

# Training programme on GST

**Topic :** “LINK OF GST WITH ITR, COMPANIES ACT, COST  
AUDIT REPORT”

**Date – 15<sup>th</sup> January 2021**

**NACIN New Delhi**



**CA PP SINGH**

**B.SC(H), FCA, CS**

**Contact No. +91-9711521060, 9871229590**

**[cappsingh@gmail.com](mailto:cappsingh@gmail.com)**

**CA PP SINGH. B.SC(H), FCA, CS**  
**Contact No. +91-9711521060, 9871229590**  
[cappsingh@gmail.com](mailto:cappsingh@gmail.com)



- Post-qualification experience of around 20 years in the field of direct & indirect tax particularly income tax, service tax and VAT ,sales tax and GST.
- Experience of handling of litigation matters and advisory matters of Direct taxes particularly income tax and indirect tax like GST, service tax, DVAT, CST, Central Excise and other related matters.
- Authored the book **DNA of GST Audit and Annual return, The DNA of TDS&TCS (including withholding tax, advance tax and equalisation levy)** ,Background material on GST for empowerment of girl students ICAI, New Delhi
- Guest faculty for certification course on GST & Certification course on appeal and representation ICAI , New Delhi;
- Visiting faculty in the **National Academy Of Custom, Indirect Tax And Narcotics** (known as NACIN) Saket, new Delhi.
- Corporate trainer and guest Faculty with **Indian Institute of Management(IIM)**, NIFMS, Faridabad(Institute of Minister Finance),ICAI New Delhi and ICSI, New Delhi and other trade association.

Importance of information contained in ITRs,  
Changes in Companies Act, 2013 and its implication in GST,  
Cost Audit Report utility in GST Audit

# Reference material

**Important information in ITR  
for GST purpose**



# Reporting of GST in form 26AS

## PART H – Details of Turnover as per GSTR-3B

<b>GSTIN</b>	<b>Application Reference Number (ARN)</b>	<b>Date of filing</b>	<b>Return Period</b>	<b>Taxable Turnover</b>	<b>Total Turnover</b>
07AHMPK1972A2ZH	AA0704198044742	09-Aug-2019	April,2019	0.00	0.00
07AHMPK1972A2ZH	AA070519848768B	26-Nov-2019	May,2019	0.00	0.00
07AHMPK1972A2ZH	AB070619245515V	27-Nov-2019	June,2019	0.00	0.00
07AHMPK1972A2ZH	AA070819845264Q	27-Nov-2019	August,2019	0.00	0.00
07AHMPK1972A2ZH	AA070719849525K	27-Nov-2019	July,2019	0.00	0.00
07AHMPK1972A2ZH	AA071019749308Y	28-Nov-2019	October,2019	0.00	0.00
07AHMPK1972A2ZH	AB070919161332Y	28-Nov-2019	September,2019	0.00	0.00
07AHMPK1972A2ZH	AA071119314523F	15-Dec-2019	November,2019	0.00	0.00
07AHMPK1972A2ZH	AA0712194960911	16-Jan-2020	December,2019	0.00	0.00
07AHMPK1972A2ZH	AA070120801859C	25-Feb-2020	January,2020	0.00	0.00

# Reporting of GST in form 26AS

## Form 26AS

Annual Tax Statement under Section 203AA of the Income Tax Act, 1961

Assessment Year\*

View As

Select 'Text' to download Form 26AS in Text format.

Communication details for TRACES can be updated in 'Profile' section. However, these changes will not be updated in PAN database as mentioned above

### PART A – Details of Tax Deducted at Source

Sr. No.	Name of Deductor	TAN of Deductor	Total Amount Paid / Credited ( Rs. )	Total Tax Deducted <sup>#</sup> ( Rs. )	Total TDS Deposited ( Rs. )
1	ENTICEMENT INFRASTRUCTURE PRIVATE LIMITED	DELE08409C	188,773.00	1,888.00	1,888.00

# Reporting of amount paid or credited in form 26AS

Deduction of tax under income tax

(1) At the time of payment in certain cases

(2) At the time of payment or credit whichever is earlier



**INFORMATION REGARDING TURNOVER/GROSS RECEIPT REPORTED FOR GST**

Note – Please furnish the information below for each GSTIN No. separately

<b>E9</b>	<b>GSTIN No(s).</b>	<b>E9</b>	
<b>E10</b>	<b>Annual value of outward supplies as per the GST returns filed</b>	<b>E10</b>	

Treatment of advance : advance against supply of goods is not a supply for offering GST but Advance against supply of service is subject to tax under GST  
Under income tax advance is not part of turnover for offering income tax.

