



PROSECUTION UNDER GOODS AND SERVICE TAX REGIME

The Constitutional (One Hundred and First Amendment) Act, 2016, introduced the uniform goods and service tax under the ideology of “one nation – one tax”. In pursuance to the Constitutional amendment, the Parliament enacted Central, State/Union Territory and Integrated Goods and Service Act to supersede the erstwhile regime comprising of Central Excise Act, 1944 and Finance Act, 1994 (Service Tax) which prescribed prosecution proceedings for the offences relating to goods and services. However, the offences committed after the date of enforcement i.e. 01 July 2017¹, the prosecution proceedings shall be initiated in terms of the new legislations.

The four legislations enacted under the new GST regime includes, Central Goods and Service Tax Act, 2017 (hereinafter referred as **CGST**); State Goods and Service Tax Act, 2017; Union Territory Goods and Service Tax Act, 2017 and Integrated Goods and Service Tax Act, 2017. With regard to the present article, we will decipher the CGST Act.

Under Section 132(1) of the CGST, prescribe list of offences which are punishable with imprisonment. Section 69 empowers the tax authorities to arrest the person for the offences committed as mentioned in clause (a) or (b) or (c) or (d) of Section 132(1) and are punishable under clause (i) or (ii) of Section 132(1) of CGST. The pre-arrest sanction from the Commissioner is mandatory, who must draw such sanction on the “reason to believe” that the person has committed offences under the aforementioned provisions.

Section 132(1) also prescribe imprisonment as per the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongfully taken, as:

- If the amount exceed Rs. 5 crore, the imprisonment would be for a term upto 5 years with fine²;

¹ Notification No. 9/2017-C.T., dated 28.06.2017.

² Section 132(1)(i) of CGST Act.



- If the amount exceed Rs. 2 crore but not exceed Rs. 5 crore, the imprisonment would be for a term upto 3 years with fine³;
- If the amount exceed Rs. 1 crore but not exceed Rs. 2 crore, the imprisonment would be for a term upto 1 years with fine⁴;

Commission or Abetment⁵ in Commission of Certain Offence

The commission or abetment in commission of the offence listed at Section 132(1)(f), 132(1)(g) and 132(1)(j) is punishable with imprisonment for a term upto 6 months and/or fine⁶.

Repeated Offender

A convicted person, subsequently accused for an offence under this Act shall be subsequent punished with imprisonment for a term upto 5 years along with fine⁷.

Nature of Offences

The offences provided in Section 132(1)(a), 132(1)(b) or 132(1)(c) which are punishable under Section 132(1)(i) are cognizable offence and non-bailable offences⁸, rest of the offences and respective punishments are non-cognizable and bailable offences⁹. For the bailable offences, the Deputy Commissioner or the Assistant Commissioner shall have same power and shall be treated equally as officer-in-charge of the police station as per the Code of Criminal Procedure.¹⁰

Pre-Prosecution Sanction

Section 132(6) requires a pre-prosecution sanction from the Commissioner for initiation of prosecution for any offence under Section

³ Section 132(1)(ii) of CGST Act.

⁴ Section 132(1)(iii) of CGST Act.

⁵ Act of encouraging, inciting or aiding another and defined under Section 107 of Indian Penal Code, 1860.

⁶ Section 132(1)(iv) of CGST Act.

⁷ Section 132(2) of CGST Act.

⁸ Section 132(5) of CGST Act.

⁹ Section 132(4) of CGST Act.

¹⁰ Section 69(3)(b) of CGST Act.



132 of the CGST Act. The Act bars the court in taking cognizance of any case unless the sanction of the Commissioner has been accompanied¹¹.

Competent Court for Adjudication

Section 134 provides that the court presided by a judge not less than a rank of Magistrate of First Class is competent to try offences under the CGST Act.

Compounding of Offences

The offence may be compounded either before or after the institution of the prosecution by the Commissioner on payment by the accused person.

The effect of the compounding shall be that no further proceedings shall be initiated by the authorities and the pending criminal proceedings, if any, shall stand abated.

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¹¹ Section 134 of CGST Act.

¹² The aim of the present article is to provide insights regarding offences and prosecution under the GST tax regime, as on 27 June 2021. The opinions presented in the article are personal in nature and not to be deemed as legal advice.