



OFFENCES AND PENALTIES UNDER GST LAWS

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Introduction to offences penalties

The word offence has not been defined under the Central Goods and Service Tax Act, 2017 or under any other GST laws. As per the dictionary meaning, the word offence may mean a crime or an illegal action, something that outrages the moral or physical senses. An offence is a breach of a law or rule, i.e., an illegal act. Similarly, an offence under GST is a breach of the provisions of CGST Act and the rules made thereunder.

Penalty, fine and prosecution

Penalty: In criminal and civil law, penalties are punishments imposed as a result of breaking laws, contracts or rules. The punishments imposed may be in physical and monetary forms, and are imposed either for the performance of an act or failure to perform an act.

In civil law, however, penalties are imposed on contracts. Parties who fail to fulfil set conditions as per contract, are ordered to pay the penalties in form of damages.

Fine: Fine is a form of monetary punishment for a crime or an offence committed. In the context of criminal law, fines are used in instances involving minor crimes such as traffic violations.

For instance, a person who exceeds driving speed limits, is subjected to a fine. Other examples of fines include settlement of claims against the accused person. Although fines are monetary punishments, they may be imposed along with trials and imprisonment. The amount paid as a fine is determined by the type of offences and law of the state.

Prosecution: Prosecution is the initiation or institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code, 1973 defines “prosecution” as the initiation or institution and carrying on of the legal proceedings against a person accused of any charge.

Offences under GST laws

A number of chapters/sections of the CGST Act, 2017 require compliances by the registered taxable persons and in some cases even by persons not registered under this Act. Non-compliance with the provisions of these sections may lead to imposition of penalties/fines and prosecution under this act. An illustrative list of these chapters is given as under:

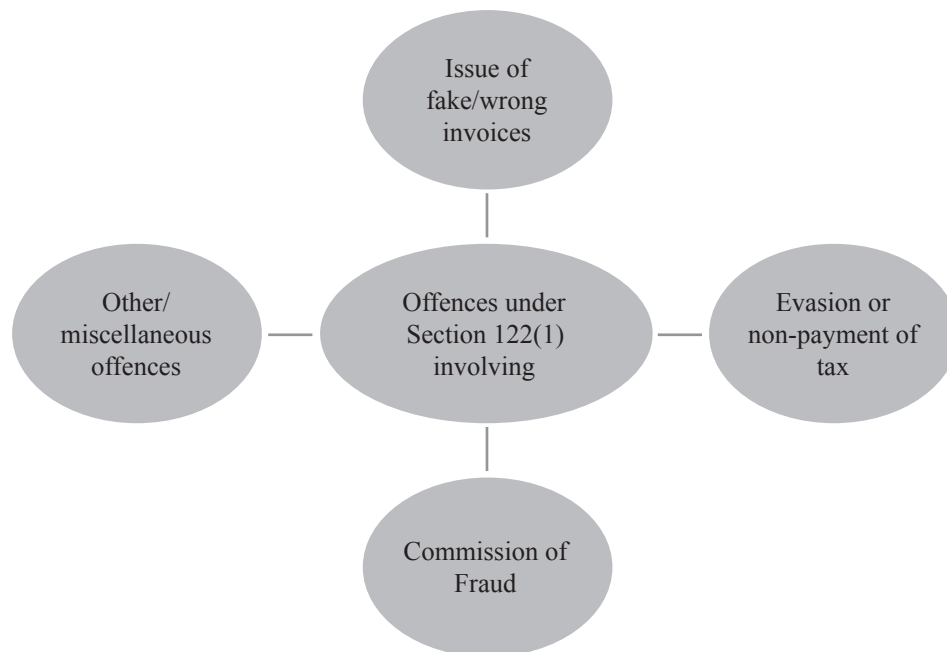
1. Chapter III involving Sections 7 to 11 provide for levy and collection of tax.

2. Chapter V provides for provisions relating to availing of input tax credit
3. Chapter VI obliges the taxable person(s) to get themselves registered under the GST laws
4. Chapter VII provides for rules relating to issue of tax invoices, debit notes and credit notes
5. Chapter VIII obliges the registered taxable person(s) to maintain books of accounts
6. Chapter IX obliges the registered taxable person(s) to file certain periodical returns
7. Chapter X obliges the registered taxable person(s) to pay tax. The chapter also provides for obligations to deduct/collect tax at source and deposit the same with government.

