



Analysis of Provisions of Bail for Offences committed under GST & Recent GST Amendments

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GST officers unearth over Rs 35,000 crore fraud in 2020-21, arrest 426 people

PTI • Last Updated: Jul 15, 2021, 09:54 AM IST



Synopsis

During 2020-21 (April 2020 to March 2021), 426 persons, including 14 professionals such as CAs, lawyers and directors, were arrested.



In the year-long crackdown on tax evasion, the GST authorities have unearthed over Rs 35,000 crore of tax fraud committed by misuse of input tax credit provision under the Goods and Services Tax (GST) regime. During the 2020-21 financial year, the CGST zones and the Directorate General of GST Intelligence (DGGI) booked about

8,000 cases involving fake ITC [NSE 0.80 %](#) of over Rs 35,000 crore, a statement from CBIC said.

Under the GST regime, at the time of paying tax on output, entities can reduce the tax they have already paid on inputs.

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GST officials booked 8,000 cases in ITC frauds worth ₹35,000 crore during FY21



Centre has been running a nationwide drive against ITC frauds since November last year.

1 min read . Updated: 13 Jul 2021, 06:11 PM IST

Livemint, Edited By **Vivek Punj**

During the financial year 426 persons, including 14 professionals such as CAs, Lawyers and masterminds, beneficiaries, directors etc., were arrested in ITC fraud cases

PATNA NEWS

50 Bihar firms caused ₹171 crore loss in GST tax, raided

The firms were selected for searches by using data analytics and 360 degree profiling on the instructions of commissioner cum secretary, commercial taxes department, Dr Pratima.

By HT Correspondent

PUBLISHED ON JUL 11, 2021 11:33 AM IST



The department said it had started tracking the owners of these firms involved in tax evasion. (PTI)

The commercial taxes department on Saturday carried searches at 50 business firms across Bihar and ... swindling worth ₹171 crore through fake e-way bills and fraudulent claim of input tax credit (ITC).

Close ×



GST invoice fraud: 104 arrested within three weeks, kingpin denied bail

In a nationwide drive against GST fake invoice fraud, the authorities on Friday arrested 8 fraudsters, booked 65 cases and unearthed 114 fake GSTIN entities

BusinessToday.In | December 4, 2020 | Updated 22:41 IST



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Home > Business

GST officers arrest 140 persons on charges of fake invoicing, focus on under-valuation of transported goods

Revenue Department sources said some companies of Delhi and Himachal are under investigation for under-valuation of goods and its transportation through transporters of Ludhiana and Jalandhar.



Published: 13th December 2020 07:26 PM | Last Updated: 13th December 2020 07:26 PM



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FAKE INVOICES

&

ITC



Fake invoices for GST credit: Govt may invoke COFEPOSA against offenders

By: FE Bureau | November 16, 2020 3:45 AM

The government is also examining whether businesses whose owners or promoters do not have commensurate income tax payment records may require physical and financial verification before their companies can be allowed GST registration.

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Sunday indicated that issuers and beneficiaries of fake GST invoices can be

detained under the COFEPOSA (Conservation of Foreign Exchange and Prevention of Smuggling Activities Act). At present, actions are being initiated under the GST law, income tax law and money laundering act.

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This indication has come at a time when 25 persons, including the son of an MLA, were arrested during the last four days as the result of a nationwide drive against fake invoices. Those arrested include two kingpins and two professionals in around 350 cases booked against 1,180 entities for issuance of fake invoices. The actual number of fake ITC involved is being ascertained. Search and investigations are on to identify and apprehend the

Home > Consumers > Another case of fake GST invoices busted

Consumers

Another case of fake GST invoices busted

Published: May 31, 2019 | 12:20 pm

894 



Hyderabad: Officers of Anti-Evasion wing of Medchal Central GST Commissionerate booked yet another offence case of fake invoices and evasion of GST against M/s. Aavya Enterprises, who had taken fraudulent input tax credit (ITC) based on 'Fake Invoices' received from 9 different firms/entities located in Kolkata and Hyderabad, without actual receipt of goods.

The fraudulent ITC taken was utilized by M/s. Aavya Enterprises for evasion of GST payable by them on their supplies of Aluminum / MS/ Copper Scrap, which were procured from open market unregistered suppliers, when the said metal scraps are sold/supplied to manufacturers of Aluminum/MS/Copper- Rods/Ingots/ Castings etc. Thus, the offence involved falls under Sec. 132(1) (c) & Sec. 132(5) of CGSTA, a cognizable & non-bailable offence, attracting inter alia, the provisions for arrest under Sec. 69 of CGSTA. This case against M/s. Aavya Enterprises, is in continuation to the cases registered against four firms/entities VIZ: Hindustan AAC Products; Aitri Engineers & Contractors Ltd; Sri Krishna Castings; Shree Metals, as reported on 23.05.2019. The total amount of fraudulent ITC taken based on the fake invoices and in turn utilized evade GST by M/s. Aavya Enterprises, is Rs. 5. 76 Cr.

The total value of goods involved in this bunch of cases is about Rs. 143 Crore and the total fraudulent ITC involved is Rs. 25.74 Cr.

Amit Mittal Proprietor of M/s. Aavya Enterprises was arrested on Thursday and he was remanded for 14 days. Two persons arrested earlier are denied of bail by the Special Judge of Economic Offences court.

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GST authorities bust a racket of fake invoicing of Rs 7896 crore

/ Gulveen Aulakh, ET Bureau • Last Updated: Mar 03, 2020, 02:16 PM IST

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Synopsis

The officers of Anti Evasion wing of Central Tax, Delhi West Commissionerate found that the network of fake companies procured and generated invoices without actual supply of goods and availed as well as passed on the ITC.



Agencies

GST authorities in West Delhi busted a major racket of **fake invoicing** of Rs 7896 crore involving fraudulent Input Tax Credit (ITC) of Rs.1709 crore, using a network of 23 shell companies, the

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Input tax Credit laundering and parallel economy in GST regime

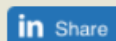
By Radhe krishna | Views 14352



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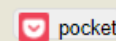
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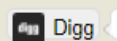
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GST was thought to be the economic integration of the nation with the slogan of one nation one tax. The system of GST taxation has undergone a roller coaster ride since the day of its implementation. A large number of changes were made into the original idea of GST in order to suit the needs of the nation and the technical preparedness. One of the pivots of GST was invoice matching but keeping in view the technical unpreparedness and needs of the smaller business, it was done away with. This doing away of invoice matching opened the Pandora of modus operandi leading to large scale of tax evasion. The business came out with new ideas of evasion be it huge credit availment in tran-1 returns, profiteering (non-passing of benefits of tax reduction on different goods and services to the ultimate consumer), registration of large number of fake firms (as registration norms made lenient) and many more other tactics harnessing the loopholes into the GST systems.