Term used in different sections of presumptive taxation:

44 AD Total Turnover or gross receipts

44ADA: total gross receipts

44AE: No concept of gross turnover or gross receipt. In GST supply is either exempt or covered under RCM/ in few cases under forward charge and taxation based on value of supply, no similar base for paying GST so always different income under income tax and value of supply in GST.

Note: annual value whether as per GSTR-3B/GSTR-4/GSTR-1/GSTR-9 ? whether adjustment/correction of next year to be taken into account ?

Note: if different amount most likely notice from any department and also reconciliation required with form 26AS

# Reporting of gross turnover/receipts in ITR

Comparison of gross receipts as per GST vs. income tax return

## SCHEDULE BP – DETAILS OF INCOME FROM BUSINESS OR PROFESSION

### COMPUTATION OF PRESUMPTIVE BUSINESS INCOME UNDER SECTION 44AD

S. No.	Name of Business	Business code	Description
(i)			
E1	Gross Turnover or Gross Receipts		
	a	Through a/c payee cheque or a/c payee bank draft or bank electronic clearing system received or prescribed electronic modes received before specified date	E1a
	b	Any other mode	E1b
E2	Presumptive Income under section 44AD		
	a	6% of E1a or the amount claimed to have been earned, whichever is higher	E2a
	b	8% of E1b or the amount claimed to have been earned, whichever is higher	E2b
	c	Total (a + b)	E2c
NOTE—If Income is less than the above percentage of Gross Receipts, it is mandatory to have a tax audit under 44AB & other ITR as applicable has to be filed			

# Reporting of GST in ITR- PL Schedule –part A trading account duties and taxes received or receivable on goods or services sold or supplied

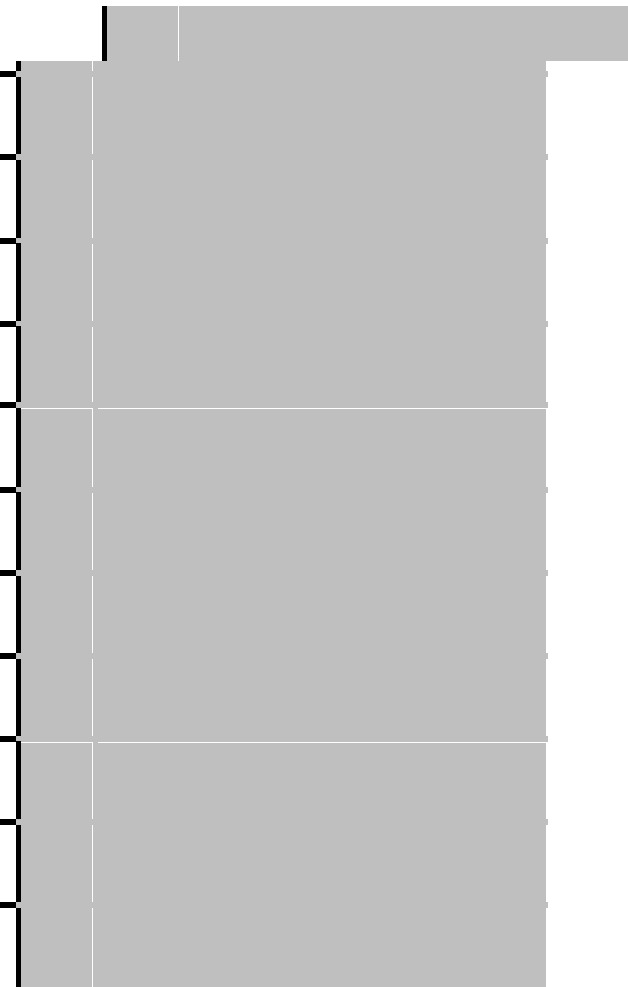
i	Union Excise duties	i		
ii	Service tax	ii		
iii	VAT/ Sales tax	iii		
iv	Central Goods & Service Tax (CGST)	iv		
v	State Goods & Services Tax (SGST)	v		
vi	Integrated Goods & Services Tax (IGST)	vi		
vii	Union Territory Goods & Services Tax (UTGST)	vii		
viii	Any other duty, tax and cess	viii		
ix	Total (i + ii + iii + iv +v+ vi+vii+viii)			Cix

