

SYNOPSIS

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133. Penalty for failure to pay contributions, etc:

If any person,--

- (a) being an employer, fails to pay any contribution which he is liable to pay under this Code or rules, regulations or schemes made thereunder; or
- (b) deducts or attempts to deduct from the wages of an employee, the whole or any part of employer's contribution; or
- (c) in contravention of the provisions of this Code, reduces the wages or any privilege or benefits admissible to an employee; or
- (d) in contravention of the provisions of Chapter IV or Chapter VI or rules, regulations or schemes made or framed under this Code respectively, relating to such Chapters, dismisses, discharges, reduces in rank or otherwise penalises a woman employee; or
- (e) fails or refuses to submit any return, report, statement or any other information required under this Code or any rules, regulations or schemes made or framed thereunder; or
- (f) obstructs any Inspector-cum-Facilitator or other officer or staff of the Central Board or the Corporation or other Social Security Organisation or a competent authority in the discharge of his duties; or

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- (g) fails to pay any amount of gratuity to which an employee is entitled under this Code; or
- (h) fails to pay any amount of compensation to which an employee is entitled under this Code; or
- (i) fails to provide any maternity benefit to which a woman is entitled under this Code; or
- (j) fails to send to a competent authority a statement which he is required to send under Chapter VII; or
- (k) fails to produce on demand by the Inspector-cum-Facilitator any register or document in his custody kept in pursuance of this Code or the rules, regulations or schemes made or framed thereunder; or
- (l) fails to pay the cess for building workers which he is liable to pay under this Code; or
- (m) is guilty of any contravention of or non-compliance with any of the requirements of this Code or the rules or the regulations or schemes made or framed thereunder in respect of which no special penalty is provided in this Chapter; or
- (n) obstructs executive officer in exercising his functions under Chapter XIII; or
- (o) dishonestly makes a false return, report, statement or information to be submitted thereunder; or
- (p) fails or makes default in complying with any condition subject to which exemption under section 143 was granted; or
- (q) fails to pay any administrative or inspection charges payable under any of the schemes framed under Chapter III, he shall be punishable,--

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(i) where he commits an offence under clause (a), with imprisonment for a term which may extend to three years, but--

(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of one lakh rupees;

(b) which shall not be less than two months but may be extended to six months, in any other case and shall also be liable to fine of fifty thousand rupees:

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term;

(ii) where he commits an offence under clause (g), with imprisonment for a term which may extend to one year or with fine which may extend to fifty thousand rupees, or with both;

(iii) where he commits an offence under any of the clauses (d), (f), (i), (k), (l) or (o), with imprisonment for a term which may extend to six months or with a fine which may extend to fifty thousand rupees, or with both;

(iv) where he commits an offence under any of the clauses (b), (c), (e), (h), (j), (m), (n), (p) or (q), with fine which may extend to fifty thousand rupees.

**134. Enhanced punishment in certain cases after previous conviction:**

Whoever, having been convicted by a court of an offence punishable under this Code, commits the same offence shall, for second, or every subsequent such offence, be punishable with

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imprisonment for a term which may extend to two years and with fine of two lakh rupees:

Provided that where such second or subsequent offence is for failure by the employer to pay any contribution, charges, cess, maternity benefit, gratuity or compensation which under this Code he is liable to pay, he shall, for such second or subsequent offence, be punishable with imprisonment for a term which may extend to three years but which shall not be less than two years and shall also be liable to fine of three lakh rupees.

### **135. Offences by companies**

(1) Where an offence under this Chapter has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, secretary or other officer of the company, such director, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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Explanation.--For the purposes of this section,--

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "Director", in relation to a firm, means a partner in the firm.

136. Cognizance of offences:

(1) No court shall take cognizance of an offence punishable under this Code, except on a complaint made by an aggrieved person or such officer as may be notified by the Central Government for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters, and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed thereunder, by the officer notified by the appropriate Government.

(2) Notwithstanding anything contained in sub-section (1), no prosecution under this Code shall be instituted, except by or with the previous sanction of the authority notified by the Central Government for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed thereunder, the authority notified by the appropriate Government.

(3) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Chapter.

(4) Notwithstanding anything contained in sub-section (1), a single complaint may be filed under that sub-section by more

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than one aggrieved persons if they are aggrieved by the same or similar offence committed at a place or different places within the jurisdiction of the court.

**137. Prior opportunity before prosecution:**

Notwithstanding anything contained in this Chapter, the Inspector-cum-Facilitator or any other officer notified for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters, by the Central Government; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed under this Code relating thereto, by the appropriate Government, shall, before initiation of prosecution proceeding against an employer for any offence under this Chapter, give an opportunity to the employer to comply with the aforesaid relevant provisions by way of a written direction, which shall lay down a time period for such compliance, and, if the employer complies with the direction within such period, then, no such proceeding shall be initiated against the employer; but no such opportunity shall be accorded to an employer, if the violation of the same nature of such provisions is repeated within a period of three years from the date on which such first violation was committed and in such case the prosecution shall be initiated in accordance with the provisions of this Chapter.

**CSS - 138 Compounding of offences:**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence committed for the first time, punishable under this Chapter, being an offence--

(i) punishable with fine only; or

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(ii) punishable with imprisonment for a term which is not more than one year and also with fine, may, on an application made, either before or after the institution of any prosecution, be compounded by an officer authorised by the Central Government for the purposes of offences relating to Chapter III and Chapter IV and the rules, regulations or schemes made or framed under this Code relating to those Chapters, by the Central Government; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed under this Code relating thereto, by the appropriate Government, in such manner as may be prescribed by the Central Government on payment by the offender to the appropriate Government the amount--

(i) in the case of an offence punishable with fine only, the half of the maximum fine provided for that offence; and

(ii) in the case of an offence punishable with imprisonment for a term which is not more than one year and also with fine, the three-fourth of the maximum fine provided for that offence.

(2) Nothing contained in sub-section (1) shall apply to an offence committed by a person for the second time or thereafter within a period of three years from the date--

(i) of commission of a similar offence which was earlier compounded; or

(ii) of commission of similar offence for which such person was earlier convicted.

(3) Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Central Government for the purposes of offences relating to Chapter III and Chapter IV and the rules,

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regulations or schemes made or framed under this Code relating to those Chapters; and for the purposes of offences relating to other provisions of this Code and the rules, regulations or schemes made or framed under this Code relating thereto, by the appropriate Government.

(4) Every application for the compounding of an offence shall be made in such form and in such manner as may be prescribed by the appropriate Government.

(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(6) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought to the notice of the court in which the prosecution is pending in writing by the officer referred to in sub-section (1), and on such notice of the compounding of the offence being given to the court, the person against whom the offence is so compounded shall be discharged.

(7) Any person who fails to comply with the order made by the officer referred to in sub-section (1), shall be liable to pay a sum equivalent to twenty per cent. of the maximum fine provided for the offence, in addition to such fine.

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