In the recent times, a large number of fake firms have been caught up by various anti evasion and tax investigation agencies which has estimated tax implication to the tune of 15000 crores (figure from the recent statement of ministry of finance) or may be more upon the economy. These fake firms were involved in the sale and purchase of fake invoices thus passing on of the input tax credit without any actual business. This can be understood as "Credit laundering". Input tax credit means one can avail credit of tax already paid by the person or business behind him in the supply chain so that there is no double taxation. The investigating agencies who caught these fake firms say that these fake firms integrated themselves in the chain and were passing on the credit first to different other fake firms and then ultimately to one actual business firm after many layers, which seems synonymous to concept of placement, layering and integration as in money laundering.

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However, there is more than just passing on of the ineligible input tax credit or credit laundering. There have been two kinds of modus operandi used by these fake firms. In the first kind there is no actual movement of goods or services.

GST Council panel for 2-pronged strategy to curb fake invoices

IANS • Last Updated: Nov 23, 2020, 11:28 AM IST

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Synopsis

According to people in the know, the panel has recommended that new or fresh registrations in GST may adopt an Aadhaar-like registration process under which new registration can be done online with live photo and use of biometrics with due verification of documents.



GST law panel for 2-pronged strategy to curb fake invoices

RELATED

View: Rebalancing capitalism-A case for purpose driven businesses

RBI working group on bank ownership puts greater onus on promoters, says Hinduja Group

New Delhi: The Law Committee of the GST Council has suggested a two-pronged strategy to tackle the issue of fake invoices, sources said.

According to people in the know, the panel has recommended that new or fresh registrations in GST may adopt an Aadhaar-like registration process under which new registration can be done online with live photo and use of biometrics with due verification of documents.

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WORLD INVESTOR WEEK 2020

Permanent loss to Reputation & Role of Tax Professionals

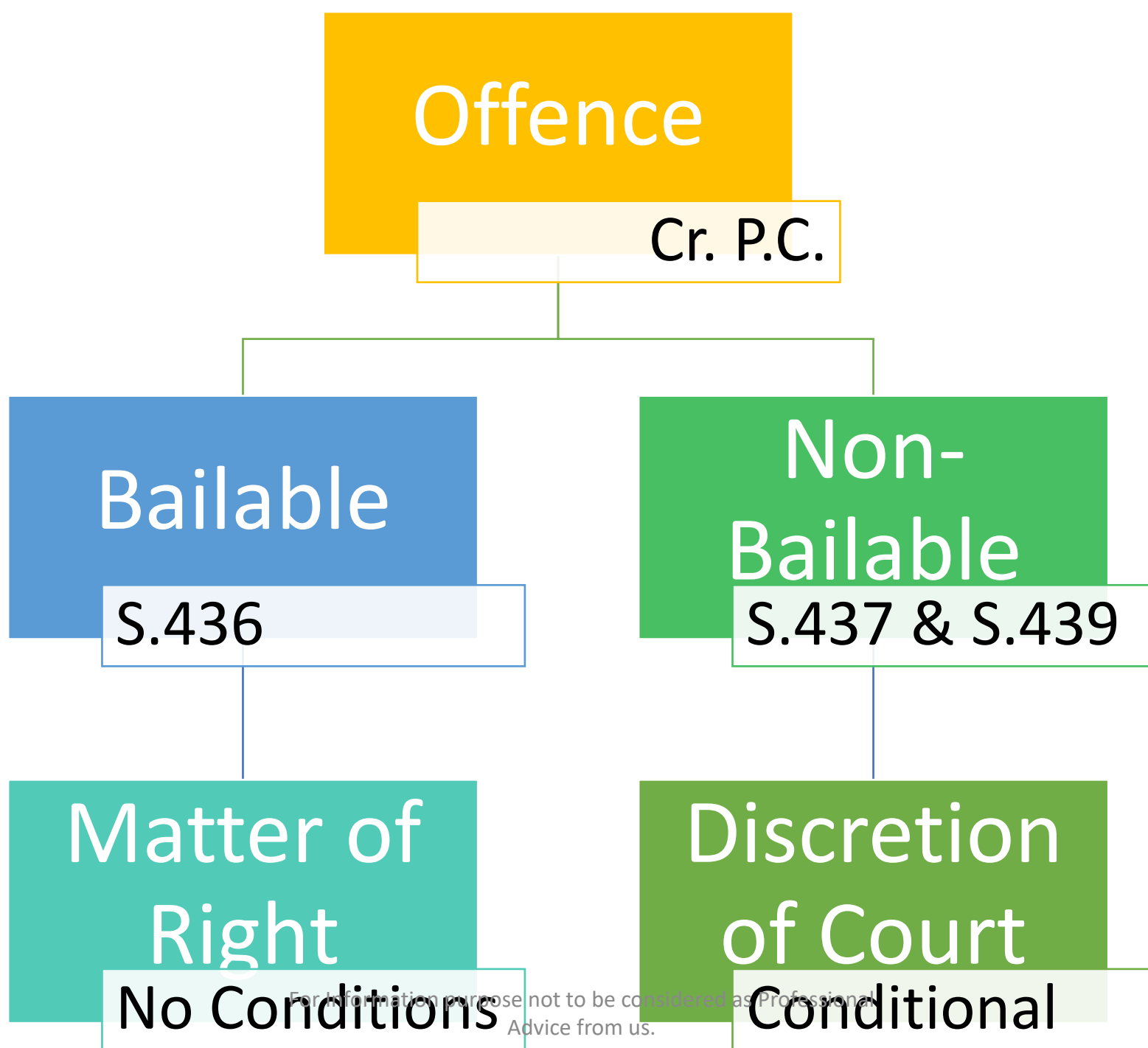


Code of Criminal Procedure, 1973 Cr. P. C.

