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Serial No.: 126
Dt.: 12-07-2023



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Section 122 of CGST Act, 2017

Section 122: Penalty for certain offences

Section 122(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 date on which such payment becomes due;
- (v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;
- (vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;
- (vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;
- (viii) fraudulently obtains refund of tax under this Act;
- (ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;
- (x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
- (xi) is liable to be registered under this Act but fails to obtain registration;
- (xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
- (xiii) obstructs or prevents any officer in discharge of his duties under this Act;
- (xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;
- (xv) suppresses his turnover leading to evasion of tax under this Act;
- (xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
- (xvii) fails to furnish information or documents called for by an officer in accordance with the

	<p>provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;</p> <p>(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;</p> <p>(xix) issues any invoice or document by using the registration number of another registered person;</p> <p>(xx) tampers with, or destroys any material evidence or document;</p> <p>(xxi) disposes off or tampers with goods that have been detained, seized, or attached under this Act,</p> <p>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.</p>
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Section 122(1) Interpretation

Penalty for certain offences

This Section deals with the punitive provisions of GST law. This Section declares the offences that attract penalty as a consequence, apart from the requirement to pay the tax and applicable interest.

Admitting liability to pay tax does not amount to admission of wrongdoing that can attract penalty in all cases. Penalty proceedings are independent of tax demand. It is possible that proceedings may be jointly initiated such that the non-payment of tax may prove the circumstances to impose penalty.

While this section describes the offence and prescribes the penalty applicable, the procedure for adjudicating the imposition of this penalty is under section 73 and section 74.

The first sub-section prescribes **21 types of offences**, any one of which, if committed, can attract penalty of **Rs.10,000/- or equal to the amount of tax involved, whichever is higher**.

Penalty equivalent to tax or Rs. 10,000/- whichever is higher in cases where –

- tax is evaded;
- tax is not deducted; or
- short deducted or
- deducted but not paid to the Government; or
- tax is not collected (or short collected) or
- collected but not paid to the Government or
- input tax credit availed of or passed on or
- ITC distributed irregularly or
- fraudulent claim of refund,

in the **following cases**:

1. Supplies any goods and/ or services:

- (a) Without issue of any invoice, or
- (b) Issues an incorrect/ false invoice in respect of such supply

Raising of an invoice before or at the time of removal of goods is mandatory under law whereas the time limit for issue of services is 1 month. Incorrect invoice would take into its ambit any misclassification of goods which on the face of it is incorrect. A false invoice is one which on the face of it is patently false. The word false means something more than “untrue”.

2. Issues an invoice (or bill of supply) without supply of goods or services or both in violation of the provisions of the Act/Rules i.e. issues “bogus invoices/ bills”.

3. Collects any amount as tax but fails to deposit the same with the Government beyond 3

months from due date.

4. Collects any tax in contravention of law but fails to deposit the same with the Government beyond 3 months from due date. Collection of taxes in contravention of law would cover situation where a registered person collects 18% as taxes but the actual tax rate is 12%. In this scenario, the difference of 6% cannot be retained by the registered person.

5. Fails to –

- (a) Deduct tax/ deduct appropriate tax, as per section 51 (Section 51 is applicable to certain specific persons. The said section requires such specified persons to deduct tax at the rate of 1% out of the payment to the supplier if the value of supply under a contract exceeds Rs. 2,50,000/-) or
- (b) deposit the tax deducted with the appropriate Government. The provisions of tax deducted at source under section 51 have come into force with effect from 01-10-2018.

6. Fails to –

- (a) collect tax/ collect appropriate tax as per provisions of section 52 (Section 52 is applicable to electronic commerce operator to collect tax from the supplier of goods at the time of payment to such supplier at the rate of 1% (CGST+SGST))
- (b) deposit the tax collected with the appropriate Government. The provisions of collection of tax at source under section 52 have come into force with effect from 01-10-2018.

7. Takes or utilizes ITC without actual receipt of goods or services either fully or partially in contravention of provisions of Act/ Rules. This covers a situation where the goods or services have not been received but the invoice has been received in advance. In such a situation the registered person cannot avail the credit in terms of section 16 of the CGST Act. If he does so, the penal provisions under this clause will stand attracted.

