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GST RELIEF UNLOCKED: A GUIDE TO SECTION 128A



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PREFACE

The introduction of Section 128A under the Central Goods and Services Tax (CGST) Act marks a significant development in the Indian Indirect taxation landscape. Recognizing the financial and operational challenges faced by taxpayers, the Government has introduced a scheme that provides relief in the form of waivers on interest and penalties under specific circumstances. This initiative aims to ease the compliance burden, enhance voluntary tax adherence, and promote a more facilitative tax regime.

This book is a comprehensive guide dedicated to exploring every facet of this newly introduced scheme. My objective is to provide a structured and detailed understanding of the provisions, implications, and practical aspects of Section 128A of the CGST Act. By delving into the nuances of the scheme, my endeavour is to offer an authoritative resource that caters to the needs of tax professionals, practitioners, business owners, and other stakeholders in the GST ecosystem.

Key features of this book include:

Legislative & Policy Perspective: An overview of the intent behind introducing this scheme, along with insights into its anticipated impact on compliance and revenue collection.

In-depth Analysis: A meticulous examination of the legal framework, eligibility criteria, procedural requirements, and practical considerations of the scheme.

Case Studies & Illustrations: Real-world examples and hypothetical scenarios that provide clarity on complex provisions and their application in varied situations.

Frequently Asked Questions (FAQs): A dedicated section addressing common queries of professionals and taxpayers, offering precise and practical solutions to aid in compliance.

Discussion on Ambiguities & Open Issues: While the scheme provides much-needed relief, certain provisions leave room for interpretation. This book identifies unresolved issues, presents diverse viewpoints, and discusses the need for further clarifications from the Government.

Flowcharts & Diagrams: To enhance understanding, this book includes visual aids such as flowcharts and diagrams that systematically explain the procedure for filing an application under this scheme, as well as various key aspects of the scheme.

The aim of this book is not only to inform but also to empower taxpayers and professionals with the knowledge required to make well-informed decisions regarding whether to opt for the scheme or not. The structure and content have been meticulously designed to ensure easy navigation and comprehension of complex provisions, making it an indispensable reference for anyone dealing with GST matters.

I would like to express my heartfelt gratitude to **my mentor, CA (Dr.) Atul Kumar Gupta**, whose constant encouragement and invaluable guidance has inspired me to undertake this research-oriented work. His unwavering support has been instrumental in shaping this book and deepening my understanding of the subject. I would also like to thank my senior, **CA Vishal Gill**, for his time and guidance in helping me navigate the complexities of the law with clarity and confidence.

I hope this book serves as a valuable resource and contributes to a deeper understanding of Section 128A of the CGST Act.

CA Anmol Gupta
February 05th, 2025

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[CHAPTER 1] – INTRODUCTION

GST in its initial years of introduction had gone through multiple changes in a short span of time in order to streamline various processes and to resolve various issues in the law or the rules made thereunder. However, these frequent amendments coupled with the fact that a radical change was made from erstwhile Indirect tax regime to new GST regime, taxpayers initially faced various challenges which led to *bona-fide* mistakes resulting in short payment of taxes/inadvertent availing of ITC.

Justice Dinesh Kumar Singh¹ had also acknowledged the difficulties faced by the taxpayers in understanding the provisions of the GST Act in the initial years of implementation and, on the same basis, set aside the demand of ITC.

Accordingly, various representations were filed by the trade seeking relief from interest & penalty, owing to the reason that the initial years of implementation were marked by significant changes, frequent amendments, and evolving compliance mechanisms, and during such initial period, taxpayers were not adept with the new laws and procedures. Small and medium-sized enterprises (SMEs) had represented that they committed inadvertent errors during the initial period due to the complexity of GST and ignorance of law/ procedures.

After deliberation on these representations by the Law Committee, considering the challenges faced by taxpayers during the initial years of implementation of GST, and to encourage compliance and support businesses to move forward, the Committee also recommended in favour of the Trade to grant a waiver of interest and penalty for the demand notices issued under Section 73 of the CGST Act, 2017 (*hereinafter referred to as the “CGST Act”*) (i.e., for cases not involving any fraud or wilful misstatement or suppression of facts) for first 3 years of implementation of GST regime subject to certain conditions, *inter-alia*, payment of 100% of the tax liability on or before a notified date.

Thus, acting on the recommendation, GST Council in its 53rd Council Meeting held on 22.06.2024 in New Delhi recommended to introduce a new section 128A in CGST Act

¹ In the matter of Anaz Abdul Rahiman Kutty v. State Tax Officer, WP(C) No. 31026 of 2023 (Kerala High Court)

granting waiver of interest & penalty in respect of ongoing litigation matters for first 3 years of implementation of GST, however, only for *bona-fide* cases, i.e., in respect of demand notices issued under Section 73 of the CGST Act.

The intent behind allowing waiver of interest & penalty only in cases involving demand notices issued under Section 73 of the CGST Act is to grant relief from levy of interest & penalty on *bona-fide*/inadvertent errors made by the taxpayers in initial years due to advent of GST regime but not with respect to the cases wherein taxpayer deliberately acted with a fraudulent or wilful intent in order to evade payment of taxes, i.e., cases where demand notices are issued under Section 74 of the CGST Act.

An interesting fact to note here is that during the 53rd GST Council meeting, **the Hon'ble Member from Haryana suggested to include 4th year also (i.e., F.Y. 2020-21) in the waiver scheme, considering the impact of COVID-19 pandemic.** However, since as on the date of said GST council meeting, the demands for the F.Y. 2020-21 (under Section 73) were not finalized (as the last date to issue SCN & pass order for the said period is 30.11.2024 and 28.02.2025 respectively), it was challenging for the Government to assess the potential benefits of extending the waiver to the FY 2020-21 and hence, it was proposed to wait until the finalization of payments & demands for the FY 2020-21 and if necessary, the issue of extending the benefit of waiver to demands for the FY 2020-21 was deferred to be reconsidered at a later stage².

Pursuant to the recommendation made by the GST Council in its 53rd meeting, the said proposal was laid down or introduced before the Lok Sabha on 23.07.2024 *vide* The Finance (No. 2) Bill, 2024. Subsequently, on 16.08.2024, the Bill received the assent of the Hon'ble President of India and became Finance (No. 2) Act, 2024 and Section 128A of the CGST Act came into force w.e.f. 01.11.2024 *vide* Notification No. 17/2024 – Central Tax dated 27.09.2024.

In order to prescribe the procedure, manner & conditions related to this relaxation granted under Section 128A, GST Council in its 54th meeting held on 09.09.2024 in New Delhi recommended to insert Rule 164 in CGST Rules, 2017 (*hereinafter referred to as the "CGST Rules"*) along with certain forms. The Council also recommended to issue the

² Minutes of Meeting of 53rd GST Council Meeting

circular to clarify various issues related to availment of waiver of interest or penalty or both as per Section 128A of CGST Act.

To give effect to GST Council's decisions, Rule 164 was introduced w.e.f. 01.11.2024 *vide* Notification No. 20/2024 – Central Tax dated 08.10.2024. Also, a Circular bearing no. 238/32/2024 – GST dated 15.10.2024 was issued clarifying various aspects of this scheme notified under Section 128A of the CGST Act with the objective of ensuring uniformity in implementation of the Scheme.

Subsequent thereto, various Advisories have been issued by the GSTN from time to time regarding procedural functionalities, like, availability of functionality to file online application seeking waiver under this scheme, availability of functionality to withdraw pending appeal, etc.

1.1. NEED FOR BRINGING THIS WAIVER SCHEME

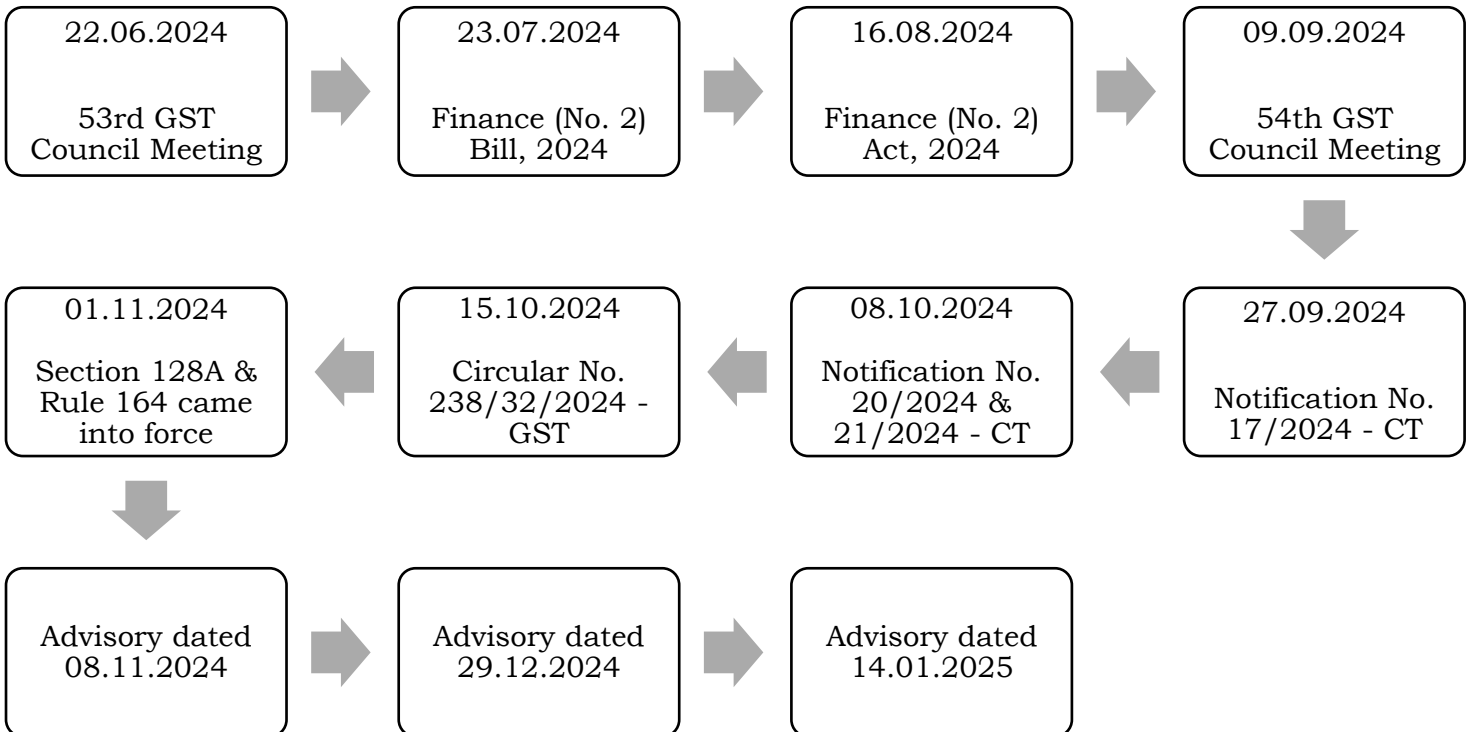
- i. Lack of a Mechanism for Conditional Relief from Penalties
 - Prior to introduction of Section 128A of the CGST Act, there was no provision allowing taxpayers to get relief from penalties in cases where they had substantially complied with the tax laws but failed due to technical or *bona-fide* reasons.
 - Even in cases of minor or *bona fide* errors, penalties were imposed without any structured relief mechanism.
- ii. Inflexibility in Waiver of Interest and Penalty
 - Section 128 of the CGST Act provided powers to waive penalties or fees in specified cases, but it did not explicitly cover interest waiver from interest.
 - Further, Authorities had no discretion to waive interest and penalties under demand notices, causing hardship to taxpayers who may have committed unintentional default.
 - There was no clear process for taxpayers to seek relief from penalties imposed *vide* adjudication orders.
- iii. Increased Litigation due to Rigid Penalty Provisions

- The absence of discretionary relief resulted in higher litigation, as taxpayers often challenged penalty and interest demands in courts or appellate levels.
- Objective is to mitigate litigation which arose due to *bona-fide* inadvertent errors committed by taxpayers during first 3 years of advent of new GST regime, resulting in short/non-payment of taxes or wrong availment or utilization of ITC.

iv. Harsh Consequences for Genuine Compliance Issues

- Taxpayers who failed to comply due to clerical errors, system glitches, or unintentional delays were penalized with harsh interest & penal consequences.
- Even if the taxpayer had paid the principal tax amount which was not paid due to unintentional errors or complexities in the new GST regime, interest and penalties were still imposed, creating a substantial burden on the taxpayer.

1.2. TIMELINES



[CHAPTER 2] – FUNDAMENTALS OF THE SCHEME

2.1. CASES ELIGIBLE FOR THE SCHEME

Following cases in respect of first 3 years of implementation of GST, i.e., FY 2017-18 (July 2017 onwards), FY 2018-19 & FY 2019-20 are eligible for the scheme –

- Show Cause Notice/Statement issued under Section 73(1) or 73(3) of the CGST Act and no Order under Section 73(9) of the CGST Act is passed till the date of application under the scheme.
- Order is passed under Section 73(9) of the CGST Act but no 1st Appellate Order is passed under Section 107(11) or Section 108(1) of the CGST Act till the date of application under the scheme.
- Appellate Order is passed under Section 107(11) or Section 108(1) of the CGST Act but no 2nd Appellate Order under Section 113(1) of the CGST Act (i.e., GST Appellate Tribunal's order) is passed till the date of application under the scheme.
- Show Cause Notice issued under Section 74(1) of the CGST Act but later, re-assessed into Section 73(1) of the CGST Act in terms of Section 75(2) of the CGST Act as the allegation of fraud, wilful misstatement, collusion, etc. (under Section 74) is held to be unsustainable.

In simple words, as on the date of application under the scheme, whatever litigation is pending, be it SCN issued but not adjudicated, Adjudication Order passed or Appellate Order has been passed, tax dues notified under the said SCN or Order is eligible for waiver under the scheme, subject to the two conditions, i.e., -

- (a) Such SCN or Order is issued or passed under Section 73 and not under Section 74 of the Act; and,

(b) Such SCN or Order pertains to FY 2017-18 (July 2017 onwards), 2018-19 & 2019-20.

Also, it is worthwhile to note here that in first scenario, though the last date to pass the Order under Section 73 for the FY 2017-18 (i.e., 31.12.2023), FY 2018-19 (i.e., 30.04.2024) & 2019-20 (i.e., 31.08.2024) has already been lapsed as on the date this scheme was notified (i.e., on 01.11.2024), this may still cover such scenarios wherein against the SCN so issued by the authorities, taxpayer filed a writ petition under Article 226 of the Constitution of India before the jurisdictional High Court and stay was granted by the High Court from passing of Order in such case.

Many writ petitions have been filed by the taxpayers before the respective High Courts against the SCNs issued by the authorities on multiple grounds, like, challenging validity of extension of time limits for passing Orders by resorting to Section 168A of the CGST Act. All these cases wherein SCNs are pending for adjudication are eligible for waiver of interest & penalty under this scheme.

For the third scenario, i.e., where no Order of GST Appellate Tribunal is passed, since no GST Appellate Tribunal (GSTAT) is made functional yet, all the 1st Appellate Orders which have been passed are eligible for relaxation under this scheme.

