



Issues in Assessment, Penalties & Recovery Proceedings

BKC

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Assessment

TYPES OF ASSESSMENT

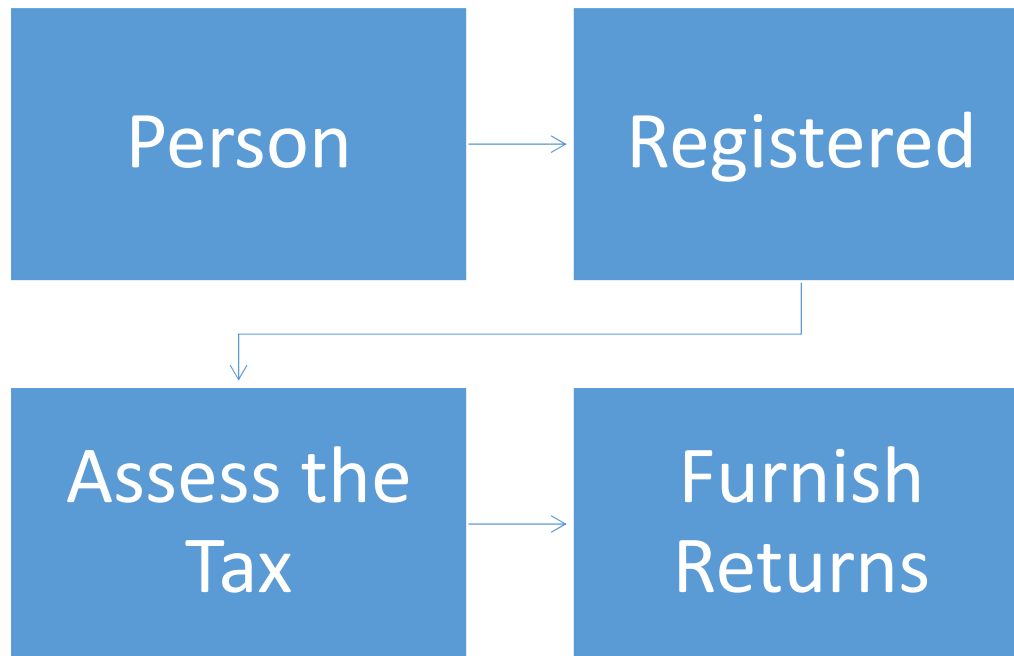
- **By Assessee**

- Self Assessment

- **By Department**

- Provisional Assessment
- Scrutiny of returns
- Best Judgement Assessment
- Summary assessment

Self Assessment - Section 59



Provisional Assessment - Section 60

- A taxable person can request the officer for provisional assessment if he is unable to determine value or rate of tax.

Value

- Determining the transaction value
- To know whether to include certain income

Rate of tax

- To know the rate of tax based on classification



Provisional Assessment- Procedure

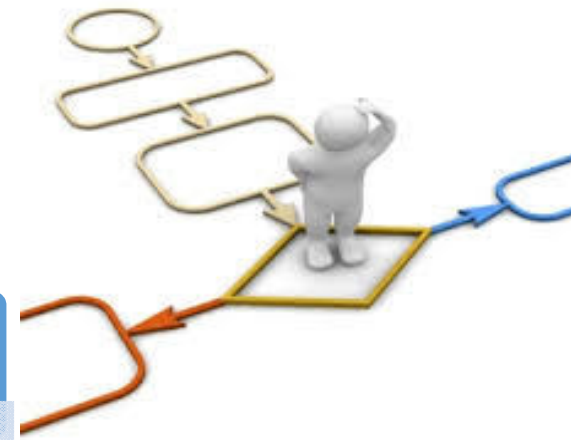
Application in writing in Form GST AMT-01

Provisional Order in Form GST ASMT-04 shall be issued by the officer within 90 days from the date of application

The applicant shall execute a Bond in Form GST ASMT-05

Final Order in Form GST ASMT-07 specifying the amount payable or refundable shall be issued within 6 months from the date of communication of the provisional order

Any differential amount payable shall be paid along with interest from the due date of payment till the date of actual payment