Central Goods & Service Tax Act'2017
CGST

Punishment for certain Offences (S.132)

Quantum of Offence	Type
Less than Rs. 5 Crores	Bailable (except for Repeat Offenders)
More than Rs. 5 Crores	Non-Bailable



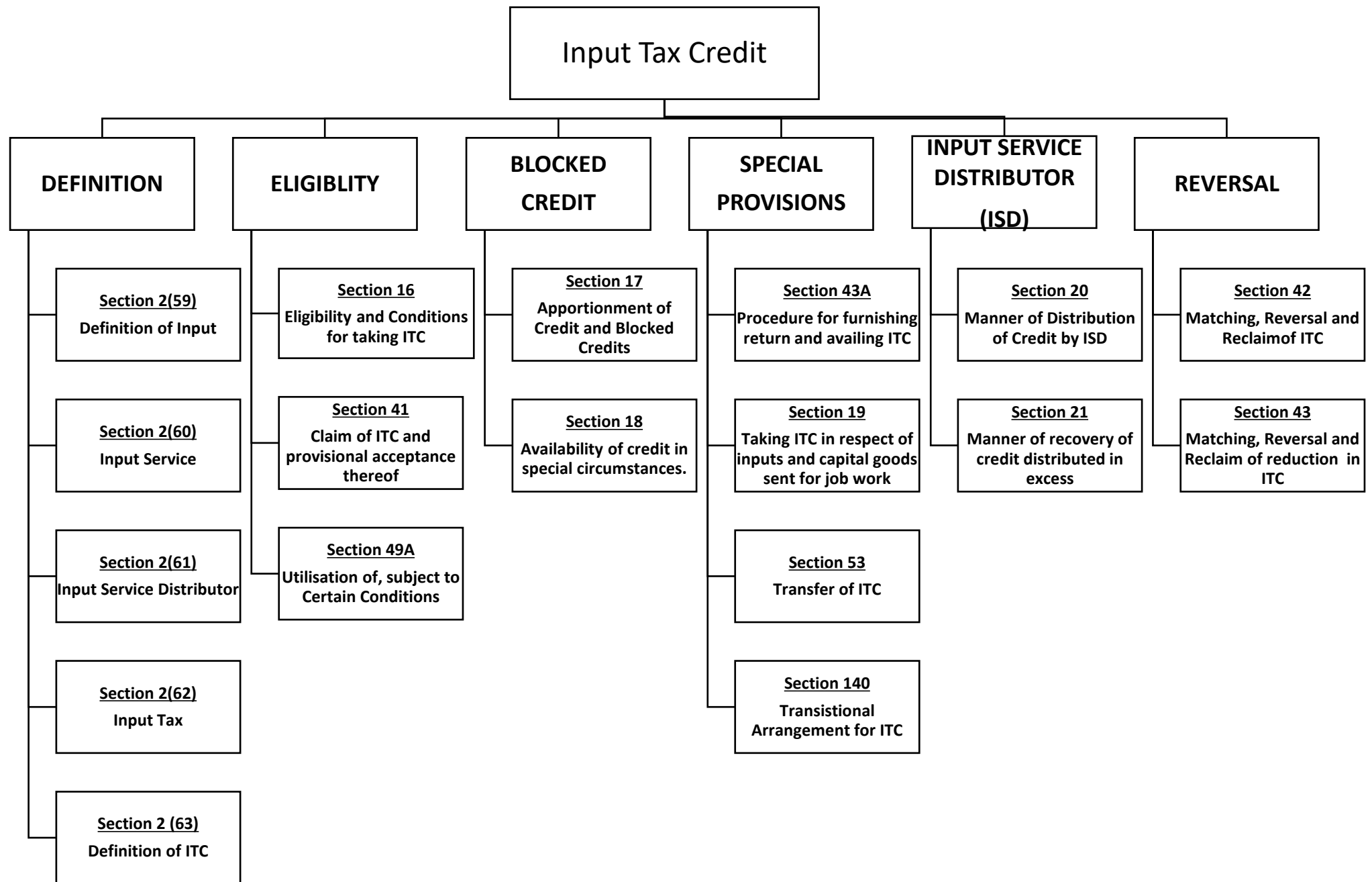
Types of Bails

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graph TD; A[Types of Bails] --- B[Regular S.437 & S.439]; A --- C[Anticipatory S.438]; A --- D[Interim Bail];
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Regular
S.437 & S.439