Further, even if notice or order is served for a part of the financial year, say for the period April – December 2019, the said notice or order is eligible for the waiver under this scheme.

2.2. CASES EXCLUDED FROM THE SCHEME

Following cases are not eligible for the waiver under this scheme –

- Any demand notice or order issued under Section 74 of CGST Act.
- Cases involving demand of erroneous refund claim.

- Cases involving demand of transitional credit where such ITC has been credited to E-credit ledger after 31.03.2020.
- Cases involving demand under the Customs Act (IGST on import of goods), Service tax law, Central Excise Act or any of the erstwhile VAT laws.
- Any case under scrutiny, investigation, audit, inquiry, etc. wherein no demand notice/Show Cause Notice has been issued.

2.3. RELIEF UNDER THE SCHEME

- Waiver from the interest leviable under Section 50 of the CGST Act & penalty leviable under the said Act (i.e., under Section 73, 122, 125, etc.) determined as per the Show Cause Notice or Adjudication Order or Appellate Order, as the case maybe.
- Conclusion of any proceedings in relation to the said Show Cause Notice or Adjudication Order or Appellate Order, as the case maybe.

Once an application is filed under the scheme and it is accepted and proceedings are concluded, taxpayer cannot opt to go back and file appeal against the tax dues so paid under the scheme. No appeal shall lie against the demand notice or order against which taxpayer has opted for the scheme and his application has been accepted resulted in conclusion of pending proceedings.

2.4. CONDITIONS FOR WAIVER UNDER THE SCHEME

For availing the benefit under scheme, following conditions needs to be adhered to –

- 100% of the tax dues as per the Show Cause Notice or Adjudication Order or Appellate Order has to be paid by the person opting for this scheme.
- If any appeal or writ petition or SLP is pending, such appeal or writ petition or SLP has to be withdrawn on or before 31.03.2025, in order to avail the benefit of this scheme.

- An application to be filed on GST portal in prescribed form on or before the due date, seeking waiver of interest & penalty.

2.5. TIME LIMIT & MODE OF PAYMENT OF TAX DUES

Payment of 100% of tax dues as ascertained in SCN or Order, as the case maybe, needs to be made before filing the application under this scheme and the last date to make such payment is as follows –

- a. For first 3 cases listed in Para 2.1 above, i.e., where SCN or Order is issued or passed under Section 73 of the CGST Act only – **On or before 31.03.2025.**
- b. For 4th case listed in Para 2.1 above, i.e., where SCN was issued under Section 74 of the CGST Act but later re-assessed under Section 73 of the CGST Act – **Within 6 months from the date of order of re-assessment issued under Section 73 of the CGST Act.**

With respect to the mode of payment of tax dues under this scheme, it can be made in the following manner –

- a. Where scheme has been opted in respect of any pending Show Cause Notice – payment of 100% tax dues alleged in SCN has to be made by way of Form DRC-03.
- b. Where scheme has been opted in respect of any pending Order – payment has to be mandatorily made by way of crediting the amount in E-liability register against debit entry created in the said ledger at the time of uploading the said Order.

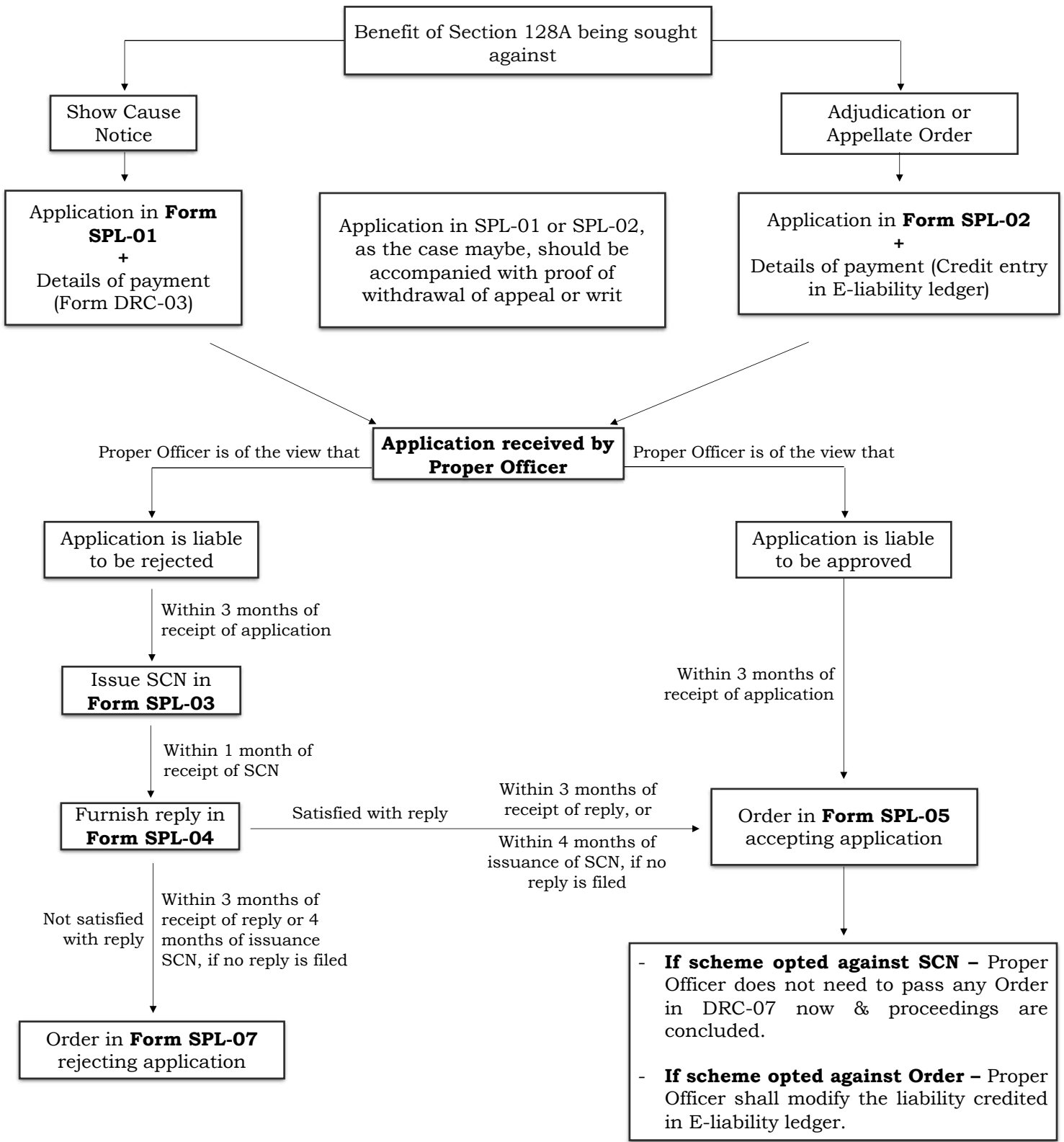
Where payment has already been made *via* Form DRC-03 due to any reason (say, amount paid under protest during investigation, enquiry, etc.), an application is required to be filed by the taxpayer in Form DRC-03A as per Rule 142(2B) of the CGST Rules and this will cause a credit entry in E-liability register.

2.6. TIME LIMIT & MODE FOR FILING APPLICATION

The application under this scheme can only be filed electronically on GST common portal, i.e., no application is required to be filed manually before the tax department and the due date of filing such application is as follows –

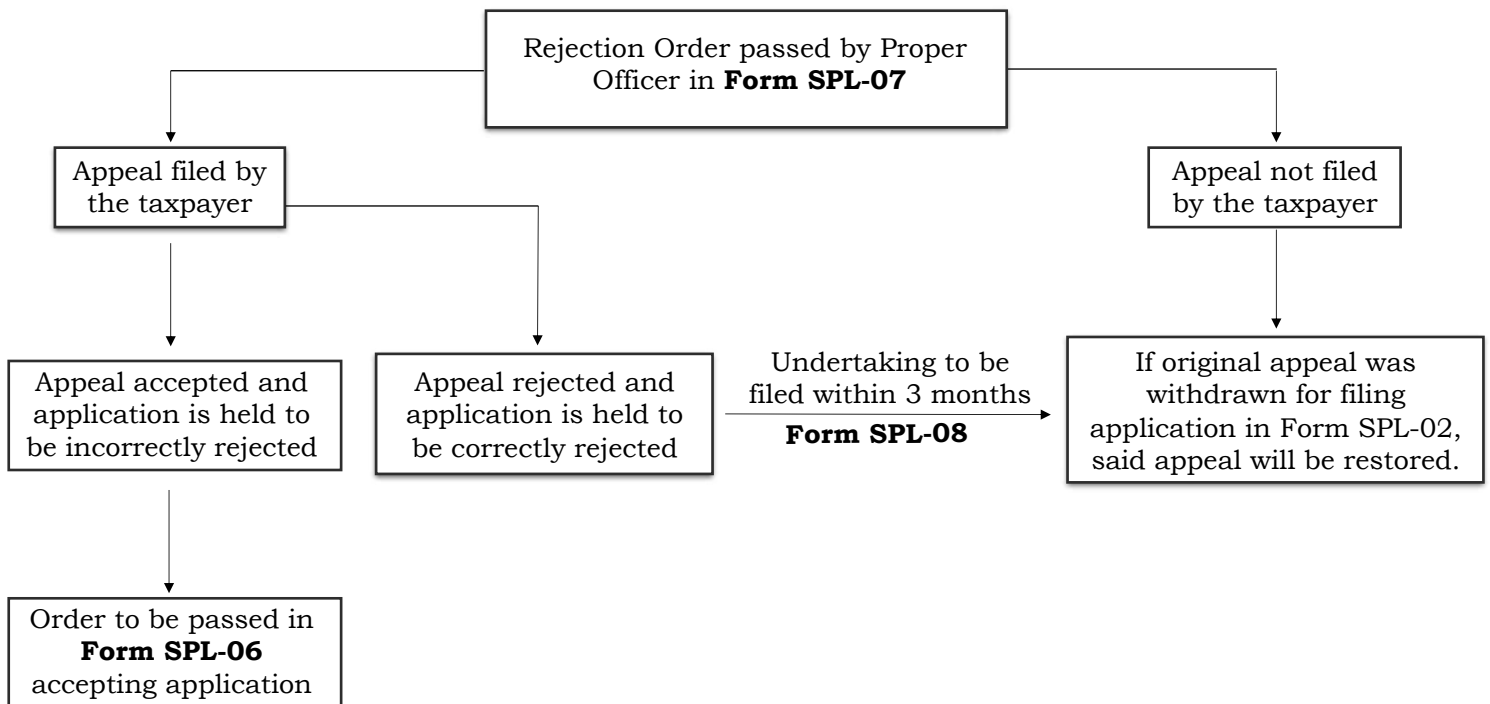
- a. For first 3 cases listed in Para 2.1 above, i.e., where SCN or Order is issued or passed under Section 73 of the CGST Act only – **On or before 30.06.2025.**
- b. For 4th case listed in Para 2.1 above, i.e., where SCN was issued under Section 74 of the CGST Act but later re-assessed under Section 73 of the CGST Act - **Within 6 months from the date of order of re-assessment issued under Section 73 of the CGST Act.**

[CHAPTER 3] – PROCEDURE FOR FILING APPLICATION UNDER THE SCHEME



A separate application is to be filed in Form SPL-01 or Form SPL-02, as the case maybe, in respect of each of the concerned notice/statement/order where multiple notices/statements/orders have been issued.

It is important to note that Order passed in Form SPL-07, i.e., Order rejecting the application filed by a taxpayer is an appealable order under Section 107 of CGST Act.



If appeal filed by the taxpayer (against the order of rejection of the application in Form SPL-07) is rejected and taxpayer wishes not to pursue the litigation further, i.e., accept the order of rejection under this scheme, such taxpayer is required to furnish an undertaking in Form SPL-08 to the effect that the taxpayer has neither filed nor intends to file any appeal against the order of the Appellate Authority. Where the said undertaking is filed by the taxpayer or where no appeal has been filed by the taxpayer against such rejection order, the original appeal (which was earlier withdrawn for filing application under this scheme) shall stand restored and the taxpayer can continue to pursue his appeal before the concerned Appellate forum.

[CHAPTER 4] – CLARITY ON VARIOUS SCENARIOS

4.1. Can I avail the benefit of waiver from interest & penalty with respect to some issues contained in SCN or Order while choose to litigate the remaining issues?

No. Under Section 128A of the CGST Act, the taxpayer has to make payment of 100% dues as ascertained in SCN or Order and does not have the option to avail benefit for part issues.

Therefore, either the taxpayer will litigate all the issues as contained in SCN or Order or will opt to pay tax on the entire demand and avail waiver of interest & penalty under Section 128A of the CGST Act.

In a case where there are strong merits against some of the issues but weak on remaining issues, taxpayer is advised to do a cost benefit analysis to identify which option is suitable, i.e., (a) to litigate on the issues which have strong merits & pay off the tax, interest & penalty on the remaining issues without opting for the scheme, or (b) to pay off the entire demand (on all the issues) and avail waiver of interest & penalty under Section 128A of the CGST Act.

An important point to note here is that there is another option available with the taxpayers in case where Order is passed and Appeal is already pending with the 1st Appellate Authority and taxpayer anticipates that a favourable order may be passed by the 1st Appellate Authority on or before 31.03.2025 with respect to the some of the issues. In such a case, taxpayer can wait for the Appellate Authority's Order wherein part demand may be dropped and then, an application under Section 128A of the CGST Act can be filed with respect to remaining issues as confirmed in Appellate Authority's order to avail benefit of waiver of interest & penalty thereupon.

4.2. I have already paid entire amount of interest and/or penalty. Whether I will be eligible for refund of interest and/or penalty under Section 128A of the CGST Act?

No refund of interest & penalty, if already paid, will be granted under Section 128A of the CGST Act.

4.3. Can I make payment of tax dues under Section 128A of the CGST Act via ITC?

Yes, it can be made either in Cash or *via* ITC, as per the option of the taxpayer. However, if the demand pertains to any of the below mentioned cases, tax has to be paid mandatorily in Cash to that extent of demand –

- (i) Liability under Reverse Charge Mechanism (RCM).
- (ii) Liability of E-commerce operator in terms of Section 9(5) of the CGST Act.
- (iii) Demand of erroneous refund which was granted/paid in cash.

4.4. How to withdraw appeal filed before the 1st Appellate Authority, which is a pre-requisite for filing application under Section 128A of the CGST Act?

Procedure for withdrawal of appeal has been given under Rule 109C of CGST Rules, inserted *vide* Notification No. 26/2022 – Central Tax dated 26.12.2022, which provides that application for withdrawal of appeal has to be filed on GST common portal in Form APL-01W or APL-03W, as the case maybe. However, with respect to availability of such functionality on GST common portal (i.e., availability of such forms), GSTN has issued an advisory dated 14.01.2025 stating that –

- *For appeals filed on or after 21.03.2023* – Withdrawal option is available on GST common portal and application is to be filed online in the manner prescribed under Rule 109C.
- *For appeals filed before 21.03.2023* – Withdrawal option is not available on GST common portal and taxpayer need to file a request letter for withdrawal of appeal applications to the concerned appellate authority citing reasons for withdrawal. Appellate Authority shall then forward such request to GSTN through State Nodal Officer for withdrawal from backend.

