

ANTI-PROFITEERING

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Member

State Screening Committee

Telangana

INTRODUCTION

A businessman has the moral right to make a “reasonable margin of profit”.
- as he invests and takes risk.

“Profit is fine, profiteering is not.”

“Don’t let someone profiteer at the expense of the Govt. Policy ”

➤ **Profiteering means:** “the activity of **taking unfair advantage** of a situation **to make a large profit**, often by **selling goods that are difficult to fetch a very high price**”

AP- Law in INDIA

- **AP in GST - First law in our constitutional history** that allows the government to keep a tab on a businessman's pricing decision **irrespective of his intentions, the nature of the produce and market circumstances.**
- **Malaysia and Australia-** only two countries have “anti-profiteering laws”.
- **Constitution does not envisage any general limits** on the right of a businessman to earn profits, **except “reasonable restrictions” in public interest.**

WHY Anti-profiteering Provisions ?

- Under **GST system** - prices of goods and services were expected to substantially come down on a/c of **removal of cascading effect & seamless ITC**.
- AP provisions are warranted to check the undue benefit to Suppliers on account of **reduced Rates** and/or availability of **ITC**.
- **Principle involved in AP :- “Equity”** - the incidence of GST falls on the recipient of Goods/Services - hence, any such benefit leading to reduced Net Tax liability - should be also be passed on to the consumers; **thus the main objective is to protect the consumer.**

Anti-profiteering Provisions

Section 171 of the CGSTA/SGSTA/UTGSTA - envisages that **the benefit** on account of the **reduction in rate of tax** on any goods/services **or** due to the availability of **input tax credit** shall be passed on to the recipient **by way of commensurate reduction in prices.**

- **Rule 122 to 137 of CGSTR/SGSTR**

Administrative set up for Anti-profiteering

CGST Rules provide for a 3-tier structure for **Scrutiny, Investigation and Adjudication** of the complaints regarding profiteering.

- National Anti-profiteering Authority (**NAA**) – **Apex Authority (Adjudicating)**
- Directorate General of AP (Safeguards) (**DGAP**) – **Investigating Agency**
- Standing committee (**SC**) at National level ; and Screening Committees (**SSC**) at the State-level – **Scrutinising bodies.**

Administrative Structure



Application by Consumer

State Screening Committees

Confirm prima facie evidence
of profiteering

Standing Committee

Confirm prima facie evidence
of profiteering

Director General of Safeguards, CBEC

For investigating profiteering and reporting

National Anti-profiteering Authority

For determining profiteering and passing
appropriate order to ensure consumers benefit from
reduction in tax rate or benefit of Input Tax Credit

Contact for further details:

Standing Committee on Anti-profiteering

Second Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg,
Gole Market, New Delhi -110001, Tel No.: 011-23741537,
Fax No.: 011-23741542, Email: dgsafeguards@nic.in

State Screening Committees on Anti-profiteering

Contact details of State Screening Committee on Anti-profiteering
are available at URL: goo.gl/eYJXnK

Constitution & Tenure of NAA

- **NAA: - 5 - member committee** - ADG (DGAP) – Secretary to NAA.
 - 1: Chairman = Secretary to the Government of India;
Sh. B.N. Sharma, Chairman of NAA - had taken charge on 01.12.2017. and
 - + 4 : Technical Members - Commissioners of State tax or Central Tax or have held an equivalent post under existing laws.
(3- CBIC: Sh. CL Mahar; Sh.Bijay Kumar ; Ms. R. Bhagya Devi + 1-State : Sh.JC Chauhan, Chairman Tax Tribunal Himachal Pradesh) [Rule 122]
- NAA will **exist for two years** from the date on which the Chairman enters upon his office unless the Council recommends otherwise. [Rule 137]

Duties of NAA

NAA undertakes the following activities:

- (i) It **identifies** the registered person who has not passed on such benefit to the recipient by way of commensurate reduction in prices;
- (ii) **Determines** the liability on the person guilty of not passing on such benefit [Rule 127]

Role of DG-AP(DGSG)

- DG AP – **investigating wing** in the anti-profiteering mechanism.
- DG AP - can **issue summons** to the interested parties or make inquiry or **call for the relevant documents for the investigation.**
- can take **help from technical experts** in the course of investigation. [Rule 132]

Standing and Screening committees

- **Standing Committee**:- 2 - officers from States (1- Haryana + 1- N.Delhi) and + 2 from CBIC – nominated **by GSTC**.
(Sh.OP Dadhich & Sh.Himamnshu Gupta; and Ms. Hashima Brar & Sh. Rajrsh Prasad)
- **State level Screening Committees** - constituted in each State by the State Governments which consists of -1-State + 1 C' Govt. - nominated by the Commissioner - ST & Chief Commissioner-CT.
- TS G.O.Rt. No. 607 dtd. 04.10.2017 which consists of the following members.

Sl . No.	Name	Designation
1.	Mandalika Srinivas	Commissioner, Central Tax
2.	B. Amrutha Lakshmi	Addl. Commr. , State Tax

Who can file complaint ?

- An application can be filed against profiteering by -
 - (i) An **interested party**
 - (ii) The Commissioner of GST [Rule 128 of CGST Rules]

- **'interested party'** includes-
 - a. **suppliers** of goods or services under the proceedings; and
 - b. **recipients** of goods or services under the proceedings;
 - c. **any other person** alleging, under sub-rule (1) of rule 128, that a registered person has not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices. *[Clause (c) of Expln to Ch. XV]*

Who can file complaint ?

Contd...

➤ In general, the following persons can lodge complaint against profiteering: *(as mentioned in the NAA portal : www.naa.gov.in)*

- (i) **Any consumer or organisation experiencing** the non-reduction in the price of the goods or service despite reduction in the rate of GST can file the complaint with proper evidences.
- (ii) Any **supplier, trader, wholesaler or retailer**, who could not get benefit of input tax credit on account of reduction in the rate of GST, can file the complaint with proper evidences.
- (iii) The **Commissioner** of Central Tax/State Tax

Online filing of complaint

- For lodging online complaints, one has to visit the Official website of the 'National Anti-Profiteering Authority' located on the website: www.naa.gov.in.
- The complaints filed **can be tracked online** to know the status of the complaint.

Processing of complaints

- All applications shall be first Scrutinised by the **SC** with regard to the merit of the complaint of Profiteering ; and
 - on issues of local nature, applications - first be examined by **SSC**;
- If **SSC** is satisfied that there is merit in Complaint, then it will forward the Application/Complaint with its recommendations to the **SC**;
[Rule 128]
- **SC- with in 2- months** from the date of receipt of APAF-1 if , *prima facie*, has evidence of contravention Sec. 171 of CGSTA , shall referred to DG AP (DGSG) for a detailed investigation. [Rule 129]

Investigation by DG AP

- **DG AP** shall conduct investigation and collect evidence necessary to determine undue profiteering;
- before initiation of the investigation, **issue a notice to the interested parties** (and to such other persons as deemed fit for a fair enquiry into the matter) containing, inter alia, information on the following :-
 - (a) the **description** of the goods or services in respect of which the proceedings have been initiated;
 - (b) **summary** of the statement of facts on which the allegations are based; and
 - (c) the **time limit** allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

[Rule 129(3)]

Investigation by DG AP contd...

➤ While Conducting investigation:-

- (i) DGAP can **seek opinion** of any other agency or statutory authorities in the discharge of his duties.
- (ii) DGAP or an officer authorised by him will have the **power to summon any person** necessary either to give evidence or to produce a document or any other thing.
- (iii) DGAP will also have the **same powers as that of a civil court** and every such inquiry will be deemed to be **a judicial proceeding**.

(can summon; if fail to appear – can issue warrant for Arrest ; attach or sell his property or impose fine – Sec. 32 of Code of Civil Procedure)

- ## ➤ On completion of the investigation, DGAP shall submit a report of its findings NAA along with the relevant records. [Rule 129]

Action by NAA

- If DGAP recommends that there is **no violation** of the provisions of Sec. 171 of the above Act, NAA may send a **copy of the report to the complainant/interested party and invite objections from it.**
- After hearing from the complainant/interested party , NAA may **either close the matter or pass any order it may deem just and proper or direct DGAP to further investigate** the matter, as the case may be. [Rule 133]

Action by NAA contd...

- If DGAP contends that **profiteering existed**, **NAA issues a notice to the interested parties** intimating the date, time and place fixed for hearing and a **copy of the report shall also be supplied to such parties along with the notice.**
- A minimum period of **15 days** will be given to the parties for appearance and filing reply which may be extended on justifiable grounds.
- NAA may also **summon any additional record** as it deems fit from any person, interested party, authority of the Central or the State Govt.
- **NAA may pass order in the proceedings as is deemed just and proper by it in the facts and circumstances of the case.**

Time limits for processing of complaints

Name of the Authority	Time limit prescribed
Standing Committee	Two months from the date of the receipt of the complaint/application
State Screening Committee	No time limit prescribed. But 2-months for SC is inclusive of the time for SSC when APAF-1 is received from SC. - If APAF-1 is received by SSC first, 2-months time available for SC would be from the date of receipt of the application from SSC.
DG, Anti-profiteering (Safeguards) [DGAP]	3(Three) months from the date of receipt of the reference from the Standing Committee which can be extended up to a further period of 3(Three) months by NAA.
Anti-profiteering Authority	NAA shall pass order within 3(Three) months from the date of receipt of report from DG, Anti-Profiteering.

