



# OFFENCES AND PENALTIES



*The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified.*

## LEARNING OUTCOMES

### After studying this Chapter, you will be able to –

- understand and explain what will constitute the offence and the quantum of penalty for different types of offences in different circumstances.
- identify and appreciate general disciplines to be followed for imposing penalty.
- analyse and apply the circumstances in which penalty may be waived.
- examine the circumstances in which detention, seizure and release of goods and conveyances in transit may be initiated.
- comprehend the circumstances in which confiscation of goods or services and levy of penalty may be initiated.
- list offences for enforcing prosecution provisions.
- categorize the offences within Cognizable and non-bailable and Non-cognizable and bailable offences.
- understand and describe the meaning of 'Culpable Mental State' and its significance in enforcing prosecution provisions.
- identify the person who is liable in case of offences by Companies.
- analyse and apply the offences that may be compounded and provisions relating thereto.

## 1. INTRODUCTION



What is penalty and prosecution?

In the GST regime, there is uniform penalty and prosecution provision for similar type of offence that may committed by a registered person, depending upon its severity.

The word “penalty” has not been defined in the CGST Act but judicial pronouncements and principles of jurisprudence have laid down the nature of a penalty as:

- a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence;
- a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do.

‘Prosecution’ is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines “prosecution” as the institution and carrying on of the legal proceedings against a person.

Whereas amount of penalty to be leviable will depend upon intention of person committing the offence, a person with fraudulent intention to evade payment of taxes will be subjected to higher amount of taxes, a relatively less amount of penalty will be levied for non-fraudulent offences.

## **PENALTIES AND PROSECUTION**

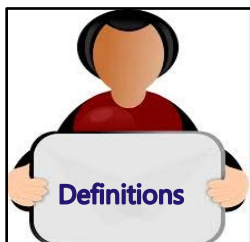
Likewise, to institute the prosecution, offences will be classified into Cognizable (serious category of offences) and non-cognizable offences (Relatively less serious category of offences). Whereas former will be non-bailable, latter will be bailable offence.

Chapter XIX – Offences and Penalties [Sections 122 to 138] of the CGST Act stipulates the provisions relating to offences and penalties. State GST laws also prescribe identical provisions in relation to offences and penalties. Where the penalty is leviable under the CGST Act and the SGST/UTGST Act, the penalty leviable under the IGST Act shall be the sum total of the said penalties.

However, before proceeding to understand the provisions, let us first go through few relevant definitions.

**Provisions of offences and penalties under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.**

## 2. RELEVANT DEFINITIONS



- ❖ **Conveyance** includes a vessel, an aircraft and a vehicle; [Section 2(34)].
- ❖ **Registered Person** means a person who is registered under section 25 but does not include a person having a Unique Identity Number. [Section 2(94)]
- ❖ **Regulations** means the regulations made by the Board under this Act on the recommendations of the Council. [Section 2(95)]
- ❖ **Proper Officer** in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board; [Section 2(91)]
- ❖ **Confiscation:** The word 'confiscation' has not been defined in the Act. The concept is derived from Roman Law wherein it meant seizing or taking into the hands of emperor, and transferring to Imperial "fiscus" or Treasury. The word "confiscate" has been defined in Aiyar's Law Lexicon as to "appropriate (private property) to the public treasury by way of penalty; to deprive of property as forfeited to the State."

In short it means transfer of the title to the goods to the Government.



### 3. PENALTY FOR CERTAIN OFFENCES [SECTION 122]



As per the provisions of sub-section (1) of section 122, there are 21 offences, for which a taxable person may be held liable to penalty. The list of said offences is as under:

- (i) Supply of any goods or services or both without issue of any invoice or issue of an incorrect or false invoice with regard to any such supply;
- (ii) Issue of 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;
- (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;
- (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;
- (xxi) Disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

### **Amount of Penalty**

- (a) ₹ 10,000/-; or
- (b) An amount equivalent to, any of the following (applicable as the case may be) –
  - (i) Tax evaded; or



- (ii) Tax not deducted under section 51 or short deducted or deducted but not paid to the Government; or
- (iii) Tax not collected under section 52 or short collected or collected but not paid to the Government; or
- (iv) Input tax credit availed of or passed on or distributed irregularly; or
- (v) Refund claimed fraudulently


