

# **PENALTIES**

SECTION 122 TO 138

**BY: CA PIYUSH BANSAL**

B. COM, FCA, DISA (ICAI),  
NATIONAL TRAINER & AUTHOR (JCI INDIA)

# **SECTION 122.**

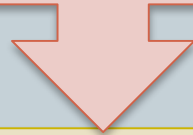
## **Penalty for certain offences**



## (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;

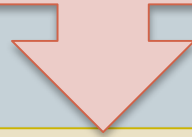


(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of **three months** from the date on which such payment becomes due;

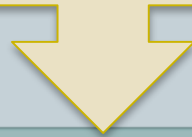
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(iv) collects any tax in **contravention of the provisions of this Act** but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;



(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;

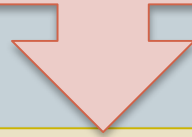


(vi) fails to **collect tax** in accordance with the provisions of sub-section (1) of section 52, or collects **an amount which is less** than the amount required to be collected under the said sub-section or where he **fails to pay** to the Government the amount collected as tax under sub-section (3) of section 52;

**Contd.....**



(vii) **takes or utilizes 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;

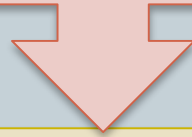


(ix) **takes or distributes input tax credit** in contravention of section 20, or the rules made thereunder;

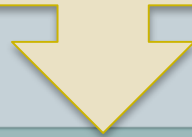
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(x) **falsifies or substitutes financial records** or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;



(xi) is liable to be registered under this Act but **fails to obtain registration;**

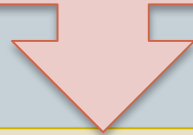


(xii) furnishes **any false information with regard to registration particulars**, either at the time of applying for registration, or subsequently;

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(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;

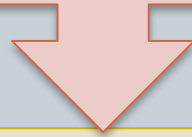


(xv) **suppresses his turnover** leading to evasion of tax under this Act;

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(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;



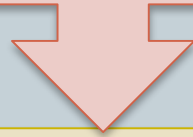
(xviii) **supplies, transports or stores** any goods which he has reason to believe are liable to confiscation under this Act;



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(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;

**Contd.....**



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.**

## **Amendment *vide* the Finance Act, 2020**



“(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.”

## Penalty for certain Offences by a **Registered Person**

(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 **ten thousand rupees or ten per cent. 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 **ten thousand rupees or the tax due from such person, whichever is higher.**

**Q: A registered person has made outward supplies for five months, from April 2019 to August 2019, but is yet to file his FORM GSTR-3B. He declares all the supplies till date in the return of September 2019. Will he have to pay any interest or penalty?**

**A: Yes, this situation will certainly attract interest to be paid @ 18% for the delay period and at the same time there is a possibility of penalty being imposed under section 122(1)(iii) of the CGST Act, which is 10,000 or the amount of tax evaded, whichever is higher. And if there is no tax evasion, there could be a penalty of 10,000.**

**Q: Mr A, who has opened a business in the name of Mr B (his driver), for issuing invoices without actual supply of goods, with the intention of evading tax, is caught by the department. The total evaded tax is to the tune of 1 crore. In this case, what penalty can be imposed by the department and against whom?**

**A: In the above case, penalty equal to the amount of tax evaded of 1 crore under section 122(1) will be imposed on Mr B, and a similar amount of penalty under section 122(1A) will be imposed on Mr. A.**

## **SECTION 123. Penalty for failure to furnish information return**

**If a person who is required to furnish an information return under section 150 fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues: Provided that the penalty imposed under this section shall not exceed five thousand rupees.**

# SECTION 124 – Fine for failure to furnish statistics

- ▶ 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, he shall be punishable with a fine which may extend to **ten thousand rupees** and in case of a **continuing offence** to a further fine which may **extend to one hundred rupees for each** day after the first day during which the offence continues subject to a **maximum limit of twenty-five thousand rupees**.



## **SECTION 125 - General Penalty**

- ▶ 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 twenty-five thousand rupees.**

# **SECTION 125 - General Penalty**

## **Examples**

- ▶ **Rule 18 requires every registered person to display registration certificate and Goods and Services Tax Identification Number on the name board. If a registered person contravenes this provision, a penalty under section 125 of up to Rs. 25,000/- can be imposed.**
- ▶ **If while filing the GST return, a registered person fails to mention/disclose his exempt supplies, a penalty up to Rs. 25,000 can be imposed under this section, even if there is no tax evasion.**

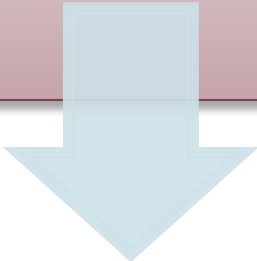
# SECTION 126. General disciplines related to penalty

**(1) 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.**


**Explanation. - For the purpose of this subsection**  
**(a) a breach shall be considered a 'minor breach' if the amount of tax involved is **less than five thousand rupees****

**(b) 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****

**(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.**

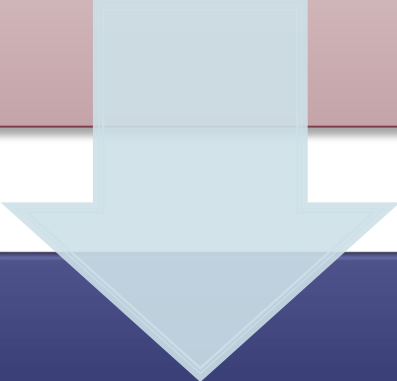


**(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.**



**(4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified**

**(5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.**



**(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.**

# **SECTION 127. Power to impose penalty in certain cases**

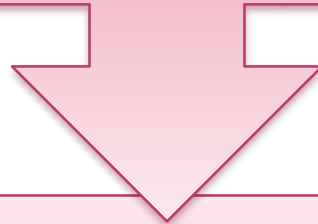
- ▶ Where the proper officer is of the view that a person **is liable to a penalty and the same is not covered under any proceeding** under sections 62, or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

# SECTION 128. Power to waive penalty or fee or both

- ▶ **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.

