OFFENCES, PENALTIES & PROSECUTIONS UNDER GST ACT

CA Deep Chheda
Email : deep@cbcandco.com

News stories these days are flush with arrests made by the GST Department for different types of fake invoicing and input tax credit related frauds committed by certain anti-social elements. While the taxpayers who indulge in these types of nefarious activities are certainly anomalies amongst the taxpayers, there are various other inadvertent offences for which even the bona fide taxpayers can draw the ire of the Department.

In line with the theme of this month's journal, the focus of this current article is the various provisions of the GST Act which can draw any sort of penalty, or even lead to prosecution, for different types of offences.

Generally, a penalty is levied along with the demands raised by the Department under Section 73 or Section 74 of the Act. Therefore, we will begin with first understanding the basic tenets of Penalty levied under Section 73 and Section 74 of CGST Act, then draw our attention towards Sections 122, 125, 129 and 130 of the Act which prescribes different types of offences and the penalty for them. Thereafter we will discuss the scenarios which could lead to the prosecution of a taxpayer and conclude with an analysis of a few precarious case studies.'

1. Penalty' under Section 73/Section 74:

The primary purpose of Section 73 and Section 74 of CGST Act is to empower the proper officer to issue show cause notice and then issue an order for recovery of tax dues which have not been paid / have been short paid or where ITC has been wrongly availed or utilised or refund has been wrongly sanctioned to the taxpayer. In short, these sections empower the proper officer to recover tax whenever the taxpayers have slipped up, due to whatever reason.

While Section 73 is the go-to proviso which is invoked under normal circumstances, Section 74 comes alive whenever the proper officer believes that the default has been done with an '*intention to evade payment of tax by way of fraud, misrepresentation or suppression*.'

Penalty levied under Section 73 is to the extent of 10% of tax or ten thousand rupees, whichever is higher. However, the penalty under Section 74 is equivalent to 100% of the tax amount. While the quantum of penalty is the apparent difference between Section 73 and 74, there are further nuances in the penalty levied under both the sections as can be seen from the following table:

Point of Distinction	Section 73	Section 74
Circumstances for levy of Penalty	In normal circumstances	Where tax intended to be evaded by way of fraud, misrepresentation or suppression
Quantum of Penalty	10% of tax or Rs. 10,000 whichever is higher	100% of tax or Rs. 10,000 whichever is higher
If demand confirmed is Rs. 5,00,000 then penalty would be?	Rs. 50,000	Rs. 5,00,000
If demand confirmed is Rs. 70,000, then penalty would be?	Rs. 10,000	Rs. 70,000
Section for levy of Penalty	Section 73(9) read with Section 122(2)(a)	Section 74(1) read with Section 122(2)(b)
Waiver of penalty before issuance of show cause notice	On payment of tax and interest	On payment of tax, interest and **15% penalty**
Waiver of penalty after issuance of show cause notice	On payment of tax and interest within 30 days of show cause notice	On payment of tax, interest and **25% penalty** within 30 days of show cause notice
Waiver of penalty before issuance of order	No such waiver available	On payment of tax, interest and **50% penalty** within 30 days from issuance of order

Apart from the above, some important points to remember for Penalty under Section 73 and Section 74 are as follows:

- Show cause notice is to be mandatorily issued to the taxpayer before confirming levy of penalty.
- If show cause notice is not issued then a Penalty cannot be demanded, irrespective of the offence
- Taxpayer must be given an opportunity for a personal hearing before passing of the order.
- Where the demand for tax is dropped, the penalty also gets dropped

Fraud, Suppression or Misrepresentation:

As is obvious from the above, the penalty under Section 74 is harsher as compared to the Penalty under Section 73. Penalty under Section 74(1) / Section 122(2)(b) can be levied only under the scenario where the taxpayer has defaulted with –

- An intention to evade payment of tax and
- By way of fraud, willful misrepresentation or suppression

Goes without saying that both these conditions, being extremely grave, should be fulfilled in order to raise and confirm demand of tax and penalty under Section 74. These conditions placed in Section 74(1) are *pari materia* with Proviso to Section 78(5) of Finance Act, 1994. Under the erstwhile law, the following principles of law have developed which hold good even under the GST Act:

- Fraud, Misrepresentation and Suppression are very strong terms and cannot be used loosely
- There has to be some positive act on the part of the taxpayer which demonstrates the intention to evade payment of tax;
- Mere non-payment of tax does not amount to intention to evade payment of tax;
- Onus for proving intention to evade lies on the Department;
- Fraud cannot be alleged when the demand has been raised during Departmental audit, or when Department has prior information of the activities of the taxpayers
- If the taxpayer has not paid tax due to bona fide interpretational issues like Judgement of Court subsequently overturned, or a circular / exemption withdrawn by Department then it cannot be said that the taxpayer has the intention to evade payment of tax.

Some important judgements of the Apex Court in this regard are as follows:

- M/s Uniworth Textiles Ltd - 2013-TIOL-13 - Supreme Court
- M/s Anand Nishikawa Co Ltd - 2005-TIOL-118 - Supreme Court
- M/s Chemphar Drugs & Liniments - 2002-TIOL-266 - Supreme Court
- M/s Tamil Nadu Housing Board - 2002-TIOL-288 - Supreme Court
- M/s Pushpam Pharmaceuticals Co. - 2002-TIOL-235 - Supreme Court

While the entire levy of 100% penalty under Section 74 is dependent on the fact that whether or not the taxpayer has indulged in fraud, misrepresentation or suppression with an intention to evade payment of tax, and it would by and large accompany the tax demand i.e., if the demand of tax is confirmed under Section 74, penalty will also most likely be confirmed and if demand of tax is dropped then penalty would also be dropped.

It must also be noted that as per Section 75(2) of CGST Act, if the charges of fraud, misrepresentation or suppression are alleged and cannot be established, then the proper officer shall adjudicate the notice under Section 73. The implication of this is that if the charges of fraud, misrepresentation or suppression are dropped but the tax amount is confirmed, then taxpayer will be liable to 10% penalty instead of 100%. By virtue of Section 75(2) the liability to penalty does not go away entirely merely because charges of fraud, misrepresentation or suppression are not established.

However, every time a show cause notice is issued where it is proposed to levy 100% penalty under Section 74, one must always test the levy of the penalty on the above basis and include the defences for the same in the response to the show cause notice.

2. Offences of Section 122:

While penalty under Section 73 and Section 74 is general and accompanies the underlying demands raised under those Sections, Section 122 lists certain specific offences and also prescribes the penalty leviable for such offences.

A gist of Section 122 is as follows:

- Section 122(1) lists down 21 offences and prescribes a fixed penalty for them
- Section 122(1A) prescribes penalty when someone has benefited from an offence committed by another person
- Section 122(2) shall be read along with Section 73 and Section 74 which we have already discussed earlier in paragraph 1 above
- Section 122(3) lists 5 offences and prescribes an upper limit of penalty for them

Section 122(1)

Section 122(1) lists down 21 offences for which the prescribed penalty is Rs. 10,000 or the amount of tax not paid / ITC wrongly availed / refund claimed fraudulently, whichever is **higher**.

List of clause-wise offences is as follows:

Clause	Offence
(i)	**Supplies made without issuing invoice or by issuing incorrect / false invoice**
(ii)	**Issuing bill without any actual supply of goods or services**
(iii)	Any amount collected as tax but not deposited with Government within 3 months from date of collection
(iv)	Tax collected in contravention to the provisions of the Act and not paid to the Government within 3 months from date of collection
(v)	Failure to deduct TDS as per Section 51 or TDS short-deducted or deducted but not paid to the Government
(vi)	Failure to collect TCS as per Section 52 or TCS short-collected or collected but not paid to the Government
(vii)	**Availment or utilisation of input tax credit without actual receipt, fully or partially, of goods or services**

Clause	Offence
(viii)	Refund obtained fraudulently
(ix)	**ISD takes or distributes credit in contravention of Section 50**
(x)	Falsification of financial records or submitting fake accounts / documents / information with an intention to evade payment of tax
(xi)	Failure to obtain Registration when liable as per the Act
(xii)	Incorrect information furnished at the time of obtaining registration
(xiii)	Obstructing / preventing any officer from discharging their duty
(xiv)	Transportation of goods without the cover of documents
(xv)	Suppression of turnover leading to evasion of tax
(xvi)	Failure to maintain books of accounts as required in the GST Act
(xvii)	Failure to furnish documents called by the officer or furnishing false information
(xviii)	Supplying, transporting or storing any goods which are liable for confiscation
(xix)	Issuing invoice by using GSTIN of another registered person
(xx)	Tampering / destroying any evidence or document
(xxi)	Disposing / tampering with goods which have been detained, seized or attached under the provisions of GST Act

