

THE ONE GST PORTAL

GSTINATION

SIMPLIFYING GST FOR THE NATION

Offences & Penalties in GST

Chapter 19 of the CGST Act

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PENALTY FOR CERTAIN OFFENCES – SECTION 122



• Supplies without issue of invoice/ issues an incorrect or false invoice	• Issues invoice/ bill without supply in violation of Act/ Rules
• Collects tax but fails to pay beyond 3 months from due date	• Collects tax against provisions but fails to pay beyond 3 months from due date
• Fails to deduct/ deducts less/ fails to pay TDS	• Fails to collect/ collects less/ fails to pay TCS
• Takes/ utilises ITC without actual receipt of supply, against Act/ Rules	• Fraudulently obtains refund
• Takes/ distributes ITC in contravention of Sec 20 and the rules	
• Falsifies/ substitutes financial records <u>or</u> produces fake accounts/ documents <u>or</u> furnishes any false information/ return with an intention to evade payment of tax	
• Fails to obtain registration even though liable	
• Furnishes any false information wrt registration particulars at the time of applying for registration or subsequently	
• Obstructs/ prevents officer in discharge of his duties	
• Transports taxable goods without cover of specified documents (Invoice/ E-waybill/ Challan)	
• Suppresses his turnover leading to evasion of tax	
• Fails to keep/ maintain/ retain books of account and other documents as per Act/ Rules;	
• Fails to furnish information/ documents called for by an officer as per Act/ Rules <u>or</u> Furnishes false information/ documents during any proceedings	
• Supplies/ transports/ stores any goods which he has reasons to believe are liable to confiscation under this Act	
• Issues invoice/ document by using the registration number of another RTP	
• Tamper with/ destroys any material evidence/ document;	
• Disposes off/ tampers with goods that have been detained/ seized/ attached	

Person committing such offences shall be liable to pay **penalty** = higher of –

1. Rs. 10,000
2. 100% of Amount of **Tax** evaded, **ITC** availed/ passed/ distributed wrongly, refund claimed fraudulently, **TDS** not deducted/ short deducted/ deducted but not paid, **TCS** not collected/ short collected/ collected but not paid

PENALTY FOR CERTAIN OFFENCES – SECTION 122 (CONTD...)

RTP who **supplies** any goods/ services/ both on which any **tax has not been paid/** short-paid/ erroneously refunded, or where the **ITC** has been **wrongly** availed/ utilised,—



<u>Reason</u>	<u>Penalty</u>
Any reason, other than fraud/ wilful misstatement/ suppression of facts	Rs. 10,000 or 10% of tax due weh
Fraud/ wilful misstatement/ suppression of facts	Rs. 10,000 or 100% of tax due weh

Any person who commits the following offences Shall be liable to a **penalty** which may extend to **Rs. 25,000** -



- (a) **Aids/ abets** any offences specified here and before it
- (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
- (c) Receives/ is in any way concerned with the supply of/ in any other manner deals with - any supply of **services** which he knows/ has reasons to believe are in contravention of Act/ Rules
- (d) Fails to appear before the officer of central tax, when issued with a **summon** in an inquiry;
- (e) Fails to issue invoice as per Act/ Rules or fails to account for an invoice in his books of account,

FAILURE TO FURNISH INFORMATION RETURN – SEC 123

If a person who is required to furnish an information return u/s 150 fails to do so within the period specified, PO may direct → liable to pay a penalty = Rs. 100 for each day failure continues (Max = Rs. 5,000).

GENERAL PENALTY – SEC 125

- Any person who contravenes Act/ Rules, and for which **no penalty** is separately **provided** → Liable to a penalty upto Rs. 25,000.

- If any person required to furnish any information/ return u/s 151 (for collection of statistics) —
 - without reasonable cause fails** to furnish such information/ return, or
 - wilfully furnishes/** causes to furnish any information/ return which he knows to be **false**,
→ Shall be punishable – fine upto Rs. 10,000; and if continuing offence, further fine upto Rs. 100 per day, after the first day during which the offence continues (Max = Rs. 25,000)

FAILURE TO FURNISH STATISTICS RETURN – SEC 124

DISCIPLINES RELATING TO PENALTY – SEC 126



[The following shall not apply in cases where penalty specified is either a fixed sum or expressed as a fixed percentage.]

- No officer shall impose penalty for –**
 - Minor breaches** (amount of tax involved < Rs. 5,000) or **procedural requirements**,
 - Omission/ mistake in documentation** (Error apparent on the face of record) without fraudulent intent/ gross negligence.
- The penalty shall depend on facts and circumstances, and as per the degree and severity of breach.
- No penalty shall be imposed without giving him an opportunity of being heard.
- The officer, while imposing penalty, shall **specify** → Nature of breach, and the applicable law where penalty has been specified for it.
- If person **voluntarily discloses** the circumstances of a breach to an officer, prior to the discovery by them, PO may consider this fact as a mitigating factor when quantifying a penalty.

