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## Sec 122 : Penalty for Certain Offences

- (1) Where a taxable person who—
- 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. collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
  - iv. collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
  - v. fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;
  - vi. fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;
  - vii. takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;
  - viii. fraudulently obtains refund of tax under this Act;
  - ix. takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;
  - x. falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

## Sec 122 : Penalty for Certain Offences

- xi. is liable to be registered under this Act but fails to obtain registration;
- xii. furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
- xiii. obstructs or prevents any officer in discharge of his duties under this Act;
- xiv. transports any taxable goods without the cover of documents as may be specified in this behalf;
- xv. suppresses his turnover leading to evasion of tax under this Act;
- xvi. fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
- xvii. fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;
- xviii. supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;
- xix. issues any invoice or document by using the registration number of another registered person;
- xx. tampers with, or destroys any material evidence or document;
- xxi. disposes off or tampers with any goods that have been detained, seized, or attached under this Act, he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

## Sec 122 : Penalty for Certain Offences

[(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.] **[Inserted by The Finance Act, 2020, w.e.f. 1-1-2021]**

[(1B) 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 ₹ 10,000, 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.] **[Sub-section 122(1B) inserted by The Finance Act, 2023, w.e.f. 1-10-2023. Through this change the government has sought to levy penalty on ECO along with the supplier in case of 3 listed offences.]**

## Sec 122 : Penalty for Certain Offences

- (2) Any 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 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 ₹ 10,000 or 10% 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 ₹ 10,000 or the tax due from such person, whichever is higher.
- (3) Any person who—
- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);
  - (b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
  - (c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
  - (d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;
  - (e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to ₹ 25,000.

## Sec 122 : Penalty for Certain Offences

At the outset, the section declares the offences that attract penalty as a consequence, apart from the requirement to pay the tax and applicable interest. Some of the offences listed under this section may also attract prosecution under section 132 but that depends on the gravity of the offence defined in that section.

This section is divided into 3 main parts –

1. The first sub-section prescribes 21 types of offences, any one of which if committed, can attract penalty equal to amount of tax involved or ₹ 10,000 (under CGST), whichever is higher. Sub-section (1A) has been introduced to also impose penalty on any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted.
2. The second sub-section deals with two situations, first is where certain offences committed are not due to either fraud or wilful misstatement or suppression of facts. In such a case, penalty will get reduced to 10% of tax involved subject to minimum of ₹ 10,000 (under CGST). And then, where the offence committed is due to either fraud or any wilful misstatement or suppression of facts to evade tax will result in a penalty equal to tax involved subject to a minimum of ₹ 10,000 (under CGST).
3. The third sub-section deals with offences where the person is not directly involved in any evasion but may be a party to evasion or if he does not attend summons or produce documents. Penalty in such a case would be upto ₹ 25,000 (under CGST)

# Offences under GST (Sec 122(1))

**There are 21 offences under GST (Sec 122(1)), these offences have been grouped for easy memorization –  
No /Fake/Wrong Information invoice**

1. A taxable person supplies any goods/services without any invoice or issues a false invoice.
2. He issues any invoice or bill without supply of goods/services in violation of the provisions of GST.
3. He issues invoices using the identification number of another bonafide taxable person.

## **False Information**

4. He submits false information while registering under GST.
5. He submits fake financial records/documents or files fake returns to evade tax.
6. Does not provide information/gives false information during proceedings.

## **Tax evasion**

7. He takes and/or utilizes input tax credit without actual receipt of goods and/or services.
8. He collects any GST but does not submit it to the government within 3 months.
9. He obtains refund of any CGST/SGST by fraud.
10. Even if he collects any GST in contravention of provisions, he still has to deposit it to the government within 3 months. Failure to do so will be an offence under GST.
11. He deliberately suppresses his sales to evade tax.



