

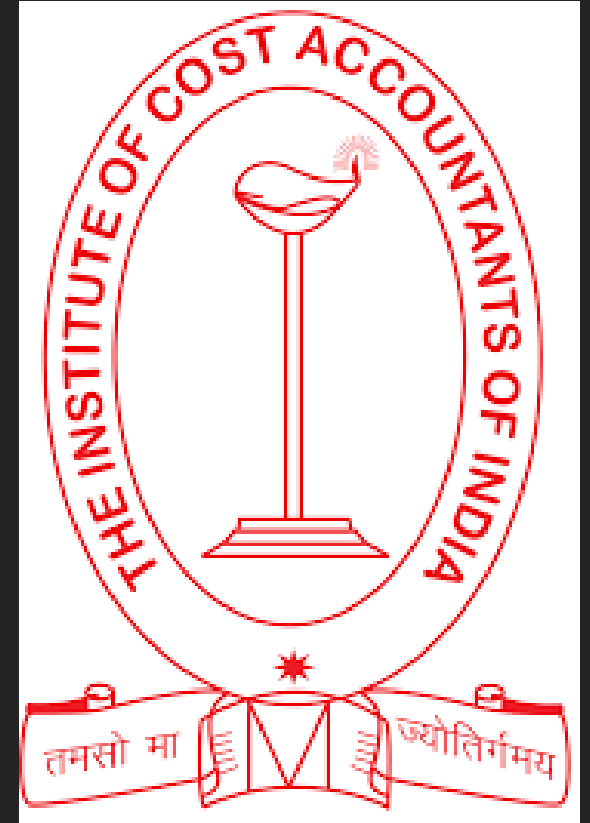
Penalties and Prosecution in GST

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Offences and penalties in GST –Chapter XIX of CGST Act - Coverage

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Offences and penalties in GST –Chapter XIX of CGST Act - Coverage

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Offences and penalties in GST – Chapter XIX of CGST Rules - Coverage

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162	Procedure for compounding of offences.

Meaning of Penalty

The word “Penalty” has **not been defined** in the CGST Act.

As per **judicial pronouncements and principles of jurisprudence**, the Penalty means:

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

In **criminal and civil laws**, 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**.

Meaning of Prosecution

Prosecution is the initiation or institution or commencement of legal proceeding.

Prosecution is 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.

Section 122 of the CGST Act **describes offences** and **prescribes the applicable Penalty**.

The procedure for **adjudication or prosecution** of the imposition of Penalty is **provided U/S 73 and U/s 74 of the CGST Act**.

Penalty leviable U/S 122 of the CGST Act is equivalent to amount of tax OR Rs. 10000-00, whichever is higher in cases where:

(a) tax is evaded, tax is not deducted or short deducted or deducted but not paid to the Government; OR

(b) tax is not collected (or short collected) or collected but not paid to the Government; OR

(c) Input Tax Credit (ITC) availed of or passed on or distributed irregularly or **fraudulent claim of refund**.

Section 122 of
CGST Act -
Penalty for
certain offences.

Section 122 of CGST Act – four sub-Sections


The **first sub-section** prescribes **twenty-one types of offences**, any one of which, if committed, can attract penalty **of ten thousand rupees or equal to the amount of tax involved**, whichever is higher.

Sub-section (1A) prescribes that penalty can be levied in case of specified offences, on any persons **satisfying both the following conditions**:

- (a) such Person **retains the benefit from the occurrence** of the specified transactions; and
 - (b) the transaction is conducted **at the instance of such Person**.
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The second sub-section deals with two situations:

- (a) where certain offences committed **are not due** to either fraud or willful misstatement or suppression of facts. In such a case, **penalty will get reduced to 10% of the tax involved, subject to a minimum of ten thousand rupees**.
 - (b) where the offence committed is **due to either fraud or any willful misstatement or suppression of facts to evade tax**. In such cases, the Penalty will be **equal to tax involved subject to a minimum of ten thousand rupees**.
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Section 122 of CGST Act – four sub-Sections

The **third sub-section** deals with offences where the **person is not directly involved** in any evasion but **may aid or abet or may be a party to evasion** or if he **does not attend summons or produce documents**.

Penalty in such a cases would **be up to twenty-five thousand rupees**.

List of Twenty-one offences as per Section 122(1) of the CGST Act

Supplying goods and / or services **without issuing an invoice** or issuing an incorrect or false invoice.

Issuing an invoice **without supplying goods and / or services**.

Collecting tax but failing to remit it to the government **within three months** of the due date.

Collecting tax in contravention of law but failing to remit it to the Government within three months of the due date.

Failing to **deduct tax or deposit the tax with the Government**.

Failing to **collect tax or collecting too little tax from the supplier** at the time of payment or **failing to pay the tax to the Government** — applies to **eCommerce Operators**.

Taking **full or partial Input Tax Credit** without **actual receipt of goods and / or services**.

Obtaining a **refund of tax by fraud**.

List of Twenty-one offences as per Section 122(1) of the CGST Act

Distributing an Input Tax Credit **other than in the manner prescribed.**

Falsifying or substituting financial records, producing fake accounts and / or documents, or **furnishing a false return.**

Failing to obtain Registration (if Registration is required).

Furnishing **false information** during registration.

Obstructing an officer from the discharge of duties.

Transporting taxable goods **without documents.**

Suppressing turnover **leading to evasion of tax.**

Failing to **maintain books of accounts** and documents.

