GSTZONE

Offences & Penalties

The consequences, stated plainly

The complete guide, plus all 23 sections and rules

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Penalties under GST fall into tiers. Ordinary compliance failures attract fixed or percentage penalties. Deliberate evasion - fake invoices, credit taken without receiving goods, tax collected and not paid - attracts penalty equal to the tax, and above certain thresholds it becomes a criminal matter.

Prosecution and arrest powers exist and are used, but they are threshold-based: the amounts involved have to cross prescribed limits before the more serious categories apply. Below those thresholds it stays a civil, monetary matter.

Compounding is the pressure valve. It allows a prosecutable offence to be settled on payment of a compounding amount, closing criminal proceedings - though it is not available for every offence or every repeat.

A worked example

Collected but not deposited - the worst category to be in

GST collected from customers	**₹14,00,000**	Charged on invoices, received in bank
Amount deposited with government	**₹0**	Used for working capital instead
Exposure	**Tax + equal penalty + interest, plus prosecution risk**	Not treated as mere delay

> **The point:** Money you collected as tax was never yours to use. This is treated far more seriously than being unable to pay your own tax, and 'cash flow was tight' is not a defence to it.

The mistakes that cost people money

- Using collected GST as working capital. It converts a payment problem into an evasion allegation.
- Assuming a small amount cannot become criminal. The category depends on the nature of the act as well as the sum.
- Ignoring a summons. Non-appearance is itself an offence, quite apart from the underlying matter.

What this guide covers

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Every provision, explained

SECTION 122 · CGST ACT, 2017

Penalty for certain offences

Section 122 lists 21 specific offences - issuing false or no invoice, invoices without supply (bill trading), taking ITC without receiving goods, fraudulent refunds, not registering, obstruction and more - each drawing a penalty of Rs 10,000 or the tax/ITC involved, whichever is higher. The mastermind who benefits from fake-invoice transactions (122(1A)) and e-commerce operators allowing ineligible supplies (122(1B)) are also penalised.

- Penalty under 122(1) is Rs 10,000 or the tax involved, whichever is HIGHER - it is not capped at Rs 10,000.
- 122(1A) reaches the person who retains the benefit of a fake-invoice transaction and at whose instance it is conducted - the beneficiary, not just the issuer.
- Prosecution under section 132 is a separate track with monetary thresholds: above Rs 5 crore is cognisable and non-bailable; between Rs 2 crore and Rs 5 crore and between Rs 1 crore and Rs 2 crore carry lower punishments. Section 122 penalty does not by itself mean prosecution.
- Arrest under section 69 requires recorded reasons to believe and written grounds - Radhika Agarwal (SC, 27-02-2025) upheld the power but fenced it with safeguards, and held that payment coerced during a search is refundable.

SECTION 122A · CGST ACT, 2017

Penalty for failure to register certain machines used in manufacture of goods as per special procedure

Where a special procedure for registration of machines has been notified under section 148 - currently for pan masala and tobacco manufacturers - failure to register a machine carries a penalty of Rs 1 lakh per unregistered machine, on top of any other penalty, and the machine itself is liable to seizure and confiscation.

- Applies where a special procedure for registration of machines has been notified under section 148 - currently pan masala and tobacco manufacturers under Notification 04/2024-Central Tax.
- Rs 1 lakh per unregistered machine, and the machine itself is liable to seizure and confiscation unless the penalty is paid and the machine registered within three days of the order.

SECTION 122B · CGST ACT, 2017

Penalty for failure to comply with track and trace mechanism

Failure to comply with the track and trace mechanism under section 148A carries a penalty of Rs 1 lakh or ten per cent of the tax payable on the goods, whichever is higher - in addition to any other penalty under the Act.

- Penalty for breaching the track-and-trace mechanism under section 148A: Rs 1 lakh or ten per cent of the tax payable on the goods, whichever is higher, over and above any other penalty.

SECTION 123 · CGST ACT, 2017

Penalty for failure to furnish information return

Section 123 imposes a penalty for failure to furnish an information return under s.150 (Rs 100/day up to Rs 5,000).

SECTION 124 · CGST ACT, 2017

Fine for failure to furnish statistics

Section 124 provides a fine for failure to furnish statistics called for under s.151.

SECTION 125 · CGST ACT, 2017

General penalty

Section 125 is the residual penalty: any contravention of the Act or rules for which no specific penalty is prescribed can attract a penalty up to Rs 25,000.

- Up to Rs 25,000 under the CGST Act and the same again under the State Act, so the real exposure is Rs 50,000 per contravention.
- It applies only where no specific penalty is prescribed - if the department invokes 125 alongside a specific penalty for the same default, that is a ground of challenge.

SECTION 126 · CGST ACT, 2017

General disciplines related to penalty

Section 126 protects taxpayers: no penalty for minor breaches (tax under Rs 5,000) or easily-rectifiable documentation errors made without fraud or gross negligence; penalties must be proportionate to the breach; a hearing is required; and voluntary disclosure before detection is a mitigating factor. It does not apply where the penalty is a fixed amount or fixed percentage.