4.5. The procedure prescribed in Rule 109C of the CGST Rules as well as GSTN Advisory applies to appeals filed online but how to withdraw such appeal which has been filed manually before the 1st Appellate Authority?

In the past times, sometimes orders were not uploaded online on GST common portal by the tax authorities due to which taxpayer could not file appeal online on GST common portal. However, since the taxpayer was in receipt of true copy of Order *via* registered speed post, in order to avoid first appeal getting time barred under Section 107 of the CGST Act, taxpayers had filed appeal manually before the 1st Appellate Authority which could not be filed on GST portal.

Though there is no procedure prescribed in entire GST law as to how to withdraw appeals filed manually before the 1st Appellate Authority, however, it is advisable to file a request letter before the concerned appellate authority citing reasons and requesting withdrawal of appeal and such appellate authority, after considering the application, must pass an Order, allowing withdrawal of appeal to the taxpayer.

4.6. What should be the contents of withdrawal letter/application seeking withdrawal of appeal?

In the request letter or in online application seeking withdrawal of appeal, it is advisable to mandatorily incorporate following two points –

- (a) The reason as to why this withdrawal letter is being filed by the taxpayer, i.e., the fact that taxpayer wishes to opt for the scheme under Section 128A of the CGST Act for which there is a pre-requisite in Section 128A(3) of CGST Act read with Rule 164(7) of CGST Rules to withdraw the pending appeal first and then, file an application under the scheme.
- (b) The fact that taxpayer reserves its right to get its appeal restored in terms of Rule 164(15) of CGST Rules, in case application filed under this scheme is rejected by the Proper Officer.

4.7. How can I file application under Section 128A of the CGST Act in case order allowing withdrawal of appeal or writ (or SLP) is not passed by the due date for filing application?

In case application has been filed for withdrawal of appeal or writ petition (or SLP) by the due date (i.e., on or before 31.03.2025) but no order of withdrawal is passed till the due date of filing of application under the scheme, applicant can upload the proof of request/application seeking withdrawal and proceed to file the application under this scheme on the GST common portal. Once the order of withdrawal of appeal or writ petition (or SLP) is passed at a later date, said order of withdrawal needs to be uploaded by the applicant within 1 month of issuance.³

- 4.8. **In case order re-assessing liability from Section 74 to Section 73 of the CGST Act is passed after 31.03.2025, how can I make payment of taxes on or before the due date as the due date for payment of taxes will be over by the time this order is passed? Similarly, in case order re-assessing liability from Section 74 to Section 73 of the CGST Act is passed after 30.06.2025, how can I make payment of taxes as well as file application under Section 128A of the CGST Act seeking waiver of interest & penalty for such order as the due date for the same will already be over by the time order is passed?**

Please note that this scheme will remain in force beyond 31.03.2025 or 30.06.2025, as the case maybe, in specified cases.

For cases where demand is re-assessed from Section 74 to Section 73 in terms of Section 75(2) of the CGST Act, i.e., where notice issued under sub-section (1) of section 74 is held not to be sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established –

- (a) The due date for payment of 100% taxes as per the scheme is 6 months from the date of communication of re-assessment order issued under Section 73 of the CGST Act.
- (b) Similarly, the due date for filing application under this scheme in Form SPL-01 or SPL-02, as the case maybe, is also is 6 months from the date of

³ Proviso to sub-rule (7) of Rule 164 of CGST Rules.

communication of re-assessment order issued under Section 73 of the CGST Act.

Thus, even if the said re-assessment order under Section 73 is passed, say in March 2027, even then, the benefit of this scheme can be availed in the year 2027.

4.9. I have received Form SPL-05 accepting my application filed under Section 128A of the CGST Act. How the pending proceedings against me via SCN or Order, as the case maybe, will be concluded on GST common portal?

In case Proper Officer has issued Form SPL-05, i.e., order accepting the application filed by the taxpayer under this scheme, pending proceedings against such taxpayer will be concluded in the following manner –

- *If scheme was opted by the taxpayer against SCN issued* – Proper Officer need not to pass any Order in DRC-07 now & proceedings against the SCN are deemed to be concluded.
- *If scheme was opted by the taxpayer against Order passed* – Proper Officer shall modify the liability credited in E-liability register to the extent the demand pertaining to tax is already paid by the taxpayer and pending demand pertaining to interest & penalty will be removed by the Proper Officer.

4.10. Who is the Proper Officer to accept/reject the application filed under Section 128A of the CGST Act for waiver of interest & penalty?

Proper Officer will be as follows –

- *In cases where the application for waiver of interest, or penalty, or both is made with respect to a Show Cause Notice* - Proper officer having the power to pass the Order under Section 73 of the CGST Act, i.e., Adjudicating Authority.
- *In cases where the application for waiver of interest, or penalty, or both, is made with respect to any Order* - Proper officer referred to in Section 79 of the CGST Act, i.e., officer authorized to make the recovery of outstanding tax dues from the taxpayer.

4.11. Whether opportunity of being heard will be provided in case Proper Officer is of the view that application filed by the taxpayer (in Form SPL-01 or SPL-02, as the case maybe) is liable to be rejected and has issued SCN in Form SPL-03?

Yes, Proper Officer will give an opportunity of being heard to the applicant⁴. Also, applicant will have the option to file reply (in Form SPL-04) to the notice issued by the Proper Officer proposing rejection (in Form SPL-03)⁵.

4.12. What is the time limit to pass Order by the Proper Officer?

Time limit to pass the Order, either accepting or rejecting the application filed by the applicant is as follows⁶ –

- (a) In case the Proper Officer is of the view that application filed is liable to be accepted – Within 3 months of receipt of application by the Proper Officer.
- (b) In case the Proper Officer is of the view that application filed is liable to be rejected in pursuance of which Proper Officer has issued SCN in Form SPL-03 proposing rejection – Within 3 months of reply filed by the applicant in Form SPL-04 (to be filed within one month from the date of receipt of notice) or where no reply is filed by the applicant, within 4 months of issuance of SCN in Form SPL-04.

However, it is important to note that where the withdrawal order was not passed by the Appellate Authority or High Court or Supreme Court, as the case maybe, and taxpayer filed the copy of request letter/application with Form SPL-01 or SPL-02, time period from the date of filing of application in Form SPL-01 or SPL-02 till the date of submission of withdrawal order shall not be included while calculating the time period for passing order in Form SPL-05 or SPL-07, as the case maybe⁷.

⁴ Sub-rule (8) of Rule 164 of CGST Rules

⁵ Sub-rule (9) of Rule 164 of CGST Rules

⁶ Sub-rule (13) of Rule 164 of CGST Rules

⁷ Explanation to sub-rule (13) of Rule 164 of CGST Rules.

4.13. What will happen if no Order is passed by the Proper Officer within time period stipulated in law?

If no order, either accepting or rejecting the application filed by an applicant, is passed by the Proper Officer within three months from the date of receipt of application or three months from the date of receipt of reply of the applicant or four months from the date of issuance of notice in Form SPL-03, as the case maybe, then application filed by the taxpayer will be deemed as accepted by the department⁸.

4.14. In case an Order is passed confirming demand partly on issues for which no application under this scheme can be filed and partly on issues for which application under this scheme can be filed, am I eligible to file application under Section 128A of the CGST Act? If yes, how to make payment of taxes & avail waiver of interest & penalty?

If a Show Cause Notice or Order is issued containing demand partly on issues for which application under this scheme cannot be filed (say, demand on erroneous refund claim) and partly on issues for which application can be filed under Section 128A of the CGST Act, in such a case, taxpayer is eligible to file application under this scheme, subject to the two conditions –

- (a) 100% tax demand as per the Show Cause Notice or order is to be paid by the taxpayer on or before the due date prescribed⁹; and,
- (b) Interest & penalty on such demand which pertains to issues for which application under this scheme cannot be filed (say, demand on erroneous refund claim) needs to be compulsorily paid within 3 months of date of issuance of acceptance order in Form SPL-05 or SPL-06, as the case maybe, failing which waiver granted in Form SPL-05 or SPL-06 shall become void¹⁰. Said amount of interest & penalty, payable will be shown by the Proper Officer in Column No. 19 & 20 of Form SPL-05 or SPL-06, as the case maybe.

⁸ Sub-rule (14) of Rule 164 of CGST Rules.

⁹ Sub-rule (3) of Rule 164 of CGST Rules.

¹⁰ Sub-rule (17) of Rule 164 of CGST Rules.

4.15. In case an Order is passed confirming demand partly for the period for which no application under this scheme can be filed and partly for the period for which application under this scheme can be filed, am I eligible to file application under Section 128A of the CGST Act? If yes, how to make payment of taxes & avail waiver of interest & penalty?

If a Show Cause Notice or Order is issued containing demand partly for the period for which application under this scheme cannot be filed (say, demand for the FY 2020-21) and partly for the period for which application can be filed under Section 128A of the CGST Act (say, demand for the FY 2019-20), in such a case, taxpayer is eligible to file application under this scheme, subject to the two conditions –

- (a) 100% tax demand as per the Show Cause Notice or order is to be paid by the taxpayer on or before the due date prescribed¹¹; and,
- (b) Interest & penalty on such demand which pertains to issues for which application under this scheme cannot be filed (i.e., for FY 2020-21 in above example) needs to be compulsorily paid within 3 months of date of issuance of acceptance order in Form SPL-05 or SPL-06, as the case maybe, failing which waiver granted in Form SPL-05 or SPL-06 shall become void¹². Said amount of interest & penalty, payable will be shown by the Proper Officer in Column No. 19 & 20 of Form SPL-05 or SPL-06, as the case maybe.

4.16. I have been served an Order confirming demand partly on the issue of ITC being availed time barred under Section 16(4) of the CGST Act and partly for other issues (other than erroneous refund). For the issue of availment of ITC being time barred, a retrospective amendment is already carried out by way of insertion of sub-section (5) or (6) in Section 16 of the CGST Act owing to which my ITC is now time barred. In this case, how to make payment of taxes & avail waiver of interest & penalty? What will happen to the proceedings in relation to demand confirmed under Section 16(4) of the CGST Act?

¹¹ Sub-rule (4) of Rule 164 of CGST Rules.

¹² Sub-rule (17) of Rule 164 of CGST Rules.

Suppose a taxpayer is served with a Show Cause Notice or Order containing demand partly on the issue of availment of ITC being time barred under Section 16(4) and partly on other issues (other than erroneous refund) and demand on the issue of availment of ITC being time barred is covered by retrospective amendment carried out by way of insertion of sub-sections (5) or (6) of Section 16 of the CGST Act as per which ITC so availed by the taxpayer is not time barred now.

In such a case, taxpayer is required to make payment of only such tax dues which remains after deducting the demand of ITC which is not payable in terms of retrospective amendment carried out by way of insertion of sub-section (5) or (6) in Section 16 of the CGST Act¹³. The details of said amount not payable anymore in view of retrospective amendment which is deducted while making payment has to be reported in Form SPL-01 or SPL-02, as the case maybe, for the Proper Officer to verify the genuineness of deduction so made and payment made by the taxpayer under this scheme.

Further, said deduction is allowed only if the demand was on account of or under the allegation of ITC being time barred under Section 16(4) of the CGST Act. However, if demand of said ITC is on account of multiple reasons, say, apart from issue of Section 16(4), non-availability of invoice of such ITC in violation of Section 16(2)(a) of the CGST Act is also alleged, in such a case, said amount of ITC demand cannot be deducted and entire amount (as determined in SCN or Order, as the case maybe) needs to be paid in order to avail the benefit of waiver under Section 128A of the CGST Act.

In case said amount is deducted for the purposes of making payment under Section 128A of the CGST Act, with respect to the remaining demand on account of Section 16(4) of the CGST Act, proceedings thereof will be deemed to be concluded after issuance of acceptance order in Form SPL-05 or SPL-06 and taxpayer is not required to file any rectification application as per the procedure notified *via* Notification No. 22/2024 – Central tax dated 08.10.2024¹⁴.

¹³ Sub-rule (5) of Rule 164 of CGST Rules & S. No. 15 of Table given in Para 4 of Circular No. 238/32/2024 – GST dated 15.10.2024.

¹⁴ Circular No. 238/32/2024 – GST dated 15.10.2024.

4.17. I have received multiple notices or orders pertaining to FY 2017-18, 2018-19 & 2019-20 under Section 73 of CGST Act. Can I file single application, or I need to file multiple applications for each notice or order separately?

Taxpayer is required to file separate applications in Form SPL-01 or SPL-02, as the case maybe, for each SCN or order¹⁵.

4.18. I had applied for waiver of interest & penalty under Section 128A of the CGST Act against the Order passed confirming tax demand. I have received the order accepting my application and granting waiver under the scheme. However, on verification, I found that I had a good case on merits and now, I wish to give up the waiver benefit and instead, file an appeal against the Order confirming demand. Can I do so?

No, once the application has been filed and the order has been passed allowing the benefit of waiver of interest and/or penalty under Section 128A of the CGST Act, taxpayer cannot file an appeal against the demand order or appellate order, for any reason. In other words, no appeal shall lie against an order granting waiver and conclusion of proceedings issued in Form SPL-05 or SPL-06.

4.19. I had applied for waiver of interest & penalty under Section 128A of the CGST Act but my application has been rejected by the Proper Officer in Form SPL-07. What remedy do I have?

In such cases, taxpayer may choose to file an appeal against the rejection order in Form APL-01 under Section 107 of CGST Act. With respect to the pre-deposit requirement for filing the said appeal, since the entire tax dues is already paid before filing the application under Section 128A, there will not be any need to make any pre-deposit now. Further, the subject matter of the appeal will be whether the application filed by the taxpayer is wrongly rejected and merits of the demand will not be discussed in said appeal.

¹⁵ Para 3.1.7 of Circular No. 238/32/2024 – GST dated 15.10.2024.

4.20. I have paid the entire tax dues in part/full before this scheme has been notified. Will I be eligible for adjustment of said amount already paid from the payment to be made under Section 128A of the CGST Act?

If the amount paid is towards any Show Cause Notice or demand order or appellate order which is eligible under this scheme, irrespective of the fact that such payment was made prior to after Section 128A coming into force, the taxpayer will be eligible for adjustment of payment of said amount from the tax dues to be paid under this scheme before applying in Form SPL-01 or SPL-02, as the case maybe.

4.21. Whether recovery made by the tax officers from a 3rd party on behalf of the taxpayer will be adjusted towards payment to be made under Section 128A of the CGST Act by the said taxpayer?

Yes, if the recovery has been made on or before the due date for payment as per Section 128A of the CGST Act read with Rule 164 of the CGST Rules i.e. on or before 31.03.2025.

4.22. Whether recovery made by the tax officers on account of interest & penalty will be adjusted towards payment of tax to be made under Section 128A of the CGST Act?

No. Also, no refund of interest & penalty already paid will be granted under this scheme.

4.23. I have received a notice/demand order seeking interest and/or penalty demand only, while entire taxes were already paid and not demanded. Whether I am eligible for the waiver benefit under Section 128A of the CGST Act?

Yes. In this case, taxpayer will get the waiver of interest & penalty and proceedings will be deemed to be concluded.