The above list of offences are self-explanatory. On plain reading it appears that the focal point of these offences are those transactions which are primarily entered into with an intention to evade payment of tax and to punish those who are directly involved in these offences. Therefore, a higher quantum of penalty has been prescribed for these offences, which is similar to the penalty prescribed under Section 74 of the Act, where demand is levied if tax is not paid with an intent to evade payment of tax.

Section 122(1A):

As per Section 122(1A), any person who has 'retained' the benefit of transactions covered under clause (i), (ii), (vii) and (ix) *(highlighted above)* and at whose instance such transactions have taken place, shall also be liable to **penalty equivalent to** the amount of tax evaded

Section 122(3):

Section 122(3) prescribes that any person guilty of any of the following offences shall be charged with penalty which **may extend** upto Rs. 25,000

Clause	Offence
(a)	Aiding or abetting any offence under Section 122(1)
(b)	Acquiring possession of or concerned with removal / transportation of goods which are liable for confiscation under GST Act
(c)	Receiving or concerned in any way with supply of services which are in contravention of the provisions of the GST Act
(d)	Failure to appear when summons issued by an officer
(e)	Failure to issue invoice as per the provisions of the Act

From a plain reading of Section 122(3) it appears that the purpose of Clause (a), (b) and (c) is to cover people who are knowingly complicit but not directly connected with offences covered under Section 122(1) or with removal of goods liable for confiscation or supply of services in contravention of the Act.

Similarly, clause (d) and (e) also seem to be intended to be more of a rap on the knuckles for minor offence of failure to appear for summons or failure to issue a '*proper*' invoice as opposed to not issuing an invoice at all. The usage of words penalty '*may extend*', which have not been used in Section 122(1) may also be used to interpret the intention of the legislature.

3. Penalty in case of Confiscation or Detention of goods:

Proper officer is empowered to detain goods which are being transported in contravention of the provisions of the CGST Act under Section 129, whereas goods are liable for confiscation for a wider array of offences under Section 130. Hon'ble Karnataka High Court in a recent judgement in the case of **M/s. Rajeev Traders - 2022 (9) TMI 786** has given the distinction between detention and confiscation which is as follows:

The power to detain is only to stop the transit of the goods and thereby prevent its movement till the tax and penalty is paid. However, the power to confiscate is the process of divesting the owner of the goods of all title to the goods for a contravention of the provisions of the Act and Rules.

(Emphasis supplied)

As is evident from the above judgement, the power to confiscate is much harsher, as it takes away the ownership of the goods, than the power to detain. The said principle is also discernible in the Penalties prescribed for both Sections.

In case of goods which are confiscated under Section 129, then the same can be released on payment of the following:

a. If the owner comes forward to pay tax and penalty – Applicable tax and 100% Penalty. In case of exempted goods, 2% of the value of goods or Rs. 25,000, whichever is less

b. If the owner does not come forward to pay tax and penalty – Applicable tax and 50% of the Market value of goods reduced by the tax paid as penalty. In case of exempted goods, 5% of the value of goods or Rs. 25,000, whichever is less

c. Furnishing of security equivalent to (a) or (b) above.

However, the penalty charged under Section 130 is much harsher. As per Section 130(2), whenever the goods are confiscated, the taxpayer shall, in lieu of the confiscation, pay a fine which shall be decided by the Proper officer. However, the said fine shall not be more than the market value of the goods and should not be less than the Penalty leviable under Section 129.

Mitigating factors:

As discussed, goods are detained when they are transported in contravention of any of the provisions of the CGST Act. Generation of e-way bill for movement of goods beyond a certain distance and above a certain limit (different for each state) along with proper documentation is the most important condition for movement of goods. Penalty under Section 129 is generally levied when the goods are transported without an e-way bill or the e-way bill has expired. The intention is to basically deter taxpayers and transporters from transporting goods without an e-way bill i.e. to ensure there is no evasion of tax payment by supplying the goods but not disclosing it and not paying tax on the same.

