

ASSESSMENT, OFFENCES & PENALTIES UNDER GST

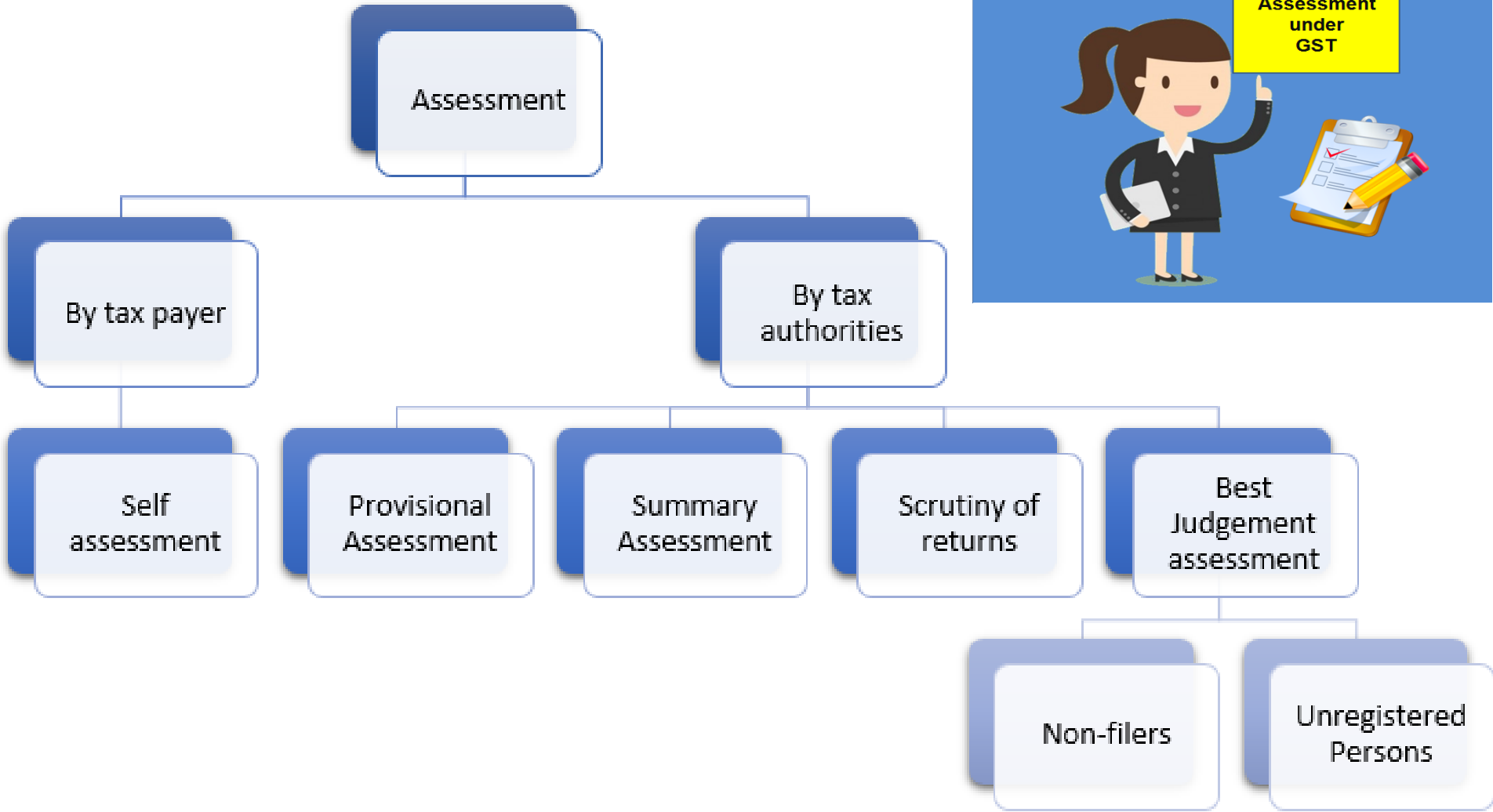
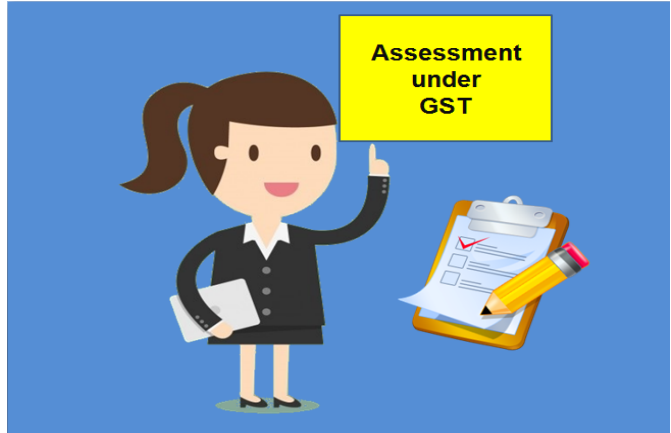
CA SAURABH PUNYANI