# Offences under GST (Sec 122(1))

## Supply/transport of goods

12. **He transports goods without proper documents**
13. Supplies/transportes goods which he knows will be confiscated
14. Destroys/tampers goods which have been seized

## Others

15. **He has not registered under GST although he is required to by law**
16. **He does not deduct TDS or deducts less amount where applicable.**
17. **He does not collect TCS or collects less amount where applicable.**
18. Being an Input Service Distributor, he takes or distributes input tax credit in violation of the rules
19. He obstructs the proper officer during his duty (for example, he hinders the officer during the audit by tax authorities)
20. **He does not maintain all the books that he required to maintain by law**
21. He destroys any material evidence or documents

*For the 21 offences above, for fraud cases, penalty will be 100% (minimum ₹ 10,000)*

# Offences under GST (Sec 122(1A))

In Section 122, Sub-section (1A) has been inserted vide The Finance Act, 2020, w.e.f. 1-1-2021 to provide that any person who retains benefit under the transactions listed below, and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to tax evaded or ITC availed of or passed on:

- Supply of goods or services without any invoice or issuance of an incorrect or false invoice with regard to any such supply.
- Issuance of any invoice or bill without supply of goods or services in violation of the provisions of the Act or rules made thereunder.
- Taking or utilizing ITC without actual receipt of goods or services either fully or partially, in contravention of the provisions of the Act or rules made thereunder.
- Taking or distributing ITC in contravention of section 20, or the rules made thereunder.

# Late Fees and Delay in Furnishing Return (Sec 44,46 & 47)

## **Notice to return defaulters (Sec 46)**

Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return within 15 days, failing which tax liability will be assessed under section 62.

## **Levy of late fee (Sec 47)**

(1) Any registered person who fails to furnish  
the details of outward supplies under section 37 or  
inward supplies required under section 38 or  
returns required under section 39 or section 45 (Final Return)  
by the due date shall pay a **late fee of ₹100** for every day during which such failure continues subject to a **maximum amount of ₹ 5,000\***.

**Late Fee for delayed filing of details of outward supplies for any month /quarter in Form GSTR – 1 [NN. 04/2018 – CT, dated 23.01.2018] :**

- (i) Where there is no outward supply in any month / quarter – Rs. 10/- per day (under CGST) during which such failure continues or Rs. 5,000 (under CGST), **whichever is lower.**
- (ii) Other Cases – Rs. 25/- per day (under CGST) during which such failure continues or Rs. 5,000 (under CGST), **whichever is lower.**

\* This is with reference to CGST Act, an equal amount of late fees would be payable by such person under the respective SGST/UTGST Act as well.

# Late Fees and Delay in Furnishing Return (Sec 44,46 & 47)

**Late Fee for delayed filing of Return in Form GSTR – 3B, GSTR – 4, and GSTR – 5 [NN. 64/2017 – CT, dated 15.11.2017, NN. 73/2017 – CT, dated 29.12.2017, NN. 5/2018 – CT, dated 23.01.2018]:**

- (i) Where the total amount of central tax payable in the said return is NIL – Rs. 10/- per day (under CGST) during which such failure continues or Rs. 5,000 (under CGST), whichever is lower.
- (ii) Other Cases – Rs. 25/- per day (under CGST) during which such failure continues or Rs. 5,000 (under CGST), whichever is lower.

**Late Fee for delayed filing of Return in Form GSTR – 6 [NN. 7/2018 – CT, dated 23.01.2018]:** Rs. 25/- per day (under CGST) during which such failure continues or Rs. 5,000 (under CGST), whichever is lower.

(2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a **late fee of ₹ 100** for every day during which such failure continues subject to a **maximum of an amount calculated at 0.25% Of his turnover in the State or Union territory\***.

\* This is with reference to CGST Act, an equal amount of late fees would be payable by such person under the respective SGST/UTGST Act as well.