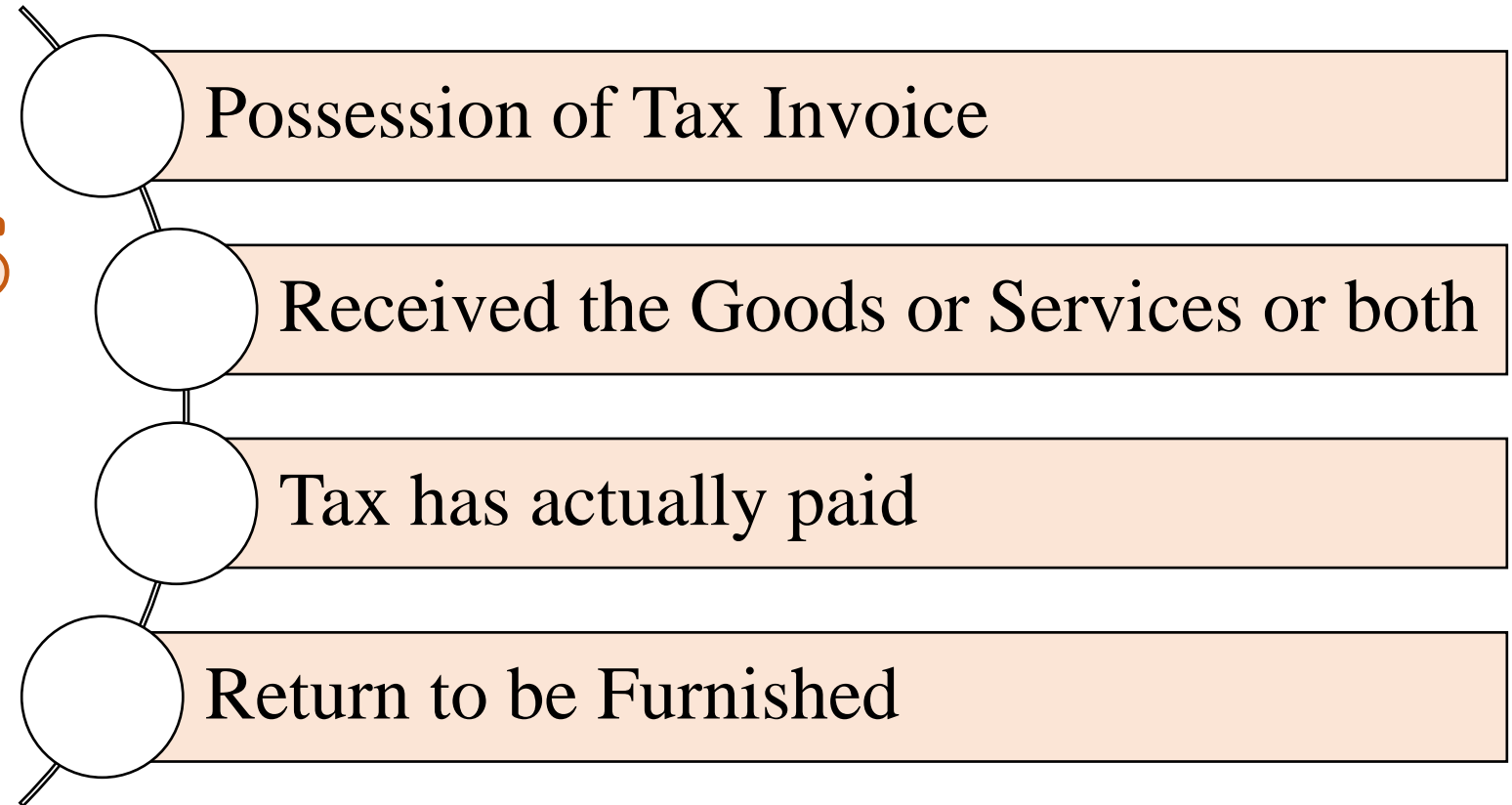
Anticipatory
S.438

Interim Bail



SECTION 16

CONDITIONS TO AVAIL ITC



To curb Fake Invoices



Registration
linked with
Aadhaar Card



Rule 86A

WHAT IS FAKE INVOICE?

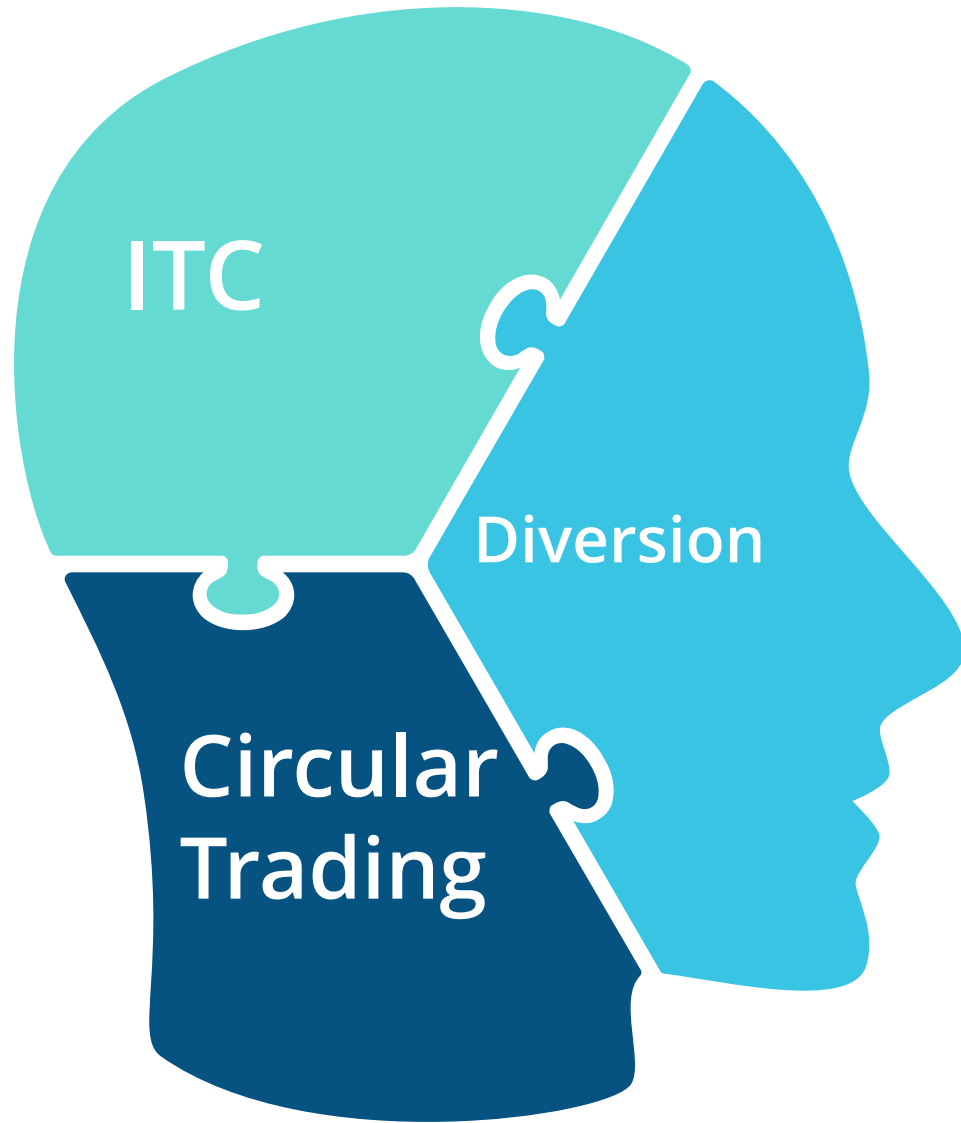


SOP on Fake Invoices by CBIC (May'2019)

- The *mens rea* for the use of such fake invoices appears to be fraudulent availment/encashment of ITC credit, the unscrupulous entities engaged in this also defraud other authorities such as Banks by inflating turnovers, laundering of money etc.

What is a fake invoice?

- The GST invoices are raised by an entity without actual supply of goods or services or payment of GST.



