Offences and Penalties [Ch-21 of CA Final]

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Section Number of CGST Act	Particulars
122	Penalty for Certain offences
123	Penalty for failure to furnish Information Return
124	Fine for failure to furnish Statistics
125	General penalty
126	General Disciplines
127	Power to impose penalty in certain cases
128	Power to waive Penalty or Fee or both
129	Detection, seizure and releasee of goods and conveyance in transit
130	Confiscation of goods or conveyances and levy of penalty
131	Confiscation or penalty not to interfere with other punishments
132	Punishments for certain offences
133	Liability of officers and certain other persons
134	Cognizance of offences
135	Presumption of culpable mental state
136	Relevancy of Statements under certain circumstances – not relevant
137	Offences by Companies
138	Compounding of Offences

Relevant Defination

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Proper officer	Any function performed under CGST act, means Commissioner or officer assigned by Commissioner.

Penalty for Certain Offences [Section 122]

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List of offences under Section 122(1)

1. Supply without Invoice or incorrect or false invoice
2. Issue invoice without supply
3. Issue invoice or document using registration number of another person
4. Transport goods without documents as required under act
5. Supply, transports or stores goods which he has reasons to believe are liable for confiscation.
6. Collect tax but fails to pay to government after 3 month of collection
7. Collect tax in contravention of act but fails to pay to government
8. Fails to deduct u/s 51(1) or deduct but fails to pay to government u/s 51(2)
9. Fails to collect u/s 52(1) or collect but fails to pay to government u/s 52(3)
10. ITC claimed fully or partially without receipt of goods
11. ITC distributes in contravene u/s 20
12. Refund obtains fraudulently
13. Fails to keep, maintain or retain books of accounts and other documents
14. False records, accounts, documents or furnish false information or return with intention to evade tax.
15. Fails to furnish information or documents called for by officer or fails to furnish false information or documents during any proceedings
16. Tampers or destroys evidence or document
17. Tampers or disposes off goods that have been detained, seized or attached
18. Suppresses (hide) turnover in order to evade tax
19. Liable to registration but fails to registered
20. Furnish false information | with regard to registration at anytime.
21. Obstructs or prevents officer in discharge of his duties

Amount of penalty for offences under Section 122(1)

1. INR 10,000 or
2. Amount equivalent to any of following
   1. Tax evaded
   2. Tax not deducted u/s 51
   3. Tax not collected u/s 52
   4. ITC availed of or passed on or distributed irregularly
   5. Refund claimed fraudulently

Whichever is higher

Penalty for Certain Offences [Section 122]

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Offences under Section 122(2)

Any registered person

1. Who supplies on which
   1. Tax has not been paid or
   2. Tax short paid or
   3. Erroneously refunded
2. Where ITC has been wrongly availed or utilised

Amount of penalty for offences under Section 122(2)

S.No.	Case	Amount of penalty equals to
1	Reason other than 2nd point.	1. INR 10,000 2. 10% of Tax due Whichever is higher
2	Fraud, Willful misstatement or Suppression of facts to evade tax	1. INR 10,000 2. Tax due Whichever is higher

Penalty for Certain Offences [Section 122]

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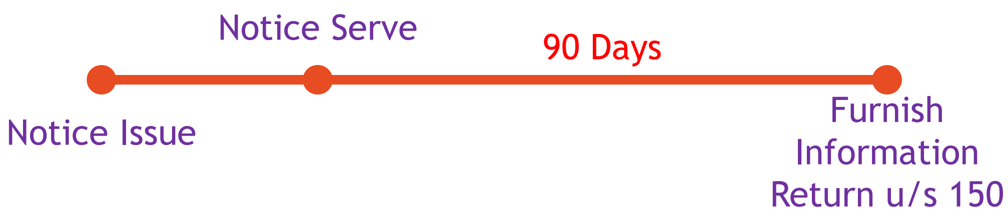
List of offences under Section 122(3)

1. Aids (Support) or abets (help) any 21 offences mentioned u/s 122(1)
2. Acquired or concerns related to goods which liable to confiscation.
3. Supply or receives goods or supply of services which person knows or reason to believe are in contravention of any provisions of this act.
4. Fails to appear before officer, when summon issued to give evidence or produce document in inquiry.
5. Fails to issue invoice as per act or fails to account such invoice in books of accounts.