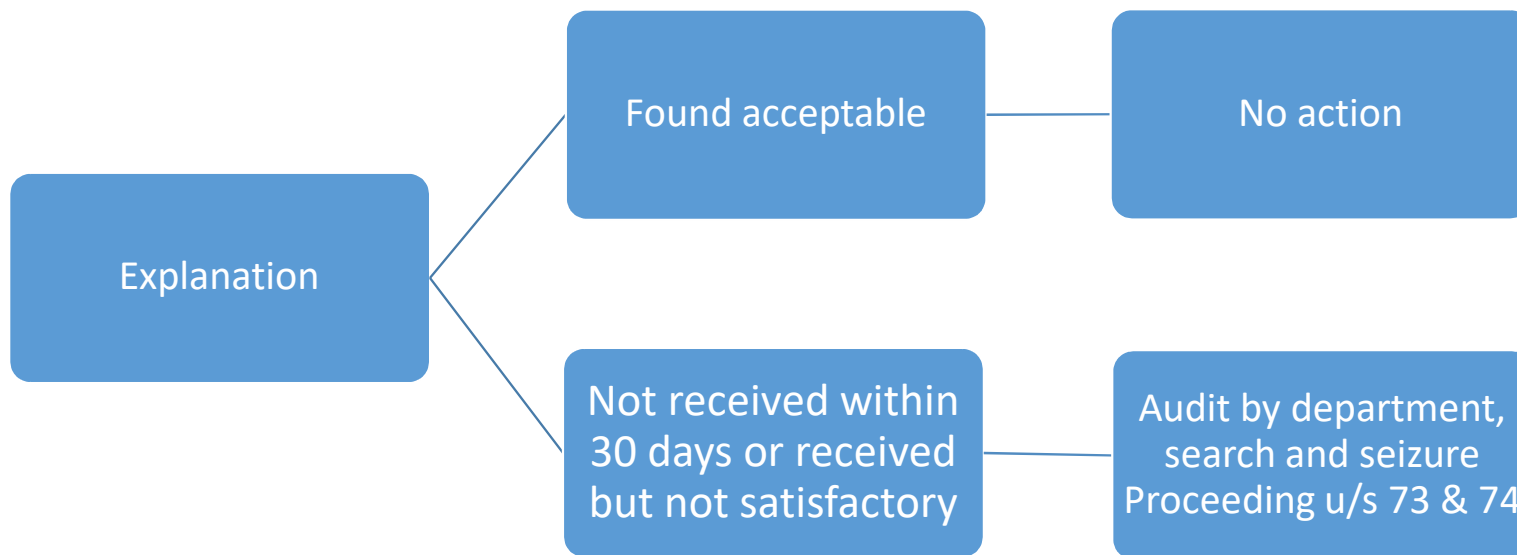


Issues:

- 1) What is the difference between the provisions of Advance Ruling and Provisional Assessment?
- 2) Mr. A cleared goods under provisional assessment in the month of March, 2018 and paid GST of Rs. 15,000/- on 20.04.2018, further the GST was paid of Rs. 5,000/- on 20.05.2018. Final Assessment order passed on 30.06.2018 assessing the GST payable as Rs. 25,000/-. Mr. A paid the balance Rs. 5,000/- on 20.07.2018. On what amounts is Mr. A liable to pay interest?
- 3) Can taxable person file an appeal against the final order passed in provisional assessment?

Scrutiny of Returns-Section 61

- The proper officer may scrutinize the returns and indicate discrepancies to the taxpayer.



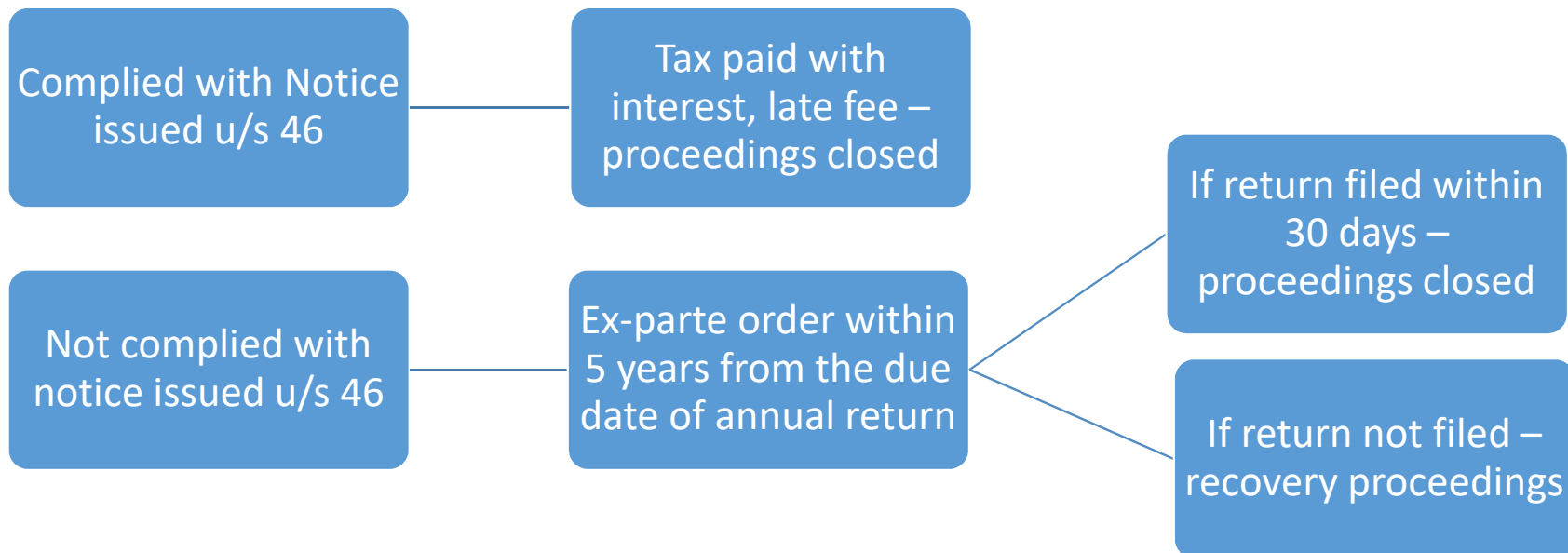
Issues:

- 1) Will the provisions of Section 61 be applicable in all cases i.e. GSTR 1, 2, 3 and 3B?
- 2) Will the provisions of Section 61 be applicable to ISD and NRTP?
- 3) Whether Section 61 is applicable only to the extent of information mentioned in the return or the officer can verify the other details also? For E.g. Inward supply details not captured in GSTR 3B.

Assessment of Non Filers of Returns - Section 62



- Applicable to registered person who fails to furnish return u/s 39 (GSTR 3) or 45 (Final return) and who has been served notice u/s 46.



Issue:

- 1) Mr. A has not filed GSTR 3B for the period July 2017 till date. The assessing officer has issued notice u/s. 46 of the CGST Act, 2017 asking him to file return and pay taxes within 15 days of issuance of notice. However, Mr. A failed to comply with the notice. What are the repercussions on Mr. A for non-compliance of this notice issued u/s. 46 of the CGST Act, 2017

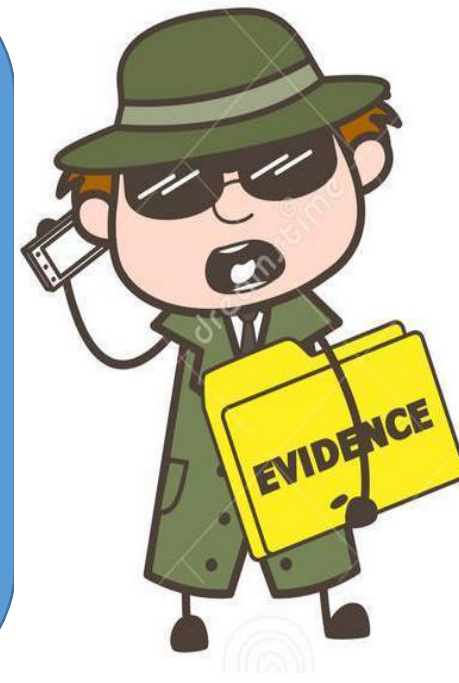
Assessments of Unregistered – Section 63

- Applicable to persons who fails to obtain registration even though liable to do so or whose registration has been cancelled but was liable to pay.
- Notice shall be issued by the proper office in FORM GST ASMT -14 for best judgement assessment.
- If not complied with the notice within 15 days, best judgement assessment order shall be passed.
- Time limit for order is 5 years of the due date of annual return



Summary Assessments – Section 64

- There should be an evidence that tax liability arises and sufficient ground that any delay will affect the interest of revenue
- Prior approval of Additional/ Joint Commissioner
- Withdrawal by Additional/ Joint Commissioner if the order is found erroneous
- If the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be liable to pay tax



Issue

Mr. A has a warehouse in Bhiwandi, which he has given on rent to various supplier. One of his customer Mr. B has stored goods which are hawala goods. What are the legal implication on Mr. A for Mr. B storing just hawala goods in the warehouse of Mr. A.



Penalties

Section 122- Applicability and Amount of Penalty

Sub-section 1

Taxable Person

Penalty of Rs. 10,000/- or amount of tax evaded, TDS/TCS not collected, wrong ITC availed/ utilized, whichever is higher