ITC without receipt of Goods or Services



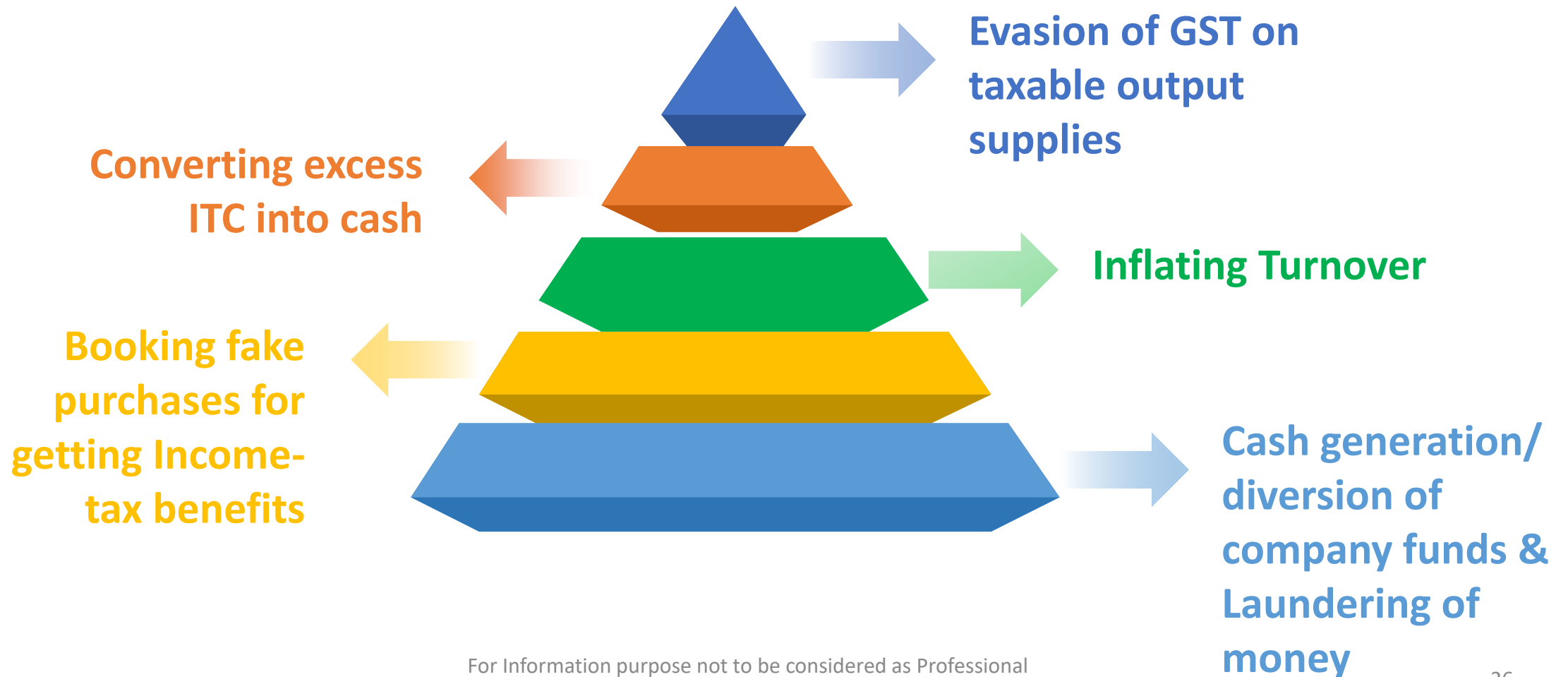
Invoice of 1 person directed to another



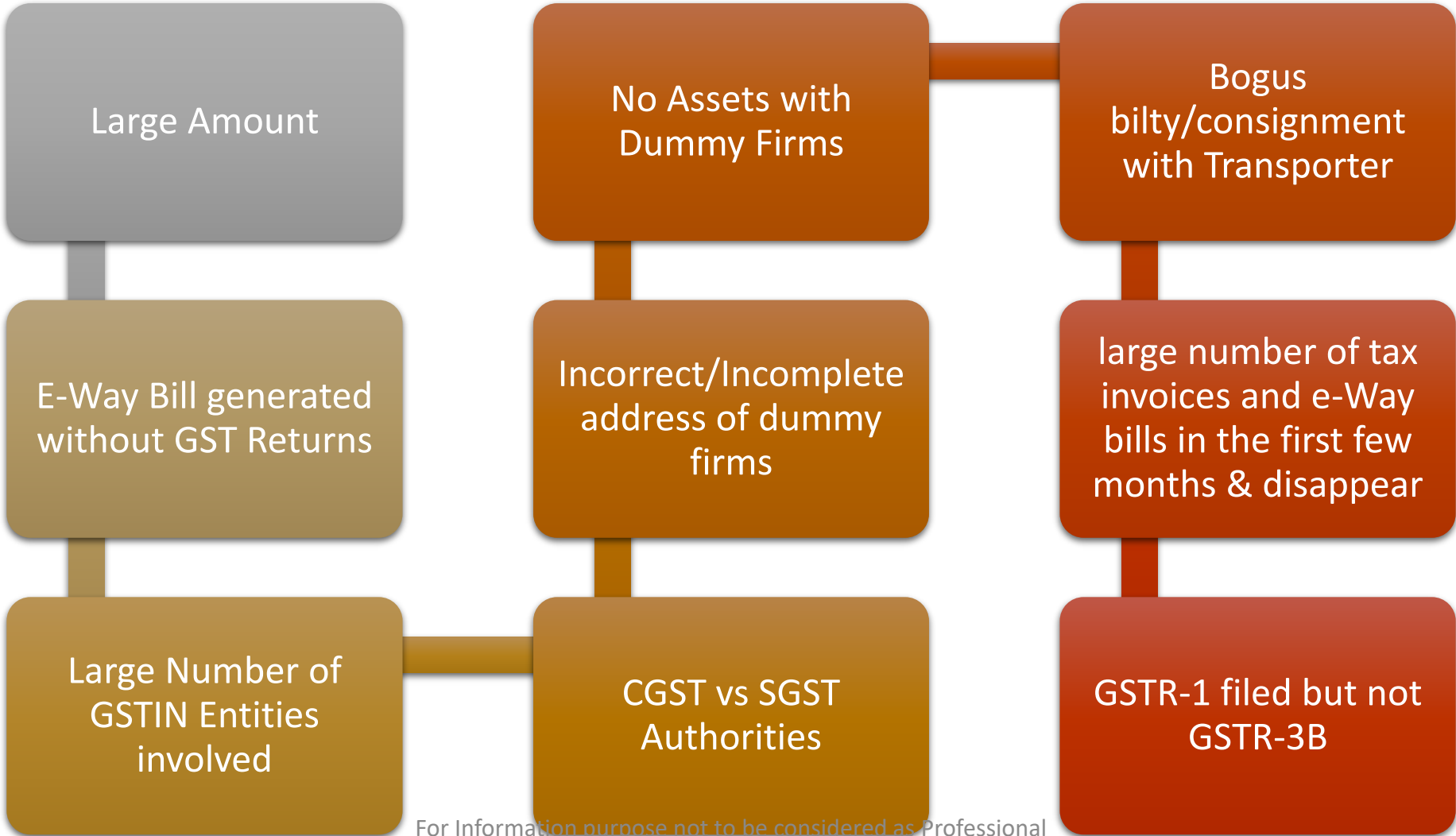
transfer of input tax credit - shell companies/dummy companies - to increase the turnover