B.COM, L.L.B., FCA, DISA, CCA

M NO. 9423680948, E-MAIL : casaurabhpunyani@gmail.com

ASSESSMENT





SELF ASSESSMENT



YAAR.....SAB KAAM MUJHE HI
KARNA PADTA HAI....!!!

- Every **registered** taxable person shall himself assess the taxes payable and furnish a return for each tax period.

PROVISIONAL ASSESSMENT

- An assessee can request the officer for provisional assessment if he is unable to determine **value** or **rate**.

VALUE

Calculating the transaction value

Understanding whether certain receipts should be included or not

RATE

Classifying the goods/services

Identifying whether any notification is applicable or not



Provisional Assessment - Procedure

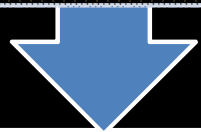
Application in Writing

Contractor must complete and submit a written application for provisional assessment.



Provisional Order - Within 90 Days from receipt of application

Assessment allowing payment of work completed to date, subject to retention of hold back. Work must be completed within 90 days.



Final Order – Within 6 months from communication of provisional order

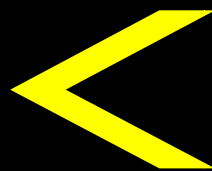
Pass a final order taking into account such information as may be required.

Provisional Assessment - Extension of Time Limit

The extension of time limit can be done on sufficient cause & reasons to be recorded in writing by