ORDER FOR PENALTY – SEC 127

Where PO finds that a person is liable to a penalty, but the **penalty is not covered under any proceedings** u/s 62/ 63/ 64/ 73/ 74/ 129/130 → he may issue an order levying such penalty, after giving a reasonable opportunity of being heard.

WAIVER OF PENALTY/ FEE – SEC 128

The Government may waive any penalty u/s 122/ 123/ 125, or any late fee u/s 47, in part or full, by a notification, for such class of taxpayers and under such mitigating circumstances as may be specified.

DETENTION OF GOODS – SEC 129



NWA contained in this Act, where any person -

- (I) Transports any goods, or
- (II) Stores any goods while they are in transit

in contravention of Act/ Rules

Then –

1. All such goods
2. The Conveyance used as a means of transport for carrying them
3. Documents relating to such goods and conveyance

Shall be liable to detention/ seizure

- They shall be detained/ seized by serving an order of detention or seizure on the person transporting the goods.
- The PO shall issue a notice, specifying the tax and penalty leviable, the assessee will be given opportunity of being heard.
- The goods will be released under any of following condition —
 - (A) Where the owner of the goods comes forward for payment
 - On payment of Tax + Penalty = 100% of the tax payable on such goods
 - [In case of exempted goods, Penalty = Lower of – (2% of **value** of goods)/ (Rs. 25,000), and obviously no tax involved]
 - (B) Where the owner of the goods does not come forward for payment
 - On payment Tax + Penalty = [50% of Value of goods (-) Tax paid thereon]
 - [In case of exempted goods, Penalty = Lower of – (5% of **value** of goods)/ (Rs. 25,000)]
 - (C) Upon furnishing a security = Amount payable as above
- As per the circumstance, the PO shall then issue order for payment under any of above 3.
- On payment of the amount, all proceedings in respect of the notice issued shall be deemed to be concluded.
- Where person transporting goods/ owner of goods, fails to pay tax and penalty, within 7 days of such detention/ seizure → further proceedings as per Sec 130 shall be initiated. If the goods are of perishable/ hazardous nature, or are likely to depreciate in value with passage of time, then period of 7 days may be reduced by PO.
- The provisions of Sec 67(6) – provisional release on furnishing of bond + security of specified amount shall apply.

CONFISCATION OF GOODS – SEC 130



NWA contained in this Act, if any person—

- (i) **Supplies/ receives goods** against Act/ Rules with **intent to evade** payment of tax
- (ii) **Does not account** for any goods on which he is liable to pay tax under this Act
- (iii) Supplies taxable goods **without being registered** (when being liable to be registered)
- (iv) **Contravenes** any of the provisions of Act/ Rules with intent to evade payment of tax
- (v) **Uses conveyance** as means of transport for carriage of goods, against Act/ Rules [unless owner of conveyance proves that it was used without the knowledge/ connivance of him/ his agent 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 u/s 122.

- Person will be given an opportunity of being heard before confiscation and penalty.
- Every police officer shall, on the requisition of PO, assist him in taking and holding possession of the confiscated goods/ conveyance.
- After confiscation, the title of such goods or conveyance shall vest in the Government.
- OPTION TO PAY FINE
Officer giving confiscation order shall give an option to the owner of the goods, that to prevent confiscation, he may pay a **fine** of amount decided by officer, not exceeding - [Market value of the goods confiscated (-) the tax chargeable thereon]. If owner accepts, then he shall also be liable to any tax, penalty and charges payable in respect of such goods or conveyance.
- Aggregate of fine and penalty shall **not be less than** - Amount of penalty leviable under detention.
- Where conveyance is used for carriage of the goods/ passengers for hire, owner of conveyance can, to prevent confiscation, pay a **fine = tax payable** on the goods being transported.
- Where person was given reasonable time (not exceeding 3 months) to pay fine in lieu of confiscation, but he does not pay, and the PO is satisfied that confiscated goods/ conveyance not required in any other proceedings, then he may **dispose of** such goods or conveyance and deposit the sale proceeds thereof with the Government.

NO PREJUDICE TO OTHER PUNISHMENTS – SEC 131

Without prejudice to of CrPC, no confiscation/ penalty under Act/ Rules shall prevent the infliction of any other punishment to which the person is liable under this Act or any other law for the time being in force.