Sub-section 2

Registered Person

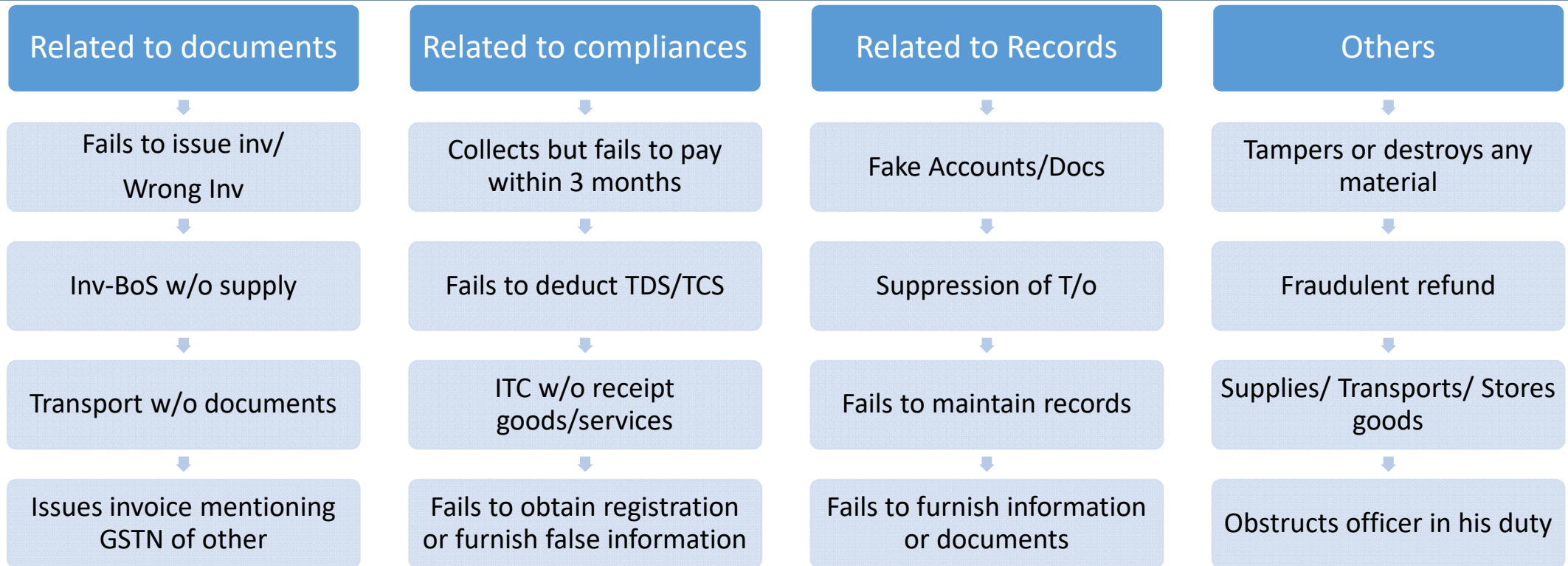
A. In case of fraud, suppression etc. - Rs. 10,000/- or tax due
B. In case of no fraud, suppression etc. - Rs. 10,000/- or 10% of tax due
C. Whichever is higher

