

What are the offences that have been listed out in GST laws.?(part-1/2)

In section 122 (1) following offences have been listed out for taxable persons:

- issues an **incorrect or false invoice** with regard to supply of goods and services;
- issues **any invoice/bill in violation of the provisions of this Act** or the rules made thereunder;
- 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
- **collects any tax in contravention** of the provisions of this Act or collected wrongly **but fails to pay the same to the Government beyond a period of three months**
- **fails to deduct TDS/TCS** or short deducted and failed to pay to government account
- **avail or utilises input tax credit without actual receipt of goods** or services or both either fully or partially
- **issues invoice/bill without supply of goods** or services or both
- supplies any goods or services or both **without issue of invoice**

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What are the offences that have been listed out in GST laws.? (part-2/2)

- as an ISD, **takes or distributes input tax credit in contravention of law**
- with an intension **to evade taxes**, manipulate records, information etc
- **fails to obtain registration** or obtain registration by giving wrong information
- transport any goods **without any documents** as prescribed
- depict **wrong or less turnover** to avoid registration or payment of taxes
- **do not maintain books of accounts** or records as per the provisions of law
- **fails to provide information**, records as asked by officer or provide false information and records during any proceedings or other wise
- **tamper or destroy** any documents or records likely to be used as evidence
- **dispose of or destroyed goods** that have been detained, seized or attached under law
- issues invoices or other documents by giving **wrong GST number**
- **fraudulently obtains refund** of tax
- **prevent any officer** to do his duty



What is the penalty for offences listed out in Section 122 of CGST Act, 2017?

The penalty shall be **Rs. 10000/-** or the followings, **whichever is higher**:

- tax amount evaded or
- tax not deducted/short deducted/deducted but not paid or
as TDS/TCS as per Section 51/52
- tax deducted but not paid to government or
- ITC wrongly availed/distributed or passed on irregularly or
- Amount wrongly got refunded,
as the case may be....



Can penalty be imposed on **third party** who is not a registered person under Law?

In cases as listed below, if **the benefits** have been retained/enjoyed by **any person**, he shall be penalized equivalent to **amount of tax evaded** or **ITC availed** as the case may be.-**Section 122(1A) –wef 01.01.2021**

- goods or services are supplied without issue of invoices or
- Invoices are issued without supply of goods/services or
- avail ITC without receipt of goods/services fully or partially or
- as an ISD avail credits or pass on ITC in contravention of law



Is there any specific **penalty for E-commerce operator** under the laws?

Yes, w.e.f 01.10.2023* u/s Section 122(1B) following offenses have been defined for e-commerce operator and are subject to penalty of **Rs. 10,000/-** or **tax evasions** involved whichever is **higher**:

- Allows any **un-registered person** other than a person exempted from registration to supply goods or services or both
- Allows a person to supply inter-state supplies of goods and services, who otherwise not allowed
- Files wrong details of outward supplies of a person who has been exempted from registration but supplies goods through his e-portal

***Notification No 28/2023 dt 31.07.2023**

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What are the **other offences and penalties** for taxable person under CGST Act, 2017?

Under section 122(2) if any registered person **without any intension of fraud** or any wilful misstatement or suppression of facts to evade tax has supplied goods/services or both and tax:

- has not been paid or short-paid or
- erroneously refunded, or
- where the input tax credit has been wrongly availed or utilised,

he shall be liable to a penalty of **Rs. Ten Thousand Rupees** or **10% of the Tax due**, whichever is higher

If such evasion or non-payment or short payment or refund is **with an intension of fraud**, then penalty shall be **Rs. 10,000/-** or **tax amount due whichever is higher.**



Is there any other offense or penalty for **any person** under the law?

Section 122(3) defines such offences where if **any person** is held responsible or found guilty of following acts, he shall be **penalized for up to Rs. 25000/-**

- Offenses listed in section 122(1)
- Involved in movement, storage, keeping etc of goods which are supposed to be confiscated under law
- Involves in supply of goods or services which are supposed to be in contravention of the provisions of law
- Fails to appear before the officer when required
- Fails to issue invoice or account for invoice in books of accounts

Also read section 130 of CGST Act for such offenses

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Is there any provision to impose **penalty to Government** or other agencies or government officers under GST Act?