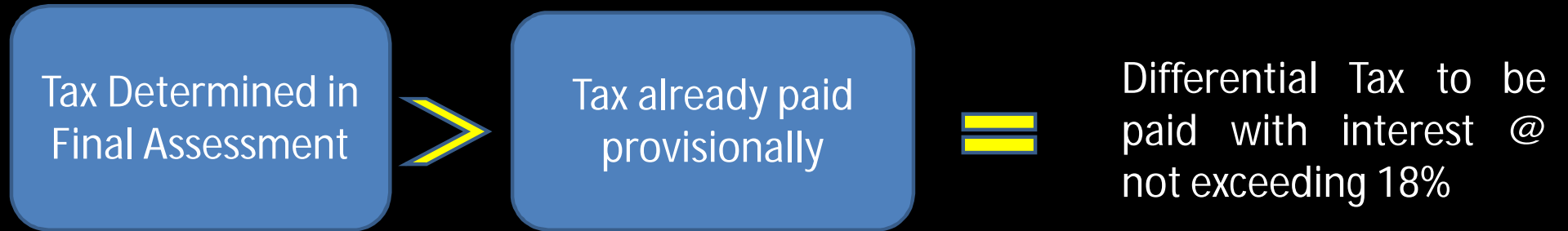


Joint Commissioner or
Additional Commissioner
by maximum up to further
6 months



Commissioner by
maximum up to further 4
years

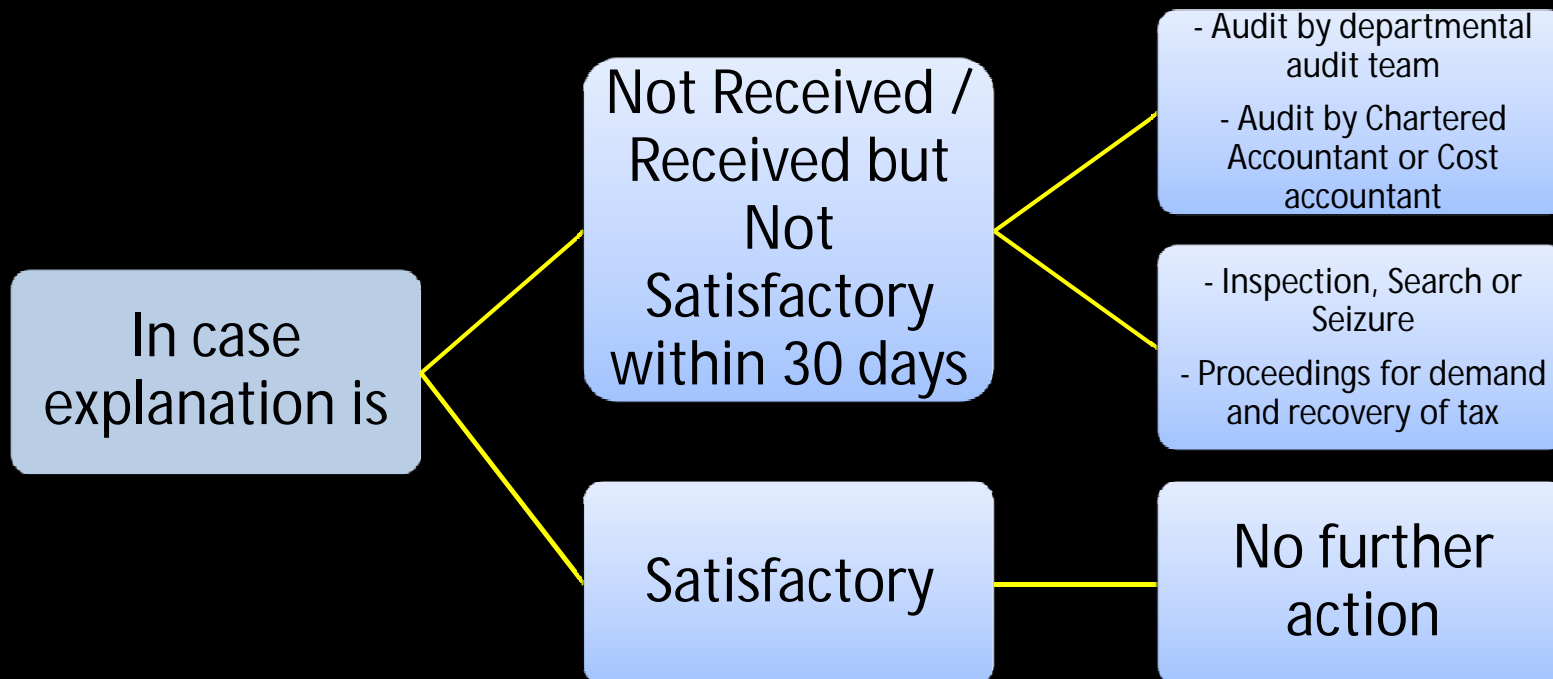
Provisional Assessment – Interest on Differential Tax