8. Fraudulently obtains refund of tax. In the normal course refunds can be claimed by a registered person in case of inverted duty structure or exports or supplies to SEZ (Zero rated supplies). Any false or incorrect claim will get covered under this clause.

9. Takes or distributes input tax credit in contravention of section 20, or the rules made thereunder (Section 20 prescribes manner of distribution of credit by input service distributor). This clause covers cases relating to ISD who either avails or distributes the available credits contravening the provisions of section 20.

10. With an intention to evade payment of tax-

- a. falsifies or substitutes financial records, or
- b. produces fake accounts or documents, or
- c. furnishes any false information or return.

11. Fails to obtain registration. This will covers situations where a person is required to register since his turnover have exceeded the threshold limits but has failed to register; or a person who is required to take compulsory registration as per section 24 but fails to obtain registration.

12. Furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently. For example, furnishing false information with regard to address of a business premise or not declaring a warehouse that existed etc.

13. Obstructs or prevents any officer in discharge of his duties. A Government servant cannot be obstructed in the performance of his duties.

14. Transports any taxable goods without the cover of specified documents such as tax invoice/ e-way bill/ delivery challan etc.

15. Suppresses his turnover leading to evasion of tax. Suppression means “failure to disclose” which essentially leads to evasion of tax.

16. Fails to keep, maintain or retain books of account and other documents as specified in law.

	<p>17. Fails to furnish information or documents called for by an officer or furnishes false information or documents during any proceedings.</p> <p>18. Supplies, transports or stores any goods which he has reason to believe are liable to confiscation.</p> <p>19. Issues any invoice or document by using the registration number of another taxable person.</p> <p>20. Tampers with or destroys any material evidence or document.</p> <p>21. Disposes off or tampers with any goods that have been detained, seized, or attached under this Act.</p>
Section 122(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.
Section 122(1A) Interpretation	<p><u>Other persons are also liable to penalty provisions (w.e.f 01.04.2020)</u></p> <p>Sub-section 1A prescribes that penalty can levied in case of specified offences, on such persons satisfying both the following conditions:</p> <ol style="list-style-type: none"> the said person is the instance for conduct of a transaction and and also retains the benefit from occurrence of the said transaction. <p>Penalty equivalent to amount of tax evaded or ITC availed or passed on, will be levied on a person committing any of the following offences. This provision will apply if such person is a beneficiary and happening of such a transaction is on his request,</p> <ul style="list-style-type: none"> · Goods/services/both are supplied without issue of invoices/issue of incorrect or false invoice · Issue of invoice/bill without supply of goods/services/both · Takes/utilises input tax credit without actual receipt of goods/services · Takes/distributes Input tax credit in contravention to provisions of Section 20 of CGST Act, 2017
Section 122(2)	<p>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,—</p> <ol style="list-style-type: none"> for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher; for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.
Section 122(2) Interpretation	<p><u>Penalty in case where tax is not paid or short paid or in case of erroneous Refunds</u></p> <p>The second sub-section deals with two situations:</p> <p>Firstly, 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 a minimum of Rs.10,000/-.</p> <p>Secondly, 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 Rs.10,000/-.</p> <p>Registered person who supplies any goods/services 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, 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 Rs. 10,000/- or 10% of the tax due from such person, whichever is higher.</p>

	<p>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, for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of Rs.10,000/- or tax due from such person, whichever is higher.</p>
Section 122(3)	<p>Any person who—</p> <ol style="list-style-type: none"> aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1); 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; 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; 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 the rules made thereunder or fails to account for an invoice in his books of account, <p>shall be liable to a penalty which may extend to twenty-five thousand rupees.</p>
Section 122(3) Interpretation	<p><u>Other offences, not listed above</u></p> <p>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 cases would be up to Rs.25,000/-.</p> <p>Penalty up to Rs. 25,000/- shall be levied where any person:</p> <ol style="list-style-type: none"> aids or abets any of the offences discussed in Section 122(1) above. Aiding or abetting normally means collusion with another person or to encourage or assist another person to commit an offence. acquires possession of, or in any way concerns himself in: <ul style="list-style-type: none"> transporting, removing, depositing, keeping, concealing, supplying, or purchasing or <p>in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation;</p> 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.