PUNISHMENT

– SEC 132



- Where any **convicted person** (under this section), is **again convicted here**, then he shall be punishable for the second and for every subsequent offence with imprisonment upto **5 years and fine**.
- Normally, the offences shall be **non-cognizable and bailable**. [Cognizable = Arrest without warrant, Non-Cognizable = Can't arrest without warrant]
- The offences specified in **clause (a)/ (b)/ (c)/ (d)** and **punishable under clause (i)** shall be **cognizable and non-bailable**.
- Prosecution for any offence under this section will be only with the **previous sanction of the Commissioner**.

“Tax” includes tax evaded/ ITC wrongly availed or utilised/ refund wrongly taken under - this/ SGST /IGST /UTGST/ Compensation Act (cess).

Where any person commits any of following offence -

- | | |
|--|---|
| (a) Supplies any goods/ services/ both <u>without</u> issue of any <u>invoice</u> in violation of Act/ Rules with <u>intention</u> to evade tax | |
| (b) Issues any invoice or bill without supply against Act/ Rules, leading to wrongful availment/ utilisation of ITC/ refund of tax | |
| (c) Avails ITC using above such invoice/ bill | (d) Collects tax but fails to pay beyond <u>3 months</u> from due date |
| (e) All cases where Evades tax/ fraudulently avails ITC / fraudulently obtains refund [but not covered under above 4] | |
| (f) Falsifies/ substitutes financial records or produces fake accounts/ documents or furnishes any false information - with an intention to evade tax | |
| (g) Obstructs/ prevents officer in discharge of his duties | |
| (h) Acquires <u>possession</u> of/ in any way <u>concerns</u> himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing/ in any other manner <u>deals</u> with - any goods which he knows or has reasons to believe are liable to confiscation under Act/ Rules | (i) <u>Receives/</u> is in any way <u>concerned</u> with the supply of/ or in any other manner <u>deals</u> with - any supply of services which he knows or has reasons to believe are in contravention of Act/ Rules |
| (j) Tampers with/ destroys any material <u>evidence</u> or <u>documents</u> | |
| (k) Fails to supply any information which he is required to supply under Act/ Rules, or supplies false information (Burden of proving truthfulness of information shall be upon him, has to establish a reasonable belief) | |
| (l) Attempts to commit/ abets the commission of any of the offences mentioned above | |

shall be punishable as under —

<u>Amount of tax evaded/ Amount of ITC wrongly availed or utilised/ Amount of refund wrongly taken</u>	<u>Punishment</u>	
(i) Amount > Rs. 5 crore	Imprisonment upto 5 years and fine	In the absence of special & adequate reasons, minimum = 6 months
(ii) Rs. 2 crore < Amount ≤ Rs. 5 crore	Imprisonment upto 3 years and fine	
(iii) Rs. 1 crore < Amount ≤ Rs. 2 crore	Imprisonment upto 1 year and fine	
(iv) In cases where he commits/ abets the commission of an offence specified in clause (f) [<u>falsification</u>] or clause (g) [<u>obstruction</u>] or clause (j) [<u>tampering</u>]	Imprisonment upto 6 months or fine or both .	

LIABILITY OF OFFICERS – SEC 133



<ul style="list-style-type: none"> Person engaged in collection/ compilation/ computerisation of statistics u/s 151 	<ul style="list-style-type: none"> Officer having access to information specified u/s 150(1) 	<ul style="list-style-type: none"> Person engaged in providing service on common portal/ agent of common portal
<p>Where above people →</p>	<p>wilfully disclose any information/ contents of return furnished</p>	<p>otherwise than in execution of their duties/ for the purposes of prosecution for an offence under this Act/ any other Act</p>
<p>→ Punishable with imprisonment upto 6 months <u>or</u> fine upto Rs. 25,000 <u>or</u> both</p>		

- A Government servant shall not be prosecuted under this section except with previous sanction of the **Government**.
- Other persons, shall not be prosecuted under this section except with previous sanction of the **Commissioner**.

COGNIZANCE OF OFFENCES – SEC 134

No court inferior to that of a Magistrate of the First Class shall try any offence punishable under this Act/ Rules, and it shall not take cognizance of any offence, except with previous sanction of Commissioner.



PRESUMPTION OF CULPABLE MENTAL STATE – SEC 135

- (Hint: Culprit ~ Culprit-able ~ Culpable)(“Culpable mental state” includes intention, motive, knowledge of a fact, and belief in a fact, or reason to believe a fact)
- If any prosecution for an offence under this Act requires a ‘culpable mental state’ of the accused, the **court shall presume** the existence of such mental state, but **it shall be a defence** for the accused to prove the fact that he had no such mental state. [“A fact (here, the fact of not having culpable mental state) is said to be proved only when court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability”]

RELEVANCY OF STATEMENTS – SEC 136

- A statement **made and signed** by a person **on appearance in** response to any **summons** issued u/s 70 during course of inquiry/ proceedings → shall be **relevant**, for proving the truth of the facts which it contains, in any prosecution for an offence under this Act, only **when** --
 - **Person** who made the statement is **dead** or **cannot be found**/ is **incapable** of giving evidence/ is **kept out of the way** by the adverse party/ his **presence cannot be obtained** without an amount of delay/ expense which the court considers unreasonable, under the circumstances of the case, or
 - **Person** who made the statement is **examined as a witness** in the case before the court and the court having regard to circumstances is of the opinion that, the statement should be admitted in evidence in the interest of justice.

