonment from <b>1 year to 7 years</b>	<b>upto 3 years</b>
Subsequent Imprisonment <b>upto 7 years</b>	

### Compounding of Offences (Section 137(3) of Customs Act, 1962)

Any offence may, either **before or after the institution of prosecution**, be compounded by the Chief Commissioner of Central Excise/Customs on payment of such compounding amount.

#### No Compounding allowed in following cases

- a) a person who has been allowed to compound once in respect of Category A or B offences under section 9 of Central Excise Act / 135 / 135A of Customs Act
- b) a person who has been allowed to compound once in respect of any offence under this Chapter for goods of **value exceeding rupees one crore**
- c) a person who has been convicted by the court under this Act on or after the 30th day of December, 2005.
- d) a person who has been accused of committing an offence under this Act which is also an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 or the Chemical Weapons Convention Act, 2000 or the Arms Act, 1959 or Wild Life (Protection) Act
- e) a person involved in smuggling of goods falling under



- i. goods specified in the list of **Special Chemicals, Organisms, Materials, Equipment and Technology** in ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy
- i. goods which are specified as **prohibited items** in the above mentioned classification
- ii. any other goods or documents, which are likely to **affect friendly relations** with a foreign State or are derogatory to national honour

**Section 140A of the Customs Act, 1962:** Application of section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958 shall not apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

**Section 136 of the Customs Act, 1962: Offences by officers of customs**

- If any officer of customs enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing, whereby any fraudulent export is effected or any duty of customs leviable on any goods, or any prohibition for the time being in force with respect to any goods is or may be evaded, he shall be punishable with imprisonment for a term which may **extend to 3 years**, or with fine, or with both.
- If any officer of customs,
  - a) requires any person to be searched for goods liable to confiscation or any document relating thereto, without having reason to believe that he has such goods or document secreted about his person
  - b) arrests any person without having reason to believe that he has been guilty of an offence punishable under section 135
  - c) searches or authorizes any other officer of customs to search any place without having reasons to believe that any goods, documents or things of the nature referred to in section 105 are secreted in that place,
 he shall be punishable with imprisonment for a term which may **extend to 6 months**, or with fine which may extend to **Rs. 1,000**, or with both.
- If any officer of customs, except in the discharge in good faith of his duty as such officer or in compliance with any requisition made under any law for the time being in force, discloses any particulars learnt by him in his official capacity in respect of any goods, he shall be punishable with imprisonment for a term which may **extend upto six months**, or with fine which may extend to **Rs. 1,000**, or with both.

**Section 160 of CGST Act: Assessment proceedings, etc., not to be invalid on certain grounds**

- No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.
- The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

**Section 161 of CGST Act: Rectification of errors apparent on the face of record.**

- Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:
- No such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:
- The said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:
- Where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

**Case Laws**

**Kemtech International Pvt. Ltd.:** Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for re-quantification of short-levy of customs duty? **Yes**

**Uniworth Textiles Ltd.:** Whether extended period of limitation for demand of customs duty can be invoked in a case where the assessee had sought a clarification about exemption from a wrong authority? **No**

**KSJ Metal Impex (P) Ltd.:** Whether interest is liable to be paid on delayed refund of special CVD arising in pursuance of the exemption granted vide Notification No. 102/2007 Cus dated 14.09.2007? **Yes**

**Parimal Ray:** Is limitation period of one year applicable for claiming the refund of amount paid on account of wrong classification of the imported goods? **No as it cannot be said to be refund of duty as no duty was payable**

**M. Ambalal & Co:** Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods? **No**

**Thakker Shipping P. Ltd.:** Can Tribunal condone the delay in filing of an application consequent to review by the Committee of Chief Commissioners if it is satisfied that there was sufficient cause for not presenting the application within the prescribed period? **Yes**

**Neeraj Jhanji:** Can a writ petition be filed before a High Court which does not have territorial jurisdiction over the matter? **No, Treaty shopping is not allowed**

**Margara Industries Ltd.:** Can delay in filing appeal to CESTAT due to the mistake of the counsel of the appellant, be condoned? **Yes**

**Rishiroop Polymers Pvt. Ltd.:** Can a writ petition be filed against an order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975? **No as appeal is possible**

**Saurashtra Cement Ltd.:** Is judicial review of the order of the Settlement Commission by the High Court or Supreme Court under writ petition/special leave petition, permissible? **Yes**

**Sanghvi Reconditioners Pvt Ltd:** In case of a Settlement Commission's order, can the assessee be permitted to accept what is favourable to them and reject what is not? **No, order of Set Com has to be accepted fully**

**Union of India:** Does the Settlement Commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue? **Yes**

**Vishnu M Harlalka:** Whether any interest is payable on delayed refund of sale proceeds of auction of seized goods after adjustment of expenses and charges in terms of section 150 of the Customs Act, 1962? **Yes**  
**Interest is payable**

**Anita Grover:** Can a former director of a company be held liable for the recovery of the customs dues of such company? **No**