In the following cases the Courts have waived off the entire tax and penalty collected by the officer under Section 129 for releasing the detained goods due to mitigating factors such as breakdown of vehicle, blockage of roads due to protests, intention to evade payment of tax is not evident, or some other minor clerical / procedural lapses and even restrictions on movement due to COVID-19:

- Satyam Shivam Papers - 2022-TIOL-07 – Supreme Court
- Greenlights Power Solutions - 2022-TIOL-482 - Kerala High Court
- Gobind Tobacco Manufacturing Co. - 2022 (5) TMI 1022 - Allahabad High Court
- Ashok Kumar Sureka - 2022-TIOL-309 – Calcutta High Court

4. Prosecution under Section 132:

Section 132 of the CGST Act prescribes the harshest punishment of all. It provides for jail-time in case of certain offences and the amount of time to be spent in jail is dependent on the quantum of tax evaded by the taxpayer. This section covers any person who commits, causes to commit or abets in committing the following offences:

Clause	Offence	Bailable /
(a)	Supply of goods or services without issuing an invoice, in order to evade payment of tax	**Cognizable and Non-bailable Offence**
(b)	Issuance of invoice without actual supply of goods or service in order to wrongfully pass on input tax	
(c)	Availment of ITC based on the invoice covered under Clause (b) above or availing ITC without any invoice	
(d)	Collection of any amount as tax but fails to pay the same to the Government within 3 months	
(e)	Evasion of tax or fraudulent availment of refund which is not covered above	**Non-cognizable and Bailable Offence**
(f)	Falsification of financial records or producing fake accounts or documents any other false information	
(g)	Obstructing / preventing any officer from discharge of duty	
(h)	Acquiring possession of or concerned with removal / transportation of goods which are liable for confiscation under GST Act	
(i)	Receiving or concerned in any way with supply of services which are in contravention of the provisions of the GST Act	
(j)	Tampering / destroying any evidence or document	
(k)	Failure to supply information or supplying false information	

Offences covered in clause (e) to (k) are non-cognizable i.e., not considered to be very serious offences and therefore require a warrant for arrest and the accused can get a bail from the Court during the course of investigation.

However, the legislature perceives the offences covered in clause (a), (b), (c) and (d) as very serious offences and therefore they are cognizable i.e., empower the officer to arrest the offender without a warrant and are non-bailable i.e., the accused cannot get a bail during the course of an investigation. On the contrary, the Courts have granted bail to an accused in such cases where they have spent a substantial time in the jail and the end of investigation is nowhere in sight. This is based on the norm of *"Bail is the rule, Jail is the exception"* followed by the Indian judiciary.

Jail time for the offences shall be as follows:

Quantum of Offence	Punishment
More than Rs. 5 crores	Upto 5 years and fine
Rs. 2 crores to Rs. 5 Crores	Upto 3 years and fine
Rs. 1 crore to Rs. 2 Crores	Upto 1 year with fine
Any person who has abetted in committing the offence	Upto 6 months with fine
Same offence for a second time and subsequent offences after one conviction, irrespective of the quantum	Upto 5 years with fine

5. General Penalty as per Section 125:

Where penalty for any offence has not been prescribed, then a penalty shall be levied under Section 125 which **may extend** to Rs. 25,000.

This is basically a residual section wherein a Penalty upto Rs. 25,000 can be levied by the proper officer if the offence committed by the taxpayer is not covered anywhere else in the GST Act.

For e.g.:

Mrs. Das is a management consultant receiving professional fees and she is paying GST on the same and disclosing it in her GST returns. She is also receiving rent from her residential property. Since the rental income is exempt, she has not shown the same in her GST Returns. During scrutiny of her returns, officer has come across this discrepancy and proposes to levy penalty under Section 125. Is this action by the officer, correct?

While it is true that the rental income is exempted from GST, it is responsibility of the taxpayer to disclose the same in their GSTR-1 and GSTR-3B. Since the taxpayer has failed to disclose correct value of supplier made by her, and penalty for the same has not been prescribed anywhere else, the approach of the officer is correct to that extent.