### Whichever is higher.

 As per the provisions of Sub-Section (2) of Section 122, any registered person –

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

### Amount of Penalty

(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 for an amount equal to— (a) ₹ 10,000/-; or (b) 10% of the tax due from such person <b>Whichever is higher</b>
(b)	For reason of fraud or any wilful misstatement or suppression of facts to evade tax		Shall be liable to a penalty for an amount equal to— (a) ₹ 10,000/-; or (b) Tax due from such person <b>Whichever is higher</b>

 As per the provisions of Sub-section (3) of section 122, penalty is leviable for any of the following offences committed by a person –

- (a) aids or abets any of the 21 offences specified in Sub-section (1) of section 122;
- (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,


#### **Amount of Penalty**

Penalty is leviable for an amount which may extend to ₹ 25,000/-.

### **4. PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN [SECTION 123]**

Where a person who is required to furnish information return under section 150, has not furnished the same within the time specified in terms of sub-section (1) or sub-section (2) of said Section, the Commissioner or an officer authorized by him in this behalf may serve upon the defaulting person a notice under section 150(3) requiring him to furnish the information return within a period not exceeding 90 days from the date of service of notice.

If the said person still fails to furnish the return within the period specified in notice issued under section 150(3), 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, subject to a maximum of five thousand rupees.



**Information Return-**  
**₹ 100/day, maximum-**  
**₹ 5,000**

## 5. FINE FOR FAILURE TO FURNISH STATISTICS [SECTION 124]

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

- Fails to furnish such information or return as may be required under that section without reasonable cause; or
- 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.

## 6. GENERAL PENALTY [SECTION 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.

**General Penalty-  
₹ 25,000**

## 7. GENERAL DISCIPLINES RELATED TO PENALTY [SECTION 126]

The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126 of the Act. According to which –

- (1) No penalty shall be imposed by any officer under this Act for –
- Minor breaches of tax regulations , or
  - procedural requirements of the law, or
  - any omission or mistake in documentation which is easily rectifiable [As per Explanation (b) to Section 126(1), an error is easily

A breach shall be considered a 'minor breach' if the amount of tax involved is less than ₹ 5,000



rectifiable if it is an error apparent on the face of record] and made without fraudulent intent or gross negligence

- (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 i.e. Issue of SCN and proper hearing in the matter, affording an opportunity to the person proceeded against is must to rebut the allegations levelled against him,.
- (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.



## **8. POWER TO IMPOSE PENALTY IN CERTAIN CASES [SECTION 127]**

A person who is not covered by any proceeding under the following Provisions, namely –

- (i) Assessment of non-filers of Returns, under section 62
- (ii) Assessment of unregistered persons, under section 63
- (iii) Summary Assessment under section 64
- (iv) Determination under section 73 of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts
- (v) Determination under section 74 of tax not paid or short paid or erroneously

refunded or ITC wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts

- (vi) Detention, seizure and release of goods and conveyances in transit under section 129
- (vii) Confiscation of goods or conveyances and levy of penalty under section 130 and proper officer is of the view that such person is liable to a penalty, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

## 9. POWER TO WAIVE PENALTY OR FEE OR BOTH [SECTION 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 delay in filing of return) for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

## 10. DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT [SECTION 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.

The Goods and/or conveyance after detention or seizure, shall be released,—

**Where owner of the goods comes forward for payment of applicable tax and penalty: -**

- (a) On payment of applicable tax and penalty equal to 100% of the tax payable on such goods; or

- (b) Upon furnishing a security equivalent to the amount payable under (a) above, in such form and manner as may be prescribed.

However, in case of exempted goods, on payment of –

- |   |   |                                  |
|---|---|----------------------------------|
| <p>(a) An amount equal to 2% of the value of goods; or<br/>₹ 25,000/-</p> | } | <p>Whichever is less;<br/>or</p> |
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- (b) Upon furnishing a security equivalent to the amount payable under (a) above, in such form and manner as may be prescribed.

**Where owner does not come forward for payment of applicable tax and penalty: -**

- (a) On payment of the applicable tax and penalty equal to 50% of the value of the goods reduced by the tax amount paid thereon; or
- (b) Upon furnishing a security equivalent to the amount payable under (a) above, in such form and manner as may be prescribed.

