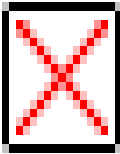


New penal provisions in GST effective - CAs and Tax Consultants beware

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penal provisions contained in the GST law have undergone a sea change with effect from January 1, 2021 with the implementation of the various amendments brought about by the Finance Act, 2020, with major ramifications for Chartered Accountants and other tax consultants and consultants. This piece is an attempt to discuss some of the hazards that tax consultants and CAs have to be aware of, post January 1, 2021.

The new Sub-Section (1A) to Section 122 of the CGST [Act, 2017](#) that was introduced by the Finance Act, 2020 has been notified with effect from 1-1-2021.

This new Sub-Section reads as under:

(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted , shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

The changes that were carried out to Section 132 dealing with prosecution provisions have also been notified to take effect from 1-1-2021. As per the new Section 132(1), whoever commits, or **causes to commit and retain the benefits arising out of**, any of the offences mentioned in the said sub-section, can be subjected to prosecution proceedings and be subjected to imprisonment.

I have highlighted the words that have been added to Section 132(1) with effect from 1-1-2021. Of course, some changes have also been brought about in the list of offences covered in Section 132(1).

Be that as it may, what could be the impact of these changes, on the Chartered Accountants and other tax consultants and consultants who are engaged in handling GST related issues for their clients?

It would seem that these changes are specifically aimed at the large community of CAs and GST consultants, who file GST returns and handle GST related matters for their clients, at the compliance level. As we know, some CAs have been arrested for alleged GST related offences and in cases involving alleged offences committed by their clients, these CAs have probably been arrested for abetting the commissioning of the alleged crimes, as provided in Section 132(1)(k) of the CGST Act. The amendment carried out in Section 132(1) effective from 1-1-2021 would vastly enlarge the scope of the prosecution provisions, vis-à-vis the CAs and the tax consultants, in my humble view. The words 'whoever causes to commit' will have to be read in a broader manner, as contrasted to the provisions related to 'abetment', insofar as my limited understanding of the IPC goes. As we know, in many small businesses, it is very common for the CAs and tax consultants to handle GST filings for their customers and it is a normal practice for these business owners to leave their DSCs with their CAs. In these cases, for all practical purposes, it is the CAs who will handle the GST filings using the DSCs of their customers.

In all of these cases, it is quite possible for the Department to invoke the expanded version of Section 132(1) to initiate prosecution proceedings against the CAs and the tax consultants who are engaged in GST filings of their customers, on the basis that, they have caused to commit the offences mentioned in Section 132(1). While under the law that existed prior to 1-1-2021, CAs could be proceeded against only on the basis that they had abetted the alleged crimes, under the new law, CAs and tax consultants who are engaged in GST filings could also get in issues with the Department on the basis that they have caused their customers/clients to commit the alleged crimes, etc.

Insofar as the introduction of Section (1A) to Section 122 is concerned, I would presume that scope of penalty provisions related to the offences specified in Section 122(1) could also get extended to CAs and tax consultants, who could be alleged to be the persons at whose instance, the specified offences were committed. CAs and tax consultants, who handle compliances under GST would need to bear in mind that they can also be visited with penalties, in addition to penalties being imposed on their clients, under this new Sub-Section.

What are the possible precautions that the CAs and tax consultants can take, to defend themselves, under the new provisions?

A good practice would be to have the customers/clients themselves to e-file the GST returns and not to undertake the physical filing of the GST returns (even by using the DSCs of their customers). While the CA and the tax consultant could always prepare the GST return and send this across to his client, it would be best that he asks the client himself to e-file the return.

In cases where the CA or the tax consultant himself has to e-file the GST return (using the DSC of his client), it would be better to have his client, countersign the return, etc. in the physical format.

It would be better for CAs and tax consultants to have a detailed service level agreement with their clients, in terms of which, it could be clarified that it is the responsibility of the client to ensure accuracy of data based on which, the GST return is prepared and e-filed by these CAs and tax

Lastly, CAs and tax consultants should also look at obtaining indemnities from their clients, to compensate them for any damages that they may suffer, in the event that proceedings are initiated against them, under the new provisions.

Before concluding

While these are very early days, these developments do seem to indicate that the mood of the Government vis-à-vis the huge ITC related frauds that are being unearthed, at frequent intervals and the role of CAs and tax consultants. The Government probably feels that these new provisions would help curb the menace of ITC related frauds, etc. in a more effective manner and would act as a possible deterrent.

These new developments do suggest that CAs and tax consultants should take extra care and diligence, while handling GST matters for their clients. While *mens rea* would still be a *sine qua non*,

for proceeding against them even under the new provisions, it cannot be denied that the role of CAs and tax consultants who handle GST compliances for their clients, would come under much greater scrutiny now.

On a humorous note, I do not know, if these new developments would prompt the insurance companies to come with new policies to compensate CAs and tax consultants, vis-à-vis the impact arising out of these penal provisions.

[The views expressed are strictly personal.]

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