List of Twenty-one offences as per Section 122(1) of the CGST Act

Failing to furnish information to CGST / SGST Officers or **furnishing false information.**

Supplying and / or storing goods which one has reason to believe **are liable for confiscation.**

Issuing an invoice or document by **using the Identification Number of another person.**

Tampering with material evidence.

Tampering with any goods that have been **detained, seized, or attached.**

Section 122(1A) of the CGST Act

This provision will apply if **such person is a beneficiary, and such a transaction is on his request.**

Penalty equivalent to the amount of tax evaded or Input Tax Credit availed or passed on, will be levied on a **person committing any of the following offences.**

Goods or Services or both are supplied without the issue of invoices / issue of incorrect or false invoices.

Issue of invoice / bill without supply of Goods or Services or both.

Takes and / or utilizes Input Tax Credit (ITC) without actual receipt of Goods and / or Services.

Takes and / or distributes Input Tax Credit in contravention of the provisions of Section 20 of CGST Act, 2017.

Section 122(1B)
of the CGST Act
— proposed to be
incorporated thru
Finance Act 2023
(not yet notified)

Any electronic commerce operator who—

- (i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;*
- (ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or*
- (iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act, shall be liable to pay a penalty of **ten thousand rupees**, or an **amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher**.*

Section 122(2) of the CGST Act

A Registered Person who supplies any Goods or Services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the Input Tax Credit has been wrongly availed or utilized, **for any reason, other than the reason of fraud or any willful 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.**

A Registered Person who supplies any Goods or Services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized, **for reason of fraud or any willful misstatement or suppression of facts to evade tax**, shall be liable to a penalty of **ten thousand rupees or tax due from such person, whichever is higher.**

Section 122(3) of the CGST Act

Penalty up to twenty-five thousand rupees will be levied where **any person commits any of the following offences:**

Aids or abets any of the offences specified in Section 122(1) of CGST Act.

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 reason to believe are liable to confiscation.

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 reason to believe are in **contravention of any provisions** of this Act or the rules made thereunder.

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.**

Fails to issue invoice in accordance with the provisions of this Act or Rules made thereunder, or fails to account for an **invoice in his books of account.**

Section 123 of CGST Act - Penalty for failure to furnish information return.


Section 123 of CGST Act is applicable in situations where the information return as prescribed under **Section 150 of CGST Act – Obligation to furnish Information Return – is not filed.**

Section **150** requires certain class of persons to maintain records and furnish information return within the prescribed time.

If the person who is required to file an information return, as prescribed under Section 150, has **not filed the return within the stipulated period of 30 days or such further period** as prescribed U/S 150(2) and 150(3) from the date of issue of Show Cause Notice, **a penalty of rupees one hundred per day** shall be levied for each day for which the failure continues but **not exceeding five thousand rupees.**

Section 124 of CGST Act - Fine for failure to furnish statistics.


Section 124 of CGST Act provides for penal consequences for failure to furnish any information or return as required under **Section 151 of CGST Act – Power to collect statistics.**



This Section specifies levy of fine under two circumstances, namely:



(a) Failure to furnish information or return without reasonable cause;
OR



(b) Furnishing false information willfully.



The fine specified is up to **ten thousand rupees** and where the offence is continuing a further fine of **up to one hundred rupees per day** after the first day during which offence continues subject to **maximum of twenty-five thousand rupees.**

Section 125 of CGST Act – General Penalty.

Any offence that does not have a specific penalty prescribed under the GST law cannot be let off without penal consequences in order to **do justice** towards the law-abiding citizens.

Section 125 is a general penalty provision under the GST law for cases **where no separate penalty is prescribed under the Act or Rules.**

Penalty up to twenty-five thousand rupees is imposable where any person contravenes:

(a) any of the provisions of the Act; **OR**

(b) any Rules made thereunder.

for which no penalty is separately prescribed under the CGST Act.

Section 126 of CGST Act – General Disciplines related to Penalty

Guideline for imposing penalty is **one of the highlights** of GST law, **which is the progressive tax legislation.**

Courts have, for long, addressed the presence of circumstances surrounding the **imposition of penalty**, for example, **non-payment of tax.**

Now a **separate provision under CGST Act** (Section 126) which is providing guidance on, **‘how’ and ‘when’ to impose or refrain from imposing penalty**, is valuable.

The **nature of penalty and the principles governing imposition of penalties** as held by the Courts would be a **guiding factor.**

Guiding principles for levy of penalty U/S 126 of CGST Act

No penalty can be imposed where the tax involved is less than **five thousand rupees**, which are considered as **minor breach**, **OR** in case of **documentation errors** apparent on the **face of record** which are **easily rectifiable** and **made without fraudulent intent** or **gross negligence**.

When penalty is **still liable to be imposed**, the next safety as laid down is to **inquire into the degree and severity of the breach** to proceed with **imposition of penalty**.

In these cases, if the **facts do not demand** imposition of penalty, **restraint is advised**.

No such **discretion is provided** in the Section **while providing for amount of penalty**.

The person liable to penalty must be given an **opportunity of being heard**.

A **speaking order** should be passed **for imposing such penalty**.

The officer must **provide explanation for levy of penalty** and the **basis on which penalty is quantified**.

Voluntary disclosure by a Person to an Officer (**not merely in his own books and records**) about the circumstances of the breach prior to the discovery of the breach by the Officer may be considered as a mitigating factor for **quantifying penalty**.