However, in case of exempted goods, on payment of –

- |   |   |                                |
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| <p>(a) An amount equal to 5% of the value of goods; or<br/>₹ 25,000/-</p> | } | <p>Whichever is lesser; or</p> |
|---|---|--------------------------------|

- (b) Upon furnishing a security equivalent to the amount payable under (a) above, in such form and manner as may be prescribed.

No such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods. [Proviso to Section 129(1)]

- (2) The provisions of sub-section (6) of section 67 shall, *mutatis mutandis*, apply for detention and seizure of goods and conveyances i.e. The above release of goods and/or conveyance under shall be made on provisional basis on payment of applicable tax and penalty or on furnishing of security, as the case may be.
- (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 sub-section (1) above.

- (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:

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.



## **11. CONFISCATION OF GOODS OR CONVEYANCES AND LEVY OF PENALTY [SECTION 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.

- (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 subject to –
- Amount of fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:
  - Aggregate of fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

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.
- (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.

## **12. CONFISCATION OR PENALTY NOT TO INTERFERE WITH OTHER PUNISHMENTS [SECTION 131]**

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, no confiscation made or penalty imposed under the provisions

of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.



## **13. PUNISHMENTS FOR CERTAIN OFFENCES [SECTION 132]**



Section 132 of the CGST Act codifies the major offences under the Act which warrant institution of criminal proceedings and prosecution. According to the provisions of Section 132(1), whoever commits any of the following offences, namely:—

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- (b) 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 leading to wrongful availment or utilisation of input tax credit or refund of tax;
- (c) avails input tax credit using such invoice or bill referred to in clause (b);
- (d) 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;
- (e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- (g) obstructs or prevents any officer in the discharge of his duties under this Act;
- (h) 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;

- (i) 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;
- (j) tampers with or destroys any material evidence or documents;
- (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

shall be punishable with the previous sanction of Commissioner, as under:

<b>Offence Involving -</b>	<b>Amount Involved (in ₹)</b>	<b>Punishment (Imprisonment minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court and extending to --)</b>
Tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken	> 5 crores	5 Years and with fine
	Exceeds 2 crores but ≤ 5 crores	3 Years and with fine
	Exceeds 1 crores but ≤ 2 crores	1 Years and with fine
Commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j)		6 months or with fine or with both
For second and every subsequent offence under section 132	No limit	5 Years and with fine

 **Cognizable vs. Non- cognizable Offence**

An offence shall be classified as Cognizable or Non-Cognizable as per the provisions of Sub-Section (4) and Sub-Section (5) as under. Whereas an offence classified as Cognizable shall be non-bailable, an offence classified as non-cognizable shall be bailable.

S. No.	Points of Distinction	Cognizable Offence	Non-cognizable Offence
1	Meaning	Generally, as per Cr. PC, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court. However, GST being a special legislation, only the officers, duly empowered under the Act can act as above.	Non-cognizable offence means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order, except as may be authorized under special legislation.
2	Classification of offence as Cognizable or Non-Cognizable	Following offences, where amount of tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken > ₹ 5 crores, namely: (a) Supply of any goods or services or both without issue of any	All offences specified under section 132 except the offences that are cognizable and non-bailable offence




		<p>invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;</p> <p>(b) Issue of 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 leading to wrongful availment or utilisation of input tax credit or refund of tax;</p> <p>(c) Avails input tax credit using such invoice or bill referred to in clause (b);</p> <p>(d) 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;</p>	
3	Bailable/Non-Bailable	Non-Bailable	Bailable



### Meaning of 'Tax' for the purpose of Section 132

The term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the SGST Act, IGST Act or the UTGST Act and cess levied under the Goods and Services Tax (Compensation to States) Act. [Explanation to Section 132 of CGST Act]

## 14. LIABILITY OF OFFICERS AND CERTAIN OTHER PERSONS [SECTION 133]

 Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof or if any officer of central tax having access to information specified under sub-section (7) of section 150, or if any person engaged in connection with the provision of service on the common portal or the agent of common portal, wilfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than –

- in execution of his duties under the said sections; or
- for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force,

he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.