SCRUTINY OF RETURNS

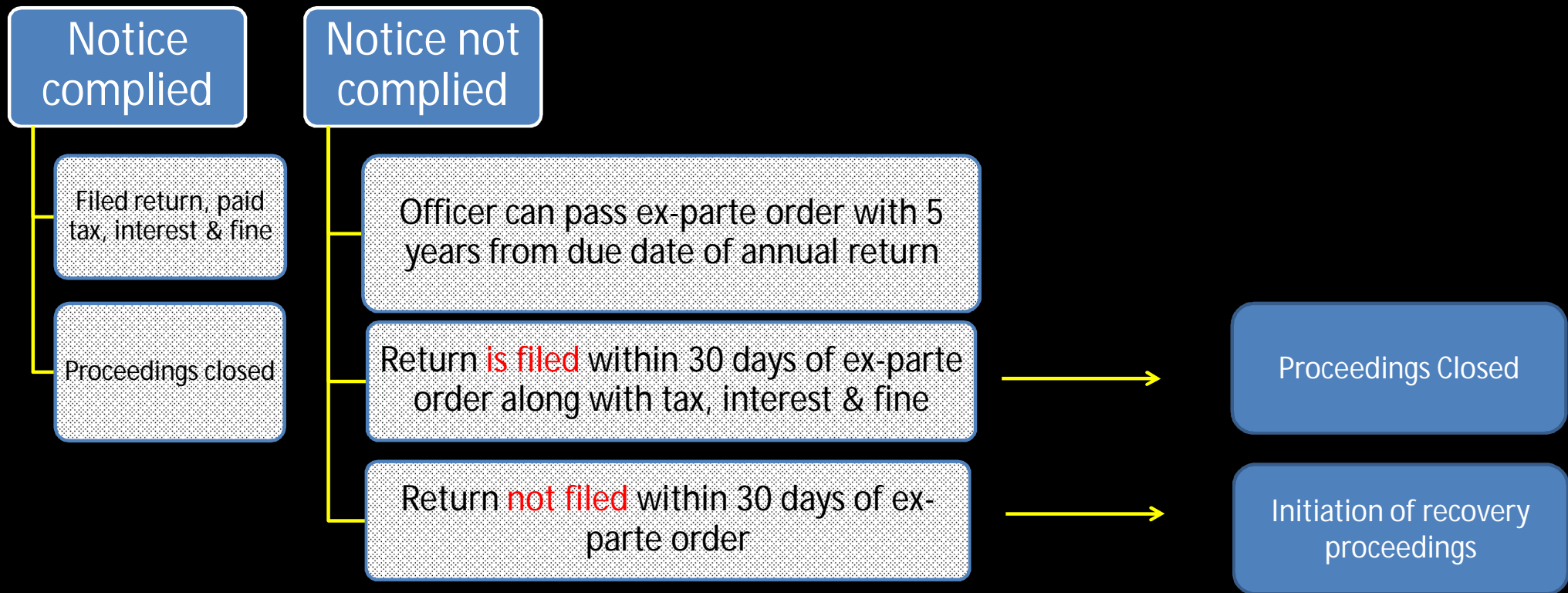


The Proper officer may scrutinize the returns and inform the tax payer for any discrepancy noticed and seek his explanation.