Cases involving **fixed sum or fixed percentage of penalty** are excluded.

Section 127 of CGST Act – Power to impose Penalty in certain cases.

Penalty proceedings can be initiated under Section 127 of the CGST Act even if the **alleged contravention is not covered under any of the following Sections of the CGST Act:**

Section 62: Assessment of non-filers of returns.

Section 63: Assessment of unregistered persons.

Section 64: Summary assessment in certain special cases.

Section 73: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts.

Section 74: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts.

Section 129: Detention, seizure and release of goods and conveyances in transit.

Section 130: Confiscation of goods or conveyances and levy of penalty.



Section 127 of CGST Act – Power to impose Penalty in certain cases.

- Penalties U/S 127 of the CGST Act can be imposed by the Proper Officer after giving due opportunity to the taxpayer even in cases where there are no proceedings open relating to the Assessment, Adjudication, Detention or Confiscation.
- The Proper Officer may issue a Penalty Order after giving opportunity of being heard to such taxpayer.

Section 128 of CGST Act – Power to waive Penalty or fee or both.

Section 128 of the CGST Act empowers the Government to **waive penalty** for **certain class of taxpayers** or **under certain circumstances** on the **recommendation of the Council**.

This section provides for waiver of penalty leviable under Section 122 (**Penalty for certain offences**) OR Section 123 (**Penalty for failure to furnish information return**) OR Section 125 (**General Penalty**) or late fee payable under Section 47 to those **classes of taxpayers** or under **such mitigating factors** as notified by the Government .

A **series of Notifications** have been issued for reduction of late fee regarding filing of Forms **GSTR 3B, GSTR-1, GSTR-5, GSTR-5A, and GSTR-6**.

Section 129 of CGST Act – Detention, seizure and release of goods and conveyance in transit.

Section 129 of CGST Act provides for the basis relating to detention of goods or conveyances or both in case of certain defaults under the law.

Detention means **keeping or holding** back either by force or otherwise.

Confiscation means to **appropriate** to the Government account;

Seizure means to take **forcible possession** of.

If a **Person contravenes** any provision of the **Act or Rules** while **transporting or storing goods** during transit, then such goods and the **conveyance in which such goods are carried** and all the documents relating to such goods and conveyance can be **detained or seized**.

The Proper Officer **detaining and seizing** the goods and / or conveyance need to **provide proper opportunity** to the transporter or such other person to explain his case **by issuing a Show Cause Notice to him**.

After **Hearing the transporter**, the officer shall **pass an appropriate Order**.

Section 129 of CGST Act – Detention, seizure and release of goods and conveyance in transit.

In **case of default**, where the owner of the goods **comes forward for the payment of penalty**, then **penalty to be levied** will be equal to **200% of the amount of tax** and in case of **exempted goods** **2% of the value of goods or twenty-five thousand rupees whichever is less**.

Section 129(1) of the CGST Act provides that:

Situation 1: When the **goods are taxable**, and the **owner comes forward to pay the penalty** – then the amount of **penalty payable** would be **equal to two hundred per cent of the tax**.

For example, in a situation where taxable **goods valued at one lakh rupees** with **applicable tax rate of eighteen per cent** are being transported without documents and are **detained enroute**, then if the owner of goods comes forward to pay penalty, the amount payable as penalty would be **equal to thirty-six thousand rupees**.

Section 129 of CGST Act – Detention, seizure and release of goods and conveyance in transit.

Situation 2 under Section 129(1): When the **goods are exempt** and the owner comes forward to **pay the penalty** – then the amount of penalty payable would be **two per cent of the value of the goods or twenty-five thousand rupees, whichever is less.**

For example, in situations where the exempt goods valued at **ten lakh rupees** are being **transported without documents** and are detained enroute, then if the owner of goods **comes forward to pay the penalty** the amount payable would be equal to **twenty thousand rupees OR twenty-five thousand rupees** whichever is lower. In this case, penalty payable works out to **twenty thousand rupees.**

Section 129 of CGST Act – Detention, seizure and release of goods and conveyance in transit.

In case where owner of the goods **does not come forward for payment of penalty**, then an Order shall be passed for payment of penalty **equal to higher of fifty per cent of the value of goods or two hundred per cent of the tax payable on such goods** and in case of exempted goods, **five per cent of the value of goods or twenty-five thousand rupees** whichever is higher.

Situation 1 under Section 129(2): When the **goods are taxable**, and the **owner does not come forward to pay the penalty** – then the amount of **penalty payable** would be **equal to fifty per cent of the value of goods or two hundred per cent of the tax payable on such goods, whichever is higher.**

For example, in a situation where taxable **goods valued at one lakh rupees** with **applicable tax rate of eighteen per cent** are being transported without documents and are **detained enroute**, then if the owner of goods does not come forward to pay penalty:

the amount payable as penalty would be **equal to higher of fifty thousand rupees (50% of Rs. 1,00,000) OR thirty-six thousand rupees (200% of 18,000),**

that is rupees fifty thousand rupees in this case.

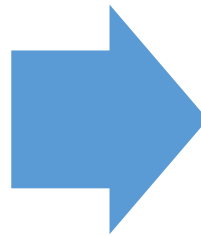
Section 129 of CGST Act – Detention, seizure and release of goods and conveyance in transit.

Situation 2 under Section 129(2):

When the **goods are exempt** and the owner does not come forward to **pay the penalty** – then the amount of penalty payable would be:

five per cent of the value of the goods; OR

twenty-five thousand rupees, whichever is higher.