6. Important considerations for Penalty under Section 126:

As per Section 126, in case of offences where any fixed amount or percentage of penalty is not mentioned (for e.g. Section 122(3) or Section 125 where only the upper limit of penalty has been mentioned) the following points must be considered by the Proper officer before levying the penalty:

- No penalty shall be levied for minor breaches of law or breach of procedural requirements, which are **easily rectifiable**, the amount of tax **does not exceed Rs. 5,000** and the breach is not with an intention to evade payment of tax;
- Penalty shall depend on the facts of the case and shall be commensurate with the degree and **severity** of the breach;
- Penalty shall not be levied without giving the person an opportunity of being heard;
- Order for imposition of penalty shall clearly specify the nature of breach and the law under which the penalty is being levied;
- When the person voluntarily discloses the breach of law / procedural requirement before the discovery by the officer, the same shall be considered to be a mitigating factor.

7. Penalty should not be levied twice:

As per Section 75(13) of the Act, where a penalty has been levied under Section 73 or Section 74, then penalty shall not be levied under any other Section of the Act for the same offence. As we have seen in earlier discussion, offences under Section 122 are specific while Section 73 and 74 are general and a lot of times a person could be liable for penalty under Section 73 / 74 as well as Section 122 for the same offence. The basic idea here is to ensure that a person is not punished twice for the same offence.

For e.g.:

Mr. A has fraudulently availed certain input tax credit, without actual receipt of goods, in order to avoid paying taxes. The Proper Officer has confirmed the demand for reversal of input tax credit and levied a 100% penalty under Section 74(1) of the Act. The proper officer also wants to levy an additional 100% penalty under Section 122(1)(vii) for availing of input tax credit without actually receiving the goods.

As per Section 75(13), since the penalty has been levied once under Section 74 for availing ITC without receiving goods, then the penalty cannot be levied again under Section 122(1)(vii) for the same offence.

8. Importance of show cause notice:

Earlier we discussed how Section 126 requires the proper officer to give a personal hearing and mention the offence and the law under which penalty is being levied. Similar requirements have been mentioned elsewhere in other sections as well. These are in line with the set judicial norms. However, one important fact that needs to be paid attention to is the issuance of show cause notice.

While Section 73 and Section 74 mandate the issuance of show cause notice before passing of an order, similar requirement is not there in other Sections. Principles of Natural Justice require that an unambiguous show cause notice must be issued for initiating any proceedings entailing civil consequences against the assessee. Therefore, issuance of show cause notice is a compulsion for levying any penalty against the assessee even if the statute does not mandate it.

Show cause notice is nothing but an intimation of the allegations levelled against the taxpayer and therefore, must invariably contain unambiguous and detailed charges against the assessee, quantification of the penalty sought to be levied and offer a chance to the assessee to respond to the show cause notice.

It is trite law that show cause notice is a non-negotiable part of the entire adjudication process. Hon'ble Supreme Court in its judgement in the case **Brindavan Beverages Pvt. Ltd. - 2007-TIOL-118** has held show cause notice to be the foundation of any demand against the assessee and has struck down demand because the allegations in the show cause notice were ambiguous.

The Hon'ble Apex Court in its judgement in the case of **M/s Oryx Fisheries P. Ltd. - 2011 (266) E.L.T. 422** has held that if the show cause notice is meant to give person proceeded against a reasonable opportunity of making his objection against proposed charges so that he can take his defence and prove his innocence. Person who is subject of the show cause notice must get an impression that he will get effective opportunity to rebut allegations and prove his innocence. It is not fair when person of ordinary prudence on reading of show cause notice gets a feeling that reply will be empty ceremony and he will merely knock his head against impenetrable wall of prejudged opinion thereby not giving the assessee an effective opportunity of defending itself.