However, waiver is not applicable where interest is on account of delayed filing of return or delayed reporting of any supply in the return, i.e., self-assessed liability falling under Section 75(12) of the CGST Act.

4.24. Whether interest demand on account of delayed filing of return or delayed reporting of any supply in the return is eligible for the waiver benefit under Section 128A of the CGST Act?

No, such cases as contained in Section 75(12) of the CGST Act are not eligible for waiver benefit under the scheme.

4.25. Whether benefit under Section 128A of the CGST Act will be available for demands of IGST and/or Compensation Cess?

Yes, by virtue of Section 20 of IGST Act, 2017 and Section 11 of GST (Compensation to States) Act, 2017. In such cases, full payment of IGST and/or Compensation cess, as the case maybe, needs to be made in order to avail the benefit of waiver of interest and / or penalty under Section 128A of the CGST Act.

4.26. My transitional Credit was verified, and a discrepancy was raised pursuant to which an Order is passed. Whether I will be eligible for waiver under Section 128A of the CGST Act with respect to demand of transitional ITC?

Yes, since as per Rule 121 read with Rule 117(3) of the CGST Rules, demand for wrongly availed transitional credit can be made under Section 73 or 74 of the CGST Act only, however, subject to two conditions –

- a) Notice or Order demanding reversal of transitional credit must be issued under Section 73 of the CGST Act; and,
- b) Such transitional credit has been credited to E-credit ledger of the taxpayer during the periods which are covered under Section 128A, i.e., during the FY 2017-18, 2018-19 or 2019-20.

Thus, if the transitional credit is credited in E-credit ledger on or before 31.03.2020, taxpayer will be eligible for waiver of interest & penalty on such demand, however, if the transitional credit is credited in E-credit ledger of the taxpayer after 31.03.2020, said case is not eligible under Section 128A of the CGST Act.

4.27. Can I get waiver of late fee, redemption fine, etc. under Section 128A of the CGST Act?

No.

4.28. Whether all the penalties levied under different sections, say, Section 122, Section 125, Section 73, etc. are covered under Section 128A of the CGST Act?

Yes, subject to SCN or Order being issued under Section 73 of the CGST Act.

4.29. Whether the demand of import IGST payable on import of goods under the Customs Act, 1972 is eligible for benefit of waiver under Section 128A of the CGST Act?

No, since the said demand pertains to customs duty and is raised under the provisions of the Customs Act, 1972 and not under Section 73 of the CGST Act.

4.30. What remedy do I have if I face any technical glitch or difficulty while filing application under the scheme?

Taxpayers may raise a ticket under the category “*Issues related to Waiver Scheme*” on self-service portal which can be accessed at <https://selfservice.gstsystem.in/>

4.31. I have filed an application in Form SPL-02 against a Demand Order which partially confirmed the demand and partially dropped the demand as proposed in Show Cause Notice. Meanwhile, department had filed an appeal in respect of that portion of the order which is adverse to the department. In the departmental appeal, 1st Appellate Authority had accepted the department appeal and confirmed the additional tax dues against me. What to do in respect of the additional demand generated *vide* the appellate order passed in pursuance of departmental appeal?

In such cases, the additional demand generated *vide* the appellate order passed in pursuance of departmental appeal is required to be paid by the taxpayer within 3 months from the date of said Appellate Order¹⁶.

If such payment is not made within the stipulated time period of 3 months, order passed in Form SPL-05 or SPL-06 will become void¹⁷.

4.32. I have filed an application in Form SPL-02 against a Demand Order against which revisional proceedings have been initiated under Section 108(1) of the CGST Act. The Revisional Authority had confirmed an additional tax dues against me. What to do in respect of the additional demand generated vide the said revisional order?

In such cases, the additional demand generated *vide* the revisional order is required to be paid by the taxpayer within 3 months from the date of said revisional Order.

If such payment is not made within the stipulated time period of 3 months, order passed in Form SPL-05 or SPL-06 will become void¹⁸.

4.33. I have already filed an appeal and made payment of 10% mandatory pre-deposit under Section 107(6) of the CGST Act. Now I wish to avail the benefit of Section 128A of the CGST Act and make payment of 100% dues. How to adjust 10% pre-deposit already made against 100% of tax dues to be paid under this scheme?

For pre-deposits made by the taxpayers through Form DRC-03, such taxpayer, in pursuance of Rule 142(2B) of CGST Rules, need to file Form DRC-03A electronically on the GST portal and consequently, the amount so paid and intimated through FORM DRC-03 shall be credited in E-Liability register in FORM PMT-01 against the debit entry created for the said demand, as if the said payment

¹⁶ Second proviso to sub-section (1) of Section 128A of CGST Act.

¹⁷ Sub-rule (16) of Rule 164 of CGST Rules.

¹⁸ Sub-rule (16) of Rule 164 of CGST Rules.

was made towards the said demand on the date of such intimation made through FORM GST DRC-03.

Whereas, for pre-deposits made by the taxpayers *via* Form APL-01 on the GST portal at the time of filing appeal itself, a credit entry is already passed in E-liability register and hence, the taxpayer will be required to make payment of remaining 90% tax dues as ascertained in Order for availing the benefit of Section 128A of the CGST Ac0074.

4.34. I have made payment of certain tax demand under protest *via* Form DRC-03 during the pendency of enquiry/audit, etc. and now I wish to avail the benefit of Section 128A against SCN/Order passed in the same matter. How to adjust the amount already paid under protest with 100% of tax dues to be paid under this scheme?

For such cases, the taxpayer, in pursuance of Rule 142(2B) of CGST Rules, need to file Form DRC-03A electronically on the GST portal and consequently, the amount so paid and intimated through FORM DRC-03 shall be credited in E-Liability register in FORM PMT-01 against the debit entry created for the said demand, as if the said payment was made towards the said demand on the date of such intimation made through FORM GST DRC-03.

4.35. I have made payment of certain tax demand *via* Form DRC-03 prior to 31.03.2025 but I have filed the application in Form DRC-03A after 31.03.2025. What shall be considered as the date of payment for the purposes of Section 128A?

For the purposes of determining the payment of taxes under Section 128A of the CGST Act, date of payment of tax *via* Form DRC-03 shall be considered and not the date on which the amount has been adjusted *via* Form DRC-03A¹⁹.

4.36. Whether the cases involving issuance of Show Cause Notice or Order under Section 129 or Section 130 of the CGST Act for the alleged discrepancy in E-

¹⁹ Para 3.2.2 of Circular No. 238/32/2024 – GST dated 15.10.2024.

way bill is also covered for waiver of penalty under Section 128A of the CGST Act?

No, since the said SCN or Order is issued under Section 129 or 130 of the CGST Act and not under Section 73 of the CGST Act.

4.37. Whether waiver granted under Section 128A of the CGST Act will have any precedential value to the effect that taxpayer has admitted its dues and paid off the same under the scheme?

No, and it is advisable that taxpayers must inform the Proper Officer that their choice of opting for waiver under this scheme should not be considered as their acceptance of liability on merits and taxpayer reserve its right to contest the same issue for subsequent period(s) on merits.

[CHAPTER 5] – SCENARIOS WHICH STILL NEED CLARITY

The Government, by way of issuing Circular and Advisories from time to time, has been very proactive in addressing and clarifying the issues which may arise under this scheme or difficulties which may be faced by a taxpayer while filing application under this scheme with a view to ensure uniformity and avoid any prospective litigation under Section 128A of the CGST Act. Even Section 128A of the CGST Act as well as Rule 164 of the CGST Rules has been drafted in such a manner as to possibly cover various aspects around the scheme, like, the cases where demand is partly for period(s) or issue(s) covered under the scheme and partly for period(s) or issue(s) not covered under the scheme has already been addressed in Rule 164 of the CGST Rules. Similarly, cases where appeal withdrawal request has been filed by a taxpayer but order has not been passed by the competent authority till the due date of filing application under this scheme, has also been covered under Rule 164 of CGST Rules.

However, there are still some issues/scenarios which are not addressed till now and needs clarification from the Government to avoid different treatments being adopted by the taxpayer and/or Proper Officers for such cases.

5.1. Whether cases where order is passed and time limit for filing of appeal has lapsed but no appeal is filed by the taxpayer are eligible for waiver under Section 128A of the CGST Act?

Suppose an Order is passed on 30.04.2024 and taxpayer did not file any appeal on or before 30.08.2024 (i.e., 3 months for filing of appeal and 1 month of condonable period under Section 107 of CGST Act). Said non-filing of appeal can be due to various reasons, like,

- No merits in contesting the said demand and hence, taxpayer deliberately chose not to file the appeal and accept the tax dues but no payment was made by the taxpayer till date.
- Taxpayer was unknown or negligent to the fact that any such order has been passed in its case, i.e., taxpayer inadvertently could not file the appeal.

Now the question arises that whether such taxpayer is eligible to file an application under Section 128A of the CGST Act seeking waiver of interest and/or penalty. There are different school of thoughts prevalent among the trade as under –

- (i) Taxpayer is eligible for waiver of interest and/or penalty in this scenario as the objective behind introduction of this scheme is to grant waiver from payment of interest and/or penalty in case of inadvertent *bona-fide* errors committed by the taxpayers during the initial period of GST regime coming into force due to frequent & significant changes, evolving compliance mechanism, etc.

The fact that appeal has been filed by the taxpayer or not is wholly irrelevant as even in case of admitted demand order under Section 73 of the CGST Act, the error committed by the taxpayer is *bona-fide* and may be attributed to the fact that GST regime was new and frequent changes were being made coupled with the fact that compliance mechanism was at nascent stage which evolved over time addressing the continuous challenges being faced by the taxpayers at large.

- (ii) Taxpayer is not eligible for waiver of interest and/or penalty under this scheme as another objective behind bringing this scheme was to reduce litigation evolving around Section 73 notices for the first 3 financial years and if there is no pending litigation, waiver will not be granted.

Moreover, the language used in clauses (b) & (c) of sub-section (1) of Section 128A, i.e., an order passed under sub-section (9) of section 73, and where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been passed; or an order passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of section 113 has been passed, read with provisions contained in Rule 164(15) of the CGST rules regarding restoration of appeal on rejection of application filed under Section 128A of the CGST Act gives a feeling that appeal must be pending against the order passed by the authorities in order to avail the benefit under this scheme.

However, to give this scheme its true meaning & purpose, it is expected that Government might come up with another circular clarifying that this scenario is also covered under the scheme which will ensure uniformity of practice across the nation.

Way forward – Till the time any clarification is issued on this, it is advisable to file the application under the scheme with respect to these cases and make a representation before the Proper Officer (if required) that these cases are also covered under the scheme basis the legislative intent with which this scheme was brought into force, i.e., to grant relief from inadvertent errors made during first 3 years of implementation of GST.

5.2. Whether cases where Show Cause Notice or Order is issued with respect to demand on account of cases falling under Section 75(12) of the CGST Act are eligible for waiver under Section 128A of the CGST Act?

Circular No. 238/32/2024 – GST dated 15.10.2024 *vide* S. No. 4 of Table given in Para 4 clarifies *waiver of interest and penalty shall not be applicable in the cases where the interest has been demanded on account of delayed filing of returns, or delayed reporting of any supply in the return, as such interest is related to demand of interest on self-assessed liability and does not pertain to any demand of tax dues and is directly recoverable under sub-section (12) of section 75.*

Section 75(12) of the CGST Act provides that in case self-assessed tax or interest thereon remains unpaid, same can be directly recovered under Section 79 (Recovery of Tax), and there is no need to resort to Section 73 or Section 74. Self-assessed tax has been defined in Explanation as the tax payable in respect of details of outward supplies furnished under section 37 (i.e., Form GSTR-1), but not included in the return furnished under section 39 (i.e., Form GSTR-3B).

However, there a large number of cases where SCNs on account of mismatch between GSTR-1 & GSTR-3B have been issued by the tax authorities under Section 73 of the CGST Act. While it is understandable that cases where recovery proceedings are initiated under Section 79 of the CGST Act may not be eligible for waiver of interest and/or penalty, being not covered under Section 128A(1) of the CGST Act.

However, cases where SCN or Order under Section 73 have been issued by the competent authority for the said issue/demand, such a case should be eligible for waiver of interest and/or penalty under Section 128A(1).

There are ambiguities prevalent in the trade which might lead to different practices being followed by either the trade or Proper Officer in view of clarification issued *vide* Circular dated 15.10.2024 that cases falling under Section 75(12) of the CGST Act are not eligible for waiver of interest and/or penalty under this scheme.

Hence, there is a need for an express clarification to the effect that cases where SCN or Order is issued, irrespective of the fact that such case falls under Section 75(12) of the CGST Act are eligible for waiver of interest and/or penalty under Section 128A.

Also, it is a well settled principle that circulars, being executive in character, cannot alter the provisions of the Act and instead, Circulars have to be in consonance with the provisions contained in Act & Rules. Wherever Circular is issued in the nature of altering the provisions of the law or providing a new legislation which is not provided in the law, it has been held to be *ultra-vires* the Act and consequently, has been set aside. This principle must also be kept in mind in case of any inconsistency between Section 128A(1) & Circular dated 15.10.2024.

5.3. Whether a single SCN or Order which covers demand on certain issues under Section 74 of the CGST Act & demand on other issues under Section 73 of the CGST Act is eligible for waiver under Section 128A of the CGST Act?

Though very rare but SCNs have been issued by tax authorities demanding tax on some issues under Section 74 of the CGST Act while on other issues under Section 73 of the CGST Act. A question arises that whether such SCNs or Orders are eligible for waiver of interest & penalty under Section 128A of the CGST Act.

Way forward – Though there is no clarification on this issue, however, drawing intent from sub-rules (3) & (4) of Rule 164 of CGST Rules, it is advisable to pay off 100% of the tax dues as determined in the SCN or Order, as the case may be, which shall involve demand both under Section 74 & 73 of the CGST Act and file an application under the scheme. Proper Officer must accept this application and pass order in Form SPL-05 after showing amount of liability towards interest and/or penalty on the demand which was proposed/confirmed under Section 74 of the CGST Act as payable by the taxpayer. Such liability of interest & penalty must be paid by the taxpayer within 3 months of issuance of order in Form SPL-05 in terms of Rule 164(17) of the CGST Rules.

For instance, an Order is passed confirming total demand of Rs. 10,00,000/- wherein demand of Rs. 2,00,000/- has been confirmed under Section 74 while remaining demand of Rs. 8,00,000/- has been confirmed under Section 73. In such a case, taxpayer must pay off entire Rs. 10,00,000/- and file an application in Form SPL-02 on GST portal. Proper Officer must accept the application and pass order in Form SPL-05 wherein the Officer must show liability of interest (say, Rs. 1,50,000/-) & penalty (say, Rs. 20,000/-) on Rs. 2,00,000/-, i.e., demand confirmed under Section 74, as payable by the taxpayer. Taxpayer must pay off this liability of Rs. 1,70,000/- (Interest & penalty) within 3 months of issuance of order in Form SPL-05.

5.4. If the payment of tax dues is being made by the taxpayer under Section 128A of the CGST Act, whether the recipient will be eligible for availment of said ITC?

There is no clarity as of now with respect to the cases where supplier is faced with a tax demand from the department under forward charge and the supplier chooses to opt for the scheme and makes payment of 100% tax dues, whether the recipient is eligible for availment of ITC on the payment so made by the supplier.