For example, in situations where the exempt goods valued at **ten lakh rupees** are being **transported without documents** and are detained enroute, then if the owner of goods does not **come forward to pay the penalty** the amount payable would be equal to:

fifty thousand rupees OR twenty-five thousand rupees whichever is lower.

In this case, penalty payable works out to **twenty-five thousand rupees.**

Section 129 of CGST Act – Detention, seizure and release of goods and conveyance in transit.

The Proper Officer shall release the goods **upon payment of penalty in the above manner** or upon **furnishing a security equivalent of the amount payable** and all the proceedings under Section 129 shall be deemed to be concluded.

If the person - either owner of the goods or any other person - fails to discharge the amount of penalty under Section 129 **within 15 days**, then the goods and / or conveyance shall be liable for confiscation.

The **period of 15 days can be reduced** by Proper Officer if goods are of perishable or hazardous in nature.

Penalty under Section 129 is a “penalty in action”, that is, this penalty cannot be imposed **after completion of movement** - in case goods are **not intercepted during movement** and **found to be deficient on the prescribed documents**.

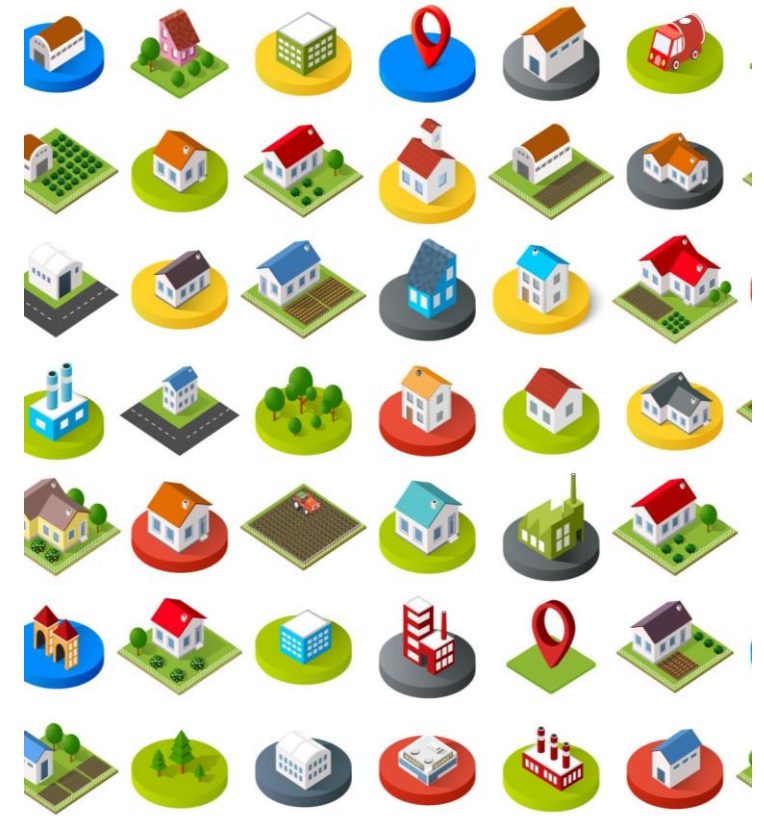
Section 130 of CGST Act – Confiscation of goods or conveyances and levy of penalty

Section 130 of CGST Act provides for **specific situations or causes** leading to **confiscation of goods / conveyances**.

The **nature of authorization to confiscate** and **providing an opportunity to show cause** and **release goods / conveyances liable for such confiscation** are provided under this Section.

There are **five precise causes** for confiscation of goods and/ or conveyances specified in this Section:

- Supply or receive goods **in contravention of the provisions of this Act or Rules** made thereunder - **resulting in actual evasion of tax**.
- **Not accounting** for goods - **carrying a liability for payment of tax**.
- Supply of **goods liable to tax** - **without applying for registration**.
- **Contravention** of the provisions of Act or rules made thereunder - **with intent to evade payment of tax**.
- **Use of conveyance** as a means of transport for carriage of goods - **in contravention of the Act or rules made thereunder**.



Section 130 of CGST Act – Confiscation of goods or conveyances and levy of penalty

In all the above cases, goods or conveyance shall be **liable for confiscation**.

In situations where the owner of the conveyance proves that it is without the **connivance of the owner himself, his agent or Person in-charge of the conveyance**, the conveyance shall not be confiscated.