# Common Offences under GST and Their Penalties

Type of Offence	Amount of Penalties
<p><u>1. Penalty for delay in filing GSTR</u></p> <p>Sec 47 – Registered person fails to furnish the details of outward under sec 37 (or) details of inward supplies sec 38 (or) returns under sec 39 (or) final return under sec 45 by the due dates[ Forms GSTR-1,GSTR-2,GSTR-3,GSTR-4,GSTR-5 and GSTR-6]</p> <ul style="list-style-type: none"><li>•Where the total amount of central tax payable in the said return is nil</li><li>•In other cases</li></ul>	<p>Late Fees of ₹ 10/- for every day</p> <p>Late Fees of ₹ 25/- for every day (Subject to a maximum of ₹ 5,000)</p>
<p>Sec 47 – Registered person fails to furnish the return in Form GSTR-3B by the due date for the month of Oct, 2017 onwards</p> <ul style="list-style-type: none"><li>• Where the total amount of central tax payable in the said return in nil</li><li>• In other cases</li></ul> <p>(Please note that late fee for the month from July to Sept. 2017 has been waived)</p>	<p>Late fee of ₹ 10/- every day</p> <p>Late fee of ₹ 25/- for every day (Subject to a maximum of ₹ 5,000)</p>
<p>Sec 44 read with 47- Failure to furnish Annual Return</p>	<p>Late fee of ₹ 100/- for every day of default; Maximum 0.25% of turnover in the State/UT</p>
<p>Sec 51(4)- Failure the issue the TDS certificate to deductee within 5 days of depositing the TDS</p>	<p>Late fee of ₹ 100/- for every day of default beyond 5 days; Maximum ₹ 5,000/-</p>

# Common Offences under GST and Their Penalties

Type of Offence	Amount of Penalties
Sec 123 Failure to furnish information return under sec 150	₹ 100/-day; Max- ₹ 5,000
Sec 124. 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	₹ 10,000/- In case of continuing offence- Further fine up to ₹ 100/- per day; Maximum- ₹ 25,000/-

## Power to Collect Statistics

**Sec 151** The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein. **[Substituted vide The Finance Act, 2021, w.e.f. 1-1-2022]**

# Common Offences under GST and Their Penalties

Type of Offence	Amount of Penalties
<u>2. Penalty for opting for composition scheme even though he is not eligible (Sec 122(2))</u>	Demand & recovery provisions of sections 73 & 74 will apply. <u>Fraud case</u> Penalty 100% of tax due or ₹ 10,000 -whichever is higher <u>Non-fraud case</u> Penalty 10% of tax due or ₹ 10,000 -whichever is higher
<u>3. Penalty for committing a fraud (Sec 122(2))</u>	Penalty 100% of tax due or ₹ 10,000 -whichever is higher (High value fraud cases also have jail term)
<u>4. Penalty for helping a person to commit fraud (Sec 122(3))</u> <ul style="list-style-type: none"><li>• Helps any person to commit fraud under GST</li><li>• Acquires/receives any goods/services with full knowledge that it is in violation of GST rules</li><li>• Fails to appear before the tax authority on receiving a summons</li><li>• Fails to issue an invoice according to GST rules</li><li>• Fails to account/vouch any invoice appearing in the books</li></ul>	Penalty extending upto ₹ 25,000
<u>5. Penalty for not issuing invoice (Sec 122(1))</u>	Penalty 100% of tax due or ₹ 10,000 -whichever is higher

# Common Offences under GST and Their Penalties

Type of Offence	Amount of Penalties
<u>6. Penalty for not registering under GST (Sec 122(1))</u>	Penalty 100% of tax due or ₹ 10,000 -whichever is higher
<u>7. Penalty for incorrect invoicing (Sec 125)</u>	Penalty of upto ₹ 25,000
<u>8. Section 125</u> - Any person who contravenes any provisions of the GST Act or the rules in respect of which no penalty is separately provided.	Up to ₹ 25,000/-
<u>9. Section Sec 127</u> - Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under Section 62 – Assessment of non-filers of returns Section 63 - Assessment of unregistered persons, Section 64 – Summary Assessment, Section 73 – Determination of demand under non-fraud cases, Section 74 – Determination of demand under fraud cases, Section 129 – Detention, search and release of goods and conveyance in transit Section 130 – Confiscation of goods or conveyances and levy of penalty, he may issue an order levying such penalty after giving a notice.	Penalty as per the order issued by the proper officer. In other words, penalties can be imposed by proper officer after giving due opportunity even in cases where there are no proceedings open with regard to assessment, adjudication, detention or confiscation. This may involve situations where there is no evasion of tax directly by the person concerned but he may be involved in offences mentioned in Sec 122(3). The sec 122(3) deals with offences where the person is not directly involved in any evasion but may be a party to evasion or if he does not attend summons or produce documents. Penalty in such a case would be upto ₹ 25,000 (under CGST)



# Situations where there is no penalty (but Interest may apply); General Penalty (Sec 125); Power to waive Penalty or fee or both (Sec 128)

## Situations where there is no penalty (but Interest may apply);

Type of Offence	Amount of Penalties
Penalty for incorrect type of GST charged (IGST instead of CGST/SGST)	No penalty. Pay the correct GST and get refund of the wrong type of GST paid earlier
Penalty for incorrect filing of GSTR	No penalty. But interest @18% on shortfall amount
Penalty for delay in payment of invoice.	ITC will be reversed if not paid within 6 months. No penalty as such

### General Penalty (Sec 125)

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to ₹25,000.