## 129. DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT

**(1) Notwithstanding anything contained in this Act, 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 and conveyance** used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, -**



**(a) on payment of the applicable tax and penalty equal to **one hundred per cent.** of the **tax payable** on such goods and, in case of **exempted goods**, on payment of an amount equal to **two per cent.** of the **value of goods** or **twenty-five thousand rupees**, **whichever is less**, where the owner of the goods comes forward for payment of such tax and penalty;**



**b) on payment of the applicable tax and penalty equal to the **fifty per cent. of the value of the goods reduced by the tax amount paid thereon** and, in case of **exempted goods**, on payment of an amount equal to **five per cent.** of the value of goods or **twenty-five thousand rupees, whichever is less**, where the owner of the goods does not come forward for payment of such tax and penalty;**



**(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed**



**Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods**

**Q: A vehicle is caught transporting goods (taxable @ 18%) valuing Rs. 10,00,000/-, without E-way Bill. What is the amount of penalty applicable in this case?**

**A: In this case the department can impose a penalty of Rs. 1,80,000/-, that is 100% of the tax payable (Rs. 10,00,000 \* 18% = Rs 1,80,000).**

**Q: A person in-charge of a vehicle is caught transporting goods (taxable @ 18%) valuing Rs. 10,00,000/- in contravention of Section 68 of the CGST Act and the department detains the goods as well as the vehicle. As the owner of goods was not coming forward to get the goods released, the transporter decides to pay the tax and penalty as it was effecting his business. What is the amount of penalty applicable in this case?**

**A:** Department can impose a penalty of Rs. 3,20,000, that is, 50% of the value of goods ( $10,00,000 * 50\% = \text{Rs. } 5,00,000$ ) reduced by the amount of tax paid (18% of Rs. 10,00,000/- = Rs. 1,80,000/-). Therefore, the penalty amount to be paid is  $(\text{Rs. } 5,00,000 - \text{Rs. } 1,80,000) = \text{Rs. } 3,20,000/-$ .

## SECTION 130. Confiscation of goods or conveyances and levy of penalty

Cause	Consequence
Supply or receive goods in contravention of the provisions of this Act or Rules made thereunder	Resulting in actual evasion of tax
Not accounting for goods	Carrying a liability for payment of tax
Supply of goods liable to tax	Without applying for registration
Contravention of the provisions of the Act or Rules made thereunder	With intent to evade payment of tax
Use of conveyance as a means of transport for carriage of goods	In contravention of the Act or rules made thereunder

**In all the above cases, goods or conveyance shall be liable for **confiscation**. However, the conveyance shall not be confiscated where the owner of the conveyance proves that it is without the knowledge or connivance of the owner himself, his agent or person in charge of the conveyance. Further, the person shall be liable to pay penalty under Section 122 of the Act. **The amount of fine shall not exceed the market value of goods as reduced by the amount of tax payable thereon.****

## **SECTION 131 - CONFISCATION OR PENALTY NOT TO INTERFERE WITH OTHER PUNISHMENTS**

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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.

## **SECTION 132. Punishment for certain offences**

<b>Tax Amount Involved 100 to 200 Lacs</b>	<b>Jail Term up to 1 year</b>	<b>Fine – Yes</b>
<b>Tax Amount Involved 200 to 500 Lacs</b>	<b>Jail Term up to 3 years</b>	<b>Fine – Yes</b>
<b>Tax Amount Involved Above 500 Lacs</b>	<b>Jail Term up to 5 years</b>	<b>Fine – Yes</b>
<b>Commits or Abets commission of an offence – clause f, g, j</b>	<b>Jail Term up to 6 years</b>	<b>Or Fine or Both</b>
<b>Second or subsequent offence</b>	<b>Jail Term up to 5 years</b>	<b>Fine – Yes</b>
<b>Offences mentioned in clause a ,b, c &amp; d</b>	<b>Jail Term up to 5 years</b>	<b>Cognizable and Non- bail able</b>

# SECTION 133. Liability of **officers** and certain other persons

- ▶ (1) Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerization 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, willfully 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 six months or with fine which may extend to twenty-five thousand rupees, or with both.**

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- ✘ (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



## **SECTION 134. COGNIZANCE OF OFFENCES**

**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.**

## 135. PRESUMPTION OF CULPABLE MENTAL STATE

- In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Explanation - For the purposes of this section, —
  - (i) the expression “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;
  - (ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

# 136. RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES

- ◉ 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.

# 137. OFFENCES BY COMPANIES

- ◉ (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.
- ◉ (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.
- ◉ (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.
- ◉ (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.

# 138. COMPOUNDING OF OFFENCES

- ◉ 1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed: Provided that nothing contained in this section shall apply to—
  - ◉ (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;
  - ◉ (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;
  - ◉ (c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force; (d) a person who has been convicted for an offence under this Act by a court;



**BY: CA PIYUSH BANSAL  
B. COM, FCA, DISA (ICAI),  
NATIONAL TRAINER & AUTHOR (JCI INDIA)**