Yes, **agencies including govt agencies or persons** as listed out in section 150* fails to provide information return within stipulated time, shall be penalized with a penalty **@ Rs 100/- per day** each under CGST & SGST Act subject to max of Rs. 5000/-.

Section 150:Obligation to furnish information return.- (a) a taxable person; (b) a local authority or other public body or association; or (c) any authority of the Centre/State Government responsible for the collection of taxes (d) a banking company or (e) a State Electricity Board or any such entity (f) the Registrar or Sub-Registrar or (g) a Registrar within the meaning of the Companies Act, 2013 or (h) the registering authority empowered to register motor vehicles or (i) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013); or (j) the recognized stock exchange referred to in clause (k) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); or (l) a depository under Depositories Act, 1996 or (m) an officer of the Reserve Bank of India or (n) the Goods and Services Tax Network, or (o) a person to whom a Unique Identity Number has been granted under GST or (p) any other person as may be specified,

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Is there any provision to impose fine to **any person** or agencies or government officers under GST Act?

Yes, if any person or agency fails to provide information as required by Commissioner by order u/s 151 shall be punished with a fine which may be up to **Rs, 10000/-** and in case of a **continuing offence to further, fine which may extend to @ Rs 100/- per day** each under CGST AND SGST Act for every day delay beyond prescribed date subject to max of Rs. 25000/-.



What is general penalty under CGST Act, 2017?

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for **which no penalty is separately provided for in this Act**, shall be liable to a penalty which may extend to **Rs. twenty-five thousand rupees**.

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Can any proper officer under act impose penalty for procedural lapses?

No officer under this Act shall impose any penalty for **minor breaches** of tax regulations or **procedural requirements** and in particular, any **omission or mistake in documentation*** which is easily rectifiable and made without fraudulent intent or gross negligence.

**an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record*



What is Minor Breach under GST Acts?

A breach shall be considered a "minor breach" if the amount of tax involved is less than **Rs. five thousand** rupees.



Is personal hearing is must to impose penalty for any offense?

Yes, No penalty shall be imposed on any person without giving him an opportunity of being heard.

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Is reference of Law, Section, Rule or regulation must while issuing order of penalty?

Yes, an officer while imposing penalty through an order must specify Section, rule or regulation, nature of breach under which penalty is imposed



In case of any breach, can any person approach Officer and disclose about the breach of the tax laws?

Yes, one can disclose the officer about the breach of the tax laws and Officer must consider his such act while quantifying the penalty.

But where penalty specified under law is **fixed amount or percentage to tax amount**, the above said procedure does not apply and officer can't quantify the amount.



Can Proper officer impose any penalty if offence is not covered under any Section of GST Act.?

Yes, u/s 127 if proper officer is of the view that person is liable to penalty and the same is not covered u/s 62, 63, 64, 73, 74, 129 and 130 he may issue order levying such penalty after giving him an opportunity being heard.



Can penalty or late fee or both be waived of?

Yes, government may by notification waive of penalty or late fee or fine imposed u/s 122, 123, 125 and u/s 47 for such class of persons as may be specified.



Can goods in transit be detained?

Where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods can be detained or seized.

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Can a vehicle carrying goods be detained?

Yes, a conveyance or vehicle used as a means of transport for carrying goods and documents relating to such goods shall be liable to detention or seizure if the transportation of goods is in contravention of any law or rules made there under.

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Can goods so detained or seized be released by proper officer?

Yes, if person/owner carrying such goods pays **penalty equivalent to 200%* of tax amount.**

In case of exempted goods, if owner of goods pay an amount as penalty **equal to two percent** of the **value of goods** or **Rs. twenty-five thousand rupees**, **whichever is less**, subject to submission of security equivalent to amount in manner as may be prescribed.

***wef 01.01.2022 vide notification no 39/2021 dt 21.12.2021**

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Can goods so detained be get released by a person other than owner of such goods?

Yes, if owner does not come forward, goods can be released on payment equal to **50% of goods value** or **200% of tax amount** **whichever is higher.**

In case of exempted goods, **5% of value of goods** or **Rs. 25000/-** **whichever is less** subject to submission of security equivalent to amount so paid /payable in manner as may be prescribed (Rule:140).



Is any notice and order is required to be issued to detain goods?