Non-compliance with the provisions of any of these chapters or the rules made thereunder, may lead to levy of interest, imposition of fine/penalty and prosecution of the defaulting taxable persons. In particular, Chapter XIX, Sections 122 to 138 of the CGST Act, 2017 read with Rule 162 of the CGST Rules, give details of various offences and penalties prescribed for these offences. These provisions also apply to State/UT Goods and Service laws and Integrated Goods and Service Tax Act, 2017.

Chapter XIX: Offences and penalties of CGST Act, 2017

Section 122 of the CGST Act, 2017 gives a list of 21 offences which are liable to penalty. For the sake of convenience, these offences can be divided under four broad categories such as issue of fake/wrong invoices, evasion or non-payment of tax liability, commission of fraud involving supply goods or services in contravention of the provisions of GST laws and others miscellaneous provision. These offences are depicted as under:



The non-compliance of these provisions may lead to imposition of fines/penalties and prosecution under the GST laws. Each of the above-mentioned categories of offences are described as under;

Offences involving issue of fake/wrong invoices:

- (1) Where a taxable person:

- i. **Supplies any goods or services** or both **without issue of any invoice** or issues an incorrect or false invoice with regard to any such supply,
- ii. **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,
- iii. avails input tax credit using such invoice or bill referred to in (ii) above ITC
- iv. issues invoices using the GST identification number of another *bonafide* taxable person

Offences involving evasion and/or non-payment of tax

- v. 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;
- vi. evades tax, fraudulently avails ITC or fraudulently obtains refund, where such offence or refund is not covered under (i) to (iv) above.
- vii. **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;
- viii. **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;
- ix. **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;
- x. **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;
- xi. **takes or distributes input tax credit in contravention** of Section 20 (distribution of ITC by Input Service Distributor) or rules made thereunder

Offences involving commission of fraud

- xii. **fraudulently obtains refund** of tax under this Act or **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 the GST laws.
- xiii. **suppresses his turnover** leading to evasion of tax under this Act
- xiv. **supplies, transports or stores any goods** which he has reasons to believe are **liable to confiscation** under this Act;
- xv. tampers with, or **destroys any material evidence** or document
- xvi. disposes off or tampers with any goods that have been detained, seized, or attached under this Act liable to be registered under this Act but fails to obtain registration;
- xvii. furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently

Other miscellaneous provisions

- xviii. obstructs or prevents any officer in discharge of his duties under this Act
- xix. transports any taxable goods without the cover of documents as may be specified in this behalf
- xx. 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;
- xxi. 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;

Penalties, fines and prosecution under GST laws

The penalties leviable under the CGST Act, 2017 are summarised as under:

1. Penalty for supply of goods/service for non/short payment of tax etc.

As per Section 122 (2) any registered person who supplies any goods or services or both on which tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised:—

- (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 of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;
- (b) for reason **of fraud or any wilful misstatement or suppression of facts to evade tax**, shall be liable to a penalty equal to **ten thousand rupees or the tax due from such person**, whichever is higher.

2. Penalty for aiding or abetting of offences

As per Section 122(3), any person who commits any of the following offences shall be liable to a penalty which may **extend to twenty-five thousand rupees:-**

- i. aids or abets any of the 21 offences specified in clauses (a) to (l) of sub-section (1) of Section 122 (at (i) to (xxi) above) or
- ii. 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;
- iii. 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;
- iv. 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;

- v. 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,

3. **Penalty for failure to furnish or return**

Section 150 of the CGST Act, 2017 provides for obligations of the taxable person(s) to furnish information/return. As per Section 123 of the Act, if a person who is required to furnish an information return under section 150, fails to do so within the period specified in the notice issued under sub-section (3) thereof, the 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. The penalty imposed under this section, however, shall not exceed five thousand rupees.

4. **Fine for failure to furnish statistics:**

Section 151 of the CGST Act, 2017 empowers the Commissioner of CGST Act, 2017 that if he considers that it is necessary so to do, he may by notification, direct that statistics may be collected relating to any matters dealt by or in connection with this Act. Section 124 provides that if any person required to furnish any information or return under section 151,—

- a. without reasonable cause fails to furnish such information or return as may be required under that section, or

- b. 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.

5. **General penalty i.e. offences for which no other penalty is provided under this Act:**

As per Section 125 of the CGST Act, 2017, any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for under this Act, shall be **liable to a penalty which may extend to twenty-five thousand rupees**.