- Section 126 does not apply where the penalty is a fixed sum or a fixed percentage - so it gives no relief against section 122(1), 129 or 130 penalties. Its real use is against section 125 and discretionary penalties.
- A breach involving tax under Rs 5,000 is a minor breach, and an omission or mistake in documentation that is easily rectifiable and apparently made without fraud or gross negligence attracts no penalty.
- Voluntary disclosure before detection is expressly a mitigating factor - put it in writing before the department finds it.

SECTION 127 · CGST ACT, 2017

Power to impose penalty in certain cases

Section 127 lets the proper officer impose a penalty where a person is liable to penalty but the case is not covered by the assessment/demand/detention sections, after a hearing.

- Where a penalty is not covered by sections 62, 63, 64, 73, 74 or 74A, the officer must issue a separate order under section 127 after a hearing - a penalty tacked on to another order without that process is challengeable.

SECTION 128 · CGST ACT, 2017

Power to waive penalty or fee or both

Section 128 empowers the Government to WAIVE, in whole or part, penalty or late fee for any class of taxpayers - the basis for amnesty schemes.

- The Government's general power to waive penalty or late fee for a class of taxpayers by notification - the source of the recurring late-fee amnesties. It is exercised by notification only; no officer can waive under it.

SECTION 128A · CGST ACT, 2017

Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods.

The amnesty: interest and penalty on a section 73 demand for FY 2017-18, 2018-19 and 2019-20 are waived if the full tax is paid by the notified date. It covers a notice or statement where no order has been passed, an order where no appellate order has been passed, and an appellate order where no Tribunal order has been passed. Any appeal must be withdrawn, nothing already paid as interest or penalty comes back, and it does not extend to erroneous refunds or to section 74 demands. Procedure is in Rule 164 through FORM SPL-01 or SPL-02.

- Covers only section 73 demands for FY 2017-18, 2018-19 and 2019-20 - not section 74, not erroneous refunds.
- The full TAX must be paid by the notified date; interest and penalty are then waived, and nothing already paid as interest or penalty comes back.
- Any appeal or writ against the demand must be withdrawn before the application is accepted.
- Rule 164 carries the procedure - SPL-01 where no order has been passed, SPL-02 where one has; the officer accepts in SPL-05 or rejects in SPL-07, and a rejection is appealable.
- Where a demand covers both eligible and ineligible periods, the eligible part can still be settled - split the demand in the application.

SECTION 129 · CGST ACT, 2017

Detention, seizure and release of goods and conveyances in transit

Goods moved in breach of the Act or rules can be detained or seized in transit. Release is on penalty only: 200% of the tax on the goods if the owner comes forward (2% of value or Rs.25,000, whichever is less, for exempted goods); if the owner does not come forward, the higher of 50% of the value or 200% of the tax (5% of value or Rs.25,000 for exempted goods). The officer must issue notice within seven days of detention and pass the order within seven days of that notice.

- Since 01-01-2022 section 129 is a penalty-only provision and is delinked from section 130 - the department cannot jump to confiscation because the penalty is unpaid.
- Notice must be issued within seven days of detention and the order within seven days of the notice; miss either and the detention is bad.
- A technical breach without intent to evade is not a section 129 case - Satyam Shivam Papers (SC, 12-01-2022): an expired e-way bill caused by traffic obstruction did not justify penalty.
- Where the penalty is not paid within seven days the goods can be sold under Rule 144A; a conveyance is released on payment of the penalty or one lakh rupees, whichever is less.
- The appeal against a 129(3) order needs a pre-deposit of twenty-five per cent of the penalty, not the usual ten per cent.

SECTION 130 · CGST ACT, 2017

Confiscation of goods or conveyances and levy of penalty

Confiscation is a separate, harsher route than detention and needs intent to evade tax (or unaccounted goods, supply without registration, or a conveyance knowingly used for such carriage). Confiscated goods vest in the Government, the owner is given the option to pay a fine in lieu of confiscation, and penalty under section 122 applies on top. Since 01-01-2022 section 129 detention no longer flows automatically into section 130.

- Confiscation needs INTENT to evade - after the 2022 delinking, a 129 detention cannot be escalated to 130 merely because the penalty went unpaid.
- The owner must be given the option of a fine in lieu of confiscation, and that fine cannot exceed the market value of the goods less the tax chargeable.
- Penalty under section 122 applies in addition, and the goods vest in the Government only after the order and the appeal window.

SECTION 131 · CGST ACT, 2017

Confiscation or penalty not to interfere with other punishments

Section 131 clarifies that confiscation or penalty under the Act does not bar other punishments under any other law.