Similar is the case where demand is under reverse charge mechanism, eligibility to avail ITC by the recipient upon payment under Section 128A is an issue which has not been addressed by the Government yet.

Section 17(5)(i) of the CGST Act provides that any tax paid under Section 74 of the CGST Act cannot be availed as ITC being blocked credit. However, tax paid under Section 73 of the CGST Act is nowhere blocked under Section 16 or 17 of the CGST Act.

Further, even if the said ITC is eligible to be availed against payment made under Section 128A of the CGST Act, procedural difficulties need to be addressed by the Government, like,

- For demands under forward charge, how the recipient will be made aware of the fact that its corresponding supplier has made the payment of taxes under Section 128A of the CGST Act and he can avail the ITC.

- How said ITC will appear in GSTR-2B of the recipient since payment under Section 128A has to be made *via* either Form DRC-03 (in case of pending SCN) or *via* credit entry in E-liability register (in case of adjudication or appellate order).
- By the time payment will be made by the supplier under Section 128A of the CGST Act and recipient is eligible for availment of ITC in compliance with Section 16(2)(c) of the CGST Act, time limit for availment of ITC by the recipient may lapse in view of Section 16(5) of the CGST Act.

5.5. How to adjust payment already made by the taxpayer *via* GSTR-3B with the tax dues payable under Section 128A of the CGST Act?

There are many cases wherein payment has been made by the taxpayers *via* Form GSTR-3B for which a Show Cause Notice or Order is pending. While adjudicating authority may verify the particulars of said payment and appropriate the payment already made by the taxpayer with pending order, there is no clarity as of now with respect to the mechanism for adjustment of the said payment made *via* GSTR-3B with the tax dues to be paid under this scheme.

This scheme only acknowledges payment made in two formats, viz. for pending SCNs, payment needs to be made in Form DRC-03 while for adjudication order or appellate order, payment has to be made by way of a credit entry in E-liability register. Hence, what would be the fate of payments already made by the taxpayer *via* returns in Form GSTR-3B is still unknown and requires clarification from the Government.

The said mode should also be considered as valid mode since the payment has already reached Government exchequer against the pending demand and proper mechanism for the same should be notified to ensure uniformity and unnecessary litigation around the same. In absence of such mechanism, Proper Officer may require the taxpayer to make the payment again (dual payment of same demand) in order to be eligible for availing benefit under this scheme which will trigger filing of refund claim(s) of tax paid earlier *via* GSTR-3B.

5.6. No mechanism for restoration of original appeal in case application filed under this scheme is rejected in Form SPL-07 or in case Form SPL-05 or Form SPL-06 becomes void.

As per Section 128A of the CGST Act read with Rule 164 of the CGST Rules, original appeal, if filed earlier and withdrawn for the purposes of filing application in Form SPL-02 under this scheme, needs restoration –

- Application filed by the taxpayer is rejected by the proper officer as not proper or not eligible under Section 128A of the CGST Act in pursuance of which Form SPL-07 has been issued.
- Application filed by the taxpayer is accepted by the proper officer or appellate authority in pursuance of which Form SPL-05 or Form SPL-06 respectively has been issued but the additional amount of tax, if any and/or interest and/or penalty determined to be payable by the Proper Officer in Form SPL-05 or Form SPL-06 is not paid by the taxpayer within stipulated time period of 3 months.

In all such cases, the mechanism for restoration of appeal earlier filed by the taxpayer online on GST portal or manually before the appellate authority is still unknown and a proper methodology for the same is required.

[CHAPTER 6] – ILLUSTRATIONS

1. **ABC Ltd. received a Show Cause Notice (SCN) on 20.01.2024 proposing a demand of Rs. 10,00,000/- along with interest under Section 50 and penalty under Section 73 for the FY 2018-19. During the proceedings, the company voluntarily made the payment of tax dues as under and filed Reply to SCN –**

Rs. 10,00,000/- as tax

Rs. 2,00,000/- as interest

Rs. 50,000/- as penalty

Subsequently, the Order confirmed the demand as follows –

Rs. 10,00,000/- as tax

Rs. 7,00,000/- as interest, as applicable under Section 50 (as accrued till the date of passing of Order)

Rs. 1,00,000/- as penalty under Section 73.

Now, in this scenario, since the taxpayer had already deposited entire tax dues, whether such taxpayer intending to opt for waiver under Section 128A can seek refund of interest and penalty as already deposited earlier?

In this case, if the taxpayer wishes to opt for waiver of interest & penalty under Section 128A –

- No additional tax demand is liable to be paid by the taxpayer as entire tax dues are already paid during adjudication proceedings. However, if such payment of Rs. 10,00,000/- was made earlier *via* Form DRC-03, taxpayer will be required to file an application in Form DRC-03A to cause a credit entry in E-liability register.
- No refund of Interest already paid by the taxpayer amounting to Rs. 2,00,000/- will be granted to the taxpayer. Taxpayer will be entitled for waiver of remaining interest liability of Rs. 5,00,000/-.

- No refund of penalty already paid by the taxpayer amounting to Rs. 50,000/- will be granted to the taxpayer. Taxpayer will be entitled for waiver of remaining penalty liability of Rs. 50,000/-.

2. ABC Ltd. has received a Show Cause Notice dated 10.05.2024 proposing tax demand of Rs. 50,00,000/- (comprising of Rs. 30,00,000/- for FY 2019-20 and Rs. 20,00,000/- for FY 2020-21), along with applicable interest under Section 50 of the CGST Act and penalty under Section 73 of the CGST Act. If company wish to avail the waiver of interest & penalty under Section 128A, how to make payment of tax under this scenario and what relief will be granted to ABC Ltd.?

In this case, if ABC Ltd. choose to opt the benefit of waiver of interest & penalty under Section 128A, following is the liability to make payment & relief that will be granted to ABC Ltd. under Section 128A –

Liability for payment –

- Entire Rs. 50,00,000/- needs to be paid on or before 31.03.2025.
- Interest, as applicable under Section 50, and penalty, under Section 73 on Rs. 20,00,000/- pertaining to FY 2020-21 has to be paid within 3 months of acceptance order passed by the Proper Officer/Appellate Authority in Form SPL-05 or SPL-06 respectively.

Relief granted under the scheme –

- Waiver of interest, as applicable under Section 50, and penalty, under Section 73 on Rs. 30,00,000/- pertaining to FY 2019-20 will be granted.
- Proceedings in relation of SCN will be deemed to be concluded.

3. ABC Ltd. has received a Show Cause Notice dated 10.05.2024 proposing tax demand of Rs. 45,00,000/- along with applicable interest under Section 50 of the CGST Act and penalty under Section 73 of the CGST Act, for the FY 2019-20. The said demand is proposed on the following allegations –

- **Rs. 20,00,000 – alleged mismatch between GSTR-3B & GSTR-2A**

- **Rs. 10,00,000 – alleged mismatch between GSTR-1 & GSTR-3B**
- **Rs. 15,00,000 – allegation of erroneous refund claimed by the company**

If company wish to avail the waiver of interest & penalty under Section 128A, how to make payment of tax under this scenario and what relief will be granted to ABC Ltd.?

In this case, if ABC Ltd. choose to opt the benefit of waiver of interest & penalty under Section 128A, following is the liability to make payment & relief that will be granted to ABC Ltd. under Section 128A –

Liability for payment –

- Entire Rs. 45,00,000/- needs to be paid on or before 31.03.2025.
- Interest, as applicable under Section 50, and penalty, under Section 73 on Rs. 15,00,000/- pertaining to the issue of erroneous refund (which is not eligible under this scheme) has to be paid by ABC Ltd. within 3 months of acceptance order passed by the Proper Officer/Appellate Authority in Form SPL-05 or SPL-06 respectively.

Relief granted under the scheme –

- Waiver of interest, as applicable under Section 50, and penalty, under Section 73 on Rs. 30,00,000/- pertaining to the demand on the issue of mismatch between GSTR-3B & 2A & mismatch between GSTR-1 & 3B will be granted.
- Proceedings in relation of SCN will be deemed to be concluded.

4. ABC Ltd. has received an Order dated 31.08.2024 confirming tax demand of Rs. 15,00,000/- along with applicable interest under Section 50 of the CGST Act and penalty under Section 73 of the CGST Act, for the FY 2019-20. The said demand is confirmed on the following allegations –

- **Issue No. 1 – alleged mismatch between GSTR-3B & GSTR-2A**
 - o **Tax demand of Rs. 10,00,000/-**

- **Interest demand of Rs. 3,00,000/-, as applicable under Section 50 of the CGST Act (as accrued till the date of passing of Order)**
 - **Penalty demand of Rs. 1,00,000/- under Section 73 of the CGST Act**
- **Issue No. 2 – alleged ITC reversal under Rule 42/43 of CGST Rules**
- **Tax demand of Rs. 5,00,000/-**
 - **Interest demand of Rs. 2,00,000/-, as applicable under Section 50 of the CGST Act (as accrued till the date of passing of Order)**
 - **Penalty demand of Rs. 50,000/- under Section 73 of the Act**

Company is accepting the demand of mismatch between GSTR-3B & 2A (Issue No. 1) but wish to litigate the ITC reversal demand under Rule 42/43 (Issue No. 2) as there are good merits involved in contesting this issue and ABC Ltd. expects a favourable outcome on the same from appellate forum.

How can ABC Ltd. avail benefit of waiver of interest & penalty with respect to Issue No. 1 while choosing to litigate remaining demand on Issue No. 2?

Such an option to partly get waiver and partly litigate the demand, raised in the same notice or order, is not available under Section 128A. The scheme can be opted for all the issues raised in the notice or order. In this case, a cost benefit analysis needs to be made by ABC Ltd. to compute which option is better –

Option 1 – Opt for the scheme – Total tax payment to be made under the scheme – Rs. 15,00,000/- (i.e., Rs. 10,00,000/- on Issue no. 1 + Rs. 5,00,000/- on Issue No. 2).

Option 2 – Pursue litigation – Total payment to be made – Rs. 14,00,000/- (i.e., tax, interest & penalty on Issue No. 1), assuming ABC Ltd. will be able to get a favourable appellate order in future with respect to Issue No. 2. Thus, in this scenario, it is advisable for ABC Ltd. not to opt for the scheme and instead make payment of tax, interest & penalty on Issue No. 1 & pursue litigation with respect to Issue No. 2.

However, if interest amount on demand under Issue No. 1 was Rs. 5,00,000/-, in such a case, total payment to be made by ABC Ltd. under Option – 2 would be Rs.

16,00,000/- (i.e., Rs. 10,00,000 towards tax + 5,00,000 towards interest + 1,00,000 towards penalty) and hence, under this scenario, it would be advisable to opt for the scheme as under scheme, total payment to be made was Rs. 15,00,000/- only.

Thus, this cost benefit analysis needs to be made by the taxpayer in order to determine whether to opt for the waiver scheme or pursue litigation in relation to tax dues ascertained by the taxpayer.

An important point to note here is that another option is available with ABC Ltd. In case an appeal is already pending with the 1st Appellate Authority and ABC Ltd. anticipates that a favourable order may be passed on or before 31.03.2025, ABC Ltd. can wait for the Appellate Authority's Order wherein demand with respect to Issue No. 2 may be dropped and then, an application in Form SPL-02 can be filed only with respect to Issue No. 1 and Rs. 10,00,000/- would be required to be paid under Section 128A to avail benefit of waiver of interest & penalty thereupon.

5. PQR Ltd. has been issued a Show Cause Notice (SCN) dated 31.05.2024, for FY 2019-20 under Section 73 of the CGST Act, on account of following two allegations:

- **Issue No. 1 – ITC availed from a dealer who has not filed the GSTR-3B return, involving a tax amount of Rs. 3,00,000/-.**
- **Issue No. 2 – ITC availed by the Company on account of an invoice claimed in the GSTR-3B for September 2020, that has been filed on 25 October 2020, involving a tax amount of Rs. 2,00,000/-, i.e., time barred ITC under Section 16(4) of the CGST Act.**

For Issue No. 2, in view of retrospective amendment carried out in Section 16 [insertion of sub-section (5)], said ITC is now availed by the company within time limit. Hence, in this scenario, how much tax payment has to be made by PQR Ltd. to avail waiver benefit under Section 128A?

In this scenario, since demand under Issue No. 2 has already been made good by way of retrospective amendment in Section 16 of the CGST Act, PQR Ltd. is liable to make payment of Rs. 3,00,000/- only (i.e., on Issue No. 1) under Section 128A for

filing application in Form SPL-01. Once acceptance order in Form SPL-05 or SPL-06 is issued by the Proper Officer, demand on Issue No. 2 will also stand concluded.

However, before claiming deduction of Rs. 2,00,000/- (demand on Issue No. 2), PQR Ltd. has to make sure that demand on Issue No. 2 is only on the sole allegation of ITC being time barred under Section 16(4) of the CGST Act.

6. PQR Ltd. has been issued a Show Cause Notice (SCN) dated 31.05.2024, for FY 2019-20 under Section 73 of the CGST Act, on account of following two allegations:

- **Issue No. 1 – ITC availed from a dealer who has not filed the GSTR-3B return, involving a tax amount of Rs. 3,00,000/-.**
- **Issue No. 2 – Mismatch of ITC between GSTR-2A & 3B amounting to Rs. 1,00,000/-.**
- **Issue No. 3 – Non-payment of GST under RCM on legal services availed by the company amounting to Rs. 2,00,000/-.**

In this scenario, can PQR Ltd. make payment of tax dues under Section 128A via E-credit ledger (ITC)?

Yes, but only to the extent demand on Issue No. 1 & 2. Since payment of RCM liability cannot be made using ITC, PQR Ltd. need to mandatorily make payment of Rs. 2,00,000/- in cash and remaining payment of Rs. 4,00,000/- can be made either in cash or *via* ITC, as per the choice of the company.

7. PQR Ltd. has been issued a Show Cause Notice (SCN) dated 31.05.2024, for FY 2019-20 under Section 73 of the CGST Act, on account of following two allegations:

- **Issue No. 1 – ITC availed from a dealer who has not filed the GSTR-3B return, involving a tax amount of Rs. 3,00,000/-.**
- **Issue No. 2 – Mismatch of ITC between GSTR-2A & 3B amounting to Rs. 1,00,000/-.**
- **Issue No. 3 – Allegation of erroneous refund availed by the company amounting to Rs. 2,00,000/-.**

In this scenario, can PQR Ltd. make payment of tax dues under Section 128A via E-credit ledger (ITC)?

Yes, however, PQR Ltd. needs to check if the refund of Rs. 2,00,000/- was originally granted by the authorities in cash, demand thereof needs to be paid in cash only, while if the said refund was earlier granted by way of credit in E-credit ledger, entire payment under Section 128A on all 3 issues can be made by PQR Ltd. *via* ITC.