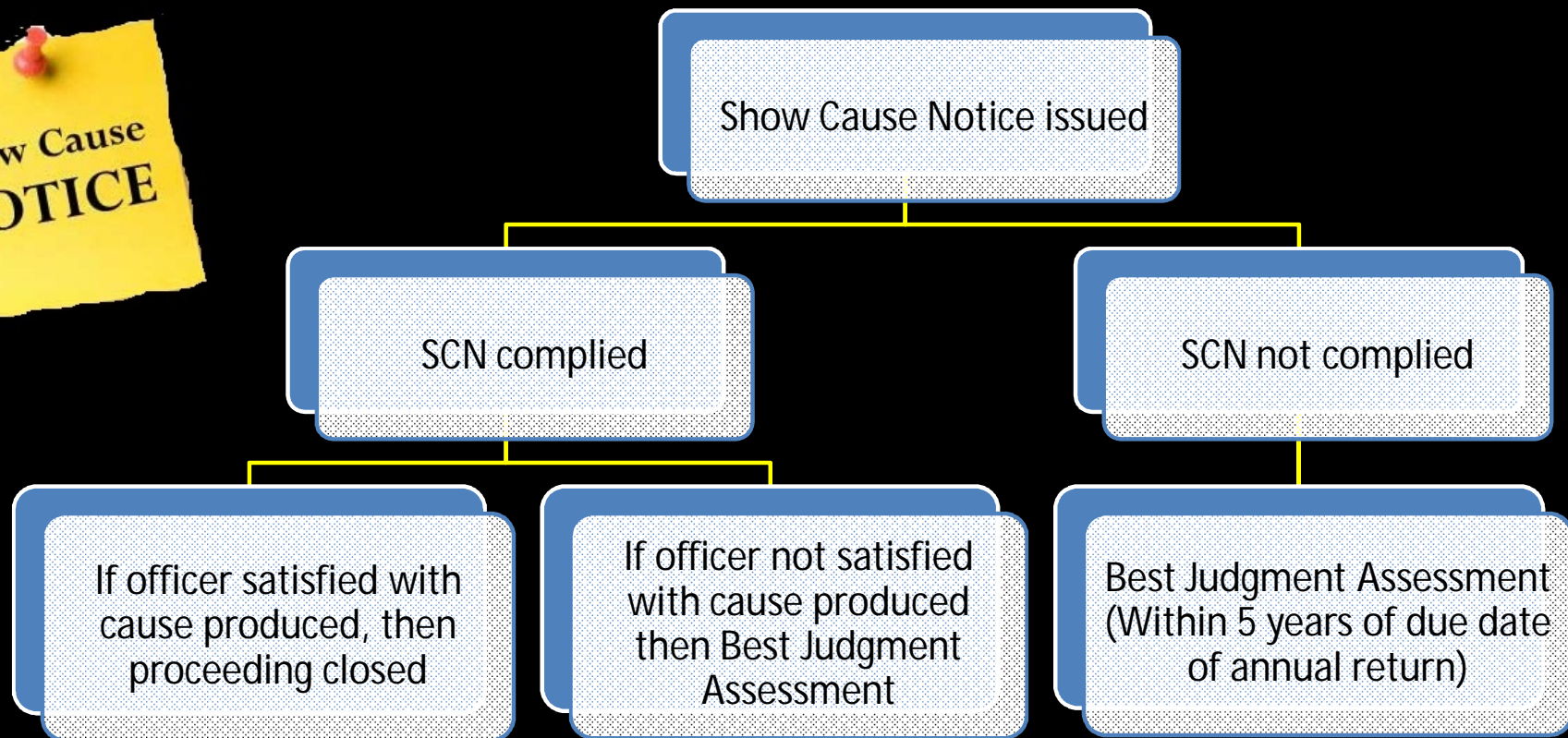
ASSESSMENT OF NON FILERS OF RETURN

If a registered person fails to file any of the returns, the proper officer may serve a notice to file return within 15 days of service of the notice



ASSESSMENT OF UNREGISTERED PERSONS

Where a taxable person, fails to obtain registration or whose registration has been cancelled but was liable to pay tax, the proper officer may serve a show cause notice



SUMMARY ASSESSMENT - PREREQUISITES

- ✓ **Prior permission** from Joint Commissioner or additional commissioner to be obtained
- ✓ Proper officer must have notice of tax liability based on some evidence
- ✓ Proper officer must have sufficient grounds that any delay in assessment will adversely affect revenue
- ✓ Proper officer must carry out the assessment ex-party i.e. without the notice of the taxable person



SUMMARY ASSESSMENT - WITHDRAWAL

Withdrawal only by Joint Commissioner or additional commissioner in following circumstances:



1. The taxable person submits himself to the assessment process **within 30 days** of service of summary assessment order
2. Joint Commissioner or additional commissioner sue-moto considers the order erroneous

On withdrawal, process of adjudication will start again...!!!

MOVING FORWARD TO.....

OFFENCES & PENALTIES

SEC 122 : PENALTY FOR CERTAIN OFFENCES

The Act lists 21 offences in sec 122. The offences enumerated in section are as follows:

- × Making **supply without invoice** or with **false or incorrect** invoice
- × Issuing an **invoice without** making any **supply**
- × **Not paying tax** collected for a period **exceeding 3 months**
- × **Not paying tax** collected in contravention of CGST/SGST Act for a period **exceeding 3 months**
- × Non deduction or lower deduction of tax at source or not depositing tax deducted at source

Contd...

- × Availing / utilizing ITC **without actual receipt** of goods &/or services
- × Non collection or lower collection of or non payment of tax collectible at source
- × **Fraudulently** obtaining any refund
- × Furnishing false information or falsification of financial records or furnishing of fake accounts / documents with **intent to evade tax**
- × **Failure to register** despite being liable to pay tax
- × **Furnishing false information** regarding registration particulars either at time of applying for registration or subsequently
- × Obstructing or preventing any official in discharge of his duty
- × Transporting goods **without prescribed documents**
- × Suppressing turnover leading to **tax evasion**

Contd...