 A Person shall be prosecuted for any offence under this section –

- **In case of Government Servant** – With the previous sanction of Government only;
- **In case of person other than Government Servant** - With the previous sanction of Commissioner only.

## 15. COGNIZANCE OF OFFENCES [SECTION 134]

No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.


## 16. PRESUMPTION OF CULPABLE MENTAL STATE [SECTION 135]

 In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state. As per Explanation (i) to Section 135, the expression “culpable mental state” includes intention, motive, knowledge of

a fact, and belief in, or reason to believe, a fact.

While committing an act, a “culpable mental state” is a state of mind wherein-

- the act is intentional;
- the act and its implications are understood and controllable;
- the person committing the act was not coerced and even overcomes hurdles to the act committed;
- the person believes or has reasons to believe that the act is contrary to law.

 It shall, however, be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. As per Explanation (ii) to Section 135, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

## 17. RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES [SECTION 136]

A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant for the purpose of proving the truth of the facts which it contains, in any prosecution for an offence under this Act,—

- (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
- (b) when 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 in evidence in the interest of justice.



## 18. OFFENCES BY COMPANIES [SECTION 137]



**Where an offence under this Act has been committed by a taxable person being a company (means a body corporate and includes a firm or other association of individuals),** 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 of the offence and shall be liable to be proceeded against and punished accordingly.

However, for an offence that has been committed –

- with the consent or connivance of, or
- is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company,

such director, manager, 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. [Sub-Section (1) and (2) of Section 137]



**Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust,** the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

However, for an offence that has been committed –

- with the consent or connivance of, or
- is attributable to any negligence on the part of, any partner/member/trustee, manager, secretary or other officer of the partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust,

such partner/member/trustee, manager, 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. [Sub-Section (3) of Section 137]



Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. [Sub-Section (4) of Section 137].



## 19. COMPOUNDING OF OFFENCES [SECTION 138]



As per the provisions of Section 138(1), Any offence, other than the following, may be compounded by the Commissioner, either before or after the institution of prosecution, upon payment of such compounding amount in such manner as may be prescribed, by the person accused of the offence, to the Central Government or the State Government, as the case be:

- (i) Offence specified in clauses (a) to (f) of sub-section (1) of section 132, if the person charged with offence had been allowed to compound earlier in respect of any of the said offences;
- (ii) Aiding/abetting offences specified in clauses (a) to (f) of sub-section (1) of section 132, if the person charged with offence had been allowed to compound earlier in respect of any of the said offences;
- (iii) Any offence (other than the above offences) under this Act or under the provisions of any SGST Act/UTGST Act/IGST Act, in respect of supplies of value > ₹ 1 crores, if the person charged with offence had been allowed to compound earlier in respect of any of the said offences;
- (iv) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;
- (v) a person who has been convicted for an offence under this Act by a court;
- (vi) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and
- (vii) any other class of persons or offences as may be prescribed:



Compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences. Further, any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law.[Proviso to Section 138(1)]



The amount for compounding of offences under this section shall be such as may be prescribed, subject to –

- The minimum limit for compounding amount is to be the higher of the following amounts:-
  - (i) 50% of tax involved, or
  - (ii) ₹ 10,000.

- The upper limit for compounding amount is to be higher of the following amounts: -