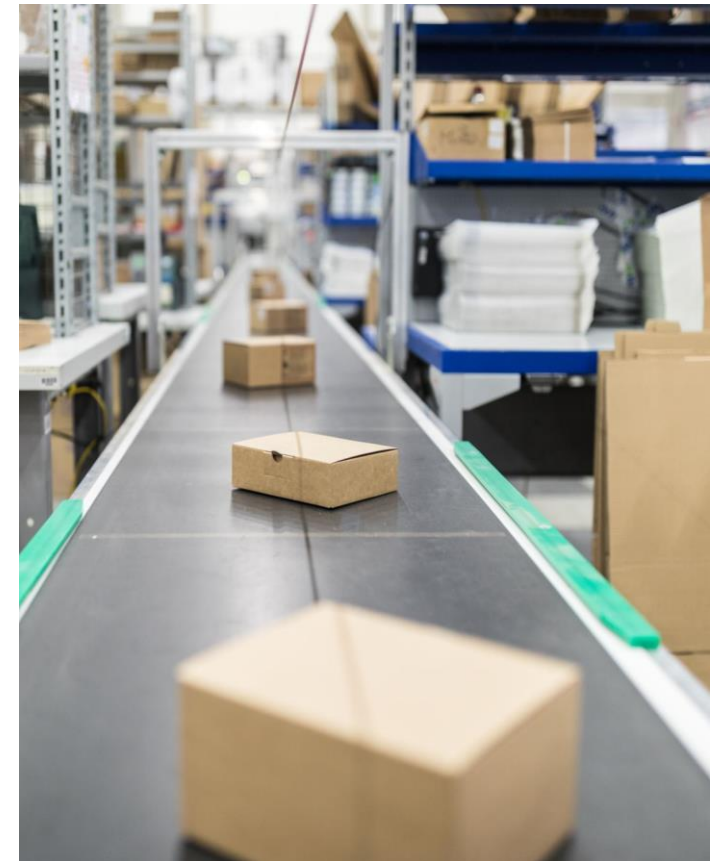
The person shall be liable to pay penalty under **Section 122 of the Act** – Penalty for certain cases.

If the goods or conveyance are liable to be confiscated under the provisions of this Act, the Proper Officer shall give the **owner of the goods an option to pay fine** in lieu of confiscation.

The amount of fine **shall not exceed the market value of goods** as reduced by the **amount of tax payable thereon**.

At the same time, the **aggregate of fine and penalty leviable shall not be less than the amount of penalty equal to hundred percent of the tax payable on such goods**.

Where the conveyance is **used for transportation of goods or passengers on hire**, the owner of the conveyance shall be **given an option to pay in lieu of confiscation of the conveyance a fine equal to the amount of tax payable on the goods transported on his conveyance**.



Section 130 of CGST Act – Confiscation of goods or conveyances and levy of penalty

The Order for **confiscation** cannot be issued without giving the Person an **opportunity of being heard**.

The title of the confiscated goods or conveyance shall be **vested with the Government**.

The Proper Officer **ordering confiscation** shall take and **hold possession of the things** confiscated **on behalf of the Government** and **every Officer of Police** shall assist in **taking such hold and possession**.

If the Proper Officer is **satisfied that the confiscated goods / conveyance are not required** for any **other proceedings under the Act**, then he shall, after giving reasonable time not exceeding **three months to pay fine** in lieu of **confiscation**, **dispose the goods** and deposit the **sale proceeds with the Government**.

Section 131 of CGST Act — Confiscation or penalty not to interfere with other punishments

Section 131 of CGST Act is an **administrative provision** which empowers the **Government to initiate other** proceedings, as applicable, **in addition to confiscation of goods or imposition or penalty.**

Normally, **the inference is that** where the goods are confiscated or where any penalty is imposed, **no other proceeding which is punitive in nature should be initiated.**

Section 131 of CGST Act provides that in addition to confiscation of goods or penalty already imposed, all or any other proceedings may also be initiated or continued under the GST law or any other law, as applicable.

This could be prosecution, arrest, cancellation of registration etc., as applicable, and provided for the relevant non-compliance.

For the **same offence both penalty and other punishments can be inflicted upon on the defaulter.**

Section 132 of CGST Act

— Punishment for certain offences

Section 132 talks about cases of tax evasion and penal actions applicable on specific events subject to the amount of tax sought to be evaded.

This provision provides for prosecution of offenders and the resultant punishment that could be imposed on them.

In the normal course, prosecution is the institution or commencement of criminal proceeding, the process of framing formal charges against an offender before a judicial forum / legal Tribunal and pursuing them to final judgement on behalf of the State or Government or by indictment or information.

Section 132 of CGST Act – Punishment for certain offences – Situations whereby there can be leakage of Government revenue

Supply of goods or services or both without the cover of invoice with an intent to evade tax;

If any person issues any invoice or bill without actual supply of goods or services or both leading to wrongful input tax credit or refund of tax;

Any person who avails input tax credit using invoice referred in point (b) above or fraudulently avails input tax credit without any invoice or bill ;

Collection of taxes without payment to the Government for a period beyond three months of due date;

Evasion of tax, or obtaining refund with intent of fraud where such offence is not covered in above four situations;

Falsifying financial records or production of false records/ accounts/ documents/ information with an intent to evade tax;

Obstructs or prevents any officer from doing his duties under this Act;

Section 132 of CGST Act – Punishment for certain offences – Situations whereby there can be leakage of Government revenue

Acquires or transports or in any other manner deals with any goods which he knows or has reasons to believe are liable for confiscation under this Act or rules made thereunder;

Receives or in any way, deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this law;

Tampers with or destroys any material evidence or documents;

Fails to supply any information which he is required to supply under this law or supply false information;

Attempts or abets the commission of any of the offences mentioned above

Section 132 of CGST Act – Punishment for certain offences

Section 132 enables institution of prosecution proceedings both against the offenders and against those persons who are instrumental in committing such offence.

Such persons who are aiding the commission of the offence are punishable only if they retain the benefits arising from the offence.

The period of imprisonment and quantum of fine varies depending on the amount of tax evaded or seriousness of the offence.