Punitive Action by NAA

- If NAA finds that a registered person **had not passed on the benefit** of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it may order-
- (a) **reduction in prices;**
 - (b) **return to the recipient**, an amount equivalent to the amount not passed on by way of commensurate reduction in prices **along with interest** at the rate of **18%** from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be;
 - and in case the eligible person does not claim return of the amount or is not identifiable, may order to deposit the same in the Consumer Welfare Fund
 - (c) **imposition of penalty;** and
 - (d) **cancellation of registration.**

[Rule 133]

Compliance of the orders passed by NAA

- The order passed by NAA **should be immediately complied with** by the Registered person.
- In case of **non-compliance - action for recovery** under CGST/SGST(UTGST)/IGST Act shall be initiated.
[Rule 135]
- **NAA may require** the Central Tax/State Tax / Union Territory Tax Authorities to **monitor the compliance** of the Order.
[Rule 136]

Progress so far.....

As on 07.03.2018

- **354** Anti-Profiteering applications/complaints have been received **by SC** .
- Out of the above, Standing Committee has forwarded **65 applications to the DGAP - for investigation.**
- DGAP sent notices in 53 cases as part of investigation (includes 2- from TS- SCC)

As on 25.06.2018- NAA adjudicated 4 cases and passed orders all in favour of the Suppliers.

Is it Effective ?

- **Hindustan Lever Ltd** – Rs. 119 Cr Declared – further quantified as Rs. 155 Cr.
- **Heritage Foods** – announced the reduction w.e.f 01.07.2017
- **Survey in Medchal CCT** – on Several Industrial Goods – 28.81 % to 18% - benefit of 10.81% rate reduced was passed on to the customer – by commensurate reduction of prices. (Switch Gear; Lightning arresters; Refractories; Thermostats; Control Panels, Radiators, Forgings; Transformers; UPVC – D/W etc.)
- Open Advertisements of reduction of prices on a/c of reduced rates of GST

**Good Wishes
&
Beware of Profiteering !!!**



GST FAQ

on

Anti-Profiteering

M. SRINIVAS IRS
COMMISSIONER
MEDCHAL G S T COMMISSIONERATE, HYDERABAD

FAQs on Anti-Profiteering

Q.1: What is 'profiteering'?

Ans. 1: The suppliers of goods and services should pass on the benefit of any reduction in the rate of GST on such supplies or the benefit of Input Tax Credit (ITC) to the recipient by way of commensurate reduction in prices. Any wilful action of not passing of such benefit to the recipient amounts to "profiteering".

Q. 2: What are the legal provisions governing the Anti-profiteering?

Ans. 2: The Sec. 171 of CGST/SGST/UTGST Act, 2017 and the Rule 122 to Rule 137 of the CGST/SGST/UTGST Rules, 2017 envisage the Anti-profiteering principle and the relevant administrative and procedural aspects.

Q.3: What is the administrative structure for enforcing the provisions of Anti-Profiteering (AP)?

Ans. 3: CGST/SGST/UTGST Act, 2017 mandates a 3-tier structure for the scrutiny, investigation and adjudication of the complaints regarding profiteering. They are:

1. The National Anti-profiteering Authority (NAA)- is the Apex body, at the National level - undertakes adjudication of the cases of AP;
2. The Directorate General of Anti-profiteering (Earlier known as DG-Safeguards) - investigates the complaints referred to by the Standing Committee;
3. The Standing Committee at the National level, supported by the State Level Screening Committees constituted at each State - scrutinises the applications received.

Q. 4: Who can file the complaint against profiteering?

Ans. 4: Any consumer or organisation experiencing or noticing the non-reduction in the price of the Goods or Services or both to commensurate the reduction in the rate of GST can file the complaint under the anti-profiteering provisions with proper evidences.

Any registered recipient of goods, trader, wholesaler or retailer, who could not get the benefit of the ITC available to their supplier by way of the commensurate reduction of the price of the supplies received, can file the complaint with proper evidences.

Q. 5: How to file a complaint against a taxpayer indulging in profiteering?

Ans. 5: A complaint has to be filed in the prescribed form VIZ: APAF-1. The said form can be downloaded by the complainant from the website of the Central Board of Indirect Taxes & Customs (CBIC) VIZ: ***www.cbic.gov.in*** and post the same duly filled with relevant information/details/data, along with the supporting documents to the **Standing Committee** at the following address:-

2nd Floor, Bhai Vir Singh Sahitya Sadan,
Bhai Vir Singh Marg, Gole Market,
New Delhi-110 001.
Ph:011-23741537; Fax.:23741542. E-mail: “anti-profiteering@gov.in”.

If the issue involved is of local nature, the complaint in the form APAF-1 can be lodged to the State Level Screening Committee constituted for each state.

The State Level Screening Committee on Anti-profiteering for the state of Telangana was constituted with the following members:

(1) **Sri. M. Srinivas**, IRS, Commissioner of Central Tax,
Medchal GST Bhavan; Lakdi-ka-pul, Hyderabad-500 004.
**Ph.No.: 040-23237262; 040-23231843 email:
mandalika.srinivas@icegate.gov.in.**

NOTE: Please call the toll free number: 1800 599 5399 or mail to gstqueries.medchal@gmail.com to seek clarifications regarding GST issues, if any. (Initiatives of Central GST, Hyderabad Zone)

(2) **Smt. B. Amrutha Lakshmi**, Additional Commissioner of State Tax; O/o the Commissioner of State Tax, CT Complex, Nampally Station Road, Hyderabad - 500 001. **Ph: 040-24652356; 040-24618912; email: tg_addlct_estt@tgct.gov.in.**

Further, a compliant in the form APAF-1 can also be lodged through online on the website of National Anti-profiteering Authority at "www.naa.gov.in".

Q. 6: How to know the status of the complaint against profiteering?

Ans. 6: The complainant can track the application filed online through the 'track complaint' module available on the website www.naa.gov.in, if it is filed online. Otherwise the complainant can contact the DG- Anti-profiteering at: 011-23741544; 011-23741542; e-mail: dgsafegaurds@nic.in.

Q. 7: What actions can be taken by NAA against a person who had not passed on the benefit of reduction in the rate of GST or the available ITC, by non-reduction of the price of the supplies?

Ans. 7: Where it is found that a registered person had not passed on the benefit of the reduction in the rate of tax on the supply of goods or services; or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, NAA may order:

- (a) reduction in prices;
- (b) return of the amount not so passed on along with interest @ 18%;
- (c) deposit of the illegal profit accrued to the Consumer welfare fund;
- (d) imposition of penalty; and
- (e) cancellation of registration of the supplier.

Q.8: Is the complainant eligible to recover the amount on account of his complaint against profiteering?

Ans. 8: The National Anti-profiteering Authority (NAA), in terms of the Rule 127 of CGST/SGST/UTGST Rules, 2017, can compel the defaulter to return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18% from the date of collection of higher amount till the date of return of such amount. In such case, it is only the recipient of Goods/Services/ both, is eligible to receive the amount.

Q.9: What happens to the amount returned by the defaulter when the eligible person does not claim return of the amount or the person who was eligible for the benefit is not identifiable?

Ans. 9: A separate fund known as Consumer Welfare Fund (CWF) was created by the Central Government under the Sec. 57 and 58 of the CGST/SGST/UTGST Act, 2017 which would be utilised for the welfare of the consumers in the country. When the recovery of the amount including interest cannot be returned for any reason like - the eligible person does not claim return of the amount or such person is not identifiable, the recovered amount shall be deposited in the CWF constituted under CGSTA and SGSTA/UTGSTA, in equal proportions.

Q.10: What are the documents to be submitted along with the form (APAF-1) for complaining about illegal profiteering?

Ans. 10: The provisions of GST law have not specified any documents for the said purpose. However, the documents such as the tax invoices / bills issued by the supplier prior to and subsequent to the reduction of rate of tax reflecting the price, rate of tax and amount of tax; the documents indicating the description of the goods (in case the invoices do not reflect true description of the goods/ services like the contract/agreement/product brochure); documents indicating non-

factoring the benefit of ITC available in price etc. are required to be submitted along with the application (APAF-1).

Q.11: Is there any time limit prescribed for filing application/complaint against profiteering; and for disposal of such applications ?

Ans.11: There is no time limit prescribed for filing of application/complaint against profiteering. But such applications needs to be filed within a reasonable time from the time of detection, to enable the authorities to gather the relevant evidence on investigation and arrive at a judicious decision.

However, certain time limits have been prescribed for disposal of the applications/complaints at various stages which are as follows:

Name of the Authority	Time limit prescribed	Relevant legal provision
Standing Committee (SC)	Two months from the date of the receipt of the complaint/application, SC shall examine the accuracy/adequacy of the evidence provided in the application to determine as to whether there is prima facie evidence to support the claim of the applicant that profiteering has taken place or not.	Rule 128(1)
State Screening Committee (SSC)	No time limit is specifically prescribed for scrutiny of the complaints/applications received and submission to the Standing Committee. However, the time for scrutiny and submission of the application by SSC to SC shall be within the two months time limit prescribed for Standing Committee, when the application was received from SC. But in case the application was received by SSC first, the two months time available for SC would be from the date of receipt of the application from SSC.	Rule 128(1)

DG, Anti-Profiteering (DG, Safeguards)	The DG, Anti-Profiteering should complete the investigation within a period of 3(Three) months from the date of receipt of the reference from the Standing Committee which can be extended up to a further period of 3(Three) months by NAA.	Rule 129(6)
National Anti- profiteering Authority (NAA)	NAA shall pass order within 3(Three) months from the date of receipt of report from DG, Anti-Profiteering.	Rule 133(1)

Q.12: Is there any monitoring mechanism for implementation of the orders passed by the National Anti-Profiteering Authority (NAA)?

