

C. B. THAKAR & CO
ADVOCATES

“Late Fee, Interest, Penalties & Penal Provisions thereof”

Speaker:

Advocate C. B. Thakar

GSTPAM Workshop – 12.03.2019

Topics Covered

- Late Fees
- Interest
- Penalties
- Offences
- Confiscation

Late Fees

Late Fees

47. (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

(2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory.

128. The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

Waiver of Penalties / Late Fees

Sr No.	Waiver	Relevant Form	Period	Condition for waiver	Notification
1	Late Fee waived for late filing of Quarterly GSTR – 4	Form GSTR - 04	July 2017 to September 2018	Furnishes the return between 22 nd December 2018 to 31 st March 2019	Notf 77/2018 – CT dt. 31.12.2018 Notf 73/2017 – CT dt. 29.12.2017
2	Late Fee waived for late filing of Monthly GSTR 3B	Form GSTR 3B	July 2017 to September 2018	Furnishes the return between 22 nd December 2018 to 31 st March 2019	Notf 76/2018 – CT dt. 31.12.2018

Waiver of Penalties / Late Fees

Sr No.	Waiver	Relevant Form	Period	Condition for waiver	Notification
3	Late Fee waived for late filing of Monthly / Quarterly GSTR – 1	Form GSTR - 01	July 2017 to September 2018	Furnishes the return between 22 nd December 2018 to 31 st March 2019	Notf 75/2018 – CT dt. 31.12.2018 Notf 4/2018 – CT dt. 23.01.2018
4	<p>Late Fees have been reduced</p> <p>Nil Return - In excess of Rs. 10 per day</p> <p>Others - In excess of Rs. 25 per day</p>	<p>Form GSTR – 04</p> <p>Form GSTR – 3B</p> <p>Form GSTR - 01</p>	Where full waiver is not made		Above Notifications

Interest

Interest

50. (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

Interest

Issue:

Whether Interest is payable on total outward liability or on the net amount after adjustment of ITC. There are different interpretations, clarification is awaited.

Issue:

Section 50(3) provides for levy of interest at 24% when there is undue or excess claim of ITC as well as undue or excess reduction in output tax liability. Whether any contention can be made about genuineness to avoid higher rate of interest.

Penalties

Issue 1: General nature of Penalty – Land mark judgment of Supreme Court in Hindustan Steel Lt. 25 STC 211 (SC)

Issue 2: Overlapping provisions creating confusion and also may attract double charge

Issue 3: Section 126 gives general disciplines related to penalty. However provision is not clear. Section 126 appears to be overriding Section about penalty and requires to be followed in all penalty cases in spite of some provisions of penalty are appearing to be mandatory like Section 122 (2) and others.

Penalties under Section 73 / 74

Under Section 73		Under Section 74	
No allegation of fraud, willful misstatement or suppression of facts		Allegation of fraud, willful misstatement or suppression of facts	
Before issue of Notice	No Penalty	15% of Tax	Before issue of Notice
Within 30 days from Notice	No Penalty	25% of Tax	Within 30 days from Notice
After 30 days from issue of SCN and as per the Order	10% of Tax	50% of Tax	After 30 days from issue of order
		100% of Tax	For any other case

Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

Penalties

122. (1) Where a taxable person who—

(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

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

(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

Penalties

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

(viii) fraudulently obtains refund of tax under this Act;

(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(xi) is liable to be registered under this Act but fails to obtain registration;

(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

Penalties

(*xiii*) obstructs or prevents any officer in discharge of his duties under this Act;

(*xiv*) transports any taxable goods without the cover of documents as may be specified in this behalf;

(*xv*) suppresses his turnover leading to evasion of tax under this Act;

(*xvi*) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

(*xvii*) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;

(*xviii*) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;

(*xix*) issues any invoice or document by using the registration number of another registered person;

(*xx*) tampers with, or destroys any material evidence or document;

Penalties

xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

he shall be liable **to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded** or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

Penalties

(3) Any person who—

(a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(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 under this Act or the rules made thereunder;

(c) receives or is in any way concerned with the supply of, 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 this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees.

Penalties

123. If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a **penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues:**

Provided that the penalty imposed under this section shall not exceed five thousand rupees.

124. If any person required to furnish any information or return under section 151,—

- (a) without reasonable cause fails to furnish such information or return as may be required under that section, or
- (b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

he shall be punishable **with a fine which may extend to ten thousand rupees** and in case of a **continuing offence** to a further fine which may extend to **one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty- five thousand rupees.**

125. Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a **penalty which may extend to twenty-five thousand rupees.**

Penalties

Penalty	Relevant Section	Subject of Penalty	Minimum Amount of Penalty	Maximum Amount of Penalty
Offences	122(1)	Specified Offences	10,000/-	Equivalent to tax, TDS, TCS, ITC amount or refund claimed
Tax has not been paid or short-paid or erroneously refunded	122(2)	For any reason other than fraud, willful misstatement or suppression of facts	10,000/-	10% of the tax amount
		For reason of fraud, willful misstatement or suppression of facts	10,000/-	100% of the tax amount
Aiding and abetting of offence	122(3)	Specified circumstances	25,000/-	25,000/-

Penalties

Penalty	Relevant Section	Subject of Penalty	Minimum Amount of Penalty	Maximum Amount of Penalty
Failure to furnish Information	123	If no information is provided under Section 150 within time prescribed in Section 150(3)	100/- per day	5,000/-
Failure to furnish statistics	124	Without reasonable cause or willfully does not furnish statistics	10,000/-	20,000/-
General Penalty	125	Where no penalty is separately provided	25,000/-	25,000/-

General disciplines related to Penalty

126. (1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation.—For the purpose of this sub-section,—

(a) a breach shall be considered a ‘minor breach’ if the amount of tax involved is less than five thousand rupees;

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

General disciplines related to Penalty

(4) The officer under this Act 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.

(5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

Detention, seizure and penalty for goods in transit

129. (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

- (a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;
- (b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

Detention, seizure and penalty for goods in transit

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, *mutatis mutandis*, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

Detention, seizure and penalty for goods in transit

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.

Confiscation of goods and conveyances and penalty

130. (1) Notwithstanding anything contained in this Act, if any person—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or (iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

Confiscation of goods and conveyances and penalty

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

Confiscation of goods and conveyances and penalty

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

C. B. THAKAR & CO
ADVOCATES

THANK YOU

C. B. Thakar & Co

206, Adamji Building, 413, Narshi Natha Street, Masjid (W), Mumbai – 400 009.

Email: cb@cbtclaw.in | office@cbtclaw.in

Mob: 022 23400376 | 9821135674