# Reporting of GST in ITR-part A trading account

## Duties and taxes, paid or payable, in respect of goods and services purchased

### Duties and taxes, paid or payable, in respect of goods and services purchased

<b>Custom duty</b>	<b>10i</b>	
<b>Special additional duty</b>	<b>10iii</b>	
<b>Union excise duty</b>	<b>10iv</b>	
<b>Service tax</b>	<b>10v</b>	
<b>VAT/ Sales tax</b>	<b>10vi</b>	
<small>State Goods &amp; Services Tax (SGST)</small>	<small>10viii</small>	
<b>Central Goods &amp; Service Tax (CGST)</b>	<b>10vii</b>	
<b>Integrated Goods &amp; Services Tax (IGST)</b>	<b>10ix</b>	
<b>Union Territory Goods &amp; Services Tax (UTGST)</b>	<b>10x</b>	
<b>Any other tax, paid or payable</b>	<b>10xi</b>	



# Reporting of GST in ITR- PL Schedule –part A profit and loss

## Rates and taxes, paid or payable to Government or any local body (excluding taxes on income)

<b>44</b>	<b>Rates and taxes, paid or payable to Government or any local body (excluding taxes on income)</b>				
<b>i</b>	<b>Union excise duty</b>	<b>44i</b>			
<b>ii</b>	<b>Service tax</b>	<b>44ii</b>			
<b>iii</b>	<b>VAT/ Sales tax</b>	<b>44iii</b>			
<b>iv</b>	<b>Cess</b>	<b>44iv</b>			
<b>v</b>	<b>Central Goods &amp; Service Tax (CGST)</b>	<b>44v</b>			
<b>vi</b>	<b>State Goods &amp; Services Tax (SGST)</b>	<b>44vi</b>			
<b>vii</b>	<b>Integrated Goods &amp; Services Tax (IGST)</b>	<b>44vii</b>			
<b>viii</b>	<b>Union Territory Goods &amp; Services Tax (UTGST)</b>	<b>44viii</b>			
<b>ix</b>	<b>Any other rate, tax, duty or cess incl STT and CTT</b>	<b>44ix</b>			
<b>x</b>	<b>Total rates and taxes paid or payable (44i + 44ii +44iii +44iv + 44v + 44vi + 44vii + 44viii +44ix)</b>			<b>44x</b>	



## Part A- OI Other Information (mandatory if liable for audit under section 44AB, for others, fill if applicable)

12 Amount of credit outstanding in the accounts in respect of

<b>a</b>	<b>Union Excise Duty</b>	<b>12a</b>		
<b>b</b>	<b>Service tax</b>	<b>12b</b>		
<b>c</b>	<b>VAT/sales tax</b>	<b>12c</b>		
<b>d</b>	<b>Central Goods &amp; Service Tax (CGST)</b>	<b>12d</b>		

	<b>e State Goods &amp; Services Tax (SGST)</b>	<b>12e</b>		
	<b>f Integrated Goods &amp; Services Tax (IGST)</b>	<b>12f</b>		
	<b>g Union Territory Goods &amp; Services Tax (UTGST)</b>	<b>12g</b>		
	<b>h Any other tax</b>	<b>12h</b>		
<b>i</b>	<b>Total amount outstanding (total of 12a to 12h)</b>	<b>12i</b>		