Ans. 12: Any order passed by NAA shall be immediately complied with by the registered person against whom the order is passed, failing which, action shall be initiated to recover the amount in accordance with the provisions of the CGST/SGST/UTGST/IGST Act, 2017. (Rule. 135)

Further The Authority may require any authority of Central tax, State tax or Union territory tax to monitor the implementation of the order passed by it. (Rule. 136).

Disclaimer:- Please note that the subject guidance material is intended to provide general understanding on the subject and it should not be treated as a legal advisory, opinion or authority. For more details, all the concerned are advised to refer to the respective legal provisions of CGST Act 2017 / CGST Rules, 2017 and Circulars of the CBIC.

Anti-Profiteering Application Form (APAF - 1)

[To be filed before Standing Committee/State level Screening Committee in terms of Rule 128 of CGST Rules, 2017]			
A.	General information about the Applicant		
A.1	Name		
A.2	Address		
A.3	Contact Number		
A.4*	E-mail ID		
A.5	Proof of identity (Please Tick-v)	Aadhaar Card	
		Voter ID	
		Permanent Account Number (PAN) Card	
		Driving Licence	
		Passport	
		Ration Card having photograph of the applicant	
		Any other proof of Identity (Specify)	
B.	General information about the Supplier who has not passed on the benefit		
B.1	Name		
B.2	Address		
B.3*	Contact Number		
C.	Particulars of Goods/Services		
C.1	Description		
C.2	Earlier Price/Value per unit	<input type="checkbox"/>	
C.3	Present Price/Value per unit	<input type="checkbox"/>	

NOTE: Please call the toll free number: 1800 599 5399 or mail to gstqueries.medchal@gmail.com to seek clarifications regarding GST issues, if any. (Initiatives of Central GST, Hyderabad Zone)

C.4	Earlier MRP	<input type="checkbox"/>				
C.5	Present MRP	<input type="checkbox"/>				
D.	Details of reduction in Tax Rate/ Benefit of Input Tax Credit (ITC) (Please Tick-√)			√		√
D.1	Whether the benefit of reduction in tax rate has been passed on (Please enclose evidence like copies of Invoice, Price List etc.).		Yes		No	
D.2*	Whether the benefit of ITC has been passed on (Please enclose evidence).		Yes		No	
D.3*#	Additional information, if any.					
<u>Declaration:</u>						
I hereby declare that the information furnished above is true to the best of my knowledge and that I have exercised due diligence in submitting such information. I understand that providing incomplete or incorrect information will make the application invalid.						

Date:

(Signature of the Applicant)

Place:

- Note 1 - Fill up the application form legibly in BLOCK LETTERS only.
- Note 2 - Fields marked with asterisk (*) are optional.
- #Note 3 - In case the applicant wants to keep his name and details confidential, please specify it.
- Note 4 - Filled up application form is to be sent to the State level Screening Committee in case **issue is of local nature** and in other cases to the Standing Committee.
- Note 5 - **Contact details of Standing Committee on Anti-profiteering :**
2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110 001. Tel No.: 011-23741537
Fax. No.: 23741542, E-mail: anti-profiteering@gov.in
Contact details of State Screening Committee on Anti-profiteering:
Contact details of State Screening Committee on Anti-profiteering are available at URL: goo.gl/eYJXnK

ANNEXURE -C

Note on Anti-Profiteering

Conceptually any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit should have been passed on to the recipient by way of commensurate reduction in prices, since GST being an indirect tax it is the customer/consumer who ultimately pays the tax involved. However it has been the experience of many countries that when GST was introduced there has been a marked increase in inflation and the prices of the commodities. This happened in spite of the availability of the tax credit right from the production stage to the final consumption stage which should have actually reduced the final prices. This was obviously happening because the supplier was not passing on the benefit to the consumer and thereby indulging in illegal profiteering. As the Government is committed to ensure all consumers enjoy the benefit of lower prices of goods and services under GST, anti-profiteering provisions (Section 171) are made in CGST/SGST Acts. Accordingly, National Anti-profiteering Authority has been constituted by the central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him, this is to ensure that the consumer is protected from arbitrary price increase in the name of GST. Further, it is required to be noted that the application of the concept of Anti-profiteering should be applied with every change of rate of tax in the GST regime.

Constitution of the Authority:

2. Central Government has constituted National Anti-profiteering Authority under Section 171(2) of the CGST ACT, 2017, and the following persons have been appointed on the recommendation of the GST-Council as Chairman and Members:

Sl. No.	Name	Earlier Designation	Present Position in NAA
1	Shri B.N. Sharma	Secretary to the Govt. of India	Chairman
2	Shri J.C. Chauhan	Chairman Tax Tribunal, Himachal Pradesh	Member
3	Shri Bijay Kumar	Principal Commissioner GST, Kolkata	Member
4	Shri C.L. Mahar	Principal Commissioner GST, Meerut	Member
5	Ms. R. Bhagyadevi	ADG, Systems, Chennai	Member

2.1. The Additional Director General of Safeguards under the CBEC (Board) shall be the Secretary to the Authority (Section 125).

3. The National Anti-profiteering Authority is functioning at the following address:

National Anti-Profiteering Authority,
6th floor, Tower-one, Jeevan Bharati,
Connaught Place, New Delhi – 110001,
Mail id: secretary.naa@gov.in

Power to determine the methodology and procedure (Section 126):

4. The Authority can determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

Duties of the Authority (Section 127):

5. The Authority would have the following duties: (i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of

input tax credit has been passed on to the recipient by way of commensurate reduction in prices; (ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices; (iii) to order, (a) reduction in prices; (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Consumer Welfare Fund; (c) imposition of penalty; and (d) cancellation of registration.

Constitution of Standing Committee and state level screening committees (Section 123):

6. The Government has constituted Standing Committee and state level screening committees.

The address of Standing Committee is as mentioned below:

Standing Committee on Anti-profiteering, Second Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi -110001. Tel No.: 011-2371537, Fax No.: 011-23741542, Email: anti-profiteering@gov.in.

7. In terms of Section 123(2), the Government of Telangana has constituted State Level Screening Committee on Anti-profiteering for Telangana (Screening Committee) vide G.O.Rt.No. 607 dated 04.10.2017 with the following members:

- (1) **Sri. M. Srinivas**, IRS, Commissioner of central Tax, Medchal GST Commissionerate Ph.No. 040 23237262; 040-23231843 email: mandalika.srinivas@icegate.gov.in ; address: H. No. 11-4-649/B, 2nd Floor, Lakdi-ka-pul, Hyderabad-500 004.

- (2) **Smt. B.Amrutha Lakshmi**, Additional Commissioner of State Tax; Ph.No. 040-24652356; 040-24618912; email: tg_addlcct_estt@tgct.gov.in ; Address: O/o the Commissioner of State Tax, CT Complex, Nampally Station Road, Hyderabad - 500 001.

(Applications may be addressed to the above members at the above addresses)

Who can file complaint?

8. The following persons can file application in form APAF-1 (attached, along with instructions to fill, as Annexure-1) before Standing Committee in case of issue of all India nature, or before Screening Committee of the concerned state if the issue is of local nature.

- (i) Interested party
{As per clause (c) of Explanation after Rule 137, “interested party” includes
 - (a) suppliers of goods or services under the proceedings;
 - (b) recipients of goods or services under the proceedings;
 - (c) any other person alleging, under sub-rule (1) of rule 128, that a registered person has not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.};
- (ii) Commissioner; or
- (iii) Any other person

Scrutiny of application:

9. Rule 128(2) specifies that all applications received from interested parties on issues of local nature shall first be examined by the Screening Committee. The Screening Committee on being satisfied that the supplier has not passed on the reduction in rate of tax on any supply of goods or services or the benefit of input tax credit on to the recipient by way of commensurate reduction in prices, will forward the application with its recommendations to the Standing Committee for further action. As per Rule 128(1), the Standing Committee examine the accuracy and adequacy of the evidence provided in the application to determine whether

there is prima-facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices. If it is satisfied then the matter will be referred to the Director General of Safeguards for a detailed investigation {Section 129(1)}.

Investigation:

10. As per Rule 129(2), the Director General of Safeguards shall conduct investigation and collect evidence necessary to determine undue profiteering and before initiation of the investigation, issue a notice to the interested parties (and to such other persons as deemed fit for a fair enquiry into the matter-Rule 129(4)) containing, inter alia, information on the following, namely:

- (a) the description of the goods or services in respect of which the proceedings have been initiated;
- (b) summary of the statement of facts on which the allegations are based; and
- (c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply. **{Rule 129(3)}**

11. The evidence or information presented to the Director General of Safeguards by one interested party can be made available to the other interested parties, participating in the proceedings **{Rule 129(4)}**. The evidence provided will be kept confidential and the provisions of section 11 of the Right to Information Act, 2005 (22 of 2005), shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis **{Rule 130}**.

12. The Director General of Safeguards will complete the investigation within a period of three months or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as allowed by the Standing Committee and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records **{Rule 129(6)}**.

Examination by Authority:

13. The Rule 133 lays down that, the Authority shall (after granting an opportunity of hearing to the interested parties if so requested) within a period of three months from the date of the receipt of the report from the Director General of Safeguards determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices. Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order:

- (a) reduction in prices;
- (b) return of the amount not passed on with interest @ 18% to the recipient;
- (c) imposition of penalty; and
- (d) cancellation of registration of the supplier

13.1. As per Rule 133(4), the authority may refer the matter to the Director General of safeguards to cause further investigation or inquiry.

Implementation of the orders of the Authority:-

14. In terms of Rule 135, any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount in accordance with the provisions of the Integrated Goods and Services Tax Act or the Central Goods and Services Tax Act or the Union territory Goods and Services Tax Act or the State Goods and Services Tax Act of the respective States, as the case may be.