Amount of penalty for offences under Section 122(3)

Any amount which may extend to INR 25,000

Penalty for failure to furnish Information Return [Section 123]



Fails to furnish Information return u/s 150

If any person (out of the ones stated below) is responsible for maintaining any of the following, he would be required to file an Information Return under GST

1. Registration records
2. Statement of accounts
3. Periodic Returns
4. Details of tax payment
5. Other details of the transaction of goods or services
6. Transactions relating to bank account
7. Transactions relating to consumption of electricity
8. Transactions of purchases
9. Transactions of sales
10. Exchange of goods or property
11. Right or interest in a property

Fails to furnish Information return u/s 150

1. Mandatory for certain class of persons.
2. Information returns are not tax returns.
3. They are tax documents which are used to report certain business transactions.
4. Class of persons obligated to file Information Returns is as follows:
   1. Any taxable person
   2. Any local authority / other public body/association
   3. Any authority of the State Government responsible to collect state-level taxes (SGST)
   4. Any authority of the Central Government responsible to collect central level taxes (CGST)
   5. Any income tax authority
   6. Any banking company
   7. State Electricity Board or distributor of electricity
   8. Registrar or Sub-registrar (Under Registration Act)
   9. Registrar (Under Companies Act)
   10. Registering authority (Under Motor Vehicles Act)
   11. Collector (As under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act)
   12. Stock exchanges
   13. Depositories
   14. Officer of Reserve Bank of India
   15. Person to whom UIN (Unique Identity Number) is granted
   16. Any other person recommended by the Government's council

Amount of penalty under Section 123

1. INR 100 each day/per day
2. INR 5000

Whichever is lower

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Fine for failure to furnish statistics [Section 124]

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Information or return u/s 151

Section 151 of CGST Act,2017 from bare act :

1. The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.
2. Upon such notification being issued, the Commissioner, or any person authorized by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected.

Fails to furnish Information or return u/s 151

If any person required to furnish any information or return u/s 151 and

1. Fails to furnish such information or return without any reasonable cause.
2. Willfully furnishes or causes to furnish which is knows to be false.

Amount of fine u/s 124

INR 10,000

+

If continuing offence then further fine

1. INR 100 each day/per day
2. INR 25,000

Whichever is lower

General Penalty [Section 125]

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Offence

1. Contravenes any provisions.
2. For which no penalty is separately provided.

Amount of penalty u/s 125

Up to INR 25,000

General Disciplines related to penalty [Section 126]

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1. Levy of penalty is based on
    1. Jurisprudence principles of natural justice and
    2. Principles governing international trade and agreements.
2. According to section 126
    1. No penalty shall imposed for
        1. Minor breaches of tax regulations
        2. Procedural requirements of law
        3. Any omission or mistake which easily rectifiable which made without fraudulent intent or gross negligence.
    2. Penalty depend upon facts and circumstances of each case.
    3. Show cause notice(SCN) is mandatory and opportunity of being heard shall be given.
    4. Officer specify the nature of breach and related law and regulation.
    5. If person voluntarily discloses about breach before discovery of breach then proper officer may consider this fact as a mitigating factor.
    6. Section 126 not apply where
        1. Fixed sum of penalty or
        2. Fixed % percentage specified

Power to impose penalty [Section 127]

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1. When person not covered under any proceedings specified below, then officer shall have power to impose penalty.

2. Proceedings are as follows

Section	Provision
62	Assessment of Non filer of returns [BJA]
63	Assessment of Unregistered persons [BJA]
64	Summary Assessment
73,74	Proceedings for determination of tax and other dues in case of reason other than fraud or reason of fraud.
129	Detection, seizure and release of goods
130	Confiscation of goods or conveyance

Power to Waive penalty [Section 128]

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1. Government may, by notification, waive
   1. In part or
   2. full
2. Any penalty referred in
   1. Section 122 – Penalty for certain offences
   2. Section 123 – Penalty for failure to furnish Information return
   3. Section 125 – General Penalty
   4. Any late fee u/s 47 – Delay in filing of return for such class of taxpayers under such mitigating circumstances

Detection, seizure and release of goods and conveyances in transit [Section 129]

1. When goods are in transit in contravention of provision of act
2. Then all such goods, conveyance and conveyance carrying document
3. Liable to detection and seizure.
4. Such goods or/and conveyance shall be release if:-
   A. Owner comes forward for payment of
      1. *Other than exempted goods*
         1) Tax +
         2) Penalty = 100% of Tax