### Power to waive penalty or fee or both (Sec 128)

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

# General Rules Regarding Penalty (Section 126)

These rules of penalty are generally the same in all laws whether tax laws or contract law or any other law.

1. No penalty shall be imposed by any officer under this Act for
  1. **MINOR BREACHES\*** of tax regulations or
  2. procedural requirements of the law or,
  3. any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.
2. The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.
3. Every taxable person, on whom the penalty is imposed, will be served with a show cause notice first and will have a reasonable opportunity of being heard.
4. The tax authority will give an explanation regarding the reason for penalty and the nature of offence
5. When any person who voluntarily discloses a breach of law, the tax authority may use this fact to reduce the penalty
6. The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

\*Minor breaches (where tax amount is less than ₹ 5,000) or errors are easily rectifiable and clearly made without any motive of fraud.

- There will not be substantial penalties for minor breaches
- The tax authority may issue a warning in such cases.

# Confiscation or penalty not to Interfere with Other Punishments (Sec 131)

## Confiscation or penalty not to Interfere with Other Punishments (Sec 131)

Sec 131 Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

# Offences under CGST Act (Sec 132(1))

- (1) Whoever commits, [or causes to commit and retain the benefits arising out of] **[Inserted by The Finance Act, 2020, w.e.f. 1-1-2021]**, any of the following offences, namely:—
- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
  - (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
  - (c) avails ITC using such invoice or bill referred to in clause (b) [or fraudulently avails input tax credit without any invoice or bill.] **[Inserted by The Finance Act, 2020, w.e.f. 1-1-2021]**
  - (d) collects any amount as tax but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due;
  - (e) evades tax, [~~fraudulently avails input tax credit~~] or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d); **[Omitted by The Finance Act, 2020, w.e.f. 1-1-2021]**
  - (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;~~ **[Omitted by The Finance Act, 2023, w.e.f. 1-10-2023]**

# Offences under CGST Act (Sec 132(1))

- 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;~~ **[Omitted by The Finance Act, 2023, w.e.f. 1-10-2023]**
- ~~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;~~ **[Omitted by The Finance Act, 2023, w.e.f. 1-10-2023]** or

# Offences under CGST Act (Sec 132(1))

- l) attempts to commit, or abets the commission of any of the offences mentioned in *[clauses (a) to (f) and clauses (h) and (i)]* of this section, shall be punishable—
- (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 ₹ 500 lakh, with imprisonment for a term which may extend to 5 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 ₹ 200 lakh but does not exceed ₹ 500 lakh, with imprisonment for a term which may extend to 3 years and with fine;
  - (iii) in the case of *[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 ₹ 100 lakh but does not exceed ₹ 200 lakh, with imprisonment for a term which may extend to 1 year and with fine;
  - (iv) in cases where he commits or abets the commission of an offence specified in clause (f) ~~*[or clause (g) or clause (j)]*~~, he shall be punishable with imprisonment for a term which may extend to 6 months or with fine or with both. **[Words in bracket amended by The Finance Act, 2023, w.e.f. 1-10-2023]**

## Note –

1. **Section 132(1)** has been amended so as to make the offence of fraudulent availment of ITC without invoice or bill cognizable and non-bailable under section 69(1) and to make any person who retains the benefit of certain transactions and at whose instance such transactions are conducted liable for punishment.
2. The government has de-criminalized 3 offences of GST which were until now criminal offences under GST. These offences are not financial in nature and did not deserve to be in the GST Act since the beginning.
3. The government has raised the threshold limit for prosecution under GST in cases where tax involved is greater than Rs. 2 crore. Earlier this limit was Rs. 1 crore . This has been done for all offences other than fake invoice i.e. invoice without supply of goods or services.