Sub-section 3

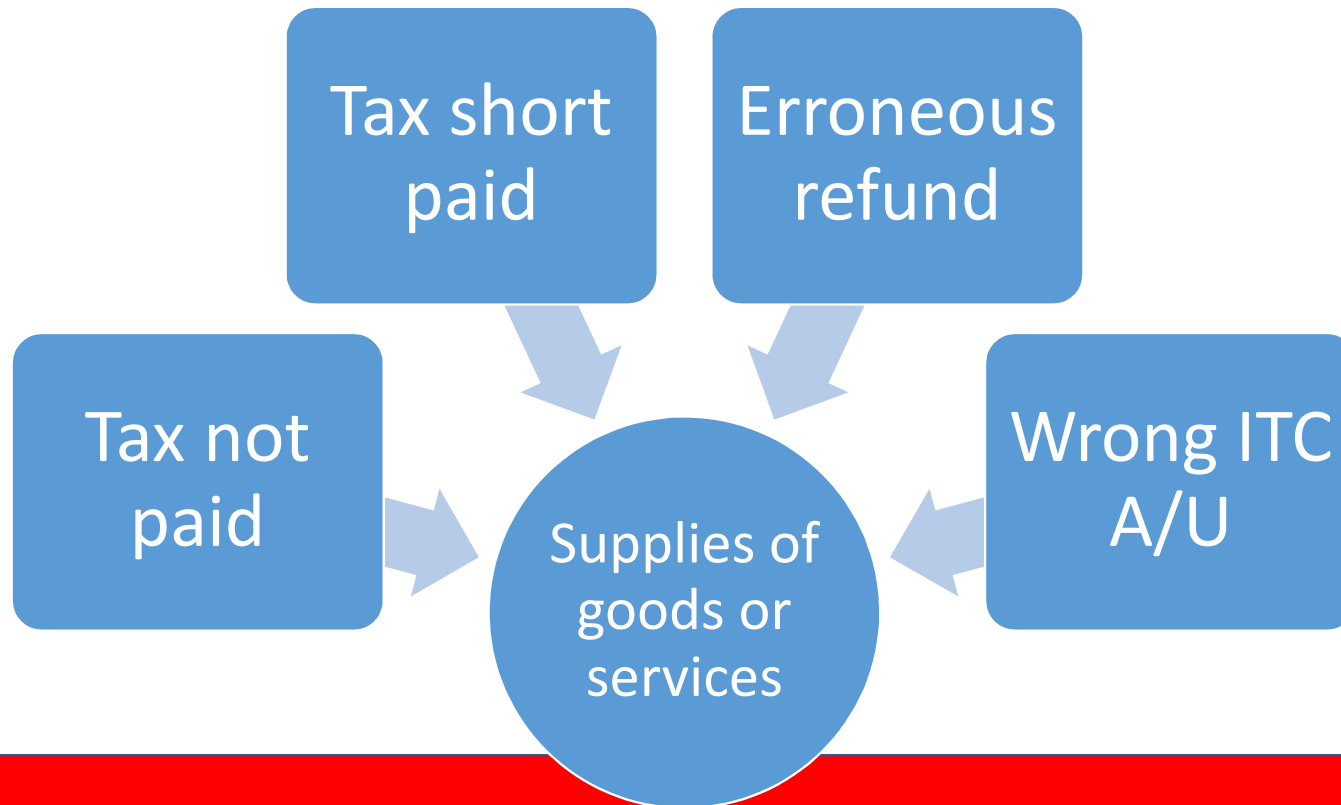
Any Person

Penalty upto Rs. 25,000/-

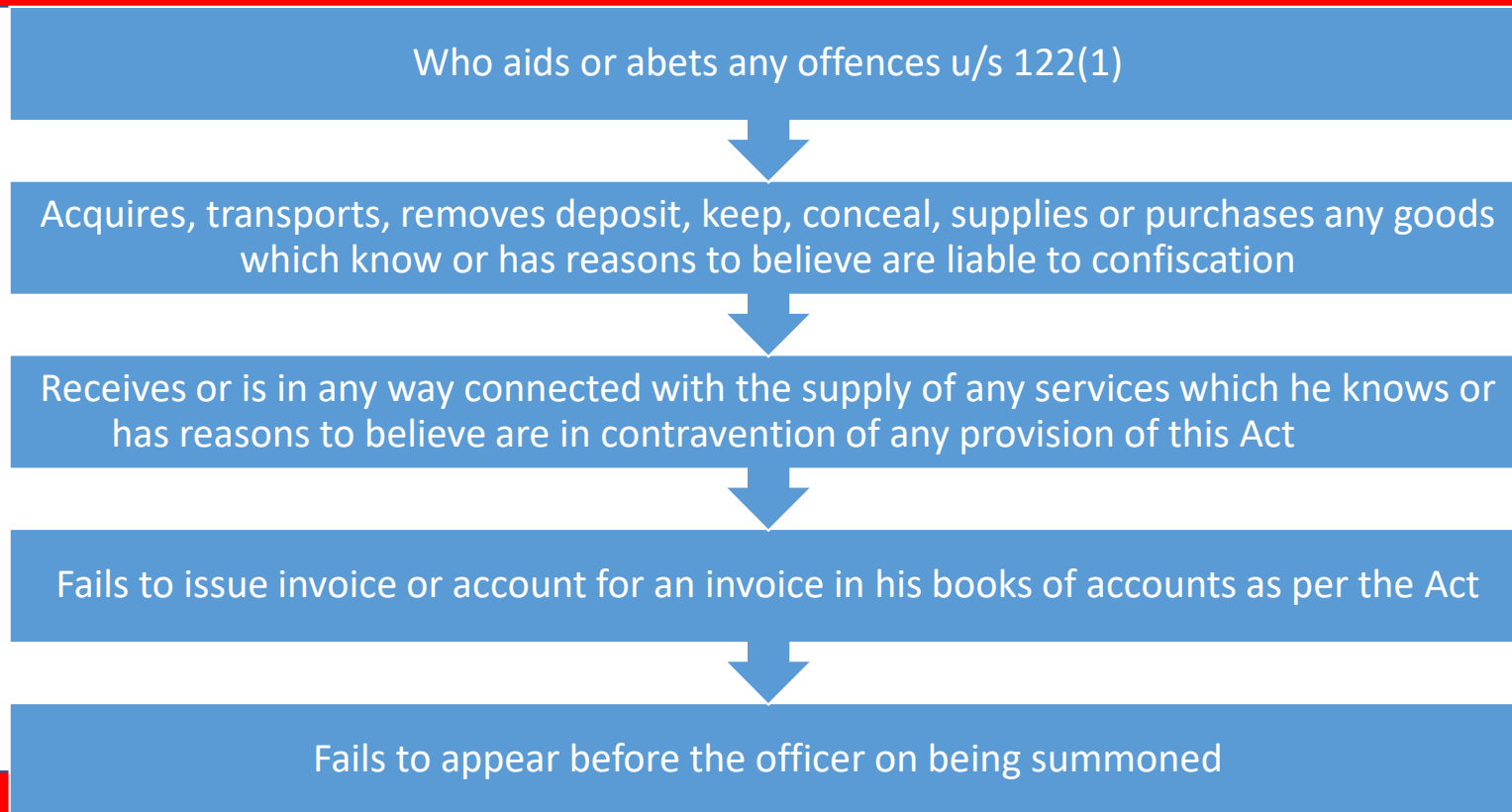
Section 122(1)- Type of offences



Section 122(2) – Situations Covered



Section 122(3) – Situations Covered

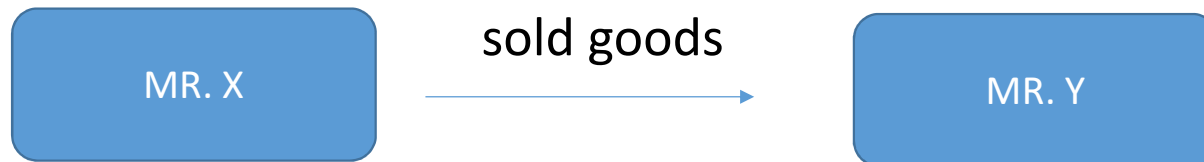


Issues:

- 1) Are all the sub-section 1,2 & 3 of Section 122 mutually exclusive or penalty can be imposed under both the sections?
- 2) Mr. X located in Maharashtra supplied goods to Mr. Y. located in Maharashtra. Instead of mentioning place of supply as Maharashtra, Mr. X has inadvertently mentioned Gujarat and charged IGST? Is Mr. X liable for penalty?

Issues:

- 3) Mr. A is not registered under GST. He supplies goods of worth Rs. 30 lakhs to Mr. B. Can penalty be imposed on Mr. B?
- 4) Implication of penalty provision in below example:



Date of Invoice – 1st April, 2018

Date of payment of GST to Government – 20th September, 2018.

Date of receipt of payment – 1st October, 2018. Will it make any difference if payment is received on 1st May, 2018?

Other Penalty Provisions – Section 123, 124 and 125:

Section	Particulars	Penalty
123- Information return	If return required to be filed by various Govt. authorities u/s 150 not filed within the time limit prescribed under said section	Rs. 100 per day or Rs. 5,000/- whichever is higher
124- Statistics Information	Person required to furnish (statistics) information return covered u/s 151 but fails to file or willfully furnishes false information return	<ul style="list-style-type: none">• Upto Rs. 10,000/-• In case of continuing default, Rs. 100/- per day subject to maximum of Rs. 25,000/-
125- General penalty	Contravention of any provisions for which penalty is not separately provided	Upto Rs. 25,000/-

Section 126- General disciplines relating to penalty (to be followed by officers)

Without
issuance of
SCN and giving
opportunity of
being heard

Without
considering the
totality of the
facts

Without
mentioning the
provisions

Without
considering
adequate
degree of
severity of
breach

For procedural
lapse

For minor
breach -Tax
involved <
Rs.5,000/-

For mistake
easily
rectifiable and
made without
fraudulent
intent and
apparent from
record

Contd...

Section 126 not applicable



Where penalty specified is either a fixed sum or expressed as a fixed percentage [Section 126(6)]

Issue:

Referring to Section 126(6) can it be said that the provisions of Section 126 are not applicable to Section 122(3), 124 and 125?

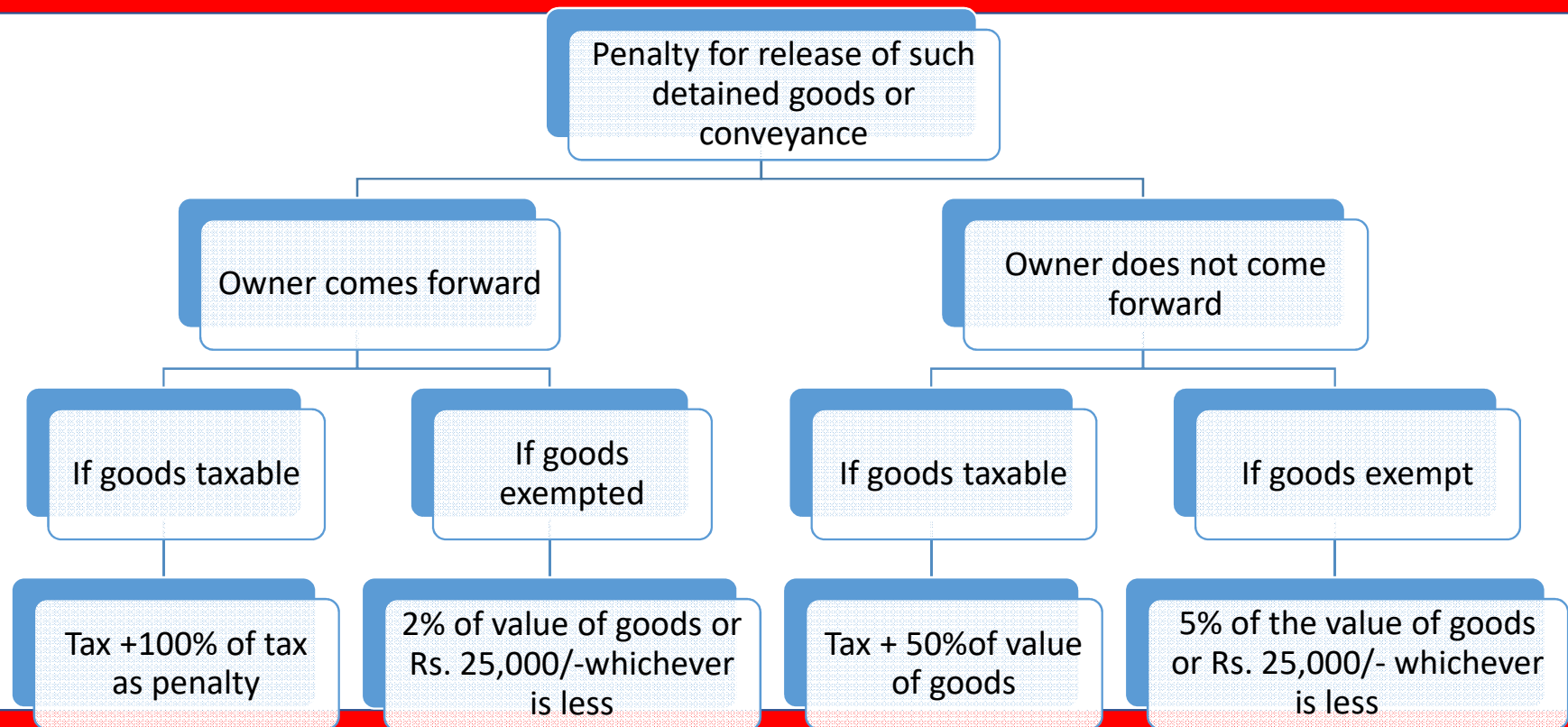
Section 129 – Detention, seizure and release of goods