- × Failure to maintain accounts / documents in the manner specified in the act or failure to retain accounts / documents for the period specified in the act
- × Failure to furnish information / documents required by an officer in terms of the act / rules or furnishing false information / documents during the course of any proceedings
- × Supplying / transporting / storing any goods liable for confiscation
- × Issuing invoice or document using GSTN of **another person**
- × Tampering or destroying any **material evidence**
- × Disposing of / tampering with goods detained / seized / attached under the act
- × Availing / distributing ITC by input tax distributor in contravention of the act & rules

General Penalty u/s 122(1) shall be higher of

Amount of tax evaded / fraudulently obtained as refund / availed as credit / not deducted or collected / short deducted or short collected

OR

Rs.10,000/-

Specific Penalty imposed on any person who has not paid tax or makes short payment of tax on supplies u/s 122(2) shall be higher of

10% of tax not paid or short paid

OR

Rs.10,000/-

SEC 123 : PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN

INFORMATION RETURN IS

Return to be filed by various government authorities within prescribed time u/s 150

PENALTY IF NOT FILED WITHIN PRESCRIBED TIME



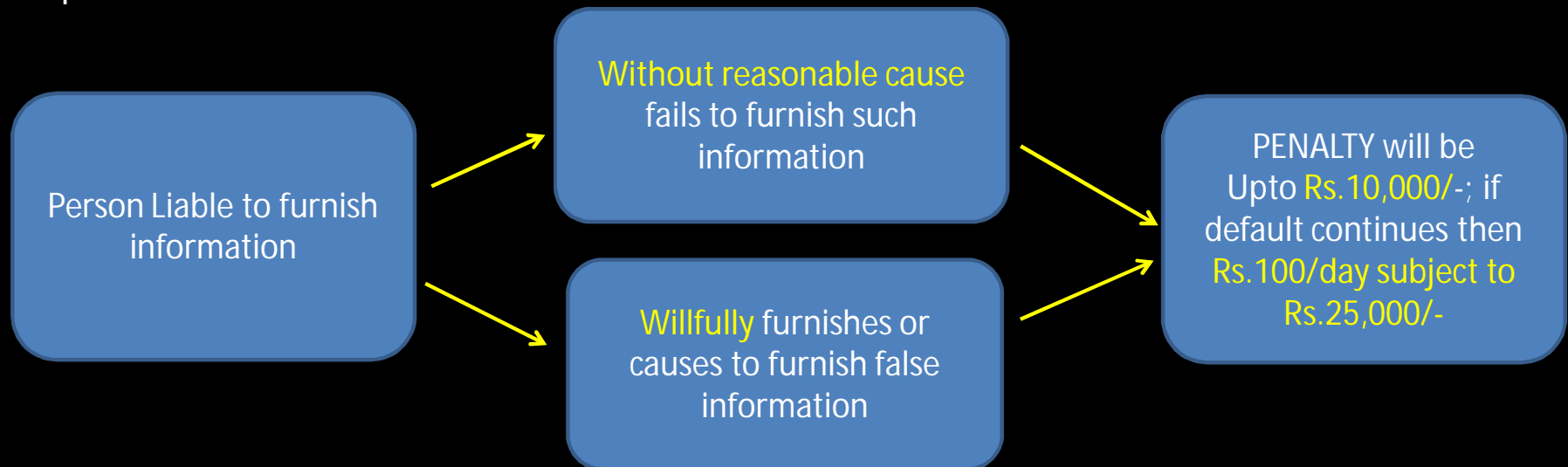
per day of continuing default subject to maximum amount of



SEC 124 : FINE FOR FAILURE TO FURNISH STATISTICS

PERSON LIABLE TO FURNISH STATISTICS

- Commissioner may by notification direct that
- Statistics may be collected relating to any matter dealt with or in connection with the act
- The same will be collected by him or person authorized by him from concerned person
- The person so concerned is liable to furnish information for statistics



SEC 125 : GENERAL PENALTY

For contravention of any provision / rules of this Act for which **no penalty is separately provided**, then such contravention shall attract penalty which **may extend** to rupees



SEC 126 : GENERAL DISCIPLINES RELATING TO PENALTY (TO BE FOLLOWED BY OFFICERS)

The section provides for general disciplines to be followed by the officer imposing penalty under the act. The disciplines to be followed are:

- ✓ No penalty should be imposed without issuance of SCN or proper opportunity of being heard as against the natural rule of justice
- ✓ No penalty should be imposed without considering the totality of the facts
- ✓ The penalty imposed must be commensurate with degree of severity of offence
- ✓ Nature of breach is to be mentioned clearly in the order of penalty to be issued
- ✓ The provisions under which the penalty has been imposed should be mentioned specifically
- ✓ No penalty should be imposed in case of minor breach
(Tax involved < Rs.5,000/-)
- ✓ No penalty for any procedural lapse or mistake easily rectifiable made without fraudulent intent & which can be seen apparently on the face of the record

