

CA Final IDT - Penalties and Prosecutions



Penalty - Summary

Section	Nature of Offence	Person Liable	Penalty (CGST)
122(1)	21 specified offences (invoice, tax evasion, ITC misuse, records, registration, transport etc.)	Taxable person who Commits	₹10,000 or Tax/ITC/Refund amount (whichever higher)
122(1A)	Bogus transactions (fake invoice, without invoice, fake ITC etc.)	Beneficiary + Consultant	Equivalent to Tax/ITC amount
122(1B)	ECO violations (TCS related, unregistered supply, wrong info)	E-commerce operator	₹10,000 or Tax amount (whichever higher)
122(3)	Aiding/abetting offences , dealing with confiscation goods, non-appearance	Any person	Up to ₹25,000
122B	Track & trace violation	Notified person	₹1,00,000 or 10% of tax (higher)
125	General penalty (no specific penalty)	Any person	Up to ₹25,000
129	Detention of goods (in transit violations)	For release of Goods, Docs. & Conveyance [If Taxable Goods]	<u>If owner comes forward:</u> 200% of tax <u>If not:</u> Higher of 50% value or 200% tax
		For release of Goods, Docs. & Conveyance [If Exempt Goods]	<u>If owner comes forward:</u> 2% value or ₹25,000 (lower) <u>If not:</u> 5% value or ₹25,000 (lower)
		For release of only Conveyance	Lower of above penalty or ₹1,00,000
	Minor errors	Any person	₹500
130	Confiscation of goods/conveyance	For release of Goods, & Conveyance	<u>Min Fine</u> = 100% of tax <u>Max Fine</u> Market value - tax
		For release of only Conveyance	Tax Payable on Goods

Customs	Delay in filing of arrival manifest/import manifest/import report/passenger and crew arrival manifest/departure/export manifest/export report		upto ₹ 50,000 for each
	Contravention of any provision of Audit		upto ₹ 50,000
74A	Tax not paid/short paid, ITC wrongly availed/utilized, erroneous Refund (non-fraud)	If paid before SCN/ In 60 days of SCN	Nil
		Otherwise	₹10,000 or 10% of Tax (higher)
	Note: In case of self-assessed tax or amount collected as tax is not paid within 30 days from due date, penalty shall be applicable in all cases.		
	Tax not paid/short paid, ITC wrongly availed/utilized, erroneous Refund (fraud/Suppression/Misstatement)	Before SCN	15% of tax
		In 60 days of SCN	25% of tax
In 60 days of Order		50% of tax	
Otherwise		100% of tax	
122(2)	Tax not paid/short paid, ITC wrongly availed/utilized, erroneous Refund (non-fraud)	Registered person	₹10,000 or 10% of Tax (higher)
	Tax not paid/short paid, ITC wrongly availed/utilized, erroneous Refund (fraud/Suppression/Misstatement)	Registered person	₹10,000 or 100% of Tax (higher)

Note:

- (i) Section 74A and 122(2) gives penalty for same circumstances hence if in question any word i.e. Demand, Notice, SCN or 74A is mentioned apply 74A otherwise 122(2) or on safer side alternative answer may be given.
- (ii) CGST penalty applies equally in SGST/UTGST & IGST penalty = double of CGST
- (iii) No double penalty if already penalized under demand provisions (e.g., Sec 74A)
- (iv) In case of Fake Invoice or ITC availed based on Fake Invoice & utilized for Non existent liability, Penalty can not be levied u/s 74A, can be levied in Section 122(1).
- (v) No penalty shall be levied in case of minor breach (<₹5,000), procedural errors.

Prosecution (Jail Term)

If any person commits or causes to commit and retain benefits from following offences:

- (i) Supplies goods and services without invoice.
- (ii) Issue invoice without supply leading to wrongful availment or utilisation of ITC or refund.
- (iii) Collect any amount as tax but not paid to government within 3 months from due date.
- (iv) Evade tax or fraudulently obtains refund of tax.
- (v) Avails ITC using fake invoices or without invoice.
- (vi) Falsify accounts or records or furnish false information or return with intent to evade tax.
- (vii) Deals with goods which he knows or believes, are liable to confiscation.
- (viii) Deals with supply of services which he knows or believes is in contravention of Act.
- (ix) Attempts to commit or abets the commission of any of the above offences.

He shall be punishable as below [However previous sanction of commissioner is required]:

Scenario	Tax/ITC/Refund	Punishment and Fine
In All 9 Cases Above	> 5 crores	6 months - 5 years (+) fine
	> 2crore ≤ 5 crore	6 months - 3 years (+) fine
Issue of invoice without supply [In (ii) Case]	> 1 crore ≤ 2 crore	6 months - 1 years (+) fine
Falsify accounts or records or furnish false information or return with intent to evade tax or abets in it [In (vi) Case]	≤ 2 crore	Upto 6 months (+) fine
Repeat offence In All 9 Cases Above	Any amount	6 months - 5 years (+) fine

Cognizable/ Non-Cognizable/ Bailable/ Non Bailable/ Arrest

Category	Scenario	Tax/ITC/Refund	Comment*
Cognizable/non-cognizable	In Cases (i) (ii) (iii) & (v) Above	> 5 crores	Cognizable
		≤ 5 crores	Not Cognizable
	In Any Case other than (i) (ii) (iii) & (v)	Any Amount	Not Cognizable
Arrest	In Cases (i) (ii) (iii) & (v) Above	> 2 crores	Arrest
		≤ 2 crores	No Arrest
	Repeat Offence in Cases (i) (ii) (iii) & (v) Above	Any Amount	Arrest
	In Any Case other than (i) (ii) (iii) & (v)	Any Amount	No Arrest

* If an offence is a Cognizable offence, it shall be non-bailable and if an offence is a non-cognizable offence, it shall be Bailable