8. PQR Ltd. was issued a Show Cause Notice (SCN) dated 31.05.2024, for FY 2019-20 under Section 73 of the CGST Act, on account of the two allegations:

- **Issue No. 1 – ITC availed from a dealer who has not filed the GSTR-3B return, involving a tax amount of Rs. 30,00,000/-.**
- **Issue No. 2 – Mismatch of ITC between GSTR-2A & 3B amounting to Rs. 1,00,00,000/-.**

After filing Reply to SCN, Order dated 31.08.2024 was passed under Section 73 confirming demand on Issue No. 1 while dropping demand on Issue No. 2. PQR Ltd. filed an appeal under Section 107 challenging the demand amounting to Rs. 30,00,000/- confirmed under Issue No. 1. Meanwhile, department has also filed an appeal against the said Order challenging the demand of Rs. 1,00,00,000/- dropped under Issue No. 2.

During the pendency of appeal, PQR Ltd. wish to avail the benefit under Section 128A. How much payment is required to be made by PQR Ltd. in this scenario?

In this case, PQR Ltd. will be liable to withdraw the appeal and make payment of Rs. 30,00,000/- on or before 31.03.2025 after which PQR Ltd. can file an application in Form SPL-02 seeking waiver of interest & penalty on Rs. 30,00,000/-.

Now the Proper Officer has accepted the application filed by PQR Ltd. and issued Order in Form SPL-05 owing to which PQR Ltd. is entitled for waiver of interest & penalty on the same.

In the meanwhile, department appeal is decided by the 1st Appellate Authority and –

- *The appeal filed by the department is accepted and demand of Rs. 1,00,00,000/- is upheld by the 1st Appellate Authority – In this case, PQR Ltd. will be liable to pay Rs. 1,00,00,000/- with Interest & penalty within 3 months from the date of issuance of 1st Appellate Authority's order, else interest & penalty waiver on Rs. 30,00,000/- granted via Form SPL-05 will become void.*
- *The appeal filed by the department is rejected by the 1st Appellate Authority and demand of Rs. 1,00,00,000/- is held to be correctly set aside by the lower authority – In this case, since no additional demand has been generated as a result of departmental appeal, no action is to be taken by PQR Ltd.*

9. XYZ Ltd. was served with a Show Cause Notice (SCN) dated 31.05.2024, for FY 2019-20 under Section 74 of the CGST Act for which Demand Order was passed in Form DRC-07 on 31.08.2024 confirming the demand. Aggrieved by the decision of Adjudicating Authority, XYZ Ltd. filed an appeal before the 1st Appellate Authority contesting the demand as well as invocation of Section 74 of the CGST Act, 2017.

Appellate Authority vide its Order dated 30.04.2025 held that Section 74 was wrongly invoked in this case as there was no fraud, wilful misstatement, etc. and hence, in terms of Section 75(2), it was directed to re-assess the demand under Section 73 of the CGST Act. Said order re-assessing the demand was passed on 31.07.2025.

Whether XYZ Ltd. is entitled for waiver of interest & penalty under Section 128A with respect to Order dated 31.07.2025 passed under Section 73? If yes, what is the last date to make payment and file application in Form SPL-02?

Yes, XYZ Ltd. is eligible for waiver of interest & penalty under Section 128A with respect to Order dated 31.07.2025 passed re-assessing the demand under Section 73. Last date to make payment of 100% taxes as determined in the said Order dated 31.07.2025 as well as to file the application in Form SPL-02 is 6 months from the date of Order dated 31.07.2025, i.e., 31.01.2026.

10. During the enquiry or audit proceedings, tax department pointed out a discrepancy of Rs. 10,00,000/- for the FY 2017-18 which was accepted and paid by the taxpayer in full. However, no interest & penalty was paid by the taxpayer and hence, department served a Show Cause Notice to such taxpayer demanding only Interest & Penalty on Rs. 10,00,000/- already deposited. Whether the taxpayer is entitled for the waiver of the interest & penalty under Section 128A for such demand notice?

Yes.

[CHAPTER 7] – LEGAL FRAMEWORK (BARE LAW)

7.1. SECTION 128A was inserted in CGST Act, 2017 *vide* Finance (No. 2) Act, 2024 w.e.f. 01.11.2024 by virtue of Notification No. 17/2024 – Central Tax dated 27.09.2024–

128A. (1) Notwithstanding anything to the contrary contained in this Act, where any amount of tax is payable by a person chargeable with tax in accordance with,—

- (a) a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, and where no order under sub-section (9) of section 73 has been issued; or*
- (b) an order passed under sub-section (9) of section 73, and where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been passed; or*
- (c) an order passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of section 113 has been passed,*

pertaining to the period from 1st July, 2017 to 31st March, 2020, or a part thereof, and the said person pays the full amount of tax payable as per the notice or statement or the order referred to in clause (a), clause (b) or clause (c), as the case may be, on or before the date, as may be notified by the Government on the recommendations of the Council, no interest under section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:

Provided *that where a notice has been issued under sub-section (1) of section 74, and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court in accordance with the provisions of sub-section (2) of section 75, the said notice or order shall be considered to be a notice or order, as the case may be, referred to in clause (a) or clause (b) of this sub-section:*

Provided further *that the conclusion of the proceedings under this sub-section, in cases where an application is filed under sub-section (3) of section 107 or under sub-section (3) of section 112 or an appeal is filed by an officer of central tax under sub-section (1) of section 117 or under sub-section (1) of section 118 or where any proceedings are initiated under sub-section (1) of section 108, against an order referred to in clause (b) or clause (c) or against the directions of the Appellate Authority or the Appellate Tribunal or the court referred to in the first proviso, shall be subject to the condition that the said person pays the additional amount of tax payable, if any, in accordance with the order of the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months from the date of the said order:*

Provided also that where such interest and penalty has already been paid, no refund of the same shall be available.

(2) Nothing contained in sub-section (1) shall be applicable in respect of any amount payable by the person on account of erroneous refund.

(3) Nothing contained in sub-section (1) shall be applicable in respect of cases where an appeal or writ petition filed by the said person is pending before Appellate Authority or Appellate Tribunal or a court, as the case may be, and has not been withdrawn by the said person on or before the date notified under sub-section (1).

(4) Notwithstanding anything contained in this Act, where any amount specified under sub-section (1) has been paid and the proceedings are deemed to be concluded under the said sub-section, no appeal under sub-section (1) of section 107 or sub-section (1) of section 112 shall lie against an order referred to in clause (b) or clause (c) of sub-section (1), as the case may be.

7.2. RULE 164 was inserted in CGST Rules, 2017 *vide* Central Goods and Services Tax (Second Amendment) Rules, 2024 w.e.f. 01.11.2024 by virtue of Notification No. 20/2024 – Central Tax dated 08.10.2024 –

164. (1) Any person who is eligible for waiver of interest, or penalty, or both in respect of a notice or a statement mentioned in clause (a) of sub-section (1) of section 128A, may file an application electronically in FORM GST SPL-01 on the common portal, providing the details of the said notice or the statement, as the case may be, along with the details of the payments made in FORM GST DRC-03 towards the tax demanded.

(2) Any person who is eligible for waiver of interest, or penalty, or both, in respect of orders mentioned in clauses (b) and (c) of sub-section (1) of section 128A, may file an application electronically in FORM GST SPL 02 on the common portal, providing the details of the said order, along with the details of the payments made towards the tax demanded:

Provided that the payment towards such tax demanded shall be made only by crediting the amount in the electronic liability register against the debit entry created by the said order:

Provided further that if the payment towards such tax demanded has been made through FORM GST DRC-03, an application in FORM GST DRC-03A, as prescribed in sub-rule (2B) of rule 142, shall be filed by the said person for credit of the said amount in the Electronic Liability Register against the debit entry created for the said demand, before filing the application in FORM GST SPL 02.

(3) Where the notice or statement or order mentioned in sub-section (1) of section 128A includes demand of tax, partially on account of erroneous refund and

partially for other reasons, an application under sub-rule (1) or sub-rule (2) may be filed only after payment of the full amount of tax demanded in the said notice or statement or order, on or before the date notified under the said sub-section.

(4) Where the notice or statement or order mentioned in sub-section (1) of section 128A includes demand of tax, partially for the period mentioned in the said sub-section and partially for the period other than that mentioned in the said sub-section, an application under sub-rule (1) or sub-rule (2) may be filed only after payment of the full amount of tax demanded in the said notice or statement or order, on or before the date notified under the said sub-section.

(5) The amount payable under sub-rule (1) or sub-rule (2) shall be the amount that remains payable, after deducting the amount not payable in accordance with sub-section (5) or sub-section (6) of section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be.

(6) Any person who wishes to file an application under sub-rule (1) or sub-rule (2), may do so within a period of three months from the date notified under sub-section (1) of section 128A:

Provided *that where an application in FORM GST SPL-02 is to be filed in cases referred to in the first proviso to sub-section (1) of section 128A, the time limit for filing the said application shall be six months from the date of communication of the order of the proper officer redetermining such tax under section 73.*

(7) The application under sub-rule (1) or sub-rule (2) shall be accompanied by documents evidencing withdrawal of appeal or writ petition, if any, filed before any Appellate Authority, or Tribunal or Court, as the case may be, to establish that the applicant is eligible for the waiver of interest or penalty or both, in terms of section 128A:

Provided *that where the applicant has filed an application for withdrawal of an appeal or writ petition filed before the Appellate Authority or Appellate Tribunal or a court, as the case may be, but the order for withdrawal has not been issued by the concerned authority till the date of filing of the application under sub-rule (1) or sub-rule (2), the applicant shall upload the copy of such application or document filed for withdrawal of the said appeal or writ petition along with the application under sub-rule (1) or sub-rule (2), and shall upload the copy of the order for withdrawal of the said appeal or writ petition on the common portal, within one month of the issuance of the said order for withdrawal by the concerned authority.*

(8) Where the proper officer is of the view that the application made in FORM GST SPL-01 or FORM GST SPL-02 is liable to be rejected as not being eligible for waiver of interest, or penalty, or both, as per section 128A, he shall issue a notice on the common portal to the applicant in FORM GST SPL-03 within three months from the date of receipt of the said application and shall also give the applicant an opportunity of being heard.

(9) On receiving the notice under sub-rule (8), the applicant may file a reply to the said notice on the common portal in FORM GST SPL-04 , within a period of one month from the date of receipt of the said notice.

(10) If the proper officer is satisfied that the applicant is eligible for waiver of interest and penalty as per section 128A, he shall issue an order in FORM GST SPL-05 on the common portal accepting the said application and concluding the proceedings under section 128A.

(11) In cases where the order in FORM GST SPL-05 is issued by the proper officer under sub-rule (10).-

(a) in respect of an application filed in FORM GST SPL-01 pertaining to a notice or statement referred to in clause (a) of sub-section (1) of section 128A, the summary of order in FORM GST DRC-07 as per sub-rule (5) of rule 142 shall not be required to be issued by the proper officer, in respect of the said notice or statement;

(b) in respect of an application filed in FORM GST SPL-02 pertaining to an order referred to in clause (b) or clause (c) of sub-section (1) of section 128A, the liability created in the part II of Electronic Liability Register, shall be modified accordingly.

(12) If the proper officer is not satisfied with the reply of the applicant, the proper officer shall issue an order in FORM GST SPL-07 rejecting the said application.

(13) (a) In cases where notice in FORM GST SPL-03 has not been issued, the proper officer shall issue the order under sub-rule (10) within a period of three months from the date of receipt of the application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be.

(b) In cases where notice in FORM GST SPL-03 has been issued, the proper officer shall issue the order in sub-rule (10) or sub-rule (12) within a period of three months from the date of receipt of reply of the applicant in FORM GST SPL-04, or within a period of four months from the date of issuance of notice in FORM GST SPL-03 where no reply is received from the applicant.

Explanation.- For the purposes of this sub-rule, in cases referred to in the proviso to sub-rule (7), the time period from the date of filing of the application under sub-rule (1) or sub-rule (2) till the date of submission of the order for withdrawal of the appeal or the writ, as the case may be, shall not be included while calculating the time period under clause (a) or clause (b) of this sub-rule.

(14) If no order is issued by the proper officer within the time limit specified in sub-rule (13), then the application in FORM GST SPL-01 or FORM GST SPL-02 , as the case may be, shall be deemed to be approved and the proceedings shall be deemed to be concluded.

(15) (a) In cases where no appeal is filed against the order in FORM GST SPL-07 within the time period specified in sub-section (1) of section 107, the original appeal,

if any, filed by the applicant against the order mentioned in clause (b) or clause (c) of sub-section (1) of section 128A, and withdrawn for filing the application in FORM GST SPL-02 in accordance with sub-section (3) of section 128A, shall be restored.

(b) In cases where an appeal is filed against the order in FORM GST SPL-07 for rejection of application for waiver of interest, or penalty, or both, if—

- (i) the appellate authority has held that the proper officer has wrongly rejected the application for waiver of interest, or penalty, or both, in FORM GST SPL-07 , the said appellate authority shall pass an order in FORM GST SPL-06 on the common portal accepting the said application and concluding the proceedings under section 128A; or*
- (ii) the appellate authority has held that the proper officer has rightly rejected the application for waiver of interest, or penalty, or both, in FORM GST SPL-07 , the original appeal, if any, filed by the applicant against the order mentioned in clause (b) or clause (c) of subsection (1) of section 128A, and withdrawn for filing the application in FORM GST SPL-02 in accordance with sub-section (3) of section 128A, shall be restored, subject to condition that the applicant files an undertaking electronically on the portal in FORM GST SPL-08 , within a period of three months from the date of issuance of the order by the appellate authority in FORM GST APL-04 , that he has neither filed nor intends to file any appeal against the said order of the Appellate Authority.*

(16) In cases where the taxpayer is required to pay an additional amount of tax liability as per the second proviso to sub-section (1) of section 128A, and such additional payment is not made within the time limit specified in the said proviso, the waiver of interest, or penalty, or both, under the said section as per the order issued in FORM GST SPL-05 or FORM GST SPL-06 , if any, shall become void.

(17) In cases where the taxpayer is required to pay any amount of interest, or penalty, or both, in respect of any demand pertaining to erroneous refund or on account of demand pertaining to the period other than the period mentioned in sub-section (1) of section 128A, and the details of such amount have been mentioned in FORM GST SPL-05 or FORM GST SPL-06 , the applicant shall pay the said amount of interest, or penalty, or both, within a period of three months from the date of issuance of the order in FORM GST SPL-05 or FORM GST SPL-06 , as the case may be, and where the said amount is not paid within the said time period, the waiver of interest, or penalty, or both, under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06 , shall become void.

Explanation.- For the purposes of this rule, the proper officer for issuance of order under this rule,-

- (a) in cases where the application for waiver of interest, or penalty, or both is made with respect to a notice or statement mentioned in clause (a) of sub-section (1) of section 128A, shall be the proper officer for issuance of order as per section 73; and*

(b) in cases where the application for waiver of interest, or penalty, or both, is made with respect to an order mentioned in clause (b) or clause (c) of sub-section (1) of section 128A, shall be the proper officer referred to in section 79 of the Act.