Amount of Tax evaded / erroneous refund / wrong ITC availed or utilised	Fine	Imprisonment
Between one crore rupees and two crore rupees	Yes	Upto 1 Year
Between two crore rupees and five crore rupees	Yes	Upto 3 years
Exceeding five crore rupees	Yes	Upto 5 years

Section 132 of CGST Act – Punishment for certain offences

- If any person commits any offence specified in clause (f), (g) or (j) under Section 132 of CGST Act, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.
- In case of repetitive offences without any specific/ special reason which is recorded in the judgment of the Court will entail an imprisonment term of not less than six months and which could extend to five years plus with a fine.
- All offences mentioned in this Section are non-cognizable and bailable except the following cases:
 - a. where the amount exceeds five crore rupees; and
 - b. instances covered by (a) to (d) in Section 132 of CGST Act.
- Every prosecution proceeding requires prior sanction of the Commissioner.



Section 132 of CGST Act – Punishment for certain offences – Changes proposed through Finance Bill 2023 – not yet notified

In section 132 of the Central Goods and Services Tax Act, in sub-section (1),—

- (a) clauses (g), (j) and (k) shall be omitted;**
- (b) in clause (l), for the words, brackets and letters "clauses (a) to (k)", the words, brackets and letters "clauses (a) to (f) and clauses (h) and (i)" shall be substituted;
- (c) in clause (iii), for the words "any other offence", the words, brackets and letter "an offence specified in clause (b)," shall be substituted;
- (d) in clause (iv), the words, brackets and letters "or clause (g) or clause (j)" shall be omitted.

Section 132 of CGST Act – Punishment for certain offences – proposed amendments

Clause 132(1)(g), Clause 132(1)(j) and Clause 132(1)(k) proposed to be deleted:

“(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(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”

In Clause 132(1)(l)(iii) changes proposed as highlighted in red:

in the case of **any other offence (an offence specified in clause b)** 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 but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

Clause 132(1)(b):

(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;

Section 133 of CGST Act – Liability of officers and certain other persons

Section 133 casts duties and obligations on the officers of the Goods and Services Tax Laws to keep the information collected either from the statistical data gathered by the Government or from the information furnished in the returns confidential.

Since the officers of the department are dealing with sensitive information, the secrecy and security of such information is of utmost importance.

The officers who are dealing with the statistical data or data collected from the information returns, need to maintain utmost secrecy of the same.

If the officer willfully discloses such information or contents by any reason other than by reason of his duties cast upon him under the Act, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five rupees or both.

Any prosecution under this section would be initiated only with the prior sanction of the Government in case of a Government Servant and with the sanction of Commissioner in the case of others.

Section 134 of CGST Act

—

Cognizance of offence

Any offence under the Act or Rules can be tried only before a Court not lower than the Court of Judicial Magistrate of First Class.

The previous sanction of the Commissioner is mandatory in every such case.

Section 135 of CGST Act – Presumption of culpable mental state

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 but it shall 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.

Explanation .-For the purposes of this section,-

- (i) the expression " culpable mental state " includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;*
- (ii) 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.*



Section 136 of CGST Act – Relevancy of statements under certain circumstances

A statement recorded during an investigation proceedings or inquiry will be relevant to prove the truthfulness of facts when:

- (a) It is made by a person who is not available in Court on account of his death, incapacity, prevention by another party or when he absconds or when his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable or
- (b) The Court considers the statement as an evidence on examination of the person as a witness.



Section 137 of CGST Act – Offences by Companies

This section states that where an offence is committed by companies, every person/ director/ manager/ secretary or any other officer who at the time of commission of the offence, 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 such offence and shall be liable to be proceeded against and punished accordingly.

Where such offences are committed by a person being partnership firm, LLP, HUF or trust, then the Partner or Karta or Managing Trustee (as the case may be) shall be deemed to be guilty and liable to be proceeded against and punished.

If the accused person proves that he was in no way related to the offence being committed or he had exercised all possible measures to prevent commission of such offences, then he is not punishable under this section.

Compounding of offences – Section 138

(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed :

Provided that nothing contained in this section shall apply to-

(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;

(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;

(c) 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;

(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) or clause (j) or clause (k) of subsection (1) of section 132 ; and

(f) any other class of persons or offences as may be prescribed:

Compounding of offences – Section 138

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as may be prescribed , subject to the minimum amount not being less than ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.

(3) 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.

Compounding of
offences —
Section 138 —
Changes
proposed thru
Finance Act 2023
— not yet notified.

In section 138 of the Central Goods and Services Tax Act,—

(a) in sub-section (1), in the first proviso,—

(i) for clause (a), the following clause shall be substituted, namely:—

"(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132;"

(ii) clause (b) shall be omitted;

(iii) for clause (c), the following clause shall be substituted, namely:—

"(c) a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132;"

(iv) clause (e) shall be omitted;

(b) in sub-section (2), for the words "ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher", the words **"twenty-five per cent. of the tax involved and the maximum amount not being more than one hundred per cent. of the tax involved"** shall be substituted.

Procedure for compounding of offences – Rule 162

(1) An applicant may, either before or after the institution of prosecution, make an application under sub-section (1) of **section 138 in FORM GST CPD-01 to the Commissioner for compounding of an offence.**

(2) On receipt of the application, the Commissioner shall **call for a report from the concerned officer** with reference to the particulars furnished in the application, or any other information, which may be considered relevant for the examination of such application.

(3) The Commissioner, after taking into account the contents of the said application, **may, by order in FORM GST CPD-02**, on being 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, allow the **application indicating the compounding amount and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application.**

(4) The application shall not be decided under sub-rule (3) without **affording an opportunity of being heard** to the applicant and recording the grounds of such rejection.