# Offences under CGST Act (Sec 132(1))

**Sec 132(1) Whoever commits or causes to commit and retain the benefits arising out of any of the following offences, namely:—**

<b><u>Fake/wrong invoices</u></b>	(a) A taxable person supplies any goods/services without any invoice or issues a false invoice. (b) He issues any invoice or bill without supply of goods/services in violation of the provisions of GST.
<b><u>Tax evasion</u></b>	(c) He takes and/or utilizes input tax credit without actual receipt of goods and/or services [or fraudulently avails input tax credit without any invoice or bill.] [Inserted by The Finance Act, 2020, w.e.f. 1-1-2021] (d) He collects any GST but does not submit it to the government within 3 months. (e) He obtains refund of any CGST/SGST by fraud.
<b><u>Fraud</u></b>	(f) He submits fake financial records/documents or files fake returns to evade tax.
<b><u>Others</u></b>	(g) He obstructs the proper officer during his duty (for example, he hinders the officer during the audit by tax authorities)
<b><u>Supply/transport of goods</u></b>	(h) Supplies/transport goods which he knows will be confiscated (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;
<b><u>Others</u></b>	(j) He destroys any material evidence or documents
<b><u>Fraud</u></b>	(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 (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,



# Can you be Jailed under GST? (Sec 132(1))

**Yes, GST has corporal punishments (jail) for high value fraud cases involving Offences as specified under Sec 132(1) and the jail term is as follows -**

Tax amount involved	Exceeding ₹1 Crore – Upto ₹2 Crores	Exceeding ₹2 Crores – Upto ₹5 Crores	Exceeding ₹ 5 Crores	Repeat Offence	Offence listed in clause (f) or clause (g) or clause (j) of Sec 132(1)*
Jail Term	Upto 1 year (but <b>not less than 6 months</b> )	Upto 3 years (but <b>not less than 6 months</b> )	Upto 5 years (but <b>not less than 6 months</b> )	Upto 5 years (but <b>not less than 6 months</b> )	Upto 6 months
Fine	In all cases				

**Sec 132(6)** A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

**Explanation**— For the purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the SGST Act, the IGST Act or the UTGST Act and cess levied under the GST (Compensation to States) Act.

## **\*Offence listed in clause (f) or clause (g) or clause (j) of Sec 132(1)**

- 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;
- j. tampers with or destroys any material evidence or documents;

**What is the difference between a cognizable and a non-cognizable offense?**

**Cognizable** offenses are those where the police can arrest a person **without** any arrest warrant.

An arrest warrant is an official document, signed by a judge (or magistrate), which authorizes a police officer to arrest the person or people named in the warrant.

They are serious crimes like murder, robbery, counterfeiting.

**Non-cognizable offenses** are those, where a police officer cannot arrest a person without a warrant issued by competent authority.

They are less serious crimes like public nuisance, assault.

# Cognizable and Non-Cognizable Offences under CGST Act (Sec 132(4)&(5))

## **Section 132(5) – Defines Cognizable offences as follows –**

The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be **cognizable and non-bailable**.

**Meaning thereby** – Cognizable offences under CGST Act, 2017 are the **following offences**, where amount of tax evaded or ITC wrongly availed or utilised or refund wrongly taken **exceeding ₹ 5 crores**, namely –

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
- (c) avails input tax credit using such invoice or bill referred to in clause (b) [or fraudulently avails input tax credit without any invoice or bill.] **[Inserted by The Finance Act, 2020, w.e.f. 1-1-2021]**
- (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;

## **Section 132(4) – Defines Non-cognizable offences as follows -**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, **all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.**

# Cognizable and Non-Cognizable Offences under CGST Act (Sec 132(4)&(5))

**What is the difference between a cognizable and a non-cognizable offense while exercising powers by the GST authorities?**

**Following powers are to exercised by the GST authorities in case of Cognizable offences -**

**As per Sec 69(2)**, where a person is arrested for an offence specified under section 132(5) (i.e. cognizable offences), the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within 24 hours.