7.3. NOTIFICATION NO. 21/2024 – CENTRAL TAX DATED 08.10.2024 prescribed the date on or before which payment of 100% tax dues has to be made by the applicant for opting this scheme –

S.O.....(E).–In exercise of the powers conferred by sub-section (1) of section 128A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (the said Act), the Central Government, on the recommendations of the Council, hereby notifies the respective date specified in Column (3) of the Table below, as the date upto which payment for the tax payable as per the notice, or statement, or the order referred to in clause (a) or clause (b) or clause (c) of the said section, as the case may be, can be made by the class of registered person specified in the corresponding entry in column (2) of the said Table, namely:–

Table

Sl. No.	Class of registered person	Date upto which payment for the tax payable as per the notice or statement or the order referred to in clause (a) or clause (b) or clause (c) of section 128A of the said Act, as the case may be, can be made for waiver of interest, or penalty, or both, under the said section
(1)	(2)	(3)
1	Registered persons to whom a notice or statement or order, referred to in clause (a) or clause (b) or clause (c) of section 128A of the said Act, has been issued.	31.03.2025
2	Registered persons to whom a notice has been issued under sub-section (1) of section 74, in respect of the period referred to in sub-section (1) of section 128A of the said Act, and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority, or Appellate Tribunal, or a court, in accordance with the provisions of sub-section (2) of section 75, for determination of the tax payable by such	Date ending on completion of six months from the date of issuance of the order by the proper officer redetermining tax under section 73 of the said Act.

	<i>person, deeming as if the notice were issued under sub-section (1) of section 73 of the said Act.</i>	
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2. This notification shall come into effect from the 1st day of November, 2024.

7.4. CIRCULAR NO. 238/32/2024 – GST DATED 15.10.2024 seeks to clarify various aspects of this scheme notified under Section 128A with the objective of ensuring uniformity in trade –

Subject: Clarification of various doubts related to Section 128A of the CGST Act, 2017.

Based on the recommendations of the GST Council made in its 53rd meeting, Section 128A has been inserted in the Central Goods and Services Tax Act, 2017 (hereinafter referred to as ‘the CGST Act’) with effect from 01.11.2024 to provide for waiver of interest or penalty or both, relating to demands under section 73 of the CGST Act pertaining to Financial Years 2017-18, 2018-19 and 2019-20, subject to certain conditions.

1.2 Subsequently, based on the recommendations of the GST Council made in its 54th meeting, Rule 164 has been inserted in Central Goods and Services Tax Rules, 2017 (hereinafter referred to as ‘the CGST Rules’) with effect from 01.11.2024 vide notification No.20/2024- Central tax dated 8th October 2024, providing for procedure and conditions for closure of proceedings under section 128A of CGST Act.

1.3 Further, vide notification No. 21/2024-Central tax dated 8th October 2024, 31.03.2025 has been notified under sub-section (1) of section 128A of CGST Act as the date on or before which the full payment of tax demanded in the notice/ statement/ order needs to be made by the taxpayer in order to avail the benefit of waiver of interest or penalty or both under the said section. Also, for cases where the application is made as per the first proviso to the sub-section (1) of the section 128A of CGST Act, the date on or before which the full payment of tax demanded in the order issued by the proper officer redetermining the tax under section 73 of CGST Act needs to be made by the taxpayer, has been notified as six months from the date of issuance of such order by the proper officer redetermining the tax under section 73 of CGST Act.

2.1 Various doubts have been raised by the trade and the field formations in respect of implementation of provisions of Section 128A of the CGST Act, relating to waiver of interest or penalty or both in respect of demands under section 73 of the CGST Act pertaining to Financial Years 2017-18, 2018-19 and 2019-20.

2.2 In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its

powers conferred by section 168(1) of the CGST Act, hereby issues the following clarifications and guidelines.

2.3 Unless otherwise specified, all the sections mentioned in this circular refer to sections of the CGST Act and all the rules mentioned herein refer to the rules of CGST Rules.

3. The procedure to be followed by the taxpayers and the tax officers to avail and implement the benefit provided under Section 128A, is as follows:

3.1 Filing of application:

3.1.1 Section 128A provides for “Waiver of interest or penalty or both relating to demands raised under **section 73**, for certain tax periods”. Therefore, provisions of Section 128A are applicable in cases where notices/ statements have been issued under Section 73, for the FYs 2017-18, 2018-19 and 2019-20, in the following situations:

- (a) Where a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, but where no order under sub-section (9) of section 73 has been issued;
- (b) Where an order has been issued under sub-section (9) of section 73, in respect of the notice/ statement issued under section 73, but where no order has been issued by the Appellate Authority/ Revisional Authority under sub-section (11) of section 107 or sub-section (1) of section 108;
- (c) Where an order has been issued by the Appellate Authority/ Revisional Authority under sub-section (11) of section 107 or sub-section (1) of section 108, in the cases where notice/ statement was issued under section 73 and where no order under subsection (1) of section 113 has been passed by the Appellate Tribunal;

3.1.2 Additionally, as per the first proviso to sub-section (1) of Section 128A, in cases where a notice was initially issued under section 74 for FYs 2017-18, 2018-19 and 2019-20, and an order is passed or required to be passed by the proper officer under section 73 (in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court in accordance with the provisions of sub-section (2) of section 75), those cases are also covered under Section 128A for the purpose of waiver of interest or penalty or both.

3.1.3 In cases referred to in clause (a) of sub-section (1) of Section 128A where a notice/ statement under Section 73 has been issued demanding tax inter alia pertaining to the period from July 2017 to March 2020, for which no order has been issued under section 73, an application in FORM GST SPL-01, may be filed electronically on the common portal, by the taxpayer.

3.1.4 In cases referred to in clause (b) of sub-section (1) of Section 128A, where an order has been issued under Section 73 demanding tax inter alia pertaining to the period from July 2017 to March 2020, for which no order has been issued under

section 107 or section 108, an application in FORM GST SPL-02, may be filed electronically on the common portal, by the taxpayer. Similarly, in cases referred to in clause (c) of sub-section (1) of Section 128A, where an order has been issued under Section 107 or Section 108, but no order has been issued under section 113, an application in FORM GST SPL-02, may be filed electronically on the common portal, by the taxpayer.

3.1.5 The application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, shall be filed within a period of three months from the date notified under section 128A (1), i.e., within three months from 31.03.2025. However, as per the first proviso to sub-section (1) of Section 128A, where a notice has been issued under section 74, and the Appellate Authority or Appellate Tribunal or a court directs the proper officer to redetermine the tax as if the demand notice is issued under section 73, in accordance with the provisions of section 75(2), then same is covered under clause (b) of sub-section (1). Therefore, as mentioned in proviso to sub-rule (6) of Rule 164, in such cases, an application in FORM GST SPL-02, can be filed within six months from the date of communication of order of the proper officer redetermining the amount of tax to be paid under section 73.

3.1.6 Where an appeal under Section 107 or section 112 has been filed by the taxpayer, against an order referred to in clause (b) or clause (c) of sub-section (1) of section 128A, or where a writ petition has been filed by the taxpayer against a notice/ statement/ order referred to in clause (a) or (b) or clause (c) of sub-section (1) of section 128A, the taxpayer is required to withdraw the same before filing an application for waiver of interest or penalty or both, and enclose the order of withdrawal of such appeal/ writ petition in along with the application filed in FORM GST SPL-01 or FORM GST SPL-02, as the case may be. However, in cases where the applicant has filed the application or any other document, for withdrawal of an appeal or writ petition before Appellate Authority or Appellate Tribunal or a court, as the case may be, but the order for withdrawal has not been issued by the concerned authority till the date of filing of the application in FORM GST SPL-01 or FORM GST SPL-02, he is required to upload the copy of such application or the document filed for withdrawal of the said appeal or writ petition along with the said application in FORM GST SPL-01 or FORM GST SPL-02. It is to be mentioned that he is required to upload the final order for withdrawal of the said appeal or writ petition on the common portal, within one month of the issuance of the said order for withdrawal by the concerned authority.

3.1.7 It may be noted that, in case the taxpayer has been issued multiple notices/ statements/ orders pertaining to demands under section 73, for period from July 2017 to March 2020, he is required to file a separate application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, in respect of each of the concerned notice/ statement/ order.

3.2 Payment of tax:

3.2.1 With respect to a notice or statement referred to in clause (a) of sub-section (1) of Section 128A, i.e., a notice or statement that is yet to be adjudicated, the payment towards the tax demanded in the said notice shall be made by the taxpayer through FORM GST DRC-03.

3.2.2 With respect to an order referred to in clause (b) and clause (c) of sub-section (1) of Section 128A, the payment towards such tax demanded shall be made by the taxpayer, only by the making the payment against the debit entry created in the Part II of the Electronic Liability Register (ELR) by the demand order. In this regard, the procedure mentioned in para 4 of Circular No. 224/18/2024 -GST dated 11th July 2024 may be referred to. However, in cases where the payment towards tax demanded in the demand order has already been made through FORM GST DRC-03, the procedure prescribed in rule 142(2B) may be followed. In such cases, the taxpayer shall be required to file an application in FORM GST DRC-03A as prescribed in the said rule, in order to adjust the amount already paid vide the FORM GST DRC-03, towards the demand created in the ELR-Part II, before filing the application for waiver under Section 128A in FORM GST SPL-02. For the purposes of determining the date of payment of full amount of tax, the date on which the amount has been paid through FORM GST DRC-03 may be considered and not the date on which the said amount has been adjusted using FORM GST DRC-03A.

3.2.3 Such payment shall be made on or before the date notified under section 128A (1), i.e., on or before 31.03.2025. Where applications are filed in respect of cases referred to in the first proviso to sub-section (1) of section 128A, then the applicants shall be required to make the payment on or before the date notified under section 128A (1) specifically for those cases, i.e., within six months of the communication of the order of the proper officer redetermining the amount of tax to be paid under section 73.

3.2.4 In cases where the amount of tax payable as per the notice/ statement/ order includes the amount that was demanded due to contravention of provisions of sub-section (4) of section 16, which is however not payable anymore due to the retrospective insertion of sub-section (5) and sub-section (6) to section 16, the full amount of tax payable as per the notice/ statement/ order as mentioned in sub-section (1) of section 128A for eligibility of waiver of interest or penalty or both shall be calculated after deducting the amount, which is not payable anymore as per sub-sections (5) or sub-section (6) of section 16, as per sub-rule (5) of Rule 164. In this regard, it is also to be mentioned that, where the taxpayer is deducting the amount of input tax credit which was denied on account of contravention of sub-section (4) of section 16, but which is now available as per retrospectively inserted provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act, he is not required to file an application for rectification for the same in terms of the special procedure notified under section 148 vide notification No. 22/2024- Central tax dated 8th October 2024.

3.2.5 It is also clarified that while calculating the amount deductible on account of not being payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be, taxpayer is required to ensure that such amount is deducted only where ITC has been denied solely on account of contravention of Section 16(4) of the CGST Act and not on any other grounds. The tax officer scrutinising such applications is also required to verify that the said amount that has been deducted by the taxpayer as not payable anymore on account of

retrospective insertion of sub-section (5) and sub-section (6) to section 16, was initially denied solely deducted on the basis of contravention of sub-section (4) of section 16, and not on any other grounds.

3.2.6 It is further mentioned that, in cases referred to in sub-rule (3) and sub-rule (4) of rule 164, the applicant can file the application for waiver of interest or penalty or both under section 128A, in respect of a notice/ statement/ order mentioned in sub-section (1) of section 128A, only after payment of full amount of tax demanded in the said notice/ statement/ order, including on account of demand pertaining to erroneous refund, if any, and also on account of demand pertaining to the period other than the period mentioned in sub-section (1) of section 128A, if any, in the said notice/ statement/ order.

3.3 Processing of application and issuance of order:

3.3.1 The proper officer for processing the application for waiver of interest or penalty or both under Section 128A, would be the proper officer to issue the order under section 73, in case the application is filed in FORM GST SPL-01, and would be the proper officer for recovery under Section 79, in case the application is filed in FORM GST SPL-02.

3.3.2 The proper officer on receipt of the application in FORM GST SPL-01 or FORM GST SPL-02, shall examine the said application. If, on examination, he finds that the said application is liable to be rejected, he shall issue a notice to the applicant, within three months from the date of receipt of the said application, in FORM GST SPL-03 on the common portal. The proper officer shall also give the applicant an opportunity of personal hearing.

3.3.3 On receipt of the notice in FORM GST SPL-03, the applicant may file his reply in FORM GST SPL-04, electronically on the common portal, within a period of one month from the date of receipt of the notice.

3.3.4 The proper officer shall issue an order in FORM GST SPL-05, accepting the said application, if he is satisfied that the applicant is eligible for waiver of interest or penalty or both under Section 128A. However, if the proper officer, based on the application and the reply in FORM GST SPL-04 received from the taxpayer, is of the view that the applicant is not eligible for waiver of interest or penalty or both under Section 128A, he shall issue an order in FORM GST SPL-07, rejecting the said application.

3.3.5 The order in FORM GST SPL-05 or FORM GST SPL-07 shall be required to be issued within the time period prescribed in sub-rule (13) of rule 164. In terms of sub-rule (14) of rule 164, in cases where no order is issued within the time limit prescribed in sub-rule (13) of rule 164, the application filed in FORM GST SPL-01 or FORM GST SPL -02, as the case may be, shall be deemed to be approved, and the order in FORM GST SPL-05 approving the said application shall be made available on the common portal.

3.3.6 In cases where an application for waiver of interest or penalty or both was filed in FORM GST SPL-01 and an order approving the said application is issued

by the proper officer in FORM GST SPL-05, then a summary of order in FORM GST DRC-07 need not be issued on the common portal. However, in cases where an order in FORM GST SPL-05 or in FORM GST SPL-06, as the case may be, has been issued approving an application filed in FORM GST SPL-02, the liability earlier created in the ELR – Part II by the demand order or the appellate order, as the case may be, shall stand modified accordingly.

3.3.7 It is also to be mentioned that as per the second proviso to sub-section (1) of Section 128A, the conclusion of proceedings against a demand notice/ statement/ order under this section and further issuance of such conclusion order in FORM GST SPL-05 or in FORM GST SPL-06, as the case may be, in cases where the department had filed an application/ initiated revisional proceedings against the said demand notice/ statement/ order, is conditional upon the payment of additional tax payable, if any, as determined by the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months of issuance of such order. In case, such additional tax is not paid within the specified time limit, then as per sub-rule (16) of Rule 164, the waiver of interest or penalty or both provided under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, shall become void.

3.3.8 Further, while processing the said application, the proper officer shall ensure that the applicant has paid the amount of tax demanded in the notice/ statement/ order referred in subsection (1) of section 128A (other than the amount not payable anymore due to the retrospective insertion of sub-section (5) and sub-section (6) to section 16, as referred in para 3.2.4), including the amount of tax demand pertaining to erroneous refund, if any, and also on account of demand pertaining to the period other than the period mentioned in sub-section (1) of section 128A, if any, in the said notice/ statement/ order. Further, the proper officer shall also keep in consideration that waiver of interest and penalty under section 128A is available only in respect of demand pertaining to the period mentioned in sub-section (1) of section 128A, and the demand on issues other than on account of erroneous refund.

3.3.9 Where it is found that any amount of interest and penalty is payable by the applicant on account of some demand pertaining to the period other than the period mentioned in sub-section (1) of section 128A or pertaining to demand of erroneous refund, the detail of the same shall be mentioned in column no. 19 and column no. 20 of FORM GST SPL-05 or FORM GST SPL06, as the case may be. Further, in such cases, an opportunity of personal hearing may be granted to the applicant, before issuance of order in FORM GST SPL-05 or FORM GST SPL-06.