# Reporting of annual outward supply- Each GST no wise.

## Schedule GST INFORMATION REGARDING TURNOVER/GROSS RECEIPT REPORTED FOR GST

DETAILS OF GST	Sl. No.	GSTIN No(s).	Annual value of outward supplies as per the GST return(s) filed
	(1)	(2)	(3)

### **NOTE** ▶

*Please furnish the information above for each GSTIN No. separately*

# Reporting of GST in tax report- 3CD- deferred for FY 2019-20

- 44 Break-up of total expenditure of entities registered or not registered under the GST.  
(This Clause is applicable from 1st April,2021)

Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure relating to entities not registered under GST
	Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	
NA	NA	NA	NA	NA	NA

# Reconciliations

- GST supply with gross turnover /receipts and sale of capital assets/goods- GSTR-1 with ITR /P-L
- Reconciliation of tax paid, payable as per GST vs ITR/Accounts
- Reconciliation of input tax- accounts, GSTR 3B, GSTR 2A/2B
- Supply VS. 26AS amount paid credited
- Reporting supply in GSTR-1 vs GSTR 3B and 26AS

# Reconciliation of Indirect Taxes (for the company as a whole)

Annexure to cost audit report

Part D

Sl. No 6



# **Duties/ Taxes Payable**

Sl.	particulars	Taxable Value/ Assessable Value	Excise Duty/ VAT, CST, Cess etc./ Other State Taxes, if any	GST			
				CGST	SGS T	IGST	Cess and Other s
	Duties/ Taxes Payable	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
	<b>Excise Duty</b>						
1.	Domestic						
2.	Export						
3.	Stock Transfers (Net)						
4.	Others, if any						
5.	<b>Total Excise Duty (1 to 4)</b>						
6.	<b>VAT, CST, Cess etc.</b>						
7	<b>Other State Taxes, if any</b>						

Sl.	particulars	Taxable Value/ Assessable Value	Excise Duty/ VAT, CST, Cess etc./ Other State Taxes, if any	GST			
				CGST	SGST	IGST	Cess and Others
	Duties/ Taxes Payable			Rs.	Rs.	Rs.	Rs.
	GST	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
8	Outward Taxable Supplies (other than zero rated, Nil Rated and Exempted)						
9	Outward Taxable Supplies (zero rated)						
10	Inward Supplies (liable to Reverse Charge)						
11	Other Outward Supplies (Nil Rated, Exempted)						
12	Non-GST Outward Supplies						
13.	<b>Total (8 to 12)</b>						
14	<b>Total Duties / Taxes Payable (5 + 6 + 7 + 13)</b>						

Sl.	Duties/ Taxes paid [by Utilisation of Input Tax Credit and Payment through Cash Ledger, as the case may be]						
	Input Tax Credit Utilised			CGST	SGST	IGST	Cess and Others
15	CGST/ CENVAT	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
16	SGST / UTGST/ VAT						
17	IGST						
18	Cess						
19	Transitional Credit						
20	Others, if any, specify						
21	<b>Total Input Tax Credit Utilised (15 to 20)</b>						
22	Payment through Cash Ledger						



Sl.	Difference between Taxes Paid and Payable (14 – 23)						
				CGST	SGST	IGST	Cess and Others
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
	<b>Difference between Taxes Paid and Payable (14 – 23)</b>						
24	Interest/Penalty/Fines Paid						



# Reporting requirement

- For the company as a whole
- No GSTIN wise reporting required
- Reporting of all types of supply including non –GST supply
- Total Tax payable by the company
- Total tax paid in cash
- Total tax paid from ITC
- Net Tax payable after payments
- Interest/Penalty/Fines Paid

