

GST Litigation Series (Virtual)

Offences & Penalties under GST

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AN INVESTMENT IN KNOWLEDGE PAYS THE BEST RETURN

Meaning of Offence

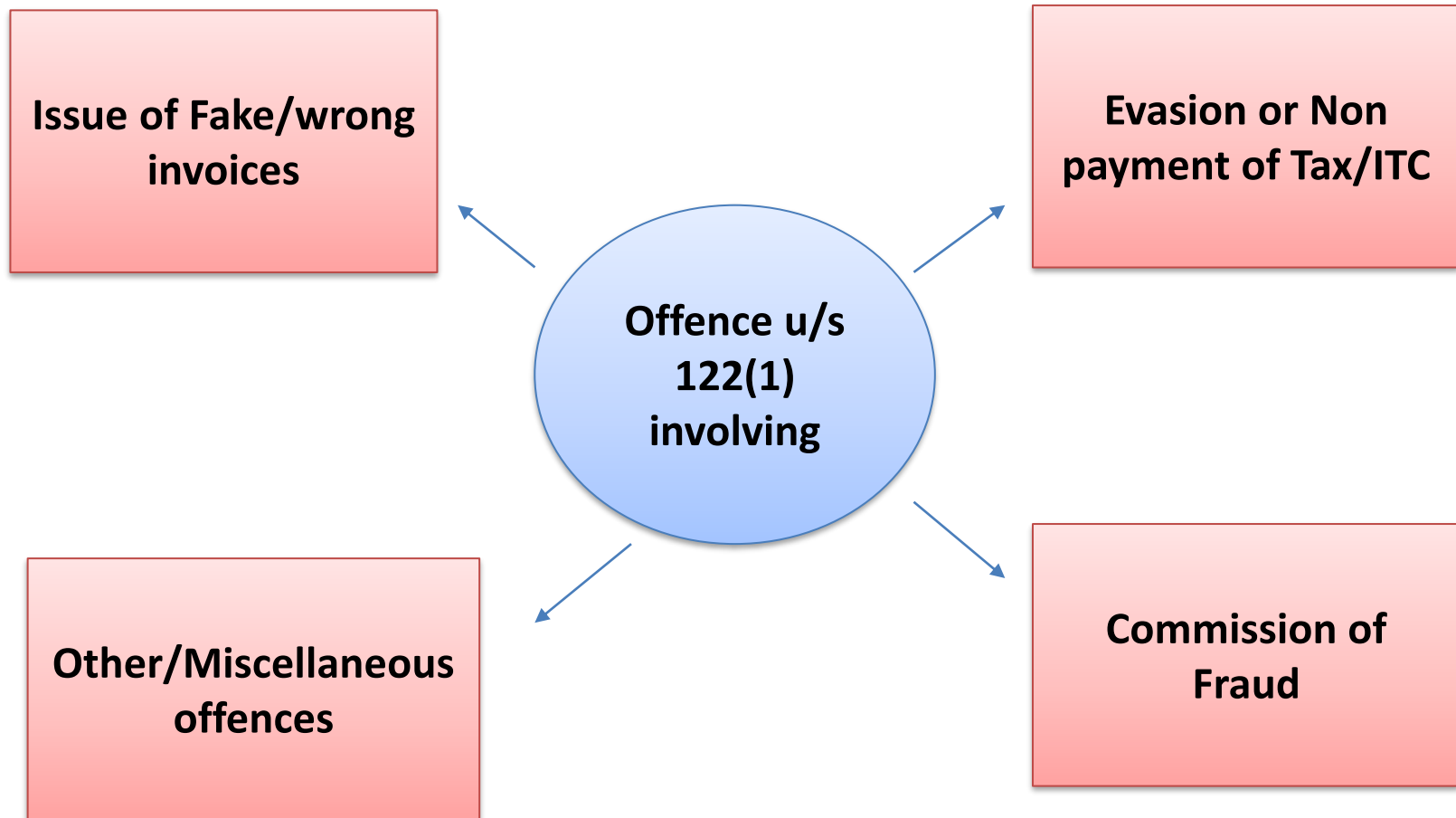
- Not defined under CGST Act/ GST laws.
- Dictionary meaning..... “**Offence**” means a crime or an illegal action, something that outrages the moral or physical senses.
- An offence is a breach of a law or rule, i.e., an illegal act.
- Under GST it is a breach of the provisions of CGST Act and the rules.