**Following powers are to exercised by the GST authorities in case of Non-Cognizable offences -**

**As per Sec 69(3)** Subject to the provisions of the Code of Criminal Procedure, 1973,—

(a) where a person is arrested for any offence specified under section 132(4) (i.e. non-cognizable offences), he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

# Power to Arrest (Sec 69)

**Sec 69(1)** Where the Commissioner has **reason to believe** that a person has **committed any offence** specified in

- clause (a), clause (b), clause (c), clause (d) of sec 132(1) **which is punishable** under clause (i) or clause (ii) of sec. 132(1) or
- 132(2)

he may by order authorise any **officer of central tax to arrest such person.**

## Offenses u/s 132 where arrest provisions become applicable-

1. A taxable person supplies any goods/services without any invoice or issues a false invoice **(Clause (a) of Section 132(1))**
2. He issues any invoice or bill without supply of goods/services in violation of the provisions of GST **(Clause (b) of Section 132(1))**
3. Avails input tax credit using such invoice or bill referred to in clause (b) **(Clause (c) of Section 132(1))**
4. 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 payment becomes due. **(Clause (d) of Section 132(1))**
5. He has already been convicted of an earlier u/s 132 i.e., this is his 2nd offense. **(Section 132(2))**

## Sec 132 Which are punishable with

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

- (i) exceeds **INR 5 Cr**, with imprisonment for a term which may extend to **5 years** and with fine;
- (ii) exceeds **INR 2 Cr** but does not exceed **INR 5 Cr.**, with imprisonment for a term which may extend to **3 years** and with fine

## **Guidelines for arrest**

Decision to arrest needs to be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of duty evaded or credit wrongfully availed, nature and quality of evidence, possibility of evidences being tampered with or witnesses being influenced, cooperation with the investigation, etc. Power to arrest has to be exercised after careful consideration of the facts of the case which may include:

- ❖ To ensure proper investigation of the offence
- ❖ To prevent such person from absconding
- ❖ Master minds or key operators effecting proxy/benami imports/exports in the name of dummy or non-existent persons/IEC, etc
- ❖ Master minds or key operators effecting proxy/benami imports/exports in the name of dummy or non-existent persons/IECs, etc
- ❖ Where the intent to evade duty is evident and element of mensrea/guilty mind is palpable
- ❖ Prevention of the possibility of tampering with evidence
- ❖ Intimidating or influencing witnesses
- ❖ Large amounts of evasion of tax

# Illustration of Sec 132 read with Sec 69

## Illustration

Examine the implications as regards the bailability and quantum of punishment on prosecution, in respect of the following cases pertaining to the period December, 2017 under CGST Act, 2017;

(i) 'X' collects Rs. 245 lakh as tax from its clients and deposits Rs. 241 lakh with the Central Government. It is, found that he has falsified financial records and has not maintained proper records.

(ii) 'Y' collects Rs. 550 lakh as tax from its clients but deposits only Rs. 30 lakh with the Central Government.

What will be the implications with regard to punishment on prosecution, of 'X' and 'Y' for the offences? What would be the position, if 'X' and 'Y' repeat the offences?

It may be assumed that offences are proved in the court.

**[CA Final, May 2018 - New] (5 Marks)**

## Solution

**The position is as follows-**

Offence	Amount involved	Bailability	Punishment	Punishment for repeat Offence
Falsifying financial Records	4 lakh	Bailable & Non-cognizable	Imprisonment for upto 6 months or with fine or both	Imprisonment for a term which may extend to 5 years and with fine
Non-payment of collected tax	520 lakh i.e. > 5 Crore	Non-Bailable & cognizable assuming dues are pending for more than 3 months	Imprisonment for upto 5 years and with fine	Imprisonment for a term which may extend to 5 years and with fine

## Liability of Officers and Certain Other Persons

**Sec 133(1)** Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof or if any officer of central tax having access to information specified under sub-section (1) of section 150, or if any person engaged in connection with the provision of service on the common portal or the agent of common portal,

- **wilfully discloses** any information or the contents of any return furnished under this Act or rules made thereunder **otherwise than**
  - in execution of his duties under the said sections or
  - for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force,he shall be punishable with imprisonment for a term which may extend **to 6 months** or with fine which may extend to ₹ 25,000, or with both.