- 150% of tax involved or
- ₹ 30,000

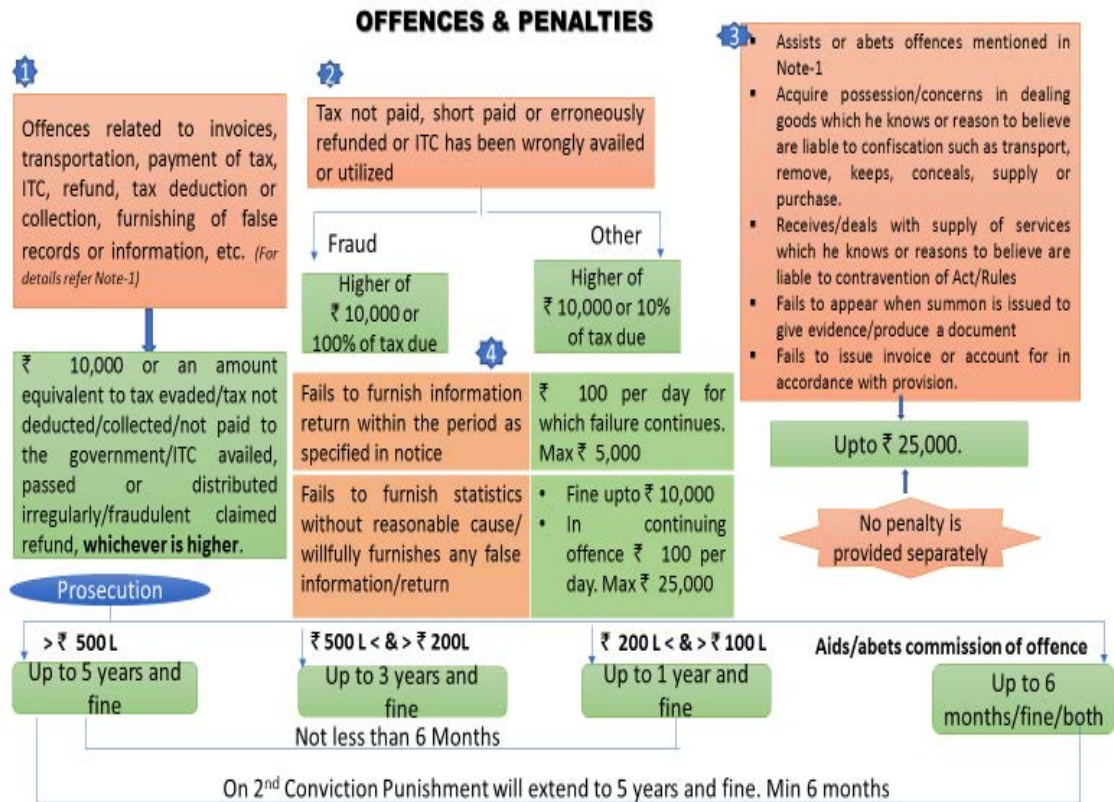
[Sub-Section (2) of Section 138]



On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated. [Sub-Section (3) of Section 138]

## LET US RECAPITULATE

The provisions relating to offences and penalties have been summarised by way of a diagram to help students remember and retain the provisions in a better and effective manner:-



**Note-1**

1. Supplies of goods/services made without invoice/ false invoice, invoices or bills issued without any supply of goods/services, transports taxable goods without document cover.
2. Collects tax, but fails to pay to Government within 3 months from due date of payment.
3. Fails to deduct any tax or collect tax, deduct or collect lesser amount of tax, failed to pay the same to Government.
4. Takes or utilizes ITC or distributes ITC in contravention of the Act.
5. Obtains refund fraudulently.
6. Falsifies or substitutes financial records/ produces fake accounts/ furnishes false information with an intention to evade tax/ suppresses the turnover in order to evade tax.
7. Fails to obtain registration/ furnishes false particulars with regard to registration/ issues invoices using registration number of another person.
8. Obstructs or prevents officer in discharge of his duties.
9. Fails to keep, maintain or retain books of accounts.
10. Fails to furnish information or documents/ furnishes false information during any proceedings.
11. Supplies, transports or stores goods which person has a reason to believe are liable for confiscation.
12. Tamper with or destroys any material evidence or document. Disposes off or tampers any goods that have been detained, seized or attached.
13. Transporting any taxable goods without cover of documents

## TEST YOUR KNOWLEDGE

1. What are the various type of offences which may be committed by a taxable person liable to penalty?
2. What is the quantum of penalty for an offence mentioned under section 122(1)?
3. Is there any penalty prescribed for a person other than the taxable person?
4. Mr. X, an unregistered person under GST purchases the goods supplied by Mr. Y who is a registered person without receiving a tax invoice from Mr. Y and thus helps in tax evasion by Mr. Y. What disciplinary action may be taken by tax authorities to curb such type of cases and on whom?
5. Suppose, in the above case, a disciplinary action is taken against Mr. X and an adhoc penalty of ₹ 20,000/- is imposed by issue of SCN without describing contravention for which penalty is going to be imposed and without mentioning the provisions under which penalty is going to be imposed. Should Mr. X proceed to pay for penalty or challenge SCN issued by department?