Meaning of Penalty

- “**PENALTY**” not been defined in the CGST/SGST Act
- As per Judicial pronouncements and principles of jurisprudence , “Penalty” means.....
 - (i) a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence;
 - (ii) a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do.
- Any breach of law/act is an **offence.....Punishment for committing an offence is “Penalty”**

Section 122(1) – Penalty for certain Offences

- Section 122(1) provide for **21 offences** for which a taxable person may be held liable to penalty.



Section 122(1) – Penalty for certain Offences

OFFENCE- ISSUE OF FAKE/WRONG INVOICE:

WHERE “**TAXABLE PERSON**” (Sec. 2(107) means a person registered or liable to be registered u/s 22/24) :

- i) supplies any goods/ services without issue of any invoice or issues an incorrect or false invoice with regard to any such supply; - **122(1)(i)**
- ii) issues invoice/bill without supply of goods or services in violation of the this Act or the rules- **122(1)(ii)**
- iii) Takes or utilise ITC without actual receipt of goods or services either fully or partially, in contravention Act/Rules - **122(1)(vii)**
- iv) issues any invoice or document by using the registration number of another registered person- **122(1)(xix)**

Section 122(1) – Penalty for certain Offences

OFFENCES- EVASION / NON-PAYMENT OF TAX/ITC

WHERE TAXABLE PERSON:

- v. collects any amount as tax but fails to pay the same to the Government beyond 3 months from the due-date **122(1)(iii)**
- vi. collects tax in contravention of the Act but fails to pay beyond a period of 3 months from the due- date – **122(1)(iv)**
- vii. fails to deduct the tax u/s 51(1), or deducts less than the amount required to be deducted u/s 51(1), or fails to pay the said TDS u/s 51(2) – **122(1)(v)**

Section 122(1) – Penalty for certain Offences

OFFENCES- EVASION / NON-PAYMENT OF TAX/ITC

WHERE TAXABLE PERSON:

- viii. fails to collect tax u/s 52(1), or collects lower amount under said sub-section or fails to pay to such collected tax U/s 52(3) – **122(1) (vi)**

- ix. takes or distributes ITC in contravention of section 20, or the rules made thereunder; - **122(1)(ix)**

Section 122(1) – Penalty for certain Offences

OFFENCES INVOLVING COMMISSION OF FRAUD

WHERE TAXABLE PERSON:

- x. fraudulently obtains refund of tax under this Act; - **122(1)(viii)**
- x. Falsifies/substitutes financial records or produces fake accounts/documents or furnishes false information or return with an **intention to evade payment of tax** - **Section 122(1)(x)**
- xi. furnishes false information regard to registration particulars, at the time of applying for registration/subsequently – **122(1)(xii)**
- xii. suppresses turnover leading to evasion of tax -**122(1)(xv)**

Section 122(1) – Penalty for certain Offences

OFFENCES INVOLVING COMMISSION OF FRAUD

WHERE TAXABLE PERSON:

- xiv. supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act; - **122(1) (xviii)**

- xiv. tampers with, or destroys any material evidence or document;
122(1)(xx)

- xv. disposes off or tampers with any goods that have been detained, seized, or attached under this Act, - **122(1)(xxi)**

Section 122(1) – Penalty for certain Offences

OTHER MISCELLANEOUS PROVISION

WHERE TAXABLE PERSON:

- xvii. is liable to be registered under this Act but fails to obtain registration- **122(1)(xi)**
- xviii. obstructs or prevents any officer in discharge of his duties under this Act – **122(1)(xiii)**
- xix. transports any taxable goods without the cover of documents as may be specified– **122(1)(xiv)**

Section 122(1) – Penalty for certain Offences

OTHER MISCELLANEOUS PROVISION

WHERE TAXABLE PERSON:

- xx. fails to keep, maintain/retain books/ other documents in accordance with the provisions of this Act/ rules– **122(1)(xvi)**

- xxi. fails to furnish information/documents called for by an officer under this Act/rules made thereunder or furnishes false information /documents during any proceedings – **122(1)(xvii)**

Section 122(1) – Penalty for certain Offences

PENALTY FOR ABOVE 21 OFFENCE IS AS FOLLOWS:

Higher of following

A) Rs. 10,000/- or

B) An amount equivalent **as applicable for offence -**

i. Tax evaded; **or**

ii. Tax not deducted/collected u/s 51 or 52 or short deducted/collected or deducted/collected but not paid to the Government; **or**

iii. ITC availed or passed on or distributed irregularly; **or**

iv. Refund claimed fraudulently

Section 122(1A) of CGST Act

Any person who retains the benefit of following transaction and at whose instance such transaction is conducted