**Sec 133(2)** Any person—

- (a) who is a **Government servant** shall not be prosecuted for any offence under this section except with the previous **sanction of the Government**;
- (b) who is **not a Government servant** shall not be prosecuted for any offence under this section except with the previous **sanction of the Commissioner**.



# Cognizance of offences (Sec 134)

## Cognizance of offences

**Sec 134** No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

# Presumption of culpable mental state (Sec 135)

## Presumption of culpable mental state

**Sec 135** In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state 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.

### **Illustration:**

Explain the meaning of “mensrea”. Is ‘mensrea’ or culpable mental state necessary for prosecution under CGST Act?

### **Answer :**

“Mensrea” means guilty mind, or criminal intent in committing the act. It is the mental element of a person’s intention to commit a crime or knowledge that one’s action or lack of action would cause a crime to be committed.

Yes, ‘mensrea’ or culpable mental state is necessary for prosecution under CGST Act. However, Section 135 of CGST Act, 2017 presumes the existence of a state of mind (i.e. “culpable mental state” or mensrea) required to commit an offence if it cannot be committed without such a state of mind.

# Relevancy of statements under certain circumstances (Sec 136)

## Relevancy of statements under certain circumstances

**Sec 136** A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

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

# Offences by companies (Sec 137)

**Sec 137(1)** Where an **offence committed by a person under this Act is a company**, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

**Sec 137(2)** Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is **proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of**, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Sec 137(3)** Where an **offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust**, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of **sub-section (2) shall, mutatis mutandis**, apply to such persons.

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

**Explanation**—For the purposes of this section,—

- (i) “company” means a body corporate and includes a firm or other association of individuals; and
- (ii) “director”, in relation to a firm, means a partner in the firm.

# Compounding of offences (Sec 138)

**Sec 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), (h), (i) and (l) of sub-section (1) of section 132];*
- (b) *[a person who has been allowed to compound once in respect of any offence (other than the above offences), under this Act or under the provisions of any SGST Act or the UTGST Act or the IGST Act in respect of supplies of value exceeding ₹ 1 cr.];*
- (c) *[a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132];*
- (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 sub-section (1) of section 132];* and
- (f) any other class of persons or offences as may be prescribed:

## Compounding of offences (Sec 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

*[25% of the tax involved*

*and the maximum amount not being more than 100% of the tax involved].*

(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.

**[Words in red amended by The Finance Act, 2023, w.e.f. 1-10-2023]**

# Compounding of offences (Rule 162(3A))

1. The government has amended the procedure for compounding of offences and has prescribed specific range of compounding amount for a particular offence of a particular nature in Rule 162(3A) of CGST Rules, 2017 through NN 38/2023-CT, w.e.f. 1-10-2023.
2. The rule has not specified the range for “issuance of fake invoice as specified in Sec 138(1)(b)”
3. The Commissioner shall determine the compounding amount under sub-rule (3) as per the Table below:-

S. No.	Offence	Compounding amount if offence is punishable under clause (i) of sub-section (1) of section 132	Compounding amount if offence is punishable under clause (ii) of sub-section (1) of section 132
1.	Offence specified in clause (a) of sub-section (1) of section 132 of the Act	<b>Up to 75%</b> of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to <b>minimum of 50%</b> of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.	<b>Up to 60%</b> of the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken, subject to <b>minimum of 40%</b> of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.
2.	Offence specified in clause (c) of sub-section (1) of section 132 of the Act		
3.	Offence specified in clause (d) of sub-section (1) of section 132 of the Act		
4.	Offence specified in clause (e) of sub-section (1) of section 132 of the Act		

# Compounding of offences (Rule 162(3A))

S. No.	Offence	Compounding amount if offence is punishable under clause (i) of sub-section (1) of section 132	Compounding amount if offence is punishable under clause (i) of sub-section (1) of section 132
5.	Offence specified in clause (f) of sub-section (1) of section 132 of the Act	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
6.	Offence specified in clause (h) of sub-section (1) of section 132 of the Act		
7.	Offence specified in clause (i) of sub-section (1) of section 132 of the Act		
8.	Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and (i) of sub-section (1) of section 132 of the Act	Amount equivalent to 25% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.	Amount equivalent to 25% of such amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken.

**Provided that** where the offence committed by the person falls under more than one category specified in the Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.]