# **Provisions under companies law-GST**

## Punishment for certain offences(S-132)

(1) **Whoever** commits any of the following offences, namely:—

- a). **Making supply** of any Goods /Services **without issue of any invoice**, in violation of the provisions of this Act/Rules, with the intention to evade tax;
- b). **Issuing an invoice without making supply** in violation of the provisions of this Act/ Rules made there under leading to **wrongful availment or utilization of Input Tax credit or refund of tax**;
- c). **Avails Input Tax Credit using such invoice or bill referred to in clause b**;
- d). **Collects any amount as tax but fails to pay the Government** beyond a period of **3 months** from the date on which such payment becomes due;
- e). **Evades tax**, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- F). **Falsifies/substitutes financial records/produces** fake accounts/documents and furnishes any false information with an intention to evade payment of tax due under this Act

## Punishment for certain offences(S-132)

(1) **Whoever** commits any of the following offences, namely:—

- g). **Obstructs/Prevents any officer** in the discharge of his duties
- h). Acquires possession of or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are **liable to confiscation** under this Act/Rules;
- I). Receives or is in any way concerned with the supply of/in any other manner **deals with any supply of services** which **he knows or has reasons to believe are in contravention of any provisions of this Act/Rule.**
- J). **Tampers with or destroys any material evidence** or documents.
- k). **Fails to supply any information** which he is required to supply under this Act/Rules made there under or supplies false information.
- i). **Attempts to commit, or abets** the commission of any of the offences mentioned in clauses (a) to (k) *of this section*

*Shall be punishable*



- i. In cases where the amount of tax evaded/the amount of input tax credit wrongly availed/utilised and the amount of refund wrongly taken **exceeds 5 crore rupees**, with imprisonment for a term which may **extend to 5 years** and with fine.
- ii. In cases where the amount of tax evaded/the amount of input tax credit wrongly availed/utilised and the amount of refund wrongly taken exceeds **Rs.2 Crore but does not exceed 5 Crore**, with imprisonment for a term which may extend to **3 years** and with fine
- iii. In the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds **Rs. 1 Crore but does not exceed 2 Crore**, with imprisonment for a term which may extend to **01 year** and with fine
- iv. in cases where he **commits or abets the commission of an offence specified in clause (f) (related to falsify record) or clause (g)( prevent officer in enquiry) or clause (j)( related tamper/destroy evidences)**, he shall be punishable with **imprisonment for a term which may extend to 6 months** or with fine or with both

shall be punishable—

In cases where the amount of tax evaded/the amount of input tax credit wrongly availed/utilised and the amount of refund wrongly taken exceeds 5 crore rupees, with imprisonment for a term which may extend to 5 years and with fine.

01

In cases where the amount of tax evaded/the amount of input tax credit wrongly availed/utilised and the amount of refund wrongly taken exceeds 2 Crore rupees but does not exceed 5 Crore Rupees, with imprisonment for a term which may extend to 3 years and with

02

In the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken exceeds 1 Crore Rupees but does not exceed 2 Crore rupees, with imprisonment for a term which may extend to 01 year and with fine

03

**In** cases where he commits or abets the commission of an offence specified in clause (f) (related to falsify record) or clause (g) (prevent officer in enquiry) or clause (j) (related tamper/destroy evidences), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both

04



**Punishment for second & every subsequent offence**  
**Sec.132(2)**

Where any **person convicted of an offence** under this section is **again convicted of an offence** under this section, then, he shall be punishable for the second and for every subsequent offence with **imprisonment for a term which may extend to 5years and with fine.**

Nature of offence Sec.132(4)&(5)

**Cognizable and non  
bailable**

**offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section**

supplies any goods or services or both without issue of any invoice

issues any invoice or bill without supply leading to wrongful availment or utilisation of input tax credit or refund of tax; offence for supplier

avails input tax credit using such invoice or bill referred to in clause (b) offence for recipient;

collects any amount as tax but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due

**Non-Cognizable and  
bailable**

All offences under this Act other than specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 explained above.