OFFENCE BY COMPANY – SEC 137



<p>Where an offence committed by a company (“company” means a body corporate and includes a firm or other association of individuals)</p>	<p>→</p>	<p>(I) Every person who was in charge of the company, and was responsible to the company for the conduct of its business, at the time the offence was committed</p>	<p>shall be deemed to be guilty of the offence and liable to prosecution and punishment accordingly</p>
		<p>(I) The Company</p>	

Where an offence committed by a company/ partnership firm/ LLP/ HUF/ trust and it is proved that offence was committed with the consent/ connivance of, or due to negligence of following persons -

<u>ENTITY</u>	<u>PERSON</u>		
Company	director, manager, secretary, other officer		
Partnership firm/ LLP	partner		
HUF	karta		
Trust	managing trustee		

COMPOUNDING OF OFFENCES – SEC 138

(Compounding = Fine instead of prosecution/ imprisonment)

COMPOUNDING NOT TO BE ALLOWED TO THE SOME PERSONS

- a) A person who had been allowed to compound once earlier, in respect of any offence specified in clauses (a) to (f) of Sec 132(1) and the offences specified in clause (l) which are relatable to (a) to (f).
- b) A person who had been allowed to compound once earlier, in respect of any offence, other than above, under this Act/ SGST/ UTGST/ IGST Act in respect of supplies of value exceeding Rs. 1 crore.
- c) A person who has been accused of committing an offence under this Act, which is also an offence under any other law.
- d) A person who has been convicted for an offence under this Act by a court
- e) A person who has been accused of committing an offence specified in clause (g)/ (j)/ (k) of Sec 132(1)
- f) Any other class of persons or offences as may be prescribed

- (1) Accused person may, before/ after the institution of prosecution, make an application in **FORM GST CPD-01** to the Commissioner for compounding of an offence.
 - (2) On receipt of application, Commissioner shall call for a report from concerned officer, and pass **order** for acceptance/ rejection within 90 days of the receipt of the application.
 - (3) If the Commissioner is satisfied that the applicant has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case → he may pass acceptance order in **FORM GST CPD-02**, indicating the compounding amount and grant him immunity from prosecution. [which means if pays the amount, then **no further proceedings** shall be initiated under this Act against the accused person. Any criminal proceedings already initiated for it, shall stand abated]
 - (4) Compounding allowed only if the person has **paid tax, interest and penalty involved** in such offences.
 - (5) If commissioner is not satisfied, he will give opportunity of being heard, and may **reject** the application, recording the grounds of such rejection.
 - (6) The applicant shall **pay** the compounding amount **within 30 days** from the date of the receipt of the order and shall furnish the proof of such payment to the commissioner.
 - (7) Compounding amount → **Minimum** = Higher of Rs. 10,000/ 50% of the tax; **Maximum** = Higher of Rs. 30,000/ 150% of the tax.
 - (8) In case the applicant **fails to pay** the compounding amount within the time, the order will become void.
- The compounding allowed shall **not affect** the proceedings instituted under **any other law**.

Immunity granted may be withdrawn by the Commissioner at any time, if he is satisfied - such person had concealed material particulars/ had given false evidence, during compounding proceedings. Then, he will be tried for the (offence for which he was given immunity) + (offence that he has committed wrt compounding proceedings), and provisions of Act shall apply as if no immunity granted.

End of Presentation!

What we learned -

- Penalty for Certain offences – Section 122
- Failure to furnish Information Return – Sec 123
- Failure to furnish Statistics Return – Sec 124
- General Penalty – Sec 125
- Disciplines relating to penalty – Sec 126
- Order for Penalty – Sec 127
- Waiver of Penalty/ Fee – Sec 128
- Detention of Goods – Sec 129
- Confiscation of Goods – Sec 130
- Option to pay Fine
- No Prejudice to other punishments – Sec 131
- Punishment – Sec 132
- Liability of Officers – Sec 133
- Cognizance of Offences – Sec 134
- Presumption of Culpable Mental State – Sec 135
- Relevancy of Statements – Sec 136
- Offence by Company – Sec 137
- Compounding of Offences – Sec 138

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The logo consists of the tagline 'THE ONE GST PORTAL' in an orange bar, the word 'GSTINATION' in a large blue font, and the tagline 'SIMPLIFYING GST FOR THE NATION' in another orange bar.