

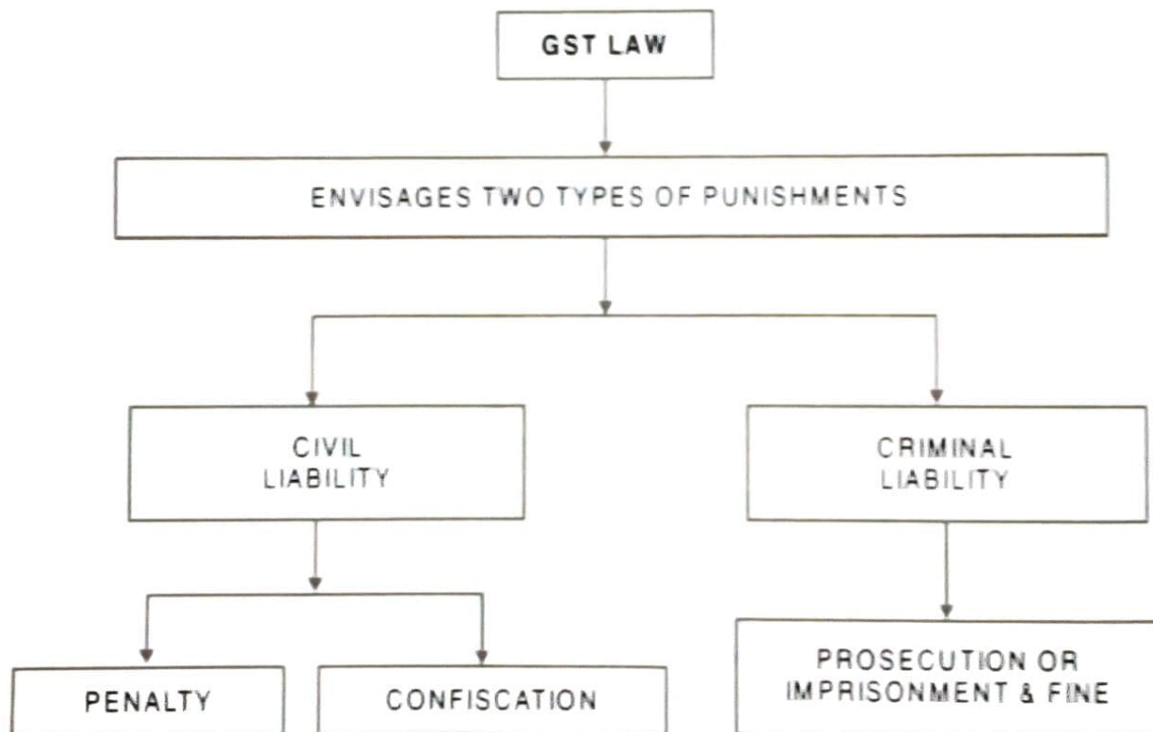
Section 3(8) of General Sections Act 1897 defines *Offence* as any act or omission made punishable by any law for the time being in force. Section 2(n) of Criminal Procedure Code defines 'offence' as any act or omission made punishable by any law for the time being in force.

Every fiscal statute requires the assessee to comply with various provisions of the Act. These provisions relate to obtaining of registration, classification of products, computation of tax liability, payment of tax, filing of return, availing of credit etc. These activities are required to be performed by the taxable person within the period specified in the provisions of the statute.

The statute also provides for levy of penalty in case the assessee does not fulfil the obligations cast upon him under different provisions of the sections or the rules made thereunder with the period specified in the statute. Penal provisions are harsh where the assessee has mala fide intention in non-compliance of statutory provisions.

Penalty in any law means a punishment whether by way of fine or otherwise like retention of goods, imprisonment, detention and confiscation of goods or conveyance, etc., for committing any offences or for failure to perform any act which is required under provision of law.

PUNISHMENTS UNDER GST LAW



The GST Law envisages two types of punishments. These can be simultaneous and concurrent.

Civil Liability. Penalty for violation of statutory provisions involving a penalty of money and confiscation of goods. This is a civil penalty and can be adjudged in departmental adjudication. This penalty can be imposed by departmental authorities

Criminal Liability. Criminal punishment is of imprisonment and fine, which can be granted only in a criminal court after prosecution. These are provided in GST law