Nature of offence Sec.132(4)&(5)

**Non-Cognizable**

**Cognizable Offence**

"`non-cognizable offence' means an offence for which, and `non-cognizable case' means a case in which, a police officer has no authority to arrest without warrant

means an offence for which, and `cognizable case' means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant

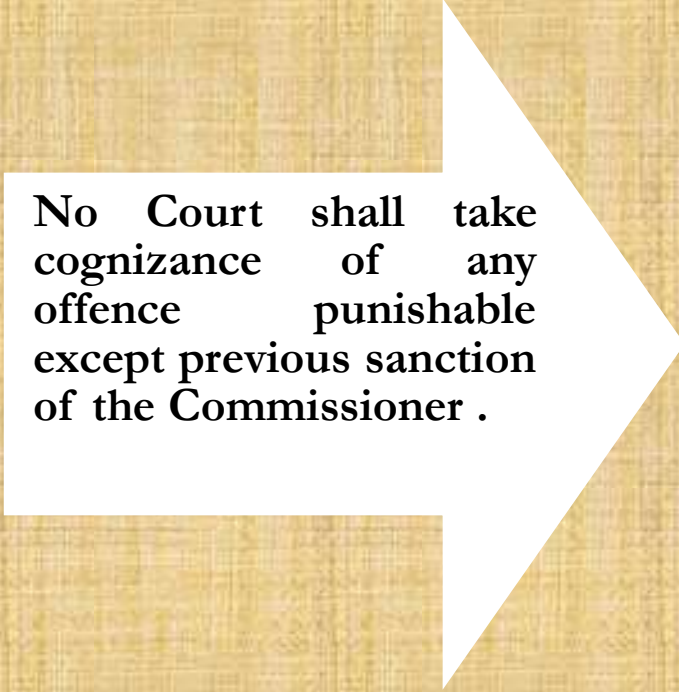
**Bailable**

**Non bailable Offence**

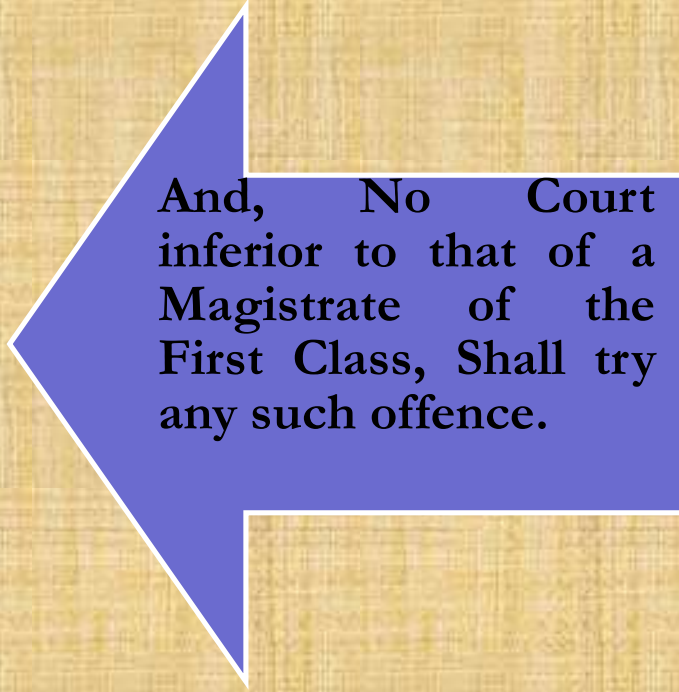
grant of bail is a matter of right. It may be either given by a police officer who is having the custody of Accused or by the court. The accused may be released on bail, on executing a "bail bond", with or without furnishing sureties

grant of Bail is not a matter of right. Here the Accused will have to apply to the court, and it will be the discretion of the court to grant Bail or not.

## Section : 134 Cognizance of Offence



**No Court shall take cognizance of any offence punishable except previous sanction of the Commissioner .**



**And, No Court inferior to that of a Magistrate of the First Class, Shall try any such offence.**



## Sec 135 Presumption of Culpable Mental State

In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused,

Sec-135

The court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution

# Explanation to section 135

- the expression “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;
- a fact is said to be proved only when the court believes **it to exist beyond reasonable doubt** and **not merely when its existence is established by a preponderance of probability.**



**Relevancy of Statements under  
certain Circumstances [Section : 136]**



**A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act,**

Section : 136

## Relevancy of Statements under certain Circumstances

when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case,

the court considers unreasonable

when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case,

the statement should be admitted in evidence in the interest of justice.