         Furnish security = Tax + Penalty
      2. *For Exempted Good*

         Amount = Whichever is lower
         1) 2% of value of goods or
         2) INR 25,000

         Furnish security = Amount in Point No.3
   B. Owner not come forward for payment of
      1. Other than exempted goods
         1) Tax +
         2) Penalty = [50% of value of goods] – Tax already paid
         3) Furnish security = Tax + Penalty
      2. For Exempted goods

         Amount = Whichever is lower
         1) 5% of value of goods or
         2) INR 25,000

         Furnish security = Amount in Point No. 3
5. Detection shall be made after giving order of detection.
6. *Circular No. 76/50/2018 Dt.31/12/2018:-*
   1. Invoice or document exist then consigner or consignee shall be deemed to be the owner
   2. Invoice or document not exist then officer determine who shall be the owner of goods.

7.After detain goods or conveyance Notice must be issued specify tax and penalty.

8.SCN - Opportunity of being heard shall be given before determination of tax and penalty.

9. If payment of tax and penalty made then all proceedings deemed to be concluded.

10. If person fails to pay tax and penalty then within 14 days of detection or seizure, then further proceedings of section 130 shall be initiated .

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Confiscation of goods and conveyances and levy of penalty [Section 130]

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1. If any person :-
   1. Supply or receives any goods in contravention of any provision of act with intent to evade payment of tax.
   2. Contravenes any provision of act with intent to evade payment of tax.
   3. Goods supplied without registration
   4. Not account goods
   5. Use conveyance for transportation of goods in contravention of provisions of act,
      - Unless owner of conveyance proves that it was used without knowledge or connivance of owner, agent and any person in charge of conveyance.
      - Then goods and conveyance shall be liable to confiscation and penalty u/s 122 (1), point no. 5 shall impose.
2. Officer adjudging shall give option to owner of goods in lieu of confiscation, to pay such fine as officer thinks fit.
   1. Fine = up to [Market value of goods – tax on such goods]
   2. Aggregate of fine and penalty >= i.e. at least penalty u/s 129 point no. 4
3. Officer adjudging shall give option to owner of Conveyance in lieu of confiscation, to pay
   Fine = Tax payable on such goods liable for confiscation.
4. Order of confiscation can not be given without giving Opportunity of being heard.
5. If goods confiscated then title of goods or conveyance shall be vest in the government.
6. Police officer shall assist him in taking and holding such possession.
7. Fine and penalty shall be payable within 3 months.
8. If fine and penalty not paid within such 3 months then officer shall sale such goods or conveyance and deposit the sale proceeds with government.

Confiscation or penalty not to interfere with other punishments [Section 131]

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- Without prejudice(harming) 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 (impose) 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

1. Major offences which warrant institution of criminal proceedings.
2. Offences are as follows :- [Similar to Sec 122]
   a. Supply goods or services without invoice with intention to evade tax
   b. Invoice issued without supply of goods or services, which leads to wrongful availment or utilization of ITC or refund of tax
   c. ITC availed on invoice issued in point no. b
   d. Collect tax but fails to pay to government beyond 3 month from due date of payment.
   e. Evade tax, fraudulently avails ITC, refund.
   f. Falsifies or substitutes records, accounts or documents or furnish false information with an intention to evade tax.
   g. Prevent any officer in discharge of his duties
   h. Supply, transports or stores goods which he has reasons to believe are liable for confiscation.
   i. Receive or supply of goods or services which are in contravention of any provision of act.
   j. Tamper or destroy any evidence or documents.
   k. Fails to supply information or supply false information.
   l. Attempt to commit or abets the commission of any of the offences mentioned from point no. 1 to 10.