3.3.10 In cases referred in para 3.3.9, the applicant is required to pay the amount of interest or penalty or both, detailed in column no. 19 and column no. 20 of FORM GST SPL-05 or FORM GST SPL-06, within a period of three months from the date of issuance of the said order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be. In case where the said amount is not paid within the period of three months from the date of issuance of the said order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, the waiver of interest or penalty or both under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, shall become void, as per sub-rule (17) of rule 164.

3.4 Appeal against the orders issued under Rule 164:

3.4.1 No appeal shall lie under section 107, against an order issued in FORM GST SPL-05 concluding the proceedings under section 128A. The order issued in FORM GST SPL-07, rejecting the application for waiver, shall be, however, appealable in accordance with sub-section (1) of section 107 within the time limit specified therein, by filing an application in FORM GST APL-01. In such cases, normally, no pre-deposit may be required to be paid by the taxpayer for filing the said appeal, as the said amount may already have been paid as a part of payment of tax dues involved in the demand notice/ statement / order before filing an application in FORM GST SPL-01 or FORM GST SPL-02. However, in cases where no amount of tax dues has been paid or amount of tax dues paid is less than the requisite amount for pre-deposit for filing appeal as per sub-section (6) of section 107, the remaining amount of pre-deposit will be required to be paid for filing the said appeal.

3.4.2 It is also important to note that the subject matter of the appeal will only be regarding the applicability of waiver of interest or penalty or both under Section 128A and not on the merits of the original notice/ statement/ order.

3.4.3 It is to be mentioned that, in cases where an appeal has been filed by the applicant against the order in FORM GST SPL-07, and the appellate authority holds that the proper officer has wrongly rejected the application, thereby allowing the applicant the benefit of the waiver of interest or penalty or both, the said appellate authority shall pass an order in FORM GST SPL06. This form shall accordingly modify the liability created, if any, in the ELR-Part II.

3.4.4 Where appeal had been withdrawn before filing an application in FORM GST SPL-02, for availing the waiver of interest or penalty or both under Section 128A, but the application for waiver is rejected by the proper officer by issuance of order in FORM GST SPL-07,

- (a) in cases, where the taxpayer prefers an appeal against the said rejection order, and the appellate authority holds that the proper officer has rightly rejected the said application made in FORM GST SPL-02, and issues an order in FORM GST APL-04, then the original appeal filed by the applicant shall be restored, subject to condition that the applicant files an undertaking electronically on the portal in FORM GST SPL-08, that he has neither filed nor intends to file any appeal against such order of the Appellate Authority.
- (b) in cases, where the taxpayer prefers an appeal against the said rejection order, and the appellate authority holds that the proper officer has wrongly rejected the said application made in FORM GST SPL-02, and issues an order in FORM GST SPL-06, thereby holding that the appellant is eligible for waiver of interest or penalty or both, no appeal shall lie against the said order issued in FORM GST SPL-06.
- (c) in case, where the taxpayer does not prefer an appeal within the time period mentioned in sub-section (1) of section 107 against the said rejection order, then the original appeal filed by the applicant shall be restored.

4. Further, the following issues with respect to availing the benefit of waiver of interest or penalty or both provided under Section 128A, are also clarified hereby:

S. No.	Issue	Clarification
1	Whether the benefit provided under Section 128A will be applicable to taxpayers who have paid the tax component in full before the date on which the said section has come into effect?	In this regard, it is to be mentioned that all such amount paid towards the said demand upto the date notified under sub-section (1) of section 128A, irrespective of whether the said payment has been done before Section 128A comes into effect, or after that, and irrespective of whether such payment was made before the issuance of the demand notice or demand order, or after that, shall be considered as paid towards the amount payable in sub-section (1) of Section 128A, as long as the said amount has been paid upto the date notified under sub-section (1) of section 128A and was intended to be paid towards the said demand.
2	Whether amount recovered by the tax officers as tax due from any other person on behalf of the taxpayer, against a particular demand can be considered as tax paid towards the same for the purpose of Section 128A?	Yes. The said amount recovered by the tax officers as tax due from any other person on behalf of the taxpayer against a demand, shall also be considered as the tax paid towards the said demand, for the purpose of section 128A provided the same has been recovered on or before the date notified under sub-section (1) of section 128A.
3	Whether the amount recovered by the tax officers as interest or penalty or both, pertaining to demand under Section 73 pertaining to Financial Years 2017-18, 2018-19 and 2019-20, can be adjusted against the tax amount payable towards the demand made under Section 73 pertaining to the said financial years?	No. It is mentioned that as per the third proviso to sub-section (1) of section 128A, no refund of such amount of interest or penalty or both, is available. Accordingly, any amount paid by the taxpayer or recovered by the tax officers, as interest or penalty cannot be adjusted towards the amount payable as tax.
4	Whether the benefit provided under Section 128A will be	Where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty

	<p><i>applicable in cases, where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty involved?</i></p>	<p><i>involved, the same shall be considered for availing the benefit of section 128A.</i></p> <p><i>However, the benefit of waiver of interest and penalty shall not be applicable in the cases where the interest has been demanded on account of delayed filing of returns, or delayed reporting of any supply in the return, as such interest is related to demand of interest on self-assessed liability and does not pertain to any demand of tax dues and is directly recoverable under sub-section (12) of section 75.</i></p>
5	<p><i>Whether the benefit under Section 128A is available, if the taxpayer intends to avail partial waiver of interest or penalty or both, on certain issues, by making part payment of the amount demanded in the notice/ statement/ order, as the case may be, and opts to litigate for the remaining issues?</i></p>	<p><i>No.</i></p> <p><i>Section 128A (1) clearly provides that the waiver of interest or penalty or both is only applicable when the full amount of tax demanded in the notice/ statement/ order is paid.</i></p>
6	<p><i>Where the notice/order involves multiple periods, ranging from the period for which waiver provided in Section 128A is applicable, and includes some other tax periods for which such waiver is not applicable, whether the benefit of waiver of interest or penalty or both under Section 128A can be availed for the period covered under section 128A?</i></p> <p><i>If so, what is the tax amount payable for</i></p>	<p><i>The taxpayer is eligible to apply for waiver of interest or penalty or both, in such cases where the demand notice/ order spans tax periods covered under Section 128A and those not covered under the said section.</i></p> <p><i>However, as per sub-rule (4) of Rule 164, the taxpayer shall be required to pay the full amount of tax demanded in the notice/ statement / order, as the case may be, to avail the benefit of waiver of interest or penalty or both under Section 128A.</i></p> <p><i>Further, though the amount of tax demanded shall be required to be paid as per the notice/ statement / order, as the case may be, for whole of the period covered under the said notice/ statement / order, but the waiver of interest or penalty or both under section 128A shall only be applicable for the period specified in section 128A, and not for the period not covered under the said section.</i></p>

	<p><i>claiming waiver under Section 128A?</i></p>	<p><i>On payment of the full amount demanded in the notice/ statement/ order, if the proper officer finds that the applicant is eligible for waiver of interest or penalty or both for tax periods covered under Section 128A, he will reduce the liability to that extent in his order in FORM GST SPL-05, and the remaining liability of interest or penalty or both for tax periods not covered under Section 128A, remains payable by the taxpayer.</i></p> <p><i>The said amount shall be required to be paid by the applicant within three months from the date of issuance of order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be. If the said amount is not paid within the time limit as mentioned above, the order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, the waiver of interest or penalty or both under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL06, shall become void, as per sub-rule (17) of rule 164.</i></p>
7	<p><i>Where the notice/ statement/order issued under Section 73 involves multiple issues and one of them is regarding demand of erroneous refund, whether an application can be filed for waiver of interest or penalty or both under Section 128A?</i></p> <p><i>If so, what is the tax amount payable for claiming waiver under Section 128A?</i></p>	<p><i>Yes.</i></p> <p><i>However, as per sub-rule (3) of Rule 164, the taxpayer shall be required to pay the full amount of tax demanded in the notice/ statement / order, as the case may be, including on account of demand of erroneous refund, to avail the benefit of waiver of interest or penalty or both under Section 128A.</i></p> <p><i>Further, in such cases, the waiver of interest or penalty or both under section 128A shall only be available in respect of tax demand other than that pertaining to demand of erroneous refund.</i></p> <p><i>On payment of the full amount demanded in the notice/ statement/ order, if the proper officer finds that the applicant is eligible for waiver of interest or penalty or both for tax periods covered under Section 128A in respect of tax demand other than that pertaining to demand of erroneous refund, he will reduce the liability to that extent in his order in FORM GST SPL-05, and the remaining liability of interest or penalty or both, that corresponds to</i></p>

		<p><i>demand of erroneous refund, remains payable by the applicant.</i></p> <p><i>The said amount shall be required to be paid by the applicant within three months from the date of issuance of order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be. If the said amount is not paid within the time limit as mentioned above, the order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, the waiver of interest or penalty or both under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL06, shall become void, as per sub-rule (17) of rule 164.</i></p>
8	<p><i>In cases where department has filed an appeal against the order mentioned in clause (b) or clause (c) of sub-section (1) of section 128A and the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, has issued an order enhancing the tax liability, and in the meanwhile the proper officer has issued an order in FORM GST SPL-05 under section 128A, and the taxpayer has not paid the said additional amount of tax liability within the specified time limit, what will be the status of the conclusion of proceedings under Section 128A?</i></p>	<p><i>Yes, as per the second proviso to section 128A, the conclusion of proceedings in such cases is subject to the condition that the said person pays the additional amount of tax payable, if any, in accordance with the order of the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months from the date of the said order.</i></p> <p><i>Accordingly, it becomes clear that even in cases where an order in FORM GST SPL-05 or in FORM GST SPL-06 has been issued the conclusion of the said proceedings will be subject to the condition that the taxpayer pays the additional tax amount as determined by the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority by an order issued in the matter of appeal filed by the department, within a period of three months from the date of the such order enhancing the tax liability.</i></p> <p><i>In case such additional payment is not done within a period of three months from the date of the said order, then as per sub-rule (16) of Rule 164, the waiver of interest or penalty or both under section 128A as per the order issued in FORM GST SPL-05 shall become void.</i></p>
9	<p><i>Sub-section (3) of section 128A refers to only appeal or writ petition.</i></p>	<p><i>Yes, in such cases also the applicant will be required to withdraw the said special leave petition and file an application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, along with proof of withdrawal of SLP or</i></p>

	<i>In this regard, whether matters where SLP filed by the applicant is pending before the Supreme Court, what is the procedure to be followed by the taxpayer to avail the waiver of interest or penalty or both?</i>	<i>the copy of the application or any other document filed for withdrawal of SLP, where the order for withdrawal of SLP has not been issued at the time of filing application in FORM GST SPL-01 or FORM GST SPL-02. In such cases, the procedure mentioned in para 3.1.6 may be followed.</i>
10	<i>Whether the benefit provided under Section 128A will be available for matters involving IGST and Compensation Cess?</i>	<i>Yes. On joint reading of section 20 of the Integrated Goods and Services Tax Act, 2017 and section 11 of GST (Compensation to States) Act, 2017 along with section 128A of CGST Act, it becomes clear that the benefit provided under Section 128A of CGST Act will be available for matters involving IGST and compensation cess as well. In this regard, it is mentioned that in such cases, full payment of tax means payment of CGST, SGST, IGST and compensation cess demanded in the notice/ statement/ order, as the case may be.</i>
11	<i>Whether Section 128A covers cases involving demand of irregularly availed transition credit?</i>	<i>The transitional credit is considered to be availed on the date on which the said credit amount is credited in the Electronic Credit Ledger. On reading Rule 121 read with sub-rule (3) of rule 117, it is clear that any demand in respect of transitional credit wrongly availed, whether wholly or partly can be made under section 73 or, as the case may be, section 74. Therefore, it is mentioned that if the amount of transitional credit has been availed in the period covered under Section 128A and notice for demand of wrongly availed credit is issued under section 73, the same is covered under Section 128A.</i>
12	<i>Whether Section 128A will cover waiver of penalties under other provisions, late fee, redemption fine etc?</i>	<i>It is clarified that any penalty, including penalties under section 73, section 122, section 125 etc, demanded under the demand notice/ statement/ order issued under section 73, is covered under the waiver provided under Section 128A.</i>

		<i>However, late fee, redemption fine etc are not covered under the waiver provided under Section 128A.</i>
13	<i>Whether payment to avail waiver under Section 128A can be made by utilizing ITC?</i>	<p><i>Yes.</i></p> <p><i>The payment of tax required to be made for eligibility for waiver under section 128A is the amount of tax demanded in the notice/ statement/ order. Therefore, it can be paid either by debiting from electronic cash ledger or by utilising the Input Tax Credit (ITC), by debiting the electronic credit ledger, or partly from both.</i></p> <p><i>However, where the demand is in respect of any amount of tax to be paid by the recipient under Reverse Charge Mechanism or by the Electronic Commerce Operator under section 9(5), then the said amount shall be required to be paid by debiting the electronic cash ledger only and not through the electronic credit ledger. Further, where the amount has to be paid for demand of erroneous refund, the demand in respect of erroneous refund paid in cash is required to be paid only by debiting the electronic cash ledger only and not through the electronic credit ledger.</i></p>
14	<i>Whether the benefit of waiver under Section 128A be availed qua import IGST payable under the Customs Act, 1962?</i>	<p><i>No.</i></p> <p><i>In such cases, demand is not issued under section 73 of the CGST Act, but is issued under the provisions of Customs Act, 1962 and therefore, such cases are not covered under waiver of interest or penalty or both under section 128A.</i></p>
15	<p><i>With retrospective insertion of sub-sections (5) and (6) to Section 16 of the CGST Act, the tax demanded in notice/ statement/ order reduces.</i></p> <p><i>Whether the entire tax amount demanded in the notice/ statement/ order has</i></p>	<p><i>Sub-rule (5) of rule 164 mentions that the amount payable in order to avail the benefit under section 128A, shall be calculated after deducting the amount not payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be.</i></p> <p><i>Therefore, the applicant is required to pay only the amount that is payable, calculated after deducting the amount not payable in accordance with sub-section (5) or sub-section</i></p>

	<p><i>to be paid in such cases, to avail the benefit under section 128A?</i></p>	<p><i>(6) of Section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be, before submitting the application. While calculating the amount deductible on account of not being payable in accordance with sub-section (5) or sub-section (6) of Section 16, from the amount payable in terms of the notice or statement or order under section 73, as the case may be, taxpayer is required to ensure that such amount is deducted only where ITC has been denied solely on account of contravention of Section 16(4) of the CGST Act and not on any other grounds.</i></p> <p><i>He is also advised to provide a breakup of the amount not payable by him anymore, as per sub-sections (5) and (6) of section 16, in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, to enable the officer to verify the payment easily.</i></p> <p><i>It is also re-iterated that where the taxpayer is deducting the amount of ITC which was denied on account of contravention of sub-section (4) of section 16 of the CGST Act, but which is now available, as per retrospectively inserted provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act, he is not required to file application for rectification in respect of the same as per special procedure notified under Section 148 vide notification No. 22/2024- Central tax dated 8th October 2024.</i></p>
16	<p><i>In case of application in FORM GST SPL-02, where the applicant has paid full or partial amount of tax through FORM GST DRC-03, whether the said applicant is mandatorily