15. The Rule 136 empowers the Authority to direct any authority of central tax, State tax or Union territory tax to monitor the implementation of the order passed by it.



STATE LEVEL SCREENING COMMITTEE
ON ANTI-PROFITEERING

H. No. 11-4-649/B, Lakdi-ka-pul, Hyderabad-500 004.

Ph: 04024303030

e-mail: mandalika.srinivas@icegate.gov.in

C.No:IV/16/36/2018-Anti-Profiteering

Date: 20.06.2018

Trade Facility No. 01/2018-GST - Anti-profiteering

Sub:-Constitution of State Level Screening Committee on Anti-profiteering for the State of Telangana- Reg.

In exercise of the powers conferred under sub-rule (2) of Rule 123 of the Telangana Goods and Services Tax Rules, 2017, the State Level Screening Committee was constituted vide Government of Telangana G.O.Rt.No.607 dated 04.10.2017 consisting of the following members:

Sl.No.	Name of the Officer	Designation	Contact Details
1.	M. Srinivas	Commissioner, Central Tax	Ph. No. 040- 24303030; Fax No. 040- 23231843; Email Address: mandalika.srinivas@icegate.gov.in
2.	B. Amrutha Lakshmi	Addl. Commissioner, State Tax	Ph. No. 040-24652356; Fax No. 040-24618912; Email Address: tg_addlct_estt@tgct.gov.in

2. The office of the Screening Committee of Anti-profiteering, Telangana is operating from the following address:

**O/o the Commissioner of Central Tax,
Medchal GST Bhavan, H.No. 11-4-649/B,
Lakdi-ka-pul, Hyderabad-500 004.**

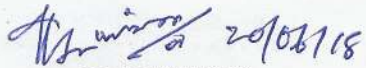
3. It is brought to the notice of all the concerned that any complaints concerning anti-profiteering pertaining to Telangana Sate involving issues of

local nature may be submitted (in the prescribed application form i.e. APAF-1 which is enclosed as Annexure-A) to the above Officers for scrutiny and onward transmission of the Standing Committee.

4. An FAQs and a note on Anti-profiteering are enclosed vide Annexure-B & Annexure-C for information and guidance.

5. All the Trade associations are requested to bring the contents of the Trade Facility to all the concerned.

Encl: As above.


(M.SRINIVAS)
COMMISSIONER

To

1. The Federation of Telangana & Andhra Pradesh Chamber of Commerce and Industry, Federation House, 11-6-841, Red Hills, Hyderabad-500 004.
2. The Deputy/Assistant Commissioner, Medchal, Malkajgiri, Jeedimetla, Kukatpally, Sangareddy, Karimnagar, Nizamabad, Mancherial Divisions.
3. Superintendent (Computers) for uploading on official website <http://cexhyd1.nic.in/>
4. As per Distribution list.

Copy to:

1. The Chief Commissioner of Customs, Central Tax, Central Excise & Service Tax, Hyderabad Zone.
2. The Standing Committee, New Delhi.
3. The Director General, Anti-profiteering (Safeguards), New Delhi.
4. The Principal Secretary, TSGST & State Excise, Hyderabad, Telangana State.
5. The Commissioner, SGST, Nampally, Hyderabad, Telangana State.

**Provisions for Enforcement and Consequential Liabilities for
Contravention of CGST Act, 2017 & CGST Rules, 2017**

Sl. No.	Nature of Contravention	Authority Section/ Rule	Penalty/late fee/ fine/or any other penal action prescribed	Remarks
1	<p>Registration:-</p> <p>In case, where</p> <p>(i) Registration has been obtained by means of fraud, wilful misstatement or suppression of facts;</p> <p>(ii) Returns have not been filed by a Composition Dealer for three consecutive tax periods (3-Quarters);</p> <p>(iii) Returns have not been filed by a regular taxpayer for a continuous period of six months;</p> <p>(iv) Contravention of any of the provisions of the Act or the rules, as may be prescribed. (not yet been prescribed);</p> <p>(v) Non-commencement of business within six months from the date of voluntary registration under sub-section (3) of section 25</p>	Sec. 29(2)	<p>Registration is liable to be cancelled by the proper officer</p> <p>(Proper Officer is Range Officer – Ref. Cir. No: 1/2017 dtd: 26.06.2017)</p>	<p>➤ In terms of proviso to Section 29(2), no cancellation shall be resorted to without giving the registered person an opportunity of being heard (<i>Principles of Natural Justice</i>).</p> <p>➤ Registration can be cancelled retrospectively, if situation demands.</p>
1A	<p>Failure to obtain Registration:-</p> <p>In case, where a person who is liable to be registered under the Act, fails to obtain registration -</p>	Sec.25(8) r/w Rule 16	<p>1. The proper officer may, proceed to register such person in such manner as may be prescribed.</p> <p>2. Such persons are also liable for Penal Action U/ Sec. 122 (1) (xi)</p> <p>[Ref. Sl.No: 20hereunder]</p>	<p>NOTE:-</p> <p>The legal action to register such persons who are liable to obtain registration but failed to do so , is without prejudice to any other action (Inspection , Search , Seize, Arrest , Demand, Confiscation, Prosecution etc.) which may be taken under the CGST Act or under any other law for the time being in force.</p>

2	<p>Composition Scheme: In case a taxable person has paid tax as applicable to Composition Scheme , under Sec. 10(1) , despite not being eligible -</p>	<p>Sec. 10(5) r/w Sec.50(1), Sec.73, Sec.74 & Sec.122.</p>	<p>Mandatory Penalty is imposable under Sec. 122, in addition to the liability towards tax short-paid & interest thereon.</p>	<p>The provisions of Sec. 73 or Sec. 74 shall, <i>mutatis mutandis</i>, apply for determination of tax and penalty.</p> <p>Sec. 50 is automatically attracted in such cases, since interest is liable to be paid when there is short payment, as referred to, in Sec. 73/ Sec.74.</p>
3	<p>Input Service Distributor: In case, an Input Service Distributor distributes the credit in contravention of the provisions contained in Sec. 20 resulting in excess distribution of credit to one or more recipients of credit -</p>	<p>Sec. 21 r/w clause (ix) of Sec. 122(1)</p>	<p>The excess credit so distributed shall be recovered from such recipients along with interest; and</p> <p>Such ISD is also liable for Penalty of Rs. 10,000/- or Equivalent to such excess credit distributed, whichever is higher, in terms of the clause (ix) of Sec. 122(1).</p>	<p>The provisions of Sec. 73 or Sec. 74, as the case may be, shall, <i>mutatis mutandis</i>, apply for determination of amount of excess ITC to be recovered from the recipient.</p> <p>Note:</p> <ol style="list-style-type: none"> 1. The excess credit so distributed in contravention of Sec. 20, if any, would be liable for recovery from the recipients, <u>only if the credit was taken by such recipient</u>, (there could be situations where ISD was distributed , but recipient might not have taken the Credit); 2. Recovery of Excess ITC distributed shall be from recipient; and the liability of Penalty is on ISD who distributed such excess ITC. 3. Hence, the details of Excess credit distributed, if any, shall be passed on to the Jurisdictional officers of the recipient, for initiating the action for determination of liability under Sec 73 or 74, as the case may be.
4	<p>Non-Accountal of Goods or Services or Both:- In case, where the registered person fails to account for the goods or services or both in accordance with the provisions of Sec. 35(1).</p>	<p>Sec. 35(6)</p>	<p>The proper officer shall determine the amount of tax payable on the goods or services or both which are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of Sec. 73 or Sec. 74, as the case may be, shall, <i>mutatis mutandis</i>, apply for determination of such tax.</p>	<ul style="list-style-type: none"> ➤ Tax shall be payable in respect of goods un-accounted for considering the same as supply on determination by the proper officer under Sec. 73 & 74; ➤ Such persons are also liable for Penal Action U/ Sec. 122 (1) – clause - (x), (xv), (xvi) & (xviii) . <p>[Ref. Sl.No: 20, hereunder]</p>