# Offences by companies( S-137)



## Offence without consent of director etc [137(1)]

**Every person** who, at the time the offence was committed was **in charge of, and was responsible to**, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

## Offence with consent of director etc [s-137(2)]

Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the **consent or connivance** of, or is attributable to any **negligence** on the part of, any director, manager, secretary or other officer of the company, such **director, manager, secretary or other officer** shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## **Offence committed by firm , LLP, HUF , Trust etc**

Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons.[S-137(3)]

**No punishment, if without knowledge  
or due care to prevent commission[S-  
137(4)]**

Nothing contained in this section shall render any such person liable to any punishment provided in this Act, **if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.**



# Meaning of company, director

- (i) “company” means a body corporate and includes a firm or other association of individuals;  
and
- (ii) “director”, in relation to a firm, means a partner in the firm.

## Under companies Act 2013

**director** means a director appointed to the Board of a company; [S-2(34) ]

**officer** includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;[S- (59) ]



## Compounding of offence[ 138]

- ❑ Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed
- ❑ compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences
- ❑ compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law
- ❑ On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

## Compounding fee[s-138(2)]

amount for compounding of offences under this section shall be such as may be prescribed, subject to the **minimum amount** not being less than Rs. 10,000/- or 50 % of the tax involved, **whichever is higher,**

and

the maximum amount not being less than Rs. 30,000/- or 150%. of the tax, **whichever is higher.**

# Non compoundable offence

[ proviso to sec 138(1)]

- a) a person who has been **allowed to compound once** in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section
- b) a person who has been **allowed to compound once** in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of **supplies of value exceeding Rs. 1 crore** ;
- c) a person who has been **accused of committing an offence under this Act which is also an offence under any other law for the time being in force.**
- d) a person who has been convicted for an offence under this Act by a court;
- e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132
- f) any other class of persons or offences as may be prescribed.

## Procedure for compounding of offences. [R-162]

- 1) Application may be made , either before or after the institution of prosecution in FORM GST CPD-01 to the Commissioner for compounding of an offence.
- (2) On receipt of the application, the Commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, or any other information, which may be considered relevant for the examination of such application.
- (3) The Commissioner, after taking into account the contents of the said application, may, by order in FORM GST CPD-02, on being satisfied that the **applicant has co-operated in the proceedings before him** and has made **full and true disclosure** of facts relating to the case, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application.
- (4) affording an opportunity of being heard to the applicant and recording the grounds of such rejection.
- (5) The **application shall not be allowed unless the tax, interest and penalty liable to be paid have been paid** in the case for which the application has been made.
- (6) The applicant shall, **within a period of 30 days** from the date of the receipt of the order for compounding , pay the compounding amount as ordered by the Commissioner **and shall furnish the proof of such payment to him.**
- (7) In case the **applicant fails to pay the compounding amount within the time specified** of 30 days the **order shall be vitiated and be void.**
- (8) **Immunity granted** to a person under sub-rule (3) may, **at any time, be withdrawn by the Commissioner**, if he is satisfied that such person had, in the course of the compounding proceedings, **concealed any material particulars or had given false evidence.** Thereupon such person may be tried for the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provisions the Act shall apply as if no such immunity had been granted. ]



# **Payment to directors**

In the case of **M/s Allied Blenders and Distillers Private Limited vs. Commissioner of Central Excise and Service Tax**, Mumbai CESTAT held that where the remuneration is paid by a company to its whole-time director for engaging himself in day-to-day operations of the organization, compliance in relation to provident fund laws, professional tax and tax deduction in terms of Income Tax laws were made and complied with and were appropriately reflected in the returns/statements filed under the relevant laws, such remuneration paid shall be treated as salary and accordingly, service tax chargeability cannot be invoked on the same.