Potential Motive to use Fake Invoices



Salient features of GST frauds involving fake invoices



Scrutiny/Verification & risk profiling

Historically tax evasion prone sectors

Multiple registrations on same PAN



Common items

Re-application for registration

Live registration - PAN - CGST jurisdiction - offence - booked by SGST authorities

Final SOP



Identification of Fake Invoice Fraud

a) Multiple GSTIN registrations for a given address

b) Multiple GSTIN for a given PAN

c) GSTIN using incomplete or wrong addresses

d) Tax payers using sensitive commodities

e) Common e mail, common mobile nos, common address, common authorised signatories, common promoters for multiple GSTIN.

Identification of Fake Invoice Fraud

f) Mismatch between the premises declared and the volume of goods transacted.

g) Mis-match between the quantum or transactions and the e-way bills generated. If there are no e-way bills or less e-way bills generated compared to the details of transactions as per the GST returns.

h) PAN involved in any “fake invoice” fraud or any other GST frauds appear as either in GSTR1A or GSTR 2A.

i) Abnormal ITC utilisation (for example above 95%)

Investigation of Fake Invoice Fraud

a) Search of all premises declared to prove the lack of or inadequacy of manufacturing facility of the declared goods.

b) Other indicators like consumption of electricity, water etc mis match with the declared quantum of goods manufactured.

c) Lack of facility and space to handle the quantum of goods traded.

d) Suppliers of invoices do not have any premise for dealing with the goods

e) The inputs and input services required for provision of certain services not existing.

Investigation of Fake Invoice Fraud

f) Lack of valid clearances / licences / permissions from any other authorities which are required to deal in any manner with either inputs or final products or intermediate products, input services or output services.

g) Lack of required agreements between the entities.

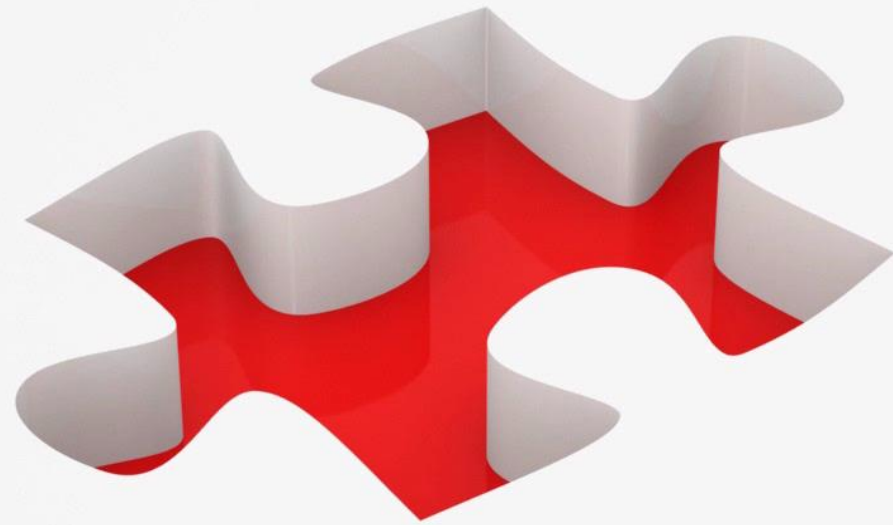
h) Lack of e-way bills

i) Fake vehicle nos shown in e e-way bills or invoices.

j) Comparing the details supplied to other agencies like Income Tax, Registrar of companies

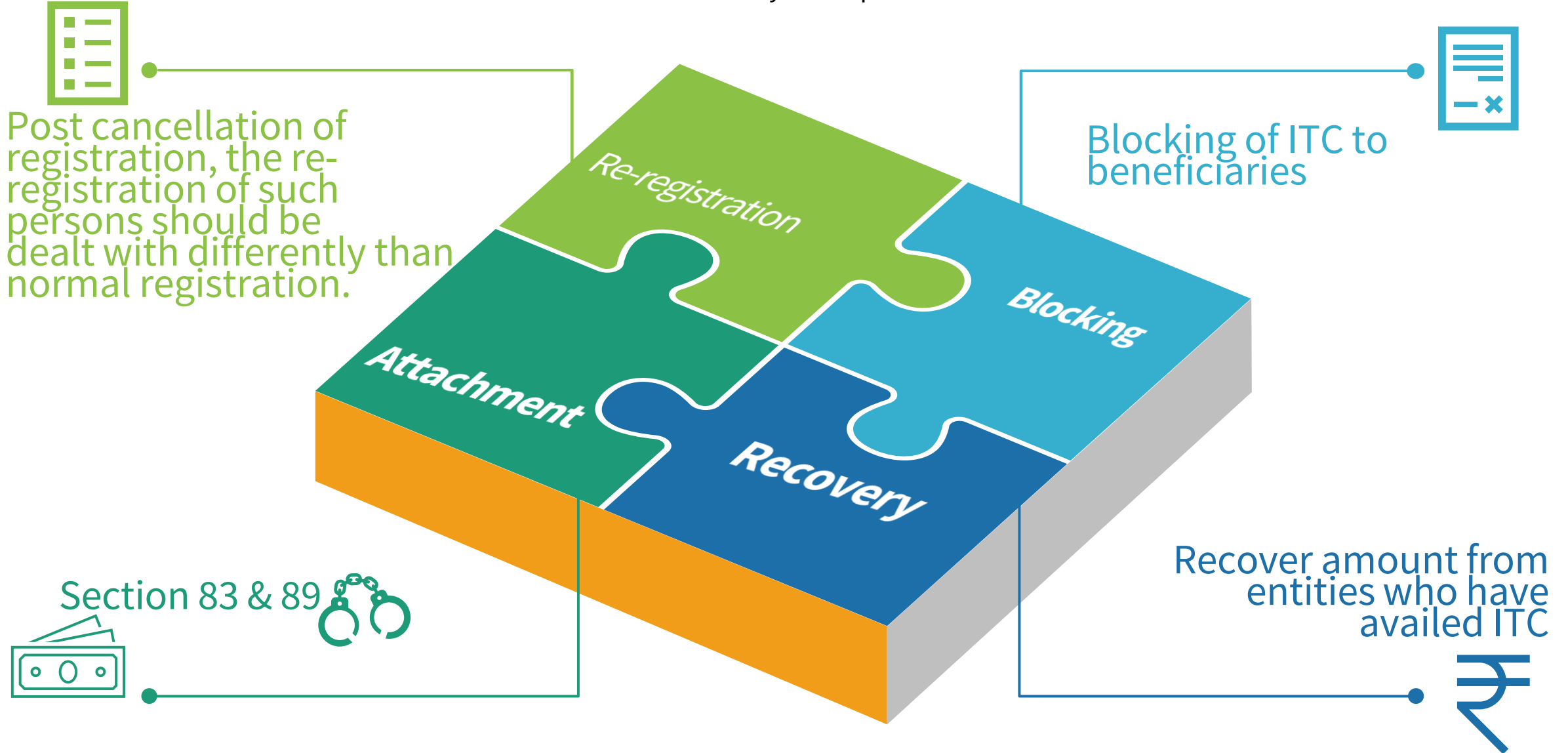
k) Mismatch with the details available for vehicles from RTO office