7	<p>Non-filing of Returns by Registered persons:-</p> <p>In case a Registered person fails to furnish the return under Sec. 39 (GSTR-3B/3) or Sec. 45 [Final Return (GSTR-10) in case of closure of business / cancellation on Registration]–</p>	<p>Sec. 46 & Sec. 62 read with Rule 68 & Rule 100(1)-</p>	<p>Assessment by Best Judgement; + Liability of Interest and the late fee.</p>	<p>I. In terms of Sec. 46 read with Rule 68, a notice in Form GSTR-3A, shall be issued.</p> <p>II. As per Sec. 62 read with Rule 68 & Rule 100(1) , where a registered person <u>fails to furnish the return under Sec. 39 or Sec. 45 even after the _____ service of _____ notice, notwithstanding anything to the contrary contained in Sec. 73 or Sec. 74</u>, the proper officer may proceed to assess the tax liability of the said person to the Best of his Judgement taking into account all the relevant material which is available or which he has gathered ; and issue an Assessment Order in Form GST ASMT-13 <u>within a period of five years</u> from the date specified under Sec.44 (31st Dec. succeeding the end of FY) for furnishing of the annual return for the financial year to which the tax not paid relates to.</p> <p>III. Where the registered person furnishes a valid return within thirty days of the service of the Best Judgment Assessment Order under sub-sec. (1) of Sec. 62, the said Best Judgment order assessment order shall be deemed to have been withdrawn <u>[but the liability for payment of interest under sub-sec. (1) of Sec. 50 or the liability for payment of late fee, under Sec. 47, shall continue]</u>.</p> <p>Note:</p> <p>1: The Best judgement Assessment should be reasonable and justifiable (should not be arbitrary); and it should invariably be made based on a thorough verification and on gathering all the relevant material/documents/ data/ evidence, to avoid incorrect or under assessment and avoidable litigation.</p> <p>2: Hence, every such case in which the assessment is made by 'Best Judgement' method, it should also be examined for possible imposition of the mandatory penalty under Sec 122, as separate proceedings; and all such cases shall also be examined for possible application of the provisions of Sec 132 (Prosecution Proceedings), if they meets the criteria prescribed therein.</p>
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7A	<p>Penalty for non-payment of Tax: In case the Taxpayer collected GST but fails to pay the same to the Govt. for a period beyond 3 months from the date on which the payment becomes due, which might also involve non-filing of Return [whether Notice U/Sec. 46 was issued or not; and/or the 'Best judgement assessment order under U/Sec 62 was issued or not];-</p>	<p>Sec. 122(1)(iii)/(iv)</p>	<p>Penalty of Rs. 10,000/- or amount equal to Tax involved, whichever is higher.</p>	<p>Remarks: Same as above at Sl.No: 7. Also Refer remarks against Sl.No: 5A.</p>
8	<p>Failures of TDS Deductor:- In case, TDS Deductor fails to furnish the certificate to the deductee, after deducting the tax at source, within <u>five days</u> of crediting the amount so deducted to the Government;</p> <p>TDS Deductor is liable to pay to Govt. the Tax deducted within 10 days of the end of the month in which such deduction is made – [Sec. 51 (2)]</p> <p>If TDS Deductor fails to pay to the Government the amount deducted as tax under Sec. 51 (1)</p> <p>Determination of the liability of TDS-Deductor – on account of failure to Deduct or short deduction; or Failure to pay to Govt. the amount deducted in terms of Sec. 51(1) -</p>	<p>Sec. 51(4)</p> <p>Sec. 51(6)& Sec. 122(1)(v)</p> <p>Sec. 51(7)</p>	<p>Late fees liable to be paid @Rs. 100/- per day from the day after the expiry of such <u>five-days</u> period until the failure is rectified, subject to a maximum amount of 5000/-.</p> <p>TDS- Deductor is liable to pay Interest in accordance with the provisions of the Sec. 50(1), in addition to the amount of tax so deducted. In such case, the Penalty in terms of Sec. 122(1)(v) is also imposable;</p> <p>The amount in default by the TDS deductor shall be determined in terms of the Sec. 73 or Sec 74, as the case may be.</p>	<p>Note:-</p> <p>1.For the details of Penalty imposable U/ Sec. 122(1)- Ref. Sl.No: 20, hereunder.</p> <p>2. Ref. Sl.No:15& 16hereunder – for the details regarding action under Sec. 73 &Sec. 74, respectively.</p>
9	<p>Failure to furnish information by ECO:- If an <u>Electronic Commerce Operator</u> fails to furnish information sought by the Dy. Commissioner or above, through Notice issued u/s 52(12) , -</p>	<p>Sec. 52(14)</p>	<p>Penalty up to Rs. 25,000/- - is imposable.</p>	<p>For each such occasion of non-furnishing of the information against a notice issued U/Sec. 52(12), the said penalty <u>up to</u> Rs. 25,000/- [quantum of penalty is discretionary, with upper limit of Rs. 25,000/-] can be imposed, without prejudice to the penal action under Sec. 122 for other contraventions noticed, if any.</p>
10	<p>Discrepancies noticed during Scrutiny of return & related particulars:- In case, the proper officer communicates the discrepancies noticed on scrutiny of the returns (Notice in the form: GST ASMT- 10); and no satisfactory explanation is furnished by the taxpayer within a period of 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 -</p>	<p>Sec. 61(1) & Sec. 61(3) r/w Rule 99</p>	<p>The proper officer may initiate appropriate action including those under Sec. 65 (Audit by Tax authorities); or Sec. 66 (Special Audit by Chartered/Cost Accountant); or Sec. 67 (Inspection/ Search/ Seizure) or Proceed to determine the tax and other dues under Sec. 73 or Sec. 74.</p>	<p>Note:-</p> <p>1. The Taxpayer shall reply to the Notice in Form GST ASMT-10, issued to convey the discrepancies by the proper officer, in Form: GST ASMT-11.</p> <p>2. If the explanation / reply of the Taxpayer submitted in form GST ASMT – 11 is found acceptable, the same would be conveyed in the form GST ASMT-12, by the proper officer; and no further action shall be taken.</p>

11	<p>Assessment of Unregistered Persons:- In case a taxable person fails to obtain Registration, even though liable to do so, or whose registration was cancelled under Sec 29(2) but who was liable to pay Tax -</p>	Sec. 63	The proper officer may proceed to assess the Tax liability to the Best of his Judgement and issue an assessment order within a period of 5-Years from the date specified for furnishing the annual Return, for the FY to which the tax not paid relates to (31 st Dec. following FY)	<p>Note:- As per the proviso to the Sec. 63, no such assessment order shall be passed without giving the person an opportunity of being heard. [Principles of Natural Justice]</p>
12	<p>Inspection: An officer, not below the rank of the <u>Joint Commissioner</u>, can authorise any other officer subordinate to him in Form GST INS-01 [Rule 139 (1)] to inspect any place, if he has reasons to believe that</p> <p>(a) any <u>taxable person</u> has indulged in any one of the following:- (i) suppressed any <u>transaction of supply</u>; (ii) suppressed stock of goods in hand; (iii) claimed excess input tax credit; (iv) contravened any provision of the Act/Rules to evade tax. or</p> <p>(b) any <u>transporter or owner</u> or operator of a warehouse or godown or any other place:- (i) keeps goods which have escaped payment of tax ; or (ii) keeps his accounts or goods in such a manner as is likely to cause evasion of tax.</p>	Sec 67(1)	<p>The Authorisation can be given to an officer to carry out <u>inspection</u> of any of the following:</p> <p>(i) any place of business of a taxable person;</p> <p>(ii) any place of business of a person engaged in the business of transporting goods;</p> <p>(iii) any place of business of an owner or an operator of a warehouse or a godown; or</p> <p>(iv) any other place (should have relevance to the taxpayer against whom the action is contemplated)</p>	<p>Note:</p> <ol style="list-style-type: none"> The expression “any other premises” include the Residential premise , subject to the relevance to the taxpayer against whom the action is contemplated; There should be a reasonable ground for conducting the inspection of the Residential or any other unregistered premises. The procedure for search of a residential premises should be strictly followed even for the inspection of such premises (presence of a Lady officer; independent witnesses etc.) Inspection of a premises is a softer option than Search. If inspection leads to a reasonable belief that the Goods which are liable to confiscation or Documents relevant for any proceedings are secreted in such premises, then such premises can be subjected to Search.
12A	<p>Inspection of Goods in Transit:- Proper officer who intercepted any conveyance may require the person in charge of the conveyance to produce documents / devices for verification; and also conduct inspection of the Goods.</p>	Sec. 68 r/w Rule 138.	The person in charge of the conveyance shall be liable to produce the documents/ devices prescribed, to the officer for verification; and also allow the inspection of the Goods.	<p>Note:-</p> <ol style="list-style-type: none"> In terms of the Sec. 68(1) read with the Rule 138& 138A, the goods of the value of Rs. 50,000/- or more shall be accompanied with the e-way bill, besides a tax invoice/bill of supply/ Bill of Entry/delivery challan. The summary report of every inspection of Goods in transit shall be recorded online by the proper officer. [R/138 C]. <p>Refer Cir. No: 41/15/2018-GSTtdt: 13.04.2018 - on the Procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances.</p>