- i. supplies any goods/ services without issue of any invoice or issues an incorrect or false invoice with regard to any such supply; - **122(1)(i)**
- ii. issues invoice/bill without supply of goods or services in violation of the this Act or the rules- **122(1)(ii)**
- iii. Takes or utilise ITC without actual receipt of goods or services either fully or partially, in contravention Act/Rules - **122(1)(vii)-----??????????**
- iv. takes or distributes ITC in contravention of section 20, or the rules made thereunder; - **122(1)(ix)-----??????????**

shall be liable to **a penalty** of an amount equivalent to the tax evaded or ITC availed of or passed on

Section 122(2) of CGST Act

Any Registered person

- i) Who supplies any goods/services or both on which any tax has not been paid or short-paid or erroneously refunded, or
- ii) Where the ITC has been wrongly availed or utilized

Section 122(2) of CGST Act

The defaulter would be liable to pay penalty as under –

Particulars	Penalty
(a) For any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax	An amount equal to – (a) Rs.10,000/- or (b) 10% of the tax due from such person Whichever is higher
For reason of fraud or any willful misstatement or suppression of facts to evade tax	An penalty for an amount equal to- (a) Rs.10,000/- or (b) Tax due from such person Whichever is higher

Section 122(3) of CGST Act

Any person

- i) Aids or abets any of the offences specified in clauses (i) to (xxi) of section 122 (1)
- ii) 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;
- iii) 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;

Section 122(3) of CGST Act

Any person

- iv. fails to appear before the officer, when issued with a **summon** to give evidence or produce a document in an inquiry;
- v. 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 Rs. 25,000/-

Summary of Penalties

Section	Type of Offence	Penalty
122(1)	Above Specified 21 offences --- Taxable Person	Rs.10,000 (or) Tax/ITC involved, whichever is HIGHER
122(1A)	Any person who retains the benefit or and at whose instance such transaction is conducted	an amount equivalent to the <u>tax evaded or ITC availed or passed on</u>

Summary of Penalties

Section	Type of Offence	Penalty
122(2)	Other than Fraud etc.,	Rs.10,000 (or) 10% of Tax/ITC involved, whichever is HIGHER
	Fraud etc.,	Rs.10,000 (or) Tax/ITC involved, whichever is HIGHER

Summary of Penalties

Section	Type of Offence	Penalty
122(3)	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	Upto Rs.25,000
123	Person fails to furnish an information return u/s 150 fails to do so ---- Return not notified	Rs.100 per day (failure period) subject to a Max. Rs.5,000

Summary of Penalties

Section	Type of Offence	Penalty
124	Any Person required to furnish any information or return u/s 151 (without reason cause or furnish false details)	Normal Cases – Up to Rs.10,000 Continuing offence – Rs.100 per day (failure period) subject to a Max.Rs.25,000
125	General Penalty for other offences not provided specifically	Up to Rs. 25,000

General Discipline

Section	Particulars
126	<ul style="list-style-type: none"><li data-bbox="311 211 1889 476">• <u>No penalty for minor offences 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.</u><li data-bbox="311 519 1889 642">• A breach shall be considered a 'Minor breach' if The amount of tax involved is less than Rs. 5,000/- <p data-bbox="311 685 1889 876">An omission or mistake in documentation shall be considered to be easily rectifiable if the same is error apparent on the face of record.</p> <p data-bbox="311 919 1889 1048">No penalty shall be imposed on any person without giving him an opportunity of being heard.</p> <p data-bbox="311 1090 1889 1290">The provisions of this section shall not apply in cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage. --- 126(6)</p>

Power to impose Penalty in certain case

Section	Particulars
127	<p>Where PO is of the view that a person is liable to a penalty and the same is not covered under following proceedings,</p> <p>Sec.62 -Assessment of non filers of return; Sec.63- Assessment of unregistered persons; Sec.64- Summary assessment; Sec.73- Demand in case of non payment, short payment of GST or erroneous refund on account of reasons other than fraud Sec.74 -Demand in case of non payment, short payment of GST or erroneous refund on account of fraud etc. Sec.129-Detention, Seizure and release of goods and conveyances in transit; Sec.130- Confiscation of goods or conveyance</p> <p><u>he may levy such penalty after giving a reasonable opportunity of being heard</u></p>