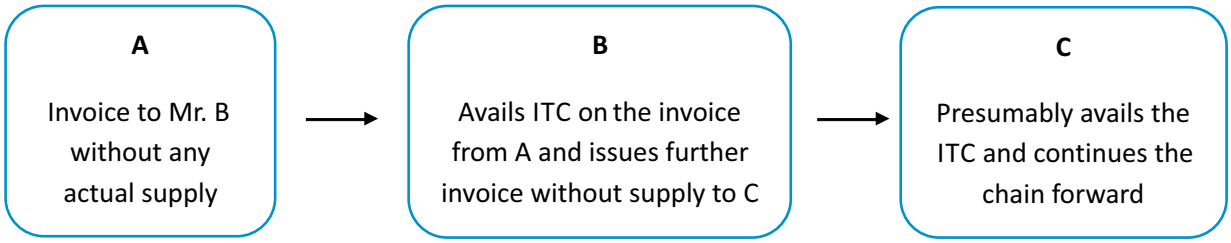
In view of the above, it is always important to have a show cause notice any time any penalty is proposed against the assessee, even if not mandated by law. And the said show cause notice shall fulfil the criteria laid down by the Hon'ble Apex Court.

9. The 'reality' of fake invoices:

The menace of fake invoicing is the biggest challenge faced by the Departmental authorities in the GST regime. While it is a legacy issue continuing from the previous regime, the extensive use of IT in return filings and the deployment of artificial intelligence has ensured quick detection of such transactions and brought it to the fore. Further, arrests made in such cases and publicised through the media have ensured that this issue remains well highlighted.

The basic modus operandi of these transactions is that one person issues an invoice without any actual supply and pays GST to the Government, the recipient of the invoice claims the input tax credit on such invoice. This chain goes on further. Whatever may be the motivation for a person to indulge in such transactions, prima facie there is no loss to the revenue as such. The problem is that these transactions lead to an undue transfer of input tax credit to those persons who are not legally eligible for such input tax credit under Section 16 of the CGST Act.

Department has issued Circular no. 171/03/2022 dated 06.07.2022 wherein they have laid down what course of action will be taken against persons involved in fake invoicing transactions. Gist of the circular can be gathered from the following:



As per the Circular, Since A has paid GST on a transaction which is not a supply, there is no tax which is recoverable from him and only penalty under Section 122(1)(ii) shall be levied for issuing invoice without making any supply.

The circular further states that since B has availed ITC without any receipt of supply, the ITC is ineligible under Section 16, however, since he has paid tax on a transaction which is not a supply, both these get offset and therefore, no recovery shall be made. However, penalty shall be levied under Section 122(1)(ii) for issuing invoice without supply and Section 122(1)(vii) for availing ITC without receiving supply.

In this case, allowing the ITC because tax has ben paid on further transaction without actual supply seems to be in contradiction to Section 16 of CGST Act. Section 16 mandates that there has to be an actual receipt of goods for availing ITC and there is no alternative for the same on the ground that tax has also been paid without supply and both get offset. However, since the circular is in favour of the assessee, Department may not be able to deny its benefit to the offenders.

Further, the circular is silent on the treatment sought to be meted out to C. It can be presumed that if he continues the chain forward by claiming ITC and issuing another invoice, the treatment will be similar to B. If the chain stops with C, then ITC availed without receipt of supply shall be recovered under Section 74 along with Penalty. Since penalty under Section 74 is levied, penalty shall not be leviable under Section 122(1)(vii) as given in Section 75(13).

The basic idea brought forward by the Circular is that while recovery of tax will only be done once, i.e., at the end of the chain, each person involved will be levied with penalty. The circular has also clarified that any person who is connected shall be liable to penalty under Section 122(1A) and that action under Section 132 i.e., jail time may also be considered based on the facts of the case.

10. Minor breaches:

A lot of times, it may so happen that the assessee makes some bona fide mistakes due to lack of awareness or the circumstances are beyond control. These could range from procedural lapses, availing ineligible ITC or charging tax at the wrong rate or under wrong head.

From all the above discussion, it is evident that heavy penalty has been sought to be levied only when the taxpayers have committed heinous crimes to evade payment of taxes. However, treating bona fide mistakes at par with heinous crimes, done consciously to evade payment of tax, would be a bit unfair to honest taxpayers. Let us understand the same with the help of some examples:

i. Ms. Jaya is required to issue an e-invoice as per the Rules but fails to do so. On realising her mistake, she generates the IRN after 3 months and communicates the same to all her customers. During audit, the officer observes the mistake and raises a query that since invoice have been issued without IRN, these are not proper invoices and alleges that Ms. Jaya has made supplies without issuance of an invoice and therefore liable for penalty under Section 122(1)(ii).