(5) The application shall not be **allowed unless the tax, interest and penalty liable to be paid** have been paid in the case for which the application has been made.

Procedure for compounding of offences – Rule 162

(6) The applicant shall, **within a period of thirty days** from the date of the receipt of the order under sub-rule (3), **pay the compounding amount as ordered by the Commissioner** and shall furnish the proof of such payment to him.

(7) In case the **applicant fails to pay the compounding amount** within the time specified in sub-rule (6), the order made under subrule (3) shall be vitiated and be void.

(8) Immunity granted to a person under sub-rule (3) may, at any time, be **withdrawn by the Commissioner**, if he is satisfied that such person had, in the **course of the compounding proceedings, concealed any material particulars** or had given false evidence. **Thereupon such person may be tried for the offence with respect to which immunity** was granted or for any other offence that appears to have been committed by him **in connection with the compounding proceedings** and the provisions the Act shall apply as if No such immunity had been granted.

If a Person fails to obtain registration, the penalty leviable will be equivalent to the _____?

- A. amount of tax;
- B. ten per cent of the amount of tax;
- C. up to ten thousand rupees;
- D. amount of tax or ten thousand rupees, whichever is higher;

Answer:- D

Penalty @ 10% of the tax can be levied in situations where _____?

- A. a person repeatedly had not appeared before GST Officer for three times;
- B. the taxable person has not filed returns for six consecutive months or more;
- C. a taxable person has been served with show cause notice for three times repeatedly;
- D. a Registered Person has not paid tax under a bona fide belief;

Answer:- D

Penalty leviable U/S 123 of CGST Act in situations where the information return as prescribed U/S 150 of CGST Act is not filed is _____?

- A. a penalty of one hundred rupees would be leviable for each day for which the failure continues subject to maximum of five thousand rupees;
- B. a penalty of two hundred rupees would be leviable for each day for which the failure continues subject to maximum of five thousand rupees;
- C. a penalty of one hundred rupees would be leviable for each day for which the failure continues subject to maximum of ten thousand rupees;
- D. a penalty of three hundred rupees would be leviable for each day for which the failure continues subject to maximum of five thousand rupees;

Answer:- A

Q.4

Fine leviable U/S 124 of CGST Act in situations where any Person either fails to furnish information or return as prescribed U/S 151 of CGST Act or willfully furnishes or causes to furnish false information is _____?

- A. fine up to twenty thousand rupees and where the offence is continuing a further fine up to one hundred rupees per day subject to maximum of twenty-five thousand rupees;
- B. fine up to ten thousand rupees and where the offence is continuing a further fine up to one hundred rupees per day subject to maximum of twenty-five thousand rupees;
- C. fine up to twenty-five thousand rupees and where the offence is continuing a further fine up to one hundred rupees per day subject to maximum of twenty-five thousand rupees;
- D. fine up to thirty thousand rupees and where the offence is continuing a further fine up to one hundred rupees per day subject to maximum of twenty-five thousand rupees;

Answer:- B

General Penalty leviable U/S 125 of CGST Act is levied _____?

- A. excluding the specified penalty under other provision/s of the GST law, where penalty is separately provided under the CGST Act;
- B. in addition to the specified penalty under other provision/s of the GST law, where penalty is separately provided under the CGST Act;
- C. where no penalty is separately provided under the CGST Act;
- D. as per any one of the Options A to C above;

Answer:- C

As per provisions U/S 126 of CGST Act, for minor breaches of tax regulations or procedural requirements, the tax authorities shall _____?

- A. not impose substantial penalties;
- B. impose nominal penalties;
- C. impose penalties as decided by the Proper Officer;
- D. not impose any penalty;

Answer:- D

Q.7

The amount of tax and penalty on goods seized U/S 129 of CGST Act need to be paid within _____ days ?

- A. seven;
- B. fifteen;
- C. twenty;
- D. thirty;

Answer:- B

In situations where the goods are taxable, and the owner does not come forward to pay the penalty, then the amount of penalty payable would be equal to _____?

- A. fifty per cent of the value of goods or two hundred per cent of the tax payable on such goods, whichever is higher;
- B. twenty-five per cent of the value of goods or two hundred per cent of the tax payable on such goods, whichever is higher;
- C. fifty per cent of the value of goods or one hundred per cent of the tax payable on such goods, whichever is higher;
- D. fifty per cent of the value of goods or two hundred per cent of the tax payable on such goods, whichever is lower;

Answer:- B

In situations where the goods are taxable, and the owner come forward to pay the penalty, then the amount of penalty payable would be equal to _____?

- A. one hundred per cent of the tax payable on such goods;
- B. one hundred fifty per cent of the tax payable on such goods;
- C. two hundred per cent of the tax payable on such goods;
- D. three hundred per cent of the tax payable on such goods;

Answer:- C

Q.9

In situations where the goods are exempt, and the owner comes forward to pay the penalty, then the amount of penalty payable would be equal to _____?

- A. two per cent of the value of goods or twenty-five thousand rupees whichever is less;
- B. three per cent of the value of goods or twenty-five thousand rupees whichever is less;
- C. two per cent of the value of goods or fifty thousand rupees whichever is less;
- D. four per cent of the value of goods or twenty-five thousand rupees whichever is less;

Answer:- A

Q.10

In situations where the goods are exempt, and the owner does not come forward to pay the penalty, then the amount of penalty payable would be equal to _____?