SEC 129 : DETENTION, SEIZURE & RELEASE OF GOODS & CONVEYANCES IN TRANSIT

- ✓ The section provides for provision relating to detention, seizure & release goods & conveyance in transit & penalty payable thereon
- ✓ If a person
 - transports any goods or stores any such goods
 - while in transit
 - without prescribed documents or
 - supplies or stores any goods that have not been recorded in books of accounts maintained by him,
 - then such goods shall be liable for detention along with vehicle on which they are being transported

Penalty for release of such detained goods & conveyance

Owner comes forward

Owner does not come forward

If goods taxable

If goods exempted

If goods taxable

If goods exempted

Tax + 100% of tax as penalty / equivalent security

2% of value of goods or Rs.25,000/- w.e.l.

Tax + 50% of value of goods as penalty / equivalent security

5% of value of goods or Rs.25,000/- w.e.l.

SEC 130 : CONFISCATION OF GOODS OR CONVEYANCE & LEVY OF PENALTY

Notwithstanding anything contained in this act, if a person

- ✓ 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
- ✓ Does not account for any goods on which he is **liable to pay tax** under this Act or
- ✓ Supplies any goods liable to tax under this Act **without** having applied for **registration**
- ✓ Contravenes any of the provisions of this Act or the rules made thereunder with **intent to evade payment of tax**
- ✓ 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

CONSEQUENCES OF 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
- ✓ The owner or in charge of goods liable for confiscation is to be given **option for fine** not exceeding an amount of market value of goods less the tax chargeable thereon
- ✓ Any conveyance carrying goods without cover of any documents prescribed under the act shall be liable for confiscation; However 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.

SEC 131 : CONFISCATION OR PENALTY NOT TO INTERFERE WITH OTHER PUNISHMENTS

The Section clarifies that

- ✓ Confiscation made or penalty imposed under the provisions of the act
- ✓ Shall not prevent infliction of any other punishments
- ✓ Under any other proposed act or
- ✓ Any other law for the time being in force

SEC 132 : PUNISHMENT FOR CERTAIN OFFENCES

Sec 132 of the act lists offences which warrant institution of **criminal proceedings & prosecution**. The offences enumerated in section are as follows:

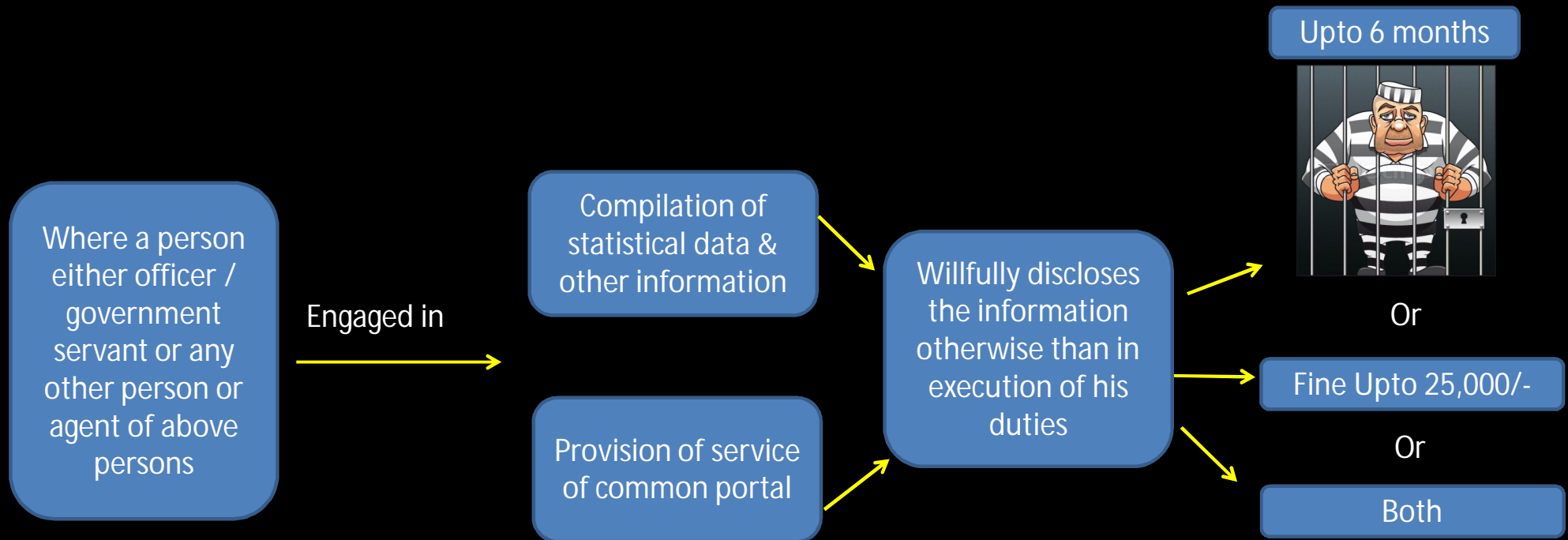
- × Making **supply without invoice** or with false or incorrect invoice
- × Issuing an **invoice without** making any **supply**
- × **Not paying tax** collected for a period **exceeding 3 months**
- × Availing / utilizing ITC **without actual receipt** of goods &/or services
- × **Fraudulently** obtaining any refund
- × Obstructing or preventing any official in discharge of his duty