- The section provides for provision relating to detention, seizure & release of goods & conveyance in transit & penalty payable thereon
- If a person transports any goods or stores any such goods
 - while in transit
 - in contravention of the provisions of this Act
 - then such goods shall be liable for detention along with vehicle on which they are being transported.
- No goods shall be detained or seized without serving an order in FORM GST MOV-06 and notice in FORM GST MOV-07 and opportunity of being heard.

Section 129 – Detention, seizure and release of goods

- The goods shall be released
 - on provisional basis upon execution of bond and furnishing security
 - Or
 - on payment of tax+ interest +penalty.
- If the person fails to pay the amount within 7 days (14 days as per revised draft) proceedings shall be initiated u/s 130.

Contd....



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- Mr. A (manufacturer) located in Gujarat supplied goods to Mr. C located in Pune directly under the instruction of Mr. B (service provider) located in Mumbai.

Mr. A raised invoice on Mr. B charging IGST. At the time of movement of goods E way bill was prepared wherein place of delivery was erroneously mentioned as Mumbai instead of Pune. The officer detained goods at Mumbai and imposed penalty under section 129, can the same be imposed?

Contd....

- Recent Judgements:

- VSL Alloys (India) Pvt. Ltd. the Allahabad High Court stated that penalty cannot be imposed merely on the ground that vehicle no. in Part B was not mentioned in the required document.
- Gati Kintetsu Express Pvt. Ltd., the Madhya Pradesh High Court held that since transporter has not updated vehicle details in Part B, the penalty can be imposed under section 129 on the transporter.

Section 130- Confiscation of goods or conveyances

Applicable to any person (i.e. Registered or Unregistered)
Confiscation of **goods or conveyance**(both are defined) and Penalty

Supplies or receives any goods in contravention of any of the provisions with intent to evade payment of tax

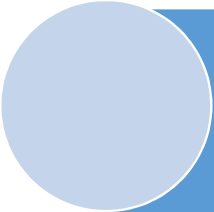
Does not account for any goods on which he is liable to pay tax under this Act

Supplies any goods liable to tax under this Act without having applied for registration

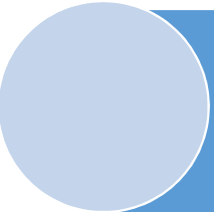
Contravenes any of the provisions of this Act with intent to evade payment of tax

Uses any conveyance for transport of goods in contravention of the provisions of this Act

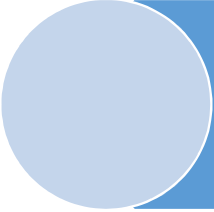
Consequences of Confiscation



The owner of goods or conveyance, liable for confiscation is to be given option for fine not exceeding an amount of market value of goods less the tax chargeable thereon

