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OFFENCES AND PENALTIES UNDER GST

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Introduction

To make GST a corruption-free and successful tax system, the government has introduced strict provisions for penalties against **GST offences**. The purpose is to make sure that [GST rules and laws](#) are followed by every business and individual throughout the country. A list of offences has been released by the GST committee along with the guidelines of penalties to be applied for any kind of tax evasion. GST act ensures that it lays more and more emphasis on its compliances and enforcement across all the areas including registration, returns, invoices etc. These offences will lead to a penalty against those stated tax fraud, fake invoices, tax evasion and other practices in any form.

❖ Offences Under GST

What is an offence?

An offence is a breach of a law or rule, i.e., an illegal act. Similarly, an offence under GST is a breach of the provisions of GST Act and GST Rules.

When has anyone committed an offence under GST?

There are following offences under GST. For easy understanding, we have grouped them as-

Fake/wrong invoices

- A taxable person supplies any goods/services without any invoice or issues a false invoice.
- He issues any invoice or bill without supply of goods/services in violation of the provisions of GST
- He issues invoices using the identification number of another bonafide taxable person

Fraud

- He submits false information while registering under GST
- He submits fake financial records/documents or files fake returns to evade tax
- Does not provide information/gives false information during proceedings

Tax evasion

- He collects any GST but does not submit it to the government within 3 months

- Even if he collects any GST in contravention of provisions, he still has to deposit it to the government within 3 months. Failure to do so will be an offence under GST.
- He obtains refund of any CGST/SGST by fraud.
- He takes and/or utilizes input tax credit without actual receipt of goods and/or services
- He deliberately suppresses his sales to evade tax

Supply/transport of goods

- He transports goods without proper documents
- Supplies/transport goods which he knows will be confiscated
- Destroys/tampers goods which have been seized

Others

- He has not registered under GST although he is required to by law
- He does not deduct TDS or deducts less amount where applicable.
- He does not collect TCS or collects less amount where applicable.
- Being an Input Service Distributor, he takes or distributes input tax credit in violation of the rules
- He obstructs the proper officer during his duty (for example, he hinders the officer during the audit by tax authorities)
- He does not maintain all the books that he required to maintain by law
- He destroys any evidence

For the offences above, for fraud cases, penalty will be 100% (minimum Rs. 10,000)

Offences under GST by Companies, LLPs, HUFs and others

For any offence committed by a company, both the officer in charge (such as director, manager, secretary) as well as the company will be held liable. For LLPs, HUFs, trust, the partner/karta/managing trustee will be held liable. Read our article on [liability to pay unpaid gst dues in certain cases](#).

❖ Penalties under GST

What does penalty mean?

The word “penalty” is not specifically defined in GST and so it takes the meaning from various judicial pronouncements and principles of jurisprudence.

A penalty is a punishment imposed by law for committing an offence or failing to do something that was the duty of a party to do.

A penalty can be both corporal or pecuniary, civil or criminal.

Both corporal (jail) and pecuniary (monetary) penalties are applicable under GST.

Common Offences under GST and Their Penalties

Type of offence	Amount of penalty
Penalty for delay in filing GSTR	Late fee is Rs. 100 per day per Act. So it is 100 under CGST & 100 under SGST. Total will be Rs. 200/day. Maximum is Rs. 5,000. There is no late fee on IGST.

Penalty for not filing GSTR	Penalty 10% of tax due or Rs. 10,000 -whichever is higher
Penalty for committing a fraud	Penalty 100% of tax due or Rs. 10,000 -whichever is higher (High value fraud cases also have jail term)
Penalty for helping a person to commit fraud	Penalty extending upto Rs. 25,000
Penalty for opting for composition scheme even though he is not eligible	<u>Demand & recovery</u> provisions of sections 73 & 74 will apply. <ul style="list-style-type: none"> • Fraud case Penalty 100% of tax due or Rs. 10,000 -whichever is higher • Non-fraud case Penalty 10% of tax due or Rs. 10,000 -whichever is higher
Penalty for wrongfully charging GST rate— charging higher rate	Penalty 100% of tax due or Rs. 10,000 -whichever is higher (if the additional GST collected is not submitted with the govt)
Penalty for not issuing invoice	Penalty 100% of tax due or Rs. 10,000 -whichever is higher
Penalty for not registering under GST	Penalty 100% of tax due or Rs. 10,000 -whichever is higher
Penalty for incorrect invoicing	Penalty of Rs. 25,000

Situations where there is no penalty (but interest may apply)

Type of offence	Action
Penalty for incorrect type of GST charged (IGST instead of CGST/SGST)	No penalty. Pay the correct GST and get refund of the wrong type of GST paid earlier
Penalty for incorrect filing of GSTR	No penalty. But interest @18% on shortfall amount
Penalty for delay in payment of invoice.	ITC will be reversed if not paid within 6 months. No penalty as such
Penalty for wrongfully charging GST rate— charging lower rate	Interest @18% applicable on the shortfall

What are the penalties under GST?

If any of the offences are committed then a penalty will have to be paid under GST. The principles on which these penalties are based are also mentioned by law.

Penalty in cases of fraud

An offender has to pay a penalty amount of tax evaded/short deducted etc., i.e., 100% penalty, subject to a minimum of Rs. 10,000.

For the 21 offences above, for fraud cases, penalty will be 100% (minimum Rs. 10,000).

What is the penalty for helping someone to commit fraud under GST?

Not only the taxable person but any person who does the following will have to pay a penalty extending upto Rs. 25,000

- Helps any person to commit fraud under GST
- Acquires/receives any goods/services with full knowledge that it is in violation of GST rules
- Fails to appear before the tax authority on receiving a summons

- Fails to issue an invoice according to GST rules
- Fails to account/vouch any invoice appearing in the books

Are there any jail punishments?

- Yes, GST has corporal punishments (jail) for high value fraud cases as follows-

Tax amount involved	100-200 lakhs	200-500 lakhs	Above 500 lakhs
Jail term	Upto 1 year	Upto 3 years	Upto 5 year
Fine	In all three cases		

- These punishments are applicable along with monetary penalty.
- For more details please read our article on [prosecution](#).

Penalty for Other Cases (no intention of fraud or tax evasion)

An offender not paying tax or making short-payments has to pay a penalty of 10% of the tax amount due, subject to a minimum of Rs.10,000. Therefore, the penalty will be high at 100% of the tax amount when the offender has evaded i.e., where there is a deliberate fraud. For other non-fraud cases, the penalty is 10% of tax.

General Penalty

Any offence under GST for which penalty is not specifically mentioned will be liable to a penalty extending Rs. 25,000.

Minor Breaches under GST

Minor breaches (where tax amount is less than Rs.5000) or errors are easily rectifiable and clearly made without any motive of fraud.

- There will not be substantial penalties for minor breaches
- The tax authority may issue a warning in such cases.

This will be beneficial to businesses, especially SMEs, who may make genuine mistakes especially in the first few months of GST implementation. Being penalized for genuine errors will be a hard blow to the SMEs who do not have as many resources as the larger organizations to adapt to GST.

General Rules Regarding Penalty

These rules of penalty are generally the same in all laws whether tax laws or contract law or any other law.

- Every taxable person, on whom the penalty is imposed, will be served with a show cause notice first and will have a reasonable opportunity of being heard.
- The tax authority will give an explanation regarding the reason for penalty and the nature of offence
- When any person who voluntarily discloses a breach of law, the tax authority may use this fact to reduce the penalty

Webliography

- www.gst.gov.in
- www.cleartax.com
- www.taxguru.com