6. **General discipline relating to penalty:**

As per sub-section (1) of Section 126 of the CGST Act 2017, no officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

For the purpose of this sub-section, —

- a. a breach shall be considered a 'minor breach', if the amount of tax involved is **less than five thousand rupees**;
- b. an omission or mistake in documentation shall be considered to be easily rectifiable, if the same is **an error apparent on the face of record**.

The following provisions have to be kept in mind by the proper officer while imposing penalty:

1. 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.
2. No penalty shall be imposed on any person without giving him an opportunity of being heard.
3. 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.
4. 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.
5. 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.
7. **Power to waive penalty or fee or both:**— As per Section 128, the Government may, by notification, waive in part or full, any penalty referred to in section 122 (i.e. 21 specified offences) or section 123 (penalty for failure to furnish information/return) or section 125 (general penalty) or any late fee referred to in section 47 (levy of late fee 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.
8. **Detention, seizure and release of goods and conveyances in transit:** Section 129, of the CGST Act, 2017, provides for levy of penalty on any person who 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 and after detention or seizure, shall be released only on payment of such tax and penalty, depending upon whether the owner of goods comes forward or does not or on furnishing of such security as provided under sub-sections 2 to 6 of Section 129 of the CGST Act, 2017.
9. **Confiscation of goods or conveyances and levy of penalty.**—
Section 130 provides for confiscation of goods or conveyances and levy of penalty. The provisions of this section are summarised as under:
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. However, such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon.

10. **Punishment for certain offences:**

Whoever commits, or causes to commit and retain the benefits arising out of, any of the following 12 offences mentioned in clauses (a) to (l) of Sub-section 1 of Section 132, shall be liable to penalty given in the matrix below:

- (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 the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;
- (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 or fraudulently obtains refund** and where such offence is not covered under clauses (a) to (d) above;
- (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,

Person(s) committing any of the offences mentioned at (a) to (l) above, shall be punishable:

Sr. No.	Description of offence	Period of imprisonment
(i)	in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees (Rs 5 crore) ;	with imprisonment for a term which may extend to five years and with fine ;
(ii)	in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees (Rs 2 crore) , but does not exceed five hundred lakh rupees (Rs 5 crore) ,	with imprisonment for a term which may extend to three years and with fine ;
(iii)	in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees (Rs 1 crore) , but does not exceed two hundred lakh rupees (Rs 2 crore) ,	with imprisonment for a term which may extend to one year and with fine ;
(iv)	in cases where he commits or abets the commission of an offence specified in clause (f: falsification of substitution of financial records or production of fake account or document) or clause (g: obstruction or prevention of any officer in the discharge of his duties under this Act;) or clause (j: tampering with or destruction of any material evidence or documents;	he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

11. Person convicted of an offence under this Act is again convicted:

As per the provision of Section 132 (2), where any person convicted of an offence under this section is again convicted of an offence under this section, then he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to **five years and with fine.**

12. Cognizable and non-bailable offences:

The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of Section 132 and punishable under clause (i) (i.e. in cases where the amount of tax evaded or the

amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees (**Rs 5 crore**) of that sub-section shall be cognizable and non-bailable. The list of cognizable and non-bailable offences is given below:

- (a) Supply of 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 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;
- (c) Availing of input tax credit using the invoice or bill referred to in clause (b) or fraudulently availing input tax credit without any invoice or bill;
- (d) Collection of any amount as tax but failing to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

Except for these four offences involving tax fraud of five crore rupee or more, all other offences under this Act, shall be non- cognizable and bailable. This is notwithstanding anything contained in the Code of Criminal Procedure, 1973.

13. **Power to order prosecution:**

A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

14. **Offences under GST by Companies, LLPs, HUFs and others**

For any offence committed by a company, both the officer in charge (such as director, manager, secretary) as well as the company will be held liable. For LLPs, HUFs, trust, the partner/karta/ managing trustee will be held liable.

Role of professionals in avoiding prosecution and payment of penalties and fines:

As is evident from the above, contravention the taxable persons have to face severe prosecution pay. CMA professionals have two way role in helping their clients to overcome compliance issues.

1. The professional should guide their client in preventing violation of any of the GST law so that the clients are saved from having to reply to show cause notices and from undergoing penalties fines and prosecution.
2. In case despite all efforts, some of the client still face the problems mentioned in the above-mentioned paragraph, the CMAs should help the clients in preparing appropriate replies, providing representational services so as to help reduce the levy of fines, penalties prosecutions
3. The CMA professionals can also help the clients in preparing analysis of the financial information so that the case could be better represented before the Appellate Authorities.