Yes, proper officer shall issue a notice to person in-charge of vehicle within 7 days from the **date of detention**, specifying the penalty payable after giving the concerned person an opportunity of being heard.

An order of detention or seizure on the person transporting the goods must be issued after a period of 7 days from the date of issue of notice.

Once payment is made by the person concerned, all proceedings shall be concluded.

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What if owner of goods or vehicle fails to deposit amount specify in the order?

If owner fails to pay penalty **within 15 days from the date of order**, such goods and vehicle shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable.

If goods are of **perishable in nature**, 15 day time can be reduced by proper officer.

However, vehicle can be released if transporter pays penalty as mentioned in order or Rs. 1,00,000/- whichever is less.



Under what circumstances goods and vehicle carry such goods confiscated?

Section 130 deals with such cases and it is mentioned that in following cases goods and the vehicle used to carry such goods can be confiscated:

- supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax
- does not account for any goods on which he is liable to pay tax under this Act
- supplies any goods liable to tax under this Act without having applied for registration
- contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax
- Unless owner of vehicle proves that goods were transported without his knowledge, goods were transported in such vehicle,

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Is there any fine in addition to penalty u/s 122 for confiscated goods?

Yes, proper officer may impose fine to owner of goods in lieu of confiscation of goods, as he thinks so but should not be more than market value of goods confiscated **less tax chargeable** on said goods.

Further that the aggregate of **such fine and penalty** leviable shall not be less than the penalty **equal to hundred per cent of the tax payable** on such goods.



Is there any fine in addition to penalty u/s 122 for confiscated vehicle?

Yes, if any vehicle used to transport any goods or passengers has been confiscated for any violation of law, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance **a fine equal to the tax payable on the goods** being transported thereon.

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Is state police has any role if goods and vehicle is confiscated?

Yes, every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession of goods and vehicle.

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Can proper officer sell the goods and vehicle so confiscated?

Yes, proper officer after giving reasonable time not **exceeding three months** to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

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Is there punishment also under GST Acts, for violation of law?

Yes, if any person commits, or causes to commit and retain the benefits arising out of specified transactions, he/she may be punished with fine and imprisonment.

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What are the specified cases where **imprisonment** provisions applied? ..part-1

- supplies any goods or services or both **without issue of any invoice** with the intention to evade tax
- issues any invoice or bill **without supply of goods or services** or both leading to wrongful availment or utilisation of input tax credit or refund of tax;
- fraudulently **avails input tax credit without any invoice or bill** or by using bills against which no supplies are made;
- collects any amount as tax but **fails to pay the same to the Government** within a period of three months
- **falsifies or substitutes financial records** or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax
- **obstructs or prevents any officer** in the discharge of his duties under this Act*

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what are the specified cases where imprisonment provisions applied?..part-2

- 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 are liable to confiscation** under this Act
- 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 are in contravention of any provisions** of this Act
- **tampers with or destroys** any material evidence or documents*
- **fails to supply any information** which he is required to supply under this Act*
- **attempts to commit, or abets the commission** of any of the offences mentioned above

***Some provisions deleted w.e.f Finance bill 2023 –dated: 01.10.2023**

Ntf No 28/2023 dt 31.07.2023

What type of imprisonment available under law for specified cases?

Description of Offense	Period of Imprisonment
the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees (Rs, 5.00 Crores)	imprisonment for a term which may extend to five years and with fine;
the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken is between Rs. 2Cr– Rs 5Cr	imprisonment for a term which may extend to three years and with fine
issues any invoice or bill without supply of goods or services or both where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken is between Rs 1Cr-Rs.2Cr (wef 1.10.2023 Nt 28/2023 dt 31.07.2023)	imprisonment for a term which may extend to one year and with fine
in cases where he commits or abets the commission for a offense i.e falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax	imprisonment for a term which may extend to six months or with fine or with both.

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Can civil courts take cognizance of any offenses under GST Act?

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.

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Who is responsible for any offense committed by a company?

Every person who, at the time 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 the offence and shall be liable to be proceeded against and punished accordingly.

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How Director, Managing Director or Company Secretaries are responsible for any offense under GST Act?

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** that shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.



How Partners, HUF or Trustees are responsible for any offence?

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

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