- × Supplying / transporting / storing any **goods liable for confiscation**
- × Furnishing false information or falsification of financial records or furnishing of fake accounts / documents with **intent to evade tax**
- × Receiving / dealing with supply of service in contravention of the act
- × Tampering or destroying any **material evidence**
- × Failing to supply any information required under the act / rules or supplying false information
- × **Attempting** to commit or abetting the commission of any of the **above offences**

PUNISHMENTS UNDER SECTION 132

OFFENCE INVOLVING	PUNISHMENT EXTENDING TO			
Tax evaded exceeding Rs.5 Crore or repeat offenders	5 years		and	 Non Bailable
Tax evaded between Rs.2 Crore to Rs.5 crore	3 years		and	 Bailable
Tax evaded between Rs.1 Crore to Rs.2 crore	1 years		and	 Bailable
<ul style="list-style-type: none"> × False Records × Obstructing Officer × Tamper Records 	6 Months		or	 or both

SEC 133 : OFFENCE & PENALTY FOR OFFICERS & CERTAIN OTHER PERSONS



For **government servant** – sanction from **government** for initiating proceedings

For **non government servant** - sanction from **commissioner** for initiating proceedings

SEC 134 : COGNIZANCE OF OFFENCE

- ✓ The section restricts courts to take cognizance of any offence punishable under the act
or rules except with previous permission of the commissioner
- ✓ No court inferior to that of first class magistrate shall try offences

SEC 135 : PRESUMPTION OF CULPABLE MENTAL STATE

- ✓ The section presumes the existence of a state of mind required to commit an offence if it can not be committed without such state of mind

SEC 136 : RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES

- ✓ The section provides for relevancy of statements made & signed by person on appearance in response to any summons
- ✓ Such statement shall be relevant for proving truth of facts when
 - a) When the person who made the statement is **dead or cannot be found** or
 - b) Is **incapable** of giving evidence or
 - c) Is **kept out of the way** by the adverse party or
 - d) Whose presence cannot be obtained without an amount of **delay or expense** which is **not reasonable** or
 - e) 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 as evidence in the interest of justice.

SEC 137 : OFFENCES BY COMPANIES

Offence Committed by	Person to be held guilty	Person not to be held guilty
Company	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	If person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
Partnership Firm / LLP / HUF / Trust	The partner or karta or managing trustee shall be deemed to be guilty of that offence	-----do-----

SEC 138 : COMPOUNDING OF OFFENCES

- ✓ The section provides for compounding of **specified offences** under the proposed act either before or after the institution of prosecution, by the commissioner on payment of prescribed compounding amount
 - ✓ Compounding is permitted only **after payment of tax, interest & penalty** and compounding shall affect any proceedings already instituted under any other law
 - ✓ Lower limit for compounding is 50% of tax involved or Rs.10,000/- w.e.h.
 - ✓ Upper limit for compounding is 150% of tax involved or Rs.30,000/- w.e.h.
- On payment of compounding amount, **no further proceedings** to be initiated under the act & **criminal proceedings** shall stand **abated**



**Thank
You!!!**