➢ In my view, the penalty will not sustain in this case because there is no intention to evade payment of tax evident here. Further, issuance of IRN maybe mandatory it is still a procedural aspect and the same has been rectified voluntarily by the assessee. Keeping both the points in mind, penalty cannot be levied.

The officer may consider levying penalty under Section 122(3) for failure to issue proper invoice which may extend upto Rs. 25,000. However, since Ms. Jaya has voluntarily taken corrective action by issuing e-invoices, as per Section 126 the same must be considered by the officer as a mitigating factor before deciding on the amount of penalty leviable.

ii. Mr. Singh has a total taxable supply of Rs. 4.85 crores in FY 2021-22. He has filed his GSTR-9 within the prescribed time limit. During FY 2021-22 he has also disclosed some 'Interest from FD' of Rs. 21 Lakhs and 'Commission' income of Rs. 3 Lakhs in his Income Tax return, which has been discovered by the GST audit officer. GST officer has asked him to pay 100% penalty on the GST not paid on commission income and another additional penalty for not filing GSTR-9C even though the total turnover is more than Rs. 5 crores.

➢ In the present scenario, there are 2 alleged violations by Mr. Singh, one is to not pay GST on commission income and disclose it in the relevant returns and second is to not file GSTR-9C despite his aggregate turnover being Rs. 5.09 Crores. Let us analyse the levy of penalty in each of these cases:

Mr. Singh is liable to pay Rs. 54,000 (Rs. 3 Lakhs x 18%) on the commission income earned by him, along with interest. In the present case, there is no positive act done by Mr. Singh to evade payment of taxes. In fact, the officer has discovered this error from the ITR filed by Mr. Singh himself. Therefore, demand can only be made under Section 73 of CGST Act. If the payment of tax and interest is done before issuance of show cause notice or within 30 days of show cause notice then penalty cannot be levied on him. Otherwise, he will be liable to penalty of Rs. 5,400 (Rs. 54,000 x 10%). Therefore, the suggestion of the officer that Mr. Singh is liable to 100% penalty is not correct.

The contention of the officer that Mr. Singh was required to file GSTR-9C is correct and to that extent assessee is liable to pay the penalty for the same. However, no penalty has been prescribed for not filing GSTR-9C, therefore, penalty under Section 125 shall be leviable which can be upto Rs. 25,000. However, the officer must consider the severity of the breach before levying the penalty, as per Section 126.

iii. NMK Pvt. Ltd. has dispatched a consignment and issued and invoice and generated an e-way bill for the same. E-way bill is expiring on 19th September 2022. Due to a few cases of riots and arson on the route normally taken by the truck, the road was closed by the police and the truck was forced to take a longer route which delayed the delivery by 36 hours and the truck was apprehended by GST officers a few kilometers before the destination at 4:15 am on 20th September 2022 and detained the truck for transporting goods with an expired e-way bill and asked them to pay penalty under Section 129 to secure release of the vehicle.

- In this particular case, transportation of the goods is being done under the cover of proper documents and the same has not been challenged by the officer. The only issue is that the e-way bill has expired a few hours before the destination. The reason for expiry is that the situation i.e., road closure due to riots and arson was beyond the control of the consignor and the transporter. This is clearly not a case of evasion of tax payment but of situation being out of control despite all the bona fides of the involved parties, and therefore, penalty should not be levied in this particular case. Similar judgement has been given by Hon'ble Supreme Court in the case of Satyam Shivam Papers - 2022-TIOL-07.

11. Conclusion:

From all the above discussions, one thing is clear, the purpose of Penalties under the GST Act is to deter offenders from committing offences to avoid payment of taxes, and to punish them if they do. However, due to the language of the law and complexity of the cases, it may very well be possible that an honest taxpayer may also face a situation where they are compelled to pay a heavy penalty.

While the most ideal way is to follow the law till the last mile and not make any mistakes, to err is human and when faced with such a situation, knowing the penalties and circumstances when they are levied and how to defend ourselves in such situations is equally important.

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