SECTION 132 · CGST ACT, 2017

Punishment for certain offences

Section 132 provides PROSECUTION for serious offences - fake invoices, ITC/refund fraud, collecting but not paying tax, etc. - with imprisonment graded by the amount (up to 5 years above Rs 5 crore). Offences above Rs 5 crore are cognizable and non-bailable.

- Thresholds: above Rs 5 crore - up to five years and fine, cognisable and non-bailable; Rs 2 to 5 crore - up to three years; Rs 1 to 2 crore - up to one year. Below Rs 1 crore there is no prosecution for these offences, except for repeat offenders.
- The Finance Act 2023 DECRIMINALISED three offences with effect from 01-10-2023 - obstructing an officer, tampering with material evidence, and failure to supply information - and raised the threshold for most offences from Rs 1 crore to Rs 2 crore, except for fake invoicing.
- Fake invoicing under 132(1)(b) and (c) keeps the Rs 1 crore threshold and is the offence prosecutions are actually built on.
- Prosecution is independent of adjudication - it can proceed even while the demand is under appeal, and an adjudication in the taxpayer's favour is a strong but not automatic answer.

SECTION 133 · CGST ACT, 2017

Liability of officers and certain other persons

Section 133 makes officers and others who wrongfully disclose information or particulars liable to punishment.

SECTION 134 · CGST ACT, 2017

Cognizance of offences

Section 134 bars courts from taking cognizance of a s.132 offence except with the Commissioner's prior sanction, triable by a Magistrate.

- No court can take cognisance without the Commissioner's prior sanction, and the trial is before a Magistrate of the first class or above - a challenge to the sanction is a standard first line of defence.

SECTION 135 · CGST ACT, 2017

Presumption of culpable mental state

Section 135 raises a presumption of a culpable mental state (guilty intent) in a prosecution, which the accused must rebut.

- The presumption of a culpable mental state shifts the burden to the accused, who must disprove it beyond reasonable doubt - a heavy burden.
- The Supreme Court in Radhika Agarwal (27-02-2025) expressly left the constitutional challenge to this section open, so it remains arguable.

SECTION 136 · CGST ACT, 2017

Relevancy of statements under certain circumstances

Section 136 makes statements recorded during inquiry relevant and admissible in prosecution in specified circumstances.

SECTION 137 · CGST ACT, 2017

Offences by companies

Section 137 makes the persons in charge of a company/firm (and, on proof, directors/partners) liable for offences committed by the company, unless they prove due diligence.

- The person in charge of and responsible to the company for the conduct of its business is liable, unless he proves the offence was committed without his knowledge or that he exercised all due diligence.
- A director, manager, secretary or other officer is liable where the offence was committed with his consent or connivance or is attributable to his neglect - so the prosecution must plead a specific role, not just the designation.

SECTION 138 · CGST ACT, 2017

Compounding of offences

Section 138 allows COMPOUNDING of offences (paying a compounding amount to avoid prosecution) on payment of tax, interest and penalty - not available for certain repeat or specified serious offences; the compounding amount is capped as prescribed.

- Compounding is NOT available for the fake-invoice offence under 132(1)(b), for a person who has already compounded once for an offence above Rs 1 crore, or where the offence is also an offence under the NDPS, FEMA or similar laws.
- The Finance Act 2023 reduced the compounding amount to between twenty-five and one hundred per cent of the tax involved, from the earlier fifty to one hundred and fifty per cent.
- Apply in CPD-01 before or after prosecution begins; the order is CPD-02, and payment must follow within thirty days. Tax, interest and penalty must be paid first.
- Compounding ends the prosecution but does not undo the demand or the penalty already confirmed.

RULE 162 · CGST RULES, 2017

Procedure for compounding of offences

Compounding of an offence: apply in CPD-01 before or after prosecution begins, the Commissioner passes an order in CPD-02 within ninety days after hearing the applicant, the compounding amount is paid within thirty days, and on payment the prosecution is not pursued. The amount is set between the statutory minimum and maximum for the offence.

RULE 163 · CGST RULES, 2017

Consent based sharing of information

Consent-based sharing: a registered person may allow the portal to share his registration details and return data with another system or person; nothing is shared without the recipient's consent recorded on the portal.

RULE 164 · CGST RULES, 2017

Procedure and conditions for closure of proceedings under section 128A in respect of demands issued under section 73

The amnesty machinery for section 128A: apply in SPL-01 (where no order has been issued) or SPL-02 (where a demand order stands) by the notified date, after paying the full tax for financial years 2017-18, 2018-19 and 2019-20; the officer issues SPL-05 accepting the application or SPL-07 rejecting it, and on acceptance the interest and penalty are waived and the proceedings are closed.

- The amnesty machinery for section 128A: SPL-01 or SPL-02 by the notified date, after paying the full tax.
- Where a demand covers eligible and ineligible periods, the eligible part can be settled separately - the rule allows an application for part of the demand.
- A rejection in SPL-07 is appealable, and the appeal against the original demand can be restored if the amnesty application fails.

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