Now, this debate has further been given some more air to the issue by the ruling pronounced by Hon'ble Rajasthan Authority for Advance Ruling ('Authority') in the case of **M/s Clay Craft India Private Limited** wherein it has been held by the Authority that the remuneration paid to directors is a consideration in respect of services supplier by them to the company and hence, is not covered by the Para 1 of Schedule III appended to the CGST Act i.e. such services are not in the course of their employment and accordingly cannot qualify to fall within the said para of Schedule III. Accordingly, since such services are not covered within Para 1 of Schedule III to the CGST Act, the same shall be treated as supply of services in accordance with Section 7 of the CGST Act and hence be chargeable to tax as taxable supply of services.

Further, in terms of Entry 6 of the **Notification No. 13/2017-Central Tax (Rate) dated June 28, 2017** ('RCM Notification'), such supply shall attract mechanism of reverse charge ('RCM') wherein the recipient (i.e. the Company or the body corporate located in taxable territory) should be paying tax at applicable rates under RCM provisions.

# The primary issue to be decided is whether or not a 'Director' is an employee of the company

- a. the definition of a whole time-director under section 2(94) of the Companies Act, 2013 is an inclusive definition, and thus he may be a person who is not an employee of the company.
- b. the definition of 'independent directors' under section 149(6) of the Companies Act, 2013, read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that such director should not have been an employee or proprietor or a partner of the said company, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed in the said company.



**4.2** Therefore, in respect of such directors who are not the employees of the said company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable. In terms of entry at Sl. No. 6 of the Table annexed to notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

**4.3** Accordingly, it is hereby clarified that the remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is taxable in hands of the company, on reverse charge basis.

## *Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company*

5.1 Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a "contract of service") or is there any element of "contract for service". The issue has been deliberated by various courts and it has been held that a director who has also taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i. e. under a contract of service (employment) entered into with the company.

5.2 It is also pertinent to note that similar identification (to that in Para 5.1 above) and treatment of the Director's remuneration is also present in the Income Tax Act, 1961 wherein the salaries paid to directors are subject to Tax Deducted at Source ('TDS') under Section 192 of the Income Tax Act, 1961 ('IT Act'). However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction under Section 194J of the IT Act.



## *Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company*

5.3. Accordingly, it is clarified that the part of Director's remuneration which are declared as 'Salaries' in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

5.4 It is further clarified that the part of employee Director's remuneration which is declared separately other than 'salaries' in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

S. No.	Type of Director	Taxability under GST
1	Whole-time director	Since the whole-time director is in the whole-time employment of the company and performs his services in relation to day-to-day activity of the company, remuneration paid to such director shall be treated as salary and shall not be chargeable to GST by virtue of Para 1 of Schedule III to the CGST Act.
2	Managing director	By virtue of decision of the Hon'ble Supreme Court in the case of <b>Employees State Insurance Corporation vs. Apex Engineering Private Limited</b> , it has been held that managing director shall be treated as employee of the company as he is in the whole-time employment of the company and is engaged in the day-to-day routine activities of the company. Hence, remuneration paid to such managing director should be treated as paid in the course of employment and is covered within Para 1 of Schedule III to the CGST Act.

3	Executive director	Since, an executive director has been assigned as the same meaning as that of a whole-time director, tax treatment of remuneration paid to such executive director shall be same. Accordingly, it shall be outside the purview of GST.
4	Non-executive director	Such directors are not to be treated as in the employment of the company and they provide their services as independent professionals. Hence, remuneration paid to them shall be chargeable to GST.
5	Independent directors	Services performed by independent directors are separate from that of the director serving under the employment agreement. Services from independent director are not to be treated as performed under any employment agreement and hence, shall be outside the purview of Para 1 of Schedule III and accordingly be taxable.
6	Nominee director	Nominee director, though not employed by the company but by the institution/foreign collaborator/Government etc., can be treated as performing his duties in the course of or in relation to his employment and accordingly, remuneration paid to such director shall be outside the ambit of GST net by virtue of Para 1 of Schedule III to the CGST Act.

THANK YOU

CA PP SINGH

Contact details

9711521060,9871229590

cappsingh@gmail.com