Sec. 129 – Detention & Seizure of Goods/conveyance

Person transport goods or store goods in contravention of Act

Goods & Conveyance liable for detention/seizure

Released

Owner of Goods **come forward** for payment of penalty

Owner of goods **does not come forward** for payment of penalty

Taxable goods

- 200% of Tax

Exempted Goods

- **Lower** of 2% of value **or** Rs. 25,000

Taxable goods

- **Higher** of 50% of value of goods **or** 200% of tax

Exempted Goods

- **Lower** 5% of value **or** Rs. 25,000

Transporter can pay penalty of Rs. 1 Lac & conveyance shall be released

Section 130 – Confiscation of goods/conveyance

Where Any person

- I. supplies or receives any goods in contravention of the provisions of this Act or rules made with intent to evade payment of tax; or
- II. does not account for any goods on which he is liable to pay tax under this Act; or
- III. supplies any goods liable to tax under this Act without having applied for registration; or
- IV. contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

Section 130 of CGST Act

Where Any person

- v. uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such **goods or conveyances** shall be liable to confiscation and the person shall be liable to **penalty under section 122**

Sec. 130 – Confiscation of Goods/conveyance and levy penalty

Whenever confiscation of any goods/conveyance is authorised by Act, the officer adjudging it shall give to the owner of the goods **an option** to pay in lieu of confiscation, **such fine as the said officer thinks fit**:

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

Provided further that the aggregate of such fine and penalty leviable shall not be less than penalty equal to 100 percent of tax payable on such goods

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, **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.

Section 132 – Punishment for certain offences

Whoever commits or causes to commit and retain the benefits arising out of, any of the following offences

- i. supplies goods/services or both without issue of invoice, in violation of this Act or the rules, **with the intention to evade tax**;
- ii. issues any invoice or bill without supply of goods/services or both in violation of this Act, or the rules made thereunder leading to wrongful availment or utilisation of ITC or refund of tax;
- iii. avails ITC using invoice or bill referred to in clause (ii) or fraudulently avails ITC without any invoice or bill

Section 132 – Punishment for certain offences

- iv. collects any amount as tax but fails to pay the same to the Government beyond a period of 3 months from due date;
- v. evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- vi. 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;
- vii. obstructs or prevents any officer in the discharge of his duties under this Act;

Section 132 – Punishment for certain offences

- viii. 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;
- ix. 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;
- x. tampers with or destroys any material evidence or documents;

Section 132 – Punishment for certain offences

- xi. 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; or

- xii. attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

Section 132 – Punishment for certain offences

Shall be punished as follows:

Amount of Tax evaded/ erroneous refund/ wrong ITC availed or utilized	Fine	Imprisonment
Exceeding ₹ 5 Crores	Yes	Upto 5 Years
₹ 2 Crores – ₹ 5 Crores	Yes	Upto 3 years
₹ 1 Crores – ₹ 2 Crores	Yes	Upto 1 year

Section 132 – Punishment for certain offences

If any person commits following offence

vi) 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;

vii) obstructs or prevents any officer in the discharge of his duties under this Act;

x) tampers with or destroys any material evidence or documents;

he shall be punishable with imprisonment for a term which **may extend to six months or with fine or with both**

Section 132 – Punishment for certain offences

- All offences mentioned in this section are **non-cognizable and bailable** **except** the following cases-
 - a. Where the amount exceeds **5 Crores and**
 - b. **Instances covered by (a) to (d) of section 132(1) herein above**
- Every prosecution proceeding initiated requires prior sanction of the Commissioner.
- Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to **five years and with fine**

Sec. 133 – Liability of officer & certain Person

- Since the officers of the department are dealing with sensitive information, the secrecy and security of such information is of utmost importance. The officers who are dealing with the statistical data or data collected from the information returns, he has to maintain utmost secrecy of the same.
- If the officer willfully discloses such information or contents by any reason other than by reason of his duties cast upon him under the Act, **he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to 25,000 or both.**
- Further any prosecution under this section would be carried out with the prior sanction of the Government in case of prosecution of a Government Servant and with the sanction of Commissioner in case of others than government servant

Section 137 – Offence by companies

- Where an offence is committed by companies, **every person/ director/ manager/ secretary or any other officer who at the time of commitment of 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 such offence and **shall be liable to proceeded against and punished accordingly**.
- Where such offences are committed by the person being Partnership Firm, LLP, HUF or trust, then the Partner or Karta or Managing Trustee (as the case may be) shall be deemed to be guilty and liable to be proceeded against and punished.
- Further, if the accused person proves that he was in no way related to the offence being committed or he had exercised all possible measures to prevent commission of such offences, then he is not punishable under this section.

WITH KNOWLEDGE..... WE KNOW THE WORDS,
BUT WITH EXPERIENCE..... WE KNOW THE MEANING



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