Action after Detection



Key Actions after Detection

Issue of SCN or any other penal actions



Section 83 Provisional attachment to protect revenue in certain cases

During the pendency of any proceedings, if commissioner's opinion for the purpose of protecting the interest of revenue by order in writing attach provisionally any property, including bank a/c belongs to that such person.

Provisionally attachment shall cease to have effect after the expiry period of one year from the date when provisional attachment order is made.

Rule 159 Provisional attachment of property

Property attachment order passed by commissioner and detailed of property mentioned in this order which is to be attached.

Copy of attachment order to be sent to concerned authorities for encumbrance.

If nature of attached property is perishable or hazardous if the taxable person pay.

- a) Amount equal to market price of such property, or
- b) Amount that is or may become payable by taxable person.

Which ever is lower then such property shall be released by an order, on proof of payment.

If taxable person failure to pay specified amount, commissioner may dispose of such property and adjust the proceeds amount with the amount payable.

If taxable person has any objection from the attachment order, may files his objection within 7 days of attachment.

Release of property if objection are sustainable.

Rule 153 Attachment of interest in partnership

Where the property to be attached consist of an interest of defaulter, being a partner in partnership proprietary , P.O may make an order under the certificate, and may by the same or subsequent order, appoint a receiver of the share of such partner in profits whether already declared or accruing, and any other amount which may due to such partner and also direct accounts and inquiries and make an order for sale of such interest.

Other partners shall be liberty at any time to redeem the interest charged or, in case of a sale being directed to purchase the same.

Sec-67 :- Power of inspection, search and seizure

Inspection

If such proper officer 'has reasons to believe' that:

- the taxable person:
 - (i) has **suppressed any transaction** of supply of goods or services or both; or
 - (ii) has **suppressed information** relating to stock in hand; or
 - (iii) has **claimed input tax credit in excess** of his entitlement; or
 - (iv) has **contravened any of the provisions of the GST law**, with an intent to evade taxes.

Search and seizure:

Jc issue authorisation (in form GST INS-01) to any other officer subordinate to him.

Powers of authorized officer:-

- to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.

Provisional Release of Seized Goods :

The goods so seized shall be released on a provisional basis, upon:

- (a) execution of Bond in Form GST INS -04 for the value of the goods and**
- (b) furnishing of security in form of Bank Guarantee equal to amount of applicable tax (incl. SGST / UTGST / IGST / Cess) + interest + penalty.**

Return of Seized Goods:

If no notice has been issued within 6 months (or an extended period of another 6 months by the proper officer, on the basis of sufficient grounds), the seized goods/exhibits ought to be returned to the person from whom the goods were seized.

Sec-137 :- offence by companies:-

If any offence is committed by companies/HUF,

every person/ director/ manager/ secretary or any other officer who at the time of commitment of the offence, 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 such offence and shall be liable to proceeded against and punished accordingly.

if the accused person proves that he was in no way related to the offence being committed or he had exercised all possible measures to prevent commission of such offences, then he is not punishable under this section.

Section 138- Compounding of offences-

- **Paying fee instead of undergoing prosecution.**
- **Specified offences can be compounded only once.**
- **As per Rule 162 of the GST Law, the application of compounding shall be filed in FORM GST-CPD-01**

INTRODUCTION

- Bail is a matter of right if the offence is bailable;
- Bail is a matter of discretion if the offence is non-bailable;
- Bail is not to be granted if the offence is punishable with death or imprisonment for life but the court has discretion in limited cases to order release of a person

• ‘

INTRODUCTION

‘The basic rule may perhaps be tersely put as bail, not jail’

- The said rule has been followed by the Hon’ble Supreme Court in number of judgements while granting of bail including high profile economic offence matters. At this juncture, it is need to be noted her that basic premise of Indian jurisprudence is accused is innocent until proven guilty unless any legislation shifts the burden of proof on accused.
- It is well settled law that personal liberty is a very precious fundamentals right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case. Irrational and Indiscriminate arrest are gross violation of human rights.

INTRODUCTION

- Bare perusal of Section reads with Section 132 of the CGST Act provides that under the GST for specified offence where quantum of offence is above INR 5Cr. Then offence is non-bailable and rest of the offence are bailable except for repeat offenders However, neither CGST Act/ SGST Act nor rules made thereunder provides any procedure for bail however Section 69(3) of the CGST Act relies on provision of Code of Criminal Procedure ,1973 for purpose of bail/default bail/custody.etc. It is need to be appreciated here that not only the CGST Act but also Customs Act.