## ANSWERS/ HINTS

1. There are 21 offences which may be committed by a taxable person and may be classified into following categories based upon their nature:

### Offences having nexus with invoice

- (i) Issue of invoice or bill without making supply;
- (ii) Issuing invoice or document using GSTIN of another person;
- (iii) Making a supply without invoice or with false/ incorrect invoice;

### Offences having nexus with payment of tax

- (iv) Not paying any amount collected as tax for a period exceeding three months;
- (v) Not paying tax collected in contravention of the CGST/SGST Act for a period exceeding 3 months;
- (vi) Non deduction or lower deduction of tax deducted at source or not depositing tax deducted at source under section 51;
- (vii) Non collection or lower collection of or non- payment of tax collectible at source under section 52;



- (viii) Availing/utilizing input tax credit without actual receipt of goods and/or services;
- (ix) Availing/distributing ITC by an Input Service Distributor in violation of Section 20;
- (x) Fraudulently obtains any refund of tax;
- (xi) Suppressing turnover;

#### **Offences having nexus with Records and related information**

- (xii) Falsification/substitution of financial records or furnishing of fake accounts/ documents or Furnishing false information/return with intent to evade payment of tax;
- (xiii) 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;
- (xiv) 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 proceeding;
- (xv) Tampering/destroying any material evidence/documents;
- (xvi) Obstructing or preventing any official in discharge of his duty;

#### **Offences having nexus with Registration**

- (xvii) Failure to register despite being liable to pay tax;
- (xviii) Furnishing false information regarding registration particulars either at the time of applying for registration or subsequently

#### **Offences having nexus with Supply/Transport of goods**

- (xix) Transporting goods without prescribed documents;
- (xx) Supplying/transporting/storing any goods liable to confiscation;
- (xxi) Disposing of /tampering with goods detained/ seized/attached under the Act.

2. Section 122(1) provides that any taxable person who has committed any of the 21 offences mentioned thereunder, shall be liable to a penalty which shall be higher of the following amounts:

- (a) ₹ 10,000/-; or

- (b) An amount equivalent to, any of the following (Applicable as the case may be) –
- (i) Tax evaded; or
  - (ii) Tax not deducted under section 51 or short deducted or deducted but not paid to the Government; or
  - (iii) Tax not collected under section 52 or short collected or collected but not paid to the Government; or
  - (iv) Input tax credit availed of or passed on or distributed irregularly; or
  - (v) Refund claimed fraudulently

However, Section 122(2) provides that if a registered person supplying goods or services has not paid any tax or short paid it or tax has been erroneously refunded to him, or ITC has been wrongly availed or utilized, for any reason other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, penalty shall be leviable for an amount higher of following:

- (a) ₹ 10,000/-; or
- (b) 10% of the tax due from such person

and in case of fraud, or any wilful misstatement or suppression of facts to evade tax, penalty shall be equal to ten thousand rupees or the tax due from such person, whichever is higher.

3. Yes, Section 122(3) provides for levy of penalty extending to ₹ 25,000/- for any person who-
- aids or abets any of the 21 offences,
  - deals in any way (whether receiving, supplying, storing or transporting) with goods that are liable to confiscation,
  - receives or deals with supply of services in contravention of the Act,
  - fails to appear before an authority who has issued a summon,
  - fails to issue any invoice for a supply or account for any invoice in his books of accounts.
4. Both Mr. X and Mr. Y will be offender and will be liable to penalty as under:  
Mr. X – Penalty under section 122(3) which may extend to ₹ 25,000/-;  
Mr. Y – Penalty under section 122(1), which will be higher of following, namely

(i) ₹ 10,000/- or (ii) 100% of tax evaded.

5. The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126 of the Act. Accordingly—
- no penalty is to be imposed without issuance of a show cause notice and proper hearing in the matter, affording an opportunity to the person proceeded against to rebut the allegations levelled against him,
  - the penalty is to depend on the totality of the facts and circumstances of the case, the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged,
  - the nature of the breach is to be specified clearly in the order imposing the penalty,
  - the provisions of the law under which the penalty has been imposed is to be specified.

Since SCN issued to Mr. X suffers from lack of clarity about nature of breach which has taken place and about provision of law under which penalty has been imposed, SCN issued by department may be challenged.