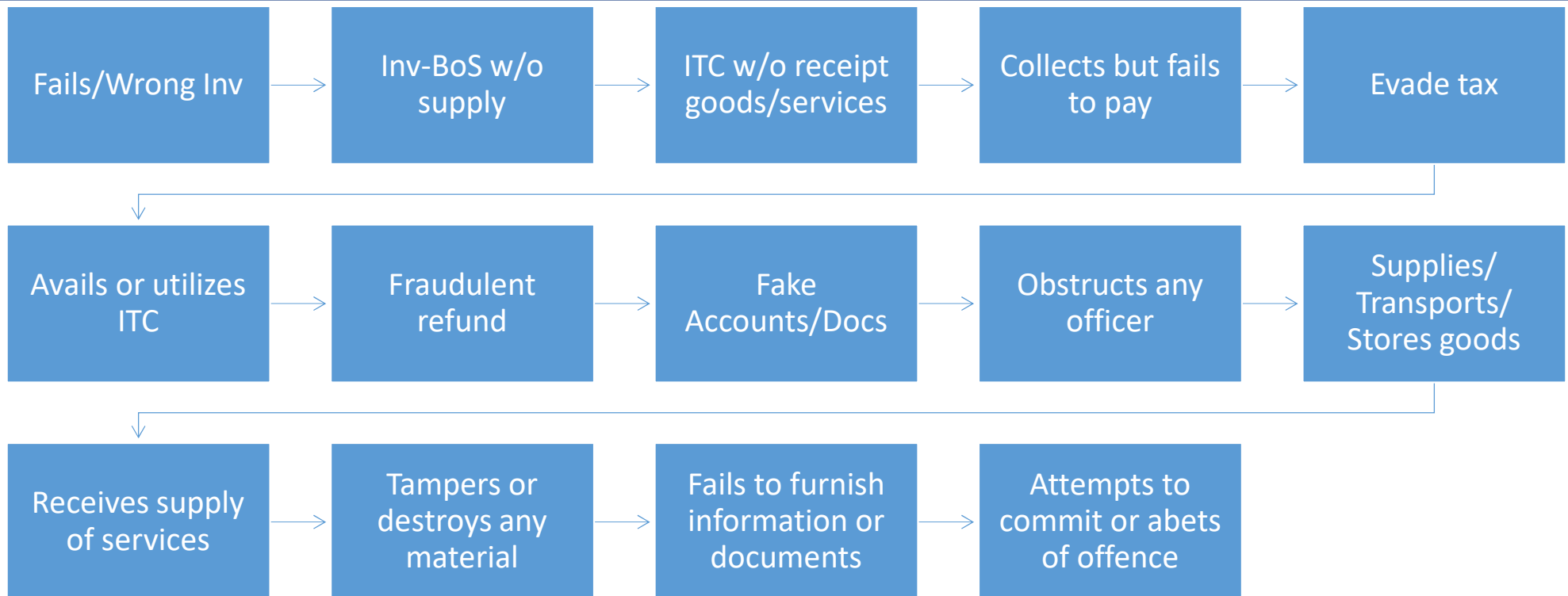


If owner of conveyance proves that the goods were being transported (without documents) without his knowledge or without the knowledge of his agent then the conveyance shall not be liable for confiscation











The title of confiscated goods shall vest in the government & every police officer to whom proper officer makes a request, shall assist in taking possession of the goods

Section 132: Types of Offences



Punishment for Offences

Particulars	Amount	Punishment				
Tax evaded, ITC wrongly availed/utilized or refund wrongly claimed	Exceeding Rs.5 Crore		5 yrs	and		Non Bailable
	Between Rs. 2Crore to Rs. 5Crore		3 yrs	and		Bailable
In case of any other offences where the amount of tax evaded, ITC wrongly availed/utilized or refund wrongly claimed	Between Rs. 1Crore to Rs. 2Crore		1 yr	and		Bailable
<ul style="list-style-type: none"> - False Records - Obstructing officer - Tamper Records 	-		6M	or		Or both Bailable



Section 78- Initiation of recovery proceedings

Any amount payable in pursuance of an order passed under this Act shall be paid within 3 months from the date of service of such order.

Any amount payable in pursuance of an order passed under this Act shall be paid within 3 months from the date of service of such order.

To protect the interest of revenue for reasons to be recorded in writing, PO may require taxable person to pay within such period less than a period of three months as may be specified by him

Section 79- Recovery of Tax

Recovery can be done by following modes:

- Deduct from the refund payable by proper officer or such other officer
- By issuing of notice to any other person (debtors) who holds or may hold money of taxable person
 - ✓ Debtors is bound to comply with above notice
 - ✓ Such person(debtor) is personally liable to the government
 - ✓ Such other person is not liable if he proves to the satisfaction of officer that he is not liable to pay or likely become liable to pay any amount to the person in default.



Contd....

- By detaining and selling any goods belonging to taxable person
- By detaining any movable or immovable property of taxable person until the disputed amount is paid.
- PO may file an application before appropriate Magistrate and such Magistrate shall proceed to recover such amount as if it were arrears of land revenue.
- The Explanation is added to the Section, that person shall include 'distinct person' as referred to in sub-section (4) or (5) of Section 25

Procedure for recovery of dues

- **Recovery through sale of goods belonging to such person**

- The officer shall prepare inventory and estimate the market value of such goods
- The goods shall be sold only to the extent of the amount payable + administrative expenses
- The goods shall be sold through auction including e-auction
- If the defaulter pays the amount before issue of notice for auction, the officer shall cancel the process of auction and release the goods



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