OFFENCES : PENALTIES & CONFISCATION

Sr. No.	Section	Offences & Person liable to Pay	Penalty
1.	47	Registered person failing to furnish details of outward or inward supplies or returns.	Late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees
2.	52	Electronic commerce operator failing to furnish the information required by the notice issued under Section 52(12)	₹ 25,000 -
3.	73 122(2)	No Fraud: Person liable to pay Tax if same not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts.	<ul style="list-style-type: none"> • Zero if amount due is paid with interest prior to or within 30 days of issue of SCN • 10% of amount due or ₹ 10000 - which ever is greater in adjudication • 10% of amount due or ₹ 10000 - which ever is greater if self assessed tax or any amount collected as tax not paid within 30 days from due date
4.	74 122(2)	Fraud: Persons liable to pay Tax if same not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful misstatement or suppression of facts	<ul style="list-style-type: none"> • 15% of amount of due if same is paid with interest on own ascertainment prior to issue of SCN • 25% of amount due if same is paid with interest within 30 days of issuance of SCN • 50% of amount due if same is paid with interest within 30 days of adjudication • 100% of amount due or ₹ 10000 whichever is higher
5.	122(1)	Any taxable person for following 21 reasons <ul style="list-style-type: none"> • supplying any goods or services or both without issue of any invoice or an incorrect or false invoice. • issuing any invoice or bill without supply of goods or services or both in violation of GST; 	₹ 10000 - or an amount equivalent to the tax evaded or the tax not deducted or short deducted or deducted but not paid to the Government or tax not collected or short collected or collected but not paid to the

Sr. No.	Section	Offences & Person liable to Pay	Penalty
9.	125	General Penalty on any person for contravening GST provisions where separate penalty not provided for	₹ 25000/-
10.	126	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	No penalty
11.	129	Release of seized/detained taxable goods	100% of applicable tax, if same also paid where the owner of the goods comes forward for payment of such tax and penalty 50% of value of goods with applicable tax where the owner of the goods does not comes forward for payment of such tax and penalty
12.	130	Confiscation of goods	goods gets confiscated
13.	20 of IGST Act	Penalty if leviable under the CGST Act and the SGST Act or the UTGS Tax Act	Sum total of penalty imposed under these Acts

DETAILED EXPLANATION OF ALL OFFENCES & PENALTIES

1. Levy of late fee

Under Section 47(1) any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount, of five thousand rupees.

Under Section 47(2), any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees. for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent, of his turnover in the State or Union territory.

2. Penalty U/s 52

Any person who fails to furnish the information required by the notice served under section 52(12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees. [Refer Chapter-Payment of Tax for detailed information on TCS].

3. Demand of tax by any reason other than fraud, wilful mis statement or suppression of facts

The Section 73 makes provisions for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud, wilful mis-statement or suppression of facts.

The section 73 of the GST Act is applicable in the following circumstances:

(i) **When Tax is not paid.** It means that the taxable person has not paid any tax on supply of goods or services. The non-payment of tax by taxable person can be on account of his belief that the tax is not payable on goods or services supplied by him. The end result of supply is that the tax is not paid by the supplier.

For example, Ravi has made supply of product Y to various customers. Ravi feels that such supply is exempt from payment of tax, therefore he has not paid the tax. However, the department is of the opinion that the product Y is not exempted from payment of taxes and Ravi should have paid the appropriate amount of tax.

(ii) **When Tax is short paid.** The section 73 applies in case of short payment of tax. In this case, the taxable person has paid the tax, but the department is of the opinion that the tax paid by him is less than the amount of tax which should have been paid.

For example, Ravi has sold product A on the value of ₹ 100 to the customer and paid ₹ 18 as GST. However, the department feels that the price should have been ₹ 110 and therefore, has short paid the tax on the value of ₹ 10. This is the instance of short payment of tax.

(iii) **Erroneous Refund.** Sections 54 to 58 of the GST Act makes provisions for granting of refund. If after granting of refund the department may realize that the refund has been wrongly granted, the department must serve the Show Cause Notice under sub-section (1) of Section 73 for recovery of taxes erroneously refunded. The erroneous refund may be on account of various factors like wrong computation, wrong interpretation of law, etc.

(iv) **Wrong availment or utilization of Credit.** The definition of inputs and input services have been given in Section 2(52) & (53) of the GST Act. Further Section 17(5) specifies certain items on which credit is not available. There has always been dispute regarding availment of credit on inputs and input services. There are plethora of judgments interpreting the definition of inputs and input services. The taxable person may take credit on any inputs which may be denied by the department. Such situations are also covered under sub-section (1) of Section 73.

Amount of Penalty

The amount of penalty as per sub-section (9) of Section 73 shall not exceed 10% of the tax or ₹ 10,000 whichever is higher.

4. Demand of tax by reason of fraud, wilful mis-statement or suppression of facts

Applicability of Section 74

The Section 74 is applicable for determination of demand of tax, erroneously refunded or input tax credit wrongly availed and utilized. **The demand of tax shall arise by reason**