Punishments for certain offences [Section 132]

Punishment

Offence	Amount	Punishment
1. Tax evaded 2. ITC wrongfully availed or utilized 3. Refund wrongfully taken	1 crore =< 2 crores 2 crores =< 5 crore >5 Crore	1 year imprisonment + fine 3 year Imprisonment + fine 5 year Imprisonment + fine
Commits or abets the commission of offence no. f, g, j		6 month or/and fine
For second and every subsequent offence	No limit	5 years + fine

Cognizable vs Non-cognizable offences

	Cognizable offence	Non-cognizable offence
1. Meaning	• Means serious category of offences • In which police officer has authority to arrest without warrant & • Start investigation With or without permission of court.	• Less serious offences • In which police officer does not have authority to make arrest without warrant • Investigation start with permission of court
2. Classification	Offences where 1. Tax evaded 2. ITC wrongfully availed or utilized 3. Refund wrongfully taken 5 Crores, namely I. Supply without invoice II. Invoice issue without supply III. ITC claimed on invoice issued in point no. II. IV. Collect tax but fails to pay to government beyond 3 months from due date of payment	• All offences, • except offences which are • cognizable and non-bailable.
3. Bailable/nonbailable	Non-bailable	Bailable

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Liability of officers and certain other persons [Section 133]

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1. Any person have access of information u/s 150 or 151
2. with the provision of service of common portal or agent of such person
3. Wilfully discloses information or content of any return
4. Otherwise than
   1. Execution of his duties
   2. For the purpose prosecution for any offence
5. He shall be punishable with
   1. Fine – up to INR 25,000 or
   2. Imprisonment – which extend to 6 months or
   3. Both
6. Prosecuted for an offence, means
   1. For gov servant – previous sanction of gov only
   2. Other person – previous sanction of commissioner only

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Cognizance of offences [Section 134]

1. No court shall take cognizance(notice,consider) of any offence
2. Except with the previous sanction of commissioner and
3. No court inferior to that of a magistrate of first class i.e. magistrate of first class are inferior.
4. Shall try any such offence.

Presumption of culpable mental state [Section 135]

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1. Court shall presume existence of such mental state
2. Mental state :- includes
   - intention,
   - motive,
   - knowledge of

   fact and belief in, or reason to believe, a fact
3. "Culpable mental state" is a state of mind, wherein
   1. The act is intentional
   2. Act and implications are understood and controllable
   3. Person was not coerced(pressure) and even overcomes hurdles to the act committed
   4. Person know that act is contrary to law
4. In defence – accused has to proved the fact that no such mental state exist.
5. Explanation (ii) u/s 135 – fact is said to be proved when court believes it to exist beyond reasonable doubt.

Offences by companies [Section 137]

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A. Section 137 (1) & (2) - Taxable person being
   1. Company – body corporate, firm, association of individuals
   2. Every person who was in charge and responsible to company or conduct of business shall be deemed to be guilty of that offence.
   3. Offence was committed –
      1. With the consent or connivance (Involvement)
      2. Negligence on the part of any director, manager, secretary or other officer of company.

   Such manager, director, secretary or other officer shall also deemed to be guilty of that offence.

B. Section 137 (3) - Taxable person being
   1. Partnership firm, LLP or HUF or Trust
   2. Partner, Karta, managing trustee shall be deemed to be guilty of that offence.
   3. Offence was committed –
      1. With the consent or connivance (Involvement)
      2. Negligence on the part of any director, manager, secretary or other officer of company.

   Such partner, member, trustee manager, secretary, or other officer shall also deemed to be guilty of that offence.

C. Nothing shall render any such person liable to punishment, if he proves that
   - Offence was committed
   - Without his knowledge or
   - He exercised all due diligence
   - To prevent(save) the commission of such offence.

Compounding of offences [Section 138]

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1. **Any offence** other then following, may be compounded by commissioner
2. Either before or after institution of prosecution
3. Upon payment of such compounding amount.
4. Following offence, which excluded :-
   1. Offences u/s 132 from point no. a to f.
   2. Aiding/abetting (help) offences u/s 132 from point no. a to f.
   3. Any offences in respect of supplies of value > 1 Crore, if person allowed to compounded earlier for any of said offences.
   4. Person committed offence under this act also any other law for the time being in force.
   5. Person convicted for an offence under this act by a court.
   6. Person committed an offence u/s 132 (1) (g), (j), (k)
   7. Other offence as prescribed.
5. Compounding shall allowed after making payment of
   1. Tax
   2. Interest
   3. Penalty of such offences, which determined by commissioner.
6. Proviso to Section 138 (1) - Compounding shall not affect other proceedings.
7. Amount of compounding shall be subject to :-
   1. Minimum limit – higher of
      1. 50% of tax
      2. INR 10,000
   2. Upper limit - higher of
      1. 150% of tax
      2. INR 30,000
8. On payment of compounding offence, no further proceedings shall be initiated in respect of same offence.
9. Any criminal proceedings , if initiated already, shall stand abated.