

Offence and penalties in GST Model law: Chapter XIX ,Section 85 to 91

1)	Registered taxable person	for 21 defaults mentioned in section 85(1)	Higher of Rs.10,000 or amount of default
2)	Registered taxable person	for 5 defaults mentioned in section 85 (2) other than by reason of <ul style="list-style-type: none"> ➤ Fraud ➤ wilful misstatement ➤ suppression of facts 	Higher of Rs. 10,000 or 10 % of tax due
3)	Any person	for five defaults mentioned in section 85(3)	Penalty which may extend to Rs. 25000
4)	Any person	General Penalty	Penalty which may extend to Rs.25000

Before we start going through these offences in detail we need to keep in mind that there are two type of offences. The One is which involves the monetary impact. The other type is where we can't measure its impact in monetary terms. E.g If we see point number XIII. In those cases the penalty will be fixed to Rs. 10000 as the other amount will not be there.

Offences by a registered person Section 85

- (i) supplies any goods and/or services without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
- (ii) issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder;
- (iii) collects any amount as tax but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;
- (iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;

- (v) fails to deduct the tax in terms of sub-section (1) of section 46 , or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the credit of the appropriate Government under sub section (2) thereof, the amount deducted as tax;
- (vi) fails to collect tax in terms of sub-section **Error! Reference source not found.** of section 56 , or collects an amount which is less than the amount required to be collected under the said sub-section, or where he fails to pay to the credit of the appropriate Government under subsection 0 thereof, the amount collected as tax;
- (vii) takes and/or utilizes input tax credit without actual receipt of goods and/or services either fully or partially, in violation of the provisions of this Act, or the rules made thereunder;
- (viii) fraudulently obtains refund of any CGST/SGST under this Act;
- (ix) takes or distributes input tax credit in violation of section 21, or the rules made thereunder;
- (x) falsifies or substitutes financial records or produces fake accounts and/or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
- (xi) is liable to be registered under this Act but fails to obtain registration;
- (xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
- (xiii) obstructs or prevents any officer in discharge of his duties under the Act;
- (xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;
- (xv) suppresses his turnover leading to evasion of tax under this Act;
- (xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
- (xvii) fails to furnish information and/or documents called for by a CGST/SGST officer in accordance with the provisions of this Act or rules made thereunder or furnishes false information and/or documents during any proceedings under this Act;
- (xviii) supplies, transports or stores any goods which he has reason to believe are liable to confiscation under this Act;

- (xix) issues any invoice or document by using the identification number of another taxable person;
- (xx) tampers with, or destroys any material evidence;
- (xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act;

Section 85 (2) Registered taxable person when no fraud, suppression of facts , wilful statement are involved

This part will cover the cases when there is no fraudulent intention.

Any registered taxable person

- who supplies any goods or services on which
- any tax has not been paid
- or short-paid
- or erroneously refunded,
- or where the input tax credit has been wrongly availed
- or utilized for any reason,

other than the reason of

- fraud
- or any wilful misstatement
- or suppression of facts to evade tax

Section 85(3) Offence by any person (Not required to be a registered person)

- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1) above;
- (b) 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 reason to believe are liable to confiscation under this Act or the rules made thereunder;
- (c) 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 reason to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (d) fails to appear before the CGST/SGST officer, when issued with a summon for appearance to give evidence or produce a document in an enquiry;

- (e) fails to issue invoice in accordance with the provisions of this Act or rules made thereunder, or fails to account for an invoice in his books of account;

Section 86: General penalty:

When for contravention of any provision there is no specific penalty in the law. The general penalty will be leviable. The amount of general penalty may extend up to Rs. 25000.

General disciplines related to penalty: Section 87

This section will not apply where there is a fixed sum or fixed percentage of penalty is provided in the law. For other cases the general discipline will be as follows.

No substantial penalty for minor breach: No tax authority shall impose substantial penalties for minor breaches of tax regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

What is a minor breach?: a breach shall be considered a 'minor breach' if the amount of tax involved is less than five thousand rupees

When an error will be easily rectifiable?: an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on record

No penalty without SCN: No penalty shall be imposed on any taxable person without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

Speaking order: The tax authority shall ensure that when a penalty is imposed in an order for a breach of the laws, regulations or procedural requirements, an explanation is provided therein to the persons upon whom the penalty is imposed, specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed

Voluntary disclosure: When a person voluntarily discloses to a tax authority the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the tax authority, the tax authority may consider this fact as a potential mitigating factor when quantifying a penalty for that person.

89. Detention, seizure and release of goods and conveyances in transit

Sl.No	Payment by	% and amount
1	where the owner of the goods comes forward	on payment of the -applicable tax and -penalty equal to one hundred percent (100%) of the - tax payable on such goods
2	where the owner of the goods does not come forward	on payment of the -applicable tax and -penalty equal to the fifty percent(50%) of the - value of the goods reduced by the tax amount paid thereon

Consequences of non-payment within 7 days: where the person transporting any goods or, as the case may be, the owner of the goods

- fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention,

-further proceedings shall be initiated in terms of section 90 and provisions of sub-section (6) of section 79, shall apply mutatis mutandis for provisional release of the detained goods or conveyances.

Reduction in time of 7days for hazardous and perishable goods: PROVIDED that where the detained goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.