Gravity of Offence

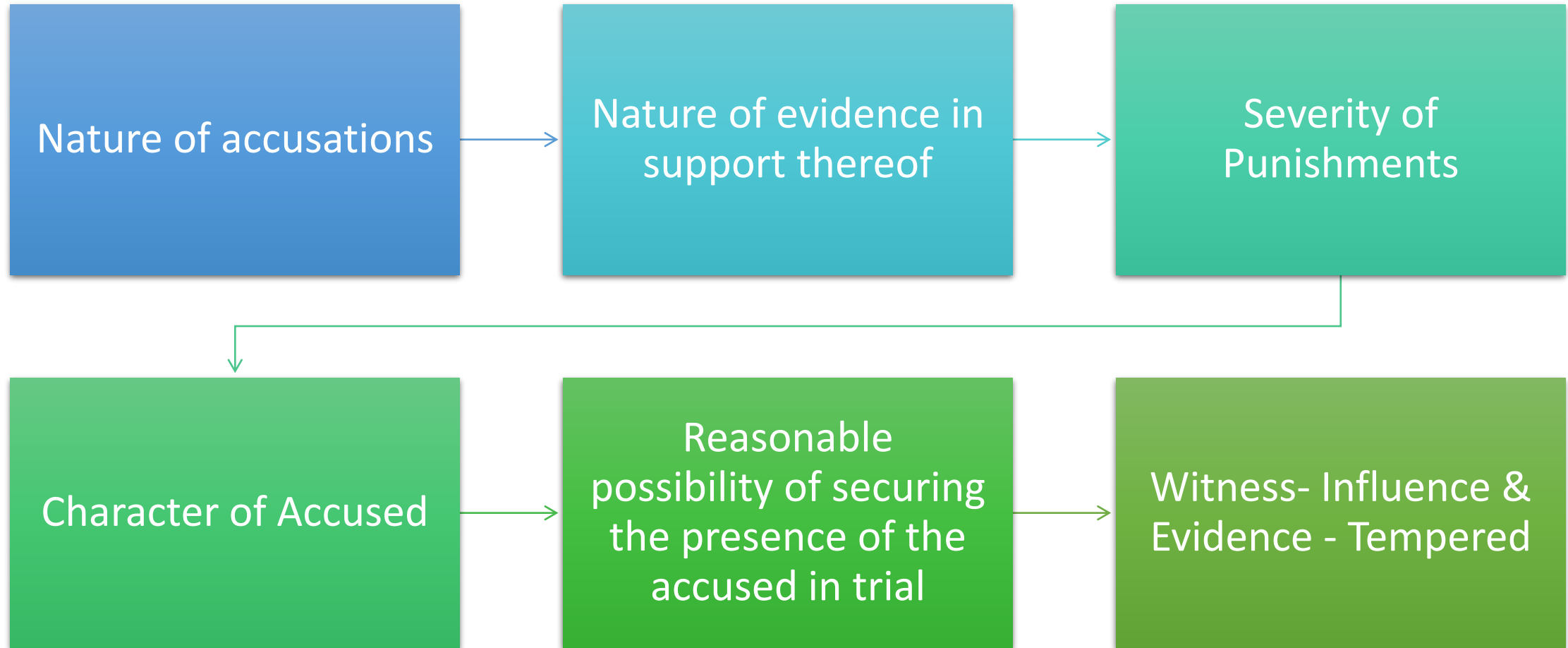


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Grave Offence

- “Gravity of Offence” is a factor which is in addition to the triple test i.e Facts, Circumstances & Punishment
- Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle.

While granting bail, the Courts keeps in mind



Y.S. Jagan Mohan Reddy vs CBI (2013) SC

Economic Offences
arises out of deep-
rooted
conspiracies &
involving Huge
Loss to Public
Funds

They affect the
Economy of the
Country as a whole
and thereby posing
serious threat to
Financial Health of
the Country

Sanjay Chandra vs CBI (2012) SC

- The Punishment for an offence is imprisonment for a term which may extend to **7 years**.
- It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue.
- Therefore, in determining whether to grant bail, both the seriousness of the charge & the severity of the punishment should be taken into consideration.

P. Chidambaram vs Dir. of Enforcement (SC)

- Case was High Profile INX Media Scam
- Seriousness of the Charges
- Severity of the Punishment
- Background of the accused

Tampering of Evidence

- Prosecution generally charges that if bail is enlarged then there may be risk of tampering of evidence by the accused
- However, in the Economic Offence matter majority of material documents/evidenced seized/collected are in possession of the Prosecution only

Important case laws

- State of Maharashtra vs Naimal Punjaji Shah (1969) 3 SCC 904
- Dhirendra Singh vs UOI (HC – Rajasthan)
- Since all the documents seized are lying either with the officers of the Department or the Court, so there is no question of tempering with the evidence

Registrations

Relevant Sections



Person Liable for Registration



Procedure for Registration



Person not liable for Registration



Deemed Registration



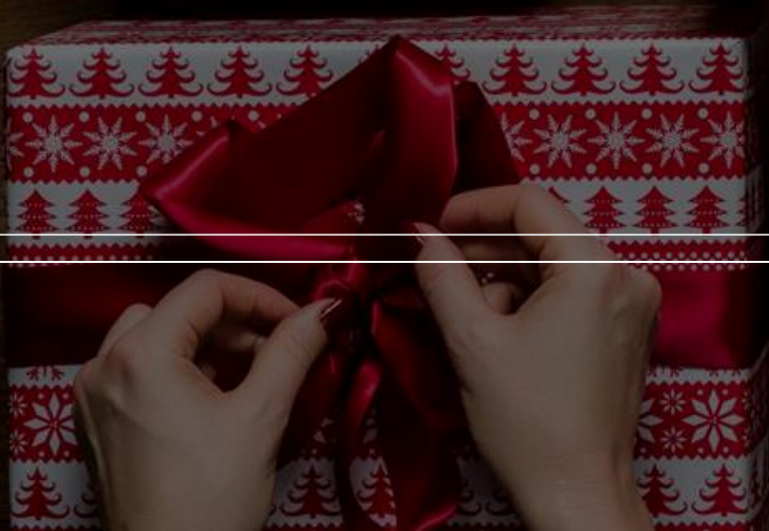
Compulsory Registration
in certain cases



Special Provisions relating to
Casual TP
&
Non-Resident TP

N/N: 94/2020

- 3 to 7 days
- 7 to 30 days
- GSTR-1 excess of GSTR-3B: Cancellation Powers
- No opportunity of being heard: Deleted Rule 21A
- Rule 36(4): ~~10%~~ now 5%
- New Rule 86B: 99% ITC: 1% cash: Taxable Supplies >Rs. 50 Lakhs
- E-way bill distance: ~~100kms~~ now 200kms
- Form REG-31



Thank You

Thanking You

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