13	<p>Search & Seizure:</p> <p>Search of a premises can only be under the Authorisation of an officer, not below the rank of Joint Commissioner.</p> <p>Such authorisation for Search can be issued only if he has reasons to believe that:</p> <ul style="list-style-type: none"> - 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 the Act- <p>are secreted in any place which is proposed to be Searched -</p> <p>and Seize such goods, documents or books or things.</p> <p>➤ If it is not practicable to Seize the Goods, the proper/authorised officer may serve an order (of Detention) on the owner or custodian of the Goods , that he shall not remove, pert with, or otherwise deal with the Goods , except with the prior permission.[provisio to Sec. 67(2)]</p>	<p>Sec 67(2) to Sec.67(11)</p>	<ul style="list-style-type: none"> ➤ Search of any premises can be launched either pursuant to an Inspection carried out under Sec.67 (1) or otherwise; ➤ The proper officer or an authorised officer of Central Tax shall make an order of Seizure inform INS-02 [Rule 139(2)] ➤ The officer empowered to authorise any other Cantal Tax officer for Search, may conduct Search by himself, under the circumstances mentioned in Sec. 67(2). ➤ The office authorised to search shall also have the power to seal or break open the door of any premises or to break open any almairah, electronic devises, box receptacle in which any goods / accounts / registers or documents of the person are suspected to be concealed , if the access to the same is denied.[Sec. 67(4)] ➤ Where the proper officer has reasons to believe that any person has evaded or 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; give a receipt for the same and shall retain the same, for Prosecution proceedings.[Sec 67(11)]. 	<p>NOTE:-</p> <ul style="list-style-type: none"> (i) The seized documents /books /things shall be retained only till the time the same are required for examination /enquiry/any other proceedings and if these are not relied on for the case, then the same shall be returned within 30 days from the issuance of show cause notice [2nd proviso to Section 67(2) and Section 67(3)] (ii) The person from whom the documents are seized shall be entitled to take copies/extracts of the same- [Section 67(5)]; (iii) The seized goods shall be provisionally released on execution of a Bond [GST INS-04]and on furnishing a security <u>or</u> on payment of applicable tax, interest and penalty- [Section 67(6) read with Rule 140(1)]; (iv) In case of seizure of goods, a notice has to be issued within six months; <u>if no notice is issued within a period of six months then all such goods shall be returned.</u> However, this period of six months can be extended by Commissioner for another six months on sufficient cause [Sec.67(7)]; (v) Hazardous/Perishable goods shall be inventoried and disposed of by the proper officer, as soon as possible, in the manner, as prescribed. [Sec. 67(8) / (9)] (vi) The procedure under Cr.P.C, 1973 pertaining to Search & Seizure , shall apply – with the change that the word “Magistrate” is substituted with the word “Commissioner”.
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14	<p>Test Purchase: is to check the issue of Tax-invoices or Bills of Supply of Goods/Services/Both, by a Taxable person.</p>	<p>Sec. 67(12)</p>	<p>➤ Test purchase can be resorted to by a person authorised by the Commissioner or an officer authorised by the Commissioner.</p> <p>➤ On return of the Goods purchased on test-check basis, the supplier is liable to refund the amount so paid.</p>	<p>➤ The refund of the amount in respect of the Goods purchased earlier on test check basis, can be on cancellation of the relevant Invoice or Bill of Supply.</p>
15	<p>Non-Payment / Short-Payment of Tax or Erroneous Refund :- (NORMAL PERIOD)</p> <p>If the tax</p> <ul style="list-style-type: none"> - has not been paid; or - has been short paid; or - has been erroneously refunded; or <p>If the Input Tax Credit has been wrongly availed or utilized -</p> <p>-- for any reason other than fraud or wilful misstatement or suppression of facts to evade tax :-</p>	<p>Sec. 73 / Sec. 122(2)(a)</p>	<p>(i) No penalty shall be imposed if the Tax amount, along with the interest is paid before issuance of Notice or within 30 days from the date of issuance of SCN [Sec 73(5) & 73(8)]</p> <p>(ii) Penalty of 10% of tax amount as determined under Sec. 73(9) or Rs. 10,000/- <u>whichever is higher</u>, is imposable, if the tax amount along with interest is not paid in the above manner mentioned at (i).</p> <p>(iii) As per Section 73(11), notwithstanding anything contained in sub-section (6) or sub-section (8), penalty equivalent to 10% of tax or Rs. 10,000/- , whichever is higher shall be payable where any amount of self-assessed tax or any amount <u>collected as tax has not been paid within a period of thirty days from the due date</u> of payment of such tax.</p>	<p>I. As per Sec. 73(2), Notice has to be issued at least 3 months prior to the time limit (Three Years) specified in Sec 73(10) for issuance of order i.e. the notice has to issued <u>within 33 months</u> from the due date for furnishing of the Annual Return (31st Dec. following end of FY) to which the non-/short- payment / erroneous refund/ irregular taking/utilisation of ITC, pertain to.</p> <p>II. In terms of Sec. 73(10), order has to be passed by the proper officer within <u>3 years</u> from the due date for furnishing of the Annual Return (31st Dec. following end of FY) to which the non-/ short- payment / erroneous refund/ irregular taking / utilisation of ITC, pertain to.</p> <p>(Also Refer Sl. No: 17 hereunder – for conclusion of proceedings)</p>

<p>16</p>	<p>Non-Payment / Short-Payment of Tax or Erroneous Refund:-</p> <p>(EXTENDED PERIOD)</p> <p>If the tax</p> <ul style="list-style-type: none"> - has not been paid; or - has been short paid; or - has been erroneously refunded; or <p>If the Input Tax Credit has been wrongly availed or utilized -</p> <ul style="list-style-type: none"> - by reason of fraud or wilful misstatement or suppression of facts, to evade tax: 	<p>Sec. 74 / Sec. 122(2)(b)</p>	<p>(i) Penalty of 15% of the tax amount is liable to be paid, if the tax amount along with interest is paid prior to issuance of SCN [Sec 74(5)]; <u>and in such case SCN shall not be issued.</u> (Ref. Sl.No: 13B hereunder).</p> <p>(ii) Penalty of 25% of the tax amount is liable to be paid, if the tax amount along with interest is paid within 30 days of issuance of SCN [Sec 74(8)]; <u>in such case the Proceedings shall be deemed to be concluded;</u> (Ref. Sl.No: 13B hereunder).</p> <p>(iii) Penalty of 100% of tax amount determined is impossible, if the evasion is proved (on adjudication of SCN) [Sec. 74(9)]</p> <p>(iv) Penalty of 50 % of the tax amount determined shall be paid, if the tax amount along with interest is paid within 30 days from the date of communication of the (Adjudication) Order [Sec.74(11)]; <u>in such case, the Proceedings shall be deemed to be concluded;</u> (Ref. Sl.No: 13B hereunder).</p>	<p>(i) As per Sec. 74(2), Notice has to be issued at least 6 months prior to the time limit specified in Sec 74(10) for issuance of order i.e. within <u>54 months</u> from the due date for furnishing Annual Return (31st Dec. following end of FY) to which the non-/ short- payment / erroneous refund / irregular taking / utilisation of ITC, pertain to.</p> <p>(ii) In terms of Sec. 74(10), order has to be passed by the proper officer within <u>5 years</u> from the due date for furnishing Annual Return (31st Dec. following end of FY) to which the non-/ short- payment / erroneous refund / irregular taking / utilisation of ITC, pertain to.</p> <p>(iii) <i>No Penalty under any provisions of GST law shall be imposed on any person without giving an opportunity of being heard [Principles of Natural Justice -Sec. 126(3)].</i></p> <p>Note:</p> <ol style="list-style-type: none"> 1. <u>If any Penalty is imposed</u> under Sec. 73 or 74, <u>no other penalty for the same act or omission shall be imposed</u> on the same person, under any other provision of this CGST Act. [Sec. 75 (13)]; 2. <i>However, the penalty liable to be imposed under the parallel provisions of SGST/UTGST Act can be imposed, as the penal provisions under those acts are equally attracted for the offences/violations which attracted the provisions of Sec. 73 & 74 of CGSTA; and the proceedings are independent.</i>
<p>17</p>	<p>Conclusion of Proceedings—on payment of dues—prior to or within 30 days from the date of issue of SCN :-</p> <p>Normal Cases:- No penalty shall be imposed if the Tax amount, along with the interest is paid before issuance of Notice or within 30 days from the date of issuance of SCN</p> <ul style="list-style-type: none"> - provided that such non-/short payment was for any reason other than fraud / wilful misstatement / suppression of facts; 	<p>Sec. 73(5) & Sec. 73(8)</p>	<ol style="list-style-type: none"> 1. No notice will be issued if the short/non-paid Tax and the interest thereon are fully paid before issue of the Notice; and the <u>proceedings</u> would be <u>deemed to be concluded.</u> 2. The <u>proceedings</u> initiated vide a notice issued under Sec 73 (1) or Sec 73(3) would be <u>deemed to be concluded,</u> if the taxpayer fully pays the short/non-paid Tax and the interest thereon, within 30 days of issues of the notice; and if so paid, no penalty is impossible. 	<p>Note:</p> <p>In the following situations , the taxpayer is liable to pay Penalty of Rs. 10,000/- or 10% of the Tax involved , whichever is higher :</p> <ol style="list-style-type: none"> (i) Cases where any amount of self-assessed Tax or any amount collected as Tax , was not paid within a period of 30-days from the due date of payment of such Tax; or (ii) Case where the Tax due along with Interest was not paid; or paid after the expiry of 30 days from the date of issuance of SCN. <p>[Ref. Sl. No: 15, here-in-above]</p>

<p>17A</p>	<p>Conclusion of Proceedings- on payment of dues :-</p> <p>In case of Non-Payment / Short-Payment of Tax or Erroneous Refund - by reason of fraud or wilful misstatement or suppression of facts, to evade tax: (EXTENDED PERIOD)</p>	<p>Sec. 74 (5) (6), (8) & (11)</p>	<p>In the following cases Proceedings shall be deemed to be concluded:-</p> <p>(i) On payment of Tax , Interest and Penalty of 15% of the tax amount, if paid prior to issuance of SCN [Sec 74(5)];</p> <p>(ii) On payment of Tax, Interest and Penalty of 25% of the tax amount, if paid within 30 days of issuance of SCN [Sec 74(8)].</p> <p>(iii) On payment of Tax, Interest and Penalty of 50 % of the tax amount determined, if paid within 30 days from the date of communication of the (Adjudication) Order [Sec. 74(11)].</p> <p>In all other cases the Penalty payable would be equal to the Tax amount determined; besides the said Tax and Interest, thereon.</p>	<p>Note:</p> <ol style="list-style-type: none"> Conclusion of the Proceeding in this section do not include the proceedings under Sec. 132 (Prosecution Proceedings) - which implies that in respect of a case arising out of the SCN, even if the quasi-judicial proceedings are concluded on account of payment of all dues as per the subject provisions, Prosecution proceedings shall still be launched, if it meets the criterion under Sec 132. [explanation 1 (i) of Sec.74] Where the proceedings under the Sec. 73 and Sec 74 are concluded on payment of all dues including penalty payable, if any, by the main notice , the penal proceedings/liability against the co-noticees, also would stand concluded. [explanation 1(ii) of Sec.74] <p>[Ref. Sl. No: 16, here-in-above]</p>
<p>18</p>	<p>Interest on TAX Not Paid / Short paid :-</p> <ol style="list-style-type: none"> Failure to pay the tax - in full (<i>i.e: filing NIL return despite having the taxable supplies during the tax period</i>) ; or Failure to pay a part of the tax (<i>short payment by resorting to under assessment</i>) -, within the due date [u/s Sec 50(1)]; Makes an undue or excess claim of Input Tax Credit[u/s Sec 50(3)]; Undue or excess reduction in output Tax liability [u/s Sec 50(3)] - {<i>any type of reduction of tax liability on account of incorrect amount in credit note – as covered under sub-Sec. (10) read with sub-Sec (7) of Sec 43 ibid</i>} 	<p>Sec. 50(1) & Sec. 50(3)</p>	<p>In addition to the liability towards the Tax not paid/short paid -Interest at the prescribed rate is liable to be paid.</p> <p><i>Further, Penalty is liable to be imposed – in certain cases – as mentioned at Sl.No: 12 & 13, hereinabove.</i></p>	<p>Vide Not. No. 13/2017-CT dtd. 28.06.2017, prescribed interest rate is:</p> <p>@ 18%- in r/o contravention of nature covered U/Sec. 50(1) (for short/non-payment of tax); and</p> <p>@ 24%- in r/o contravention of nature covered U/Sec. 50(3) [for making undue/ excess claim of ITC; and undue/excess reduction in output tax liability - by applying lesser rate of tax / undervaluation / suppression of taxable supplies etc.].</p> <p>Note: <i>The date of Payment of Tax is reckoned with the date of filing the return after duly offsetting the liability (by debiting) through the electronic Cash/ Credit ledger on GSTN. Hence, despite sufficient balance in such ledgers, if the return is not filed, by due debit of the amounts in the said ledgers, it would still be treated as non-payment of the Tax, as per law; and the relevant module in GSTN is designed accordingly.</i></p>

19	<p>GST Collected but not paid to Govt. - irrespective of the fact, whether the relevant supplies are Taxable or not:-</p> <p>Notwithstanding any other law/order - Every person who has collected from any other person, any amount, <u>as representing the tax</u> and has not paid the said amount to Government irrespective of whether the relevant supplies were taxable or not:</p>	<p>Sec. 76</p>	<p>Such amount representing tax, collected by any person shall be paid to the Govt., forthwith.</p> <p>Interest at the rate of 18% is liable to be paid in terms of Sec. 76(4) read with the Sec 50(1) - <i>from the date of collection of the amount, till the date on which it is paid to the Govt.</i></p> <p>The subject contravention is specified offence under Sec. 122(1); and hence the mandatory penalty is attracted, as detailed at Sl.No 16 hereunder.</p>	<p>If such amount is not paid forthwith, SCN shall be issued for recovery – [Sec. 76(2)]. No time limit is prescribed for serving show-cause notice in this regard; but <u>order has to be passed within one year from the date of issue of the notice</u> – [Sec. 76(6)]</p> <p>Note:</p> <p>(i) Every person – covers – even the unregistered person; (<i>in fact collection of GST by an unregistered person is prohibited vide Sec. 32(1) ; and further a registered person cannot collect Tax except in accordance with the provisions of the GST law [Sec 32(2)]</i>)</p> <p>(ii) It is important to note that such amount collected as representing the tax, shall be paid forthwith to Govt. <i>but not by the date of filing the return or by the due date for payment of the tax for the tax period during which such amount was collected.</i></p> <p>(iii) The expression in the Sec. 76 – “any amount as representing the Tax”- implies that the amount should have been collected as GST (or as CGST/SGST/UTGST/IGST),by specifically mentioning the same, in the Invoice/Bill of Supply or any other such document, to attract the provisions of Sec 76.</p>
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20	<p>Penalty for Specified Offences:-</p> <p>When a taxable person indulges in any of the 21 offences mentioned under Sec. 122(1).</p>	<p>Sec. 122(1)</p>	<p>Penalty of Rs. 10,000/-or an amount equivalent to tax involved whichever is higher, is imposable.</p>	<p>Specified Offences under Sec. 122(1):</p> <ul style="list-style-type: none"> (i) For non-issue / wrong issue/ issue of false invoice (ii) Issue of invoice/ bill w/o supply in violation of GST law; (iii) Collects GST & do not pay to Govt. for a period of 3-months; (iv) Collects GST in contravention of law & do not pay to Govt. for a period of 3 months; (v) Fails to pay/ short pay TDS etc. (vi) Fails to pay/ short pay TCS etc. (vii) Take or utilises ITC w/o good or services; (viii) Obtains fraudulent refund; (ix) Takes or distributes ISD Credit in contravention of Sec. 20; (x) Falsifying/fabrication of records; (xi) Fails to obtain Registration, although liable to register; (xii) Furnishing false information to take registration; (xiii) Obstructs/prevents officer to discharge duty; (xiv) Transportation of goods w/o specified documents; (xv) Suppression of turnover leading to evasion of GST; (xvi) Failure to keep or maintain or retain records; (xvii) Fails to furnish or furnishing false information; (xviii) Supplies/Transports/stores any goods liable for confiscation; (xix) Issuing Invoice/any document by using GSTIN of another person; (xx) Tamper/destroys any material evidence; (xxi) Disposal/tampers with any goods which were seized / detained or attached; <p>➤ <i>No Penalty under any provisions of GST law shall be imposed on any person without giving an opportunity of being heard [Principles of Natural Justice -Sec. 126(3)].</i></p>
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21	<p>Penalty on abettors & other persons dealing with offending Goods or concerned with the such services, including recipients :-</p> <p>Any person Who –</p> <p>a) aids or abets any offences u/s 122(1);</p> <p>b) 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;</p> <p>c) Receives or is in any way concerned with the supply 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 the CGSTA or the rules made there under;</p> <p>d) Fails to appear before the officer of Central Tax when summoned to give evidence or produce a document in any inquiry;</p> <p>e) Fails to issue invoice or fails to account for an invoice in his books of account.</p>	<p>Sec. 122(3)</p>	<p>Penalty is imposable – which may extend to Rs. 25,000/-.</p>	<ul style="list-style-type: none"> ➤ Penalty under Section 122(3) can be imposed on any person who commits specified offence whether he is registered or not; ➤ Quantum of penalty under Sec. 123(3) is discretionary and should commensurate with the gravity of offense; but cannot exceed Rs. 25,000/- ➤ <i>No Penalty under any provisions of GST law shall be imposed on any person without giving an opportunity of being heard [Principles of Natural Justice - Sec. 126(3)].</i>
22	<p>Failure to furnish 'Information Return' required to be submitted under Sec. 150 by any person to the proper officer – (e.g.: GSTN/ RBI / Stock Exchange/ Depository like NSDL / Income tax dept./ any State Authority collecting state excise duty etc./ etc. - as mentioned in Sec. 150(1).</p>	<p>Sec. 123</p>	<p>Penalty of Rs 100/- (plus Rs. 100/- under SGST Act) per day subject to a maximum amount of Rs. 5000/-, each under CGSTA & SGSTA.</p>	<ul style="list-style-type: none"> ➤ <i>No Penalty under any provisions of GST law shall be imposed on any person without giving an opportunity of being heard [Principles of Natural Justice -Sec. 126(3)].</i>
23	<p>Non-furnishing of “any information or return” (statistical data required to be furnished in terms of Sec.151)– without reasonable cause or wilfully furnishing information or return , which is false:</p>	<p>Sec. 124</p>	<p>Liable for Fine which may extend up to Rs. 10,000/-; and if the contravention continues , a further fine of Rs. 100/- per day – after the first day onwards, subject to a maximum amount of Rs. 25,000/- , is chargeable.</p>	<ul style="list-style-type: none"> (i) The Fine U/ Sec. 124 is Mandatory in nature. (ii) No SCN required for collection/recovery of the Fine U/ Sec. 124. (iii) The maximum Fine under Sec 124 could be Rs. 35,000/- , in case the contravention continues. [Rs. 10,000/- + 25,000/-]. <p>NOTE: The total amount of fine liable in this regard would be double the said fine amount, as an equal liability is attracted under Sec. 124 of SGSTA/UTGSTA.</p>

<p>24</p>	<p>General Penalty:- Contravention of any of the provisions of the Act or Rules made there under for which no penalty is separately provided for.</p>	<p>Sec. 125</p>	<p>Penalty is imposable <u>which may extend to Rs. 25,000/-</u>.</p> <p>NOTE: The total amount of Penalty liable to be imposed in this regard would be double the said amount, as an equal penal liability is attracted under Sec. 125 of SGSTA/UTGSTA.</p>	<p>Examples:- (Not exhaustive)</p> <p>I. When a registered person:</p> <ul style="list-style-type: none"> i) fails to display the Registration Certificate & GSTIN on the Name/Sign -board at the principal place of business and at every additional place of business as required under Rule 18 of CGSTR; ii) fails to issue invoice which does not contains the details as required under Sec. 31 read with Rule 36; iii) fails to intimate the department before sending the inputs/capital goods for job work without payment of tax as prescribed under Sec. 143. <p>II) If a registered person who opts for composition levy under Sec. 10-</p> <ul style="list-style-type: none"> a) fails to intimate the fact of opting for composition levy as required under Rule 3; b) fails to mention the words “<i>composition taxable person, not eligible to collect tax on supplies</i>” at the top of bill of supply issued by him as required under Rule 5(f); c) fails to mention the words “<i>composition taxable person</i>” on every notice or signboard displayed at the principal place of business and every additional place of business as required under Rule 5(g). <p>III) If an Electronic Commerce Operator fails to furnish GSTR-8 as required under Sec. 52</p> <p>NOTE:-</p> <ol style="list-style-type: none"> 1. As per the Sec. 126(1), no officer can impose any penalty for minor beaches of tax regulations or procedural requirements, which are easily rectifiable and without any fraudulent intent or gross negligence. [Ref. Sl.No: 28, hereunder]. 2. No Penalty under any provisions of GST law shall be imposed on any person without giving an opportunity of being heard [Principles of Natural Justice -Sec. 126(3)].
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<p>25</p>	<p>Prosecution:- If a person commits any of the twelve offences specified under Sec. 132(1) mentioned hereunder:</p> <p>a) Supplying taxable goods w/o invoice – with intention to evade GST;</p> <p>b) Issue of invoice/ bill of supply w/o supply in violation of GST law;</p> <p>c) Taking ITC using such invoice or bill referred to in (b) above;</p> <p>d) Collects GST and do not pay to Govt. for a period of three months;</p> <p>e) Evades tax or fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);</p> <p>f) Falsifying/fabrication of records;</p> <p>g) Obstructs/prevents officer to discharge duty;</p> <p>h) Acquires possession of, or concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods liable for confiscation;</p> <p>i) Receives or is concerned with the supply of, or in any other manner deals with any supply of services which are in contravention of any provisions of this Act or the Rules made thereunder;</p> <p>j) Tampers with or destroys any material evidence;</p> <p>k) Fails to furnish or furnishing false information;</p> <p>l) Attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section.</p>	<p>Sec. 132 (1) & 132 (2)</p>	<p>(i) Punishable with imprisonment up to 5 years and with fine where the tax evaded in the offence exceeds <u>Rs. 5 Crores</u> or for indulging in repeated offence specified under Section 132.</p> <p>(ii) Punishable with imprisonment up to 3 years and with fine where the tax evaded in the offence exceeds <u>Rs. 2 Crores</u> and does not exceed <u>Rs. 5 Crores</u>.</p> <p>(iii) Punishable with imprisonment up to 1 year and with fine where the tax evaded in the offence <u>is above Rs. 1 Crore and below Rs. 2 Crores</u>.</p> <p>(iv) Punishable with imprisonment up to 6 months or with fine or with both, for the offences mentioned at clause (f), clause (g) or clause (j) Sec 132 (1).</p>	<p>➤ The “<i>mens rea</i>” or “<i>culpable mental state</i>” is an essential ingredient for launching prosecution / criminal proceedings. In fact, the Sec. 135 envisages that the Court shall presume the existence of such mental state (<i>mens rea</i> or <i>culpable mental state</i>); and <u>it shall be a defence for the accused to prove that the accused had no such mental state with respect to the act charged as an offence in that prosecution.</u></p> <p>➤ But the prosecution proceedings cannot be initiated unless there is clinching evidence in the form of the incriminating documents etc. In support of the charges / alleged offence.</p> <p>➤ Both the quasi-judicial proceedings to pursue penal action and the prosecution proceedings to pursue criminal action can be initiated/launched, simultaneously.</p> <p>➤ Prosecution proceeding being a more serious action, it shouldn't be initiated unless it meets the criterion and without the prior sanction of the competent authority.</p> <p>➤ Explanation to Section 132 of CGSTA. - For the purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of CGST/SGST/UTGST/IGST and cess levied under the (Compensation to States) Act.</p>
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26	<p>Arrest: A person may be Arrested only if he/she commits an offence specified in clauses (a) to (d) of Sec 132(1) and is punishable under clause (i) or (ii) of 132(1) or (2).</p>	<p>Sec. 69</p>	<ul style="list-style-type: none"> ➤ The officer authorised to arrest, shall inform the arrested person regarding the grounds of arrest; ➤ Person arrested shall be produced before a Magistrate within 24 Hrs. ➤ In case the offence is non-cognizable and bailable, the DC/AC can grant bail by himself. 	<ul style="list-style-type: none"> ➤ Arrest can be affected , by an officer of Central Tax , duly authorised by an order, by the Commissioner, who shall order the same only in case he has the reasonable belief that the person had committed an offence specified in the clauses (a) to (d) of Sec 132(1) and punishable under clauses (i) & (ii) of 132(1) or (2).
27	<p>Action against offending Goods in Transit & Conveyance:</p> <p>Any person transports any goods or stores any goods, while they are in transit, in contravention of the provisions of the Act or the Rules made there under -</p>	<p>Sec. 129</p>	<p>All such goods and conveyance used for transport and documents pertaining to such goods shall be liable to detention or seizure.</p> <p>The Goods Detained / Seized shall be released –</p> <p>(1) To the owner of the Goods, if such owner comes forward for payment of tax and penalty, subject to the conditions;</p> <p>(2) In cases where owner does not come forward, Goods can be released to the person from whose possession the Goods were seized, subject to the conditions:</p>	<p>If the transporter or the owner of the goods fails to pay the amount of tax and penalty within seven days of detention or seizure, further proceedings shall be initiated for confiscation in terms of the provisions of Section 130</p> <p>Conditions to Release - to the owner of the Goods:</p> <p>(a) On payment of <u>tax and penalty equal to hundred percent of the tax payable</u>;</p> <p>(b) On payment of <u>2% value of the goods or Rs. 25,000/- whichever is lesser in case of the exempted goods</u>.</p> <p>(c) On furnishing a security equivalent to the amount payable above.</p> <p>Conditions to Release - to the a person other than the owner of the Goods:</p> <p>(a) On payment of the applicable tax and penalty equal to 50% of value of goods reduced by the tax amount paid;</p> <p>(b) On payment of <u>5% value of the goods or Rs. 25,000/- whichever is lesser in case of exempted goods</u>.</p> <p>(c) On furnishing a security equivalent to the amount payable above.</p>

<p>28</p>	<p>Anti-profiteering:-</p> <p>Failure to pass on the benefit of the reduction in the rate of tax on the supply of goods or services; or the benefit of input tax credit to the recipient by way of commensurate reduction in prices by registered person – attracts action as envisaged in Sec 171 r/w Rule 133.</p>	<p>Sec. 171 read with Rule 133</p>	<p>The National Anti-profiteering Authority may order-</p> <p>(i) <i>Reduction in prices;</i></p> <p>(ii) <i>Return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest;</i></p> <p>(iii) <i>Imposition of penalty as specified under the Act; and</i></p> <p>(iv) <i>Cancellation of registration under the Act.</i></p>	<p>(i) Application under these provisions can be filed by an interested party or by a Commissioner or any other person;</p> <p>(ii) Application shall be in the prescribed proforma [A revised simple application in Form: APAF-1, has been prescribed in place of the earlier application, which is available on www.cbec.gov.in) shall be filed before the Standing / Screening Committee.</p> <p>(iii) Applicant shall furnish, inter alia, the invoice as evidence in support of the alleged non-passing of the benefit on account of reduction in Rate of GST or available ITC.</p> <p>(iv) Applications are scrutinised by the State Screening / Standing Committee and recommended cases would be investigated by the DG- Safeguards.</p> <p>(v) National Anti- Profiteering Authority – consisting of four members and headed by the Chairman, would be the final authority to award any of the punishments envisaged in Rule 133 of the CGSTR, as per the merits of each case.</p>
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29	<p>General Discipline related to Penalty:-</p> <p>Minor breaches of tax regulations or procedural requirements, any omission or mistake in documentation which is easily rectifiable and made without any fraudulent intention or gross negligence;</p>	<p>Sec. 126 (1)</p>	<p>No penalty is imposable in respect of minor breaches.</p> <p>The following meaning of minor breach is provided in the explanation to Sec. 126(1) :-</p> <p>1) A breach shall be considered as 'minor breach' if the amount of tax involved is less than Rs. 5,000/-;</p> <p>2) An omission or mistake in document shall be considered to be easily rectifiable, if the same is an error apparent on the face or record.</p>	<p>General principles to be followed while imposing penalty are laid down under Section 126. They are:</p> <p>(i) <i>The penalty shall depend on the facts and circumstances of each case and shall commensurate with the degree and severity of the breach;</i></p> <p>(ii) <i>No penalty is shall be imposed on any person without giving him an opportunity of being heard;</i></p> <p>(iii) <i>The officer under CGSTA shall while imposing penalty, in an order for a breach of any law, regulation or procedural requirement specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified;</i></p> <p>(iv) <i>When a person voluntarily discloses to an officer under CGSTA the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.</i></p> <p>(v) <i>The above provisions shall not apply in such cases where the Penalty specified under the Act is either a fixed sum or expressed as a fixed percentage.</i></p>
30	<p>Penalties/ Fine etc. under the IGST Act, 2017:- All provisions pertaining to the offences & penalty / inspection/ search / seizure / Arrest / demands & recovery / miscellaneous provisions relating to imposition of interest and penalty , under the CGST Act, 2017 are , <i>mutatis mutandis</i> , are applicable to similar issues under IGST Act, 2017.</p>	<p>Sec. 20 of IGSTA, 2017</p>	<p>The penalty leviable is the sum total of the penalties of CGSTA and SGSTA/UTGSTA</p>	<p>NOTE:-</p> <p>1. The provisions of CGSTA relating to returns, other than late fee (Sec. 47 of CGSTA) is applicable <i>mutatis mutandis</i>, to similar issues under IGST Act, 2017.</p> <p>2. Late fee in any case would be attracted under CGSTA & SGSTA/UTGSTA; hence, no separate late fee on delayed returns under IGSTA, is warranted.</p>

Disclaimer :- Please note that the subject guidance material is intended to provide general understanding on the subject and it should not be treated as a legal advisory, opinion or authority. For more details, all the concerned are advised to refer to the respective legal provisions of CGST Act 2017 / CGST Rules, 2017 and Circulars of the Board.