- A. five per cent of the value of goods or twenty-five thousand rupees whichever is higher;
- B. three per cent of the value of goods or twenty-five thousand rupees whichever is less;
- C. two per cent of the value of goods or fifty thousand rupees whichever is less;
- D. five per cent of the value of goods or twenty-five thousand rupees whichever is less;

Answer:- D

Q.11

In situations where the exempt goods valued at ten lakh rupees are being transported without documents and are detained enroute, then if the owner of goods does not come forward to pay the penalty the amount payable would be equal to _____?

- A. twenty-five thousand rupees;
- B. fifty thousand rupees;
- C. seventy-five thousand rupees;
- D. one lakh rupees;

Answer:- A

The maximum amount of fine, in lieu of confiscation, that can be levied U/S 130 of the CGST Act - Confiscation of goods or conveyances and levy of penalty - is _____?

- A. market-price of the goods;
- B. market-price of the goods Less tax chargeable thereon;
- C. market-price of the goods Plus tax chargeable thereon;
- D. value of the goods declared by the owner of the goods;

Answer:- B

The option to pay fine in lieu of confiscation of goods or conveyance can be exercised within _____ as per the provisions under Section 130 of the CGST Act - Confiscation of goods or conveyances and levy of penalty?

- A. one month;
- B. two months;
- C. three months;
- D. anytime;

Answer:- C

In situations involving evasion of tax amount or erroneous availment of Input Tax Credit (ITC) or wrong claims of refund in excess of five crore rupees, the period of imprisonment as per provisions under Section 132 of CGST Act is _____?

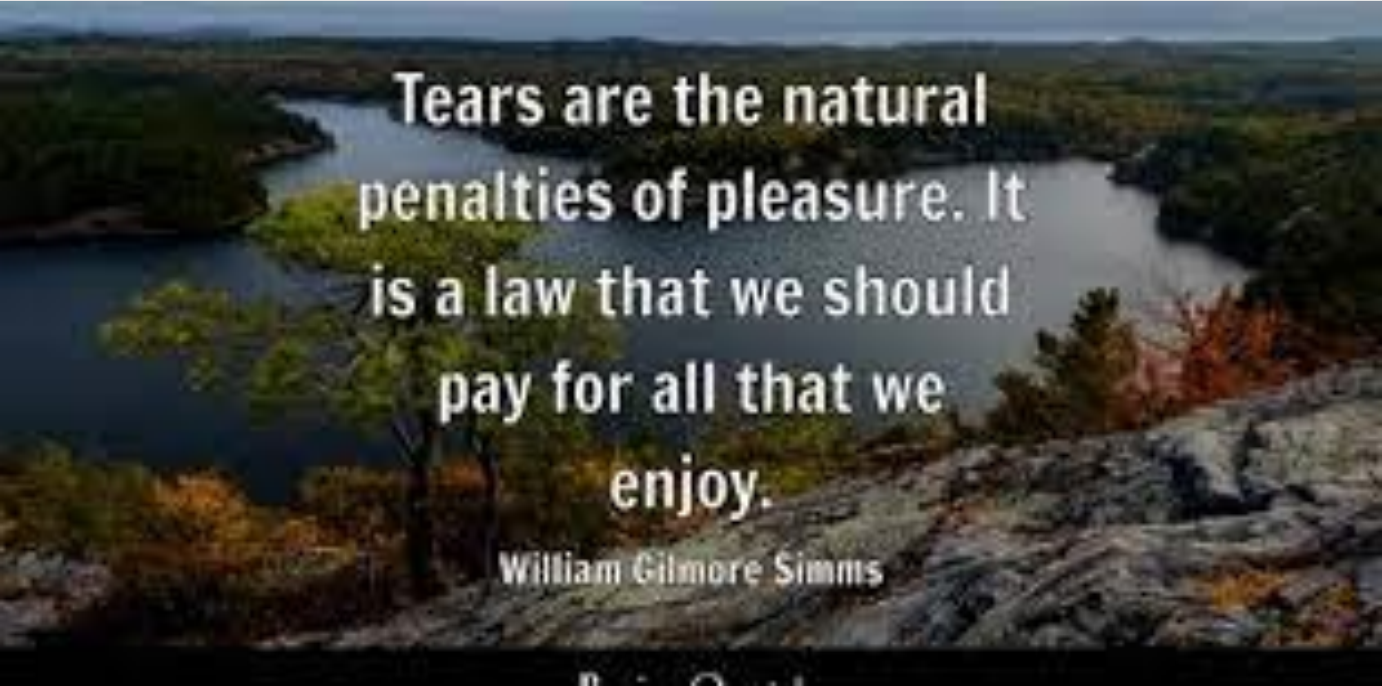
- A. one years;
- B. three years;
- C. five years;
- D. ten years;

Answer:- C

As per provisions under Section 125 of CGST Act, the maximum amount of penalty for any offence that does not have a specific penalty prescribed under the GST law is _____?

- A. one thousand rupees;
- B. five thousand rupees;
- C. ten thousand rupees;
- D. Twenty-five thousand rupees;

Answer:- D



**Tears are the natural
penalties of pleasure. It
is a law that we should
pay for all that we
enjoy.**

William Gilmore Simms

This PPT is prepared purely for academic and sharing knowledge purposes with the aid of information / material / statutory provisions / analysis of statutory provisions freely available on the internet.

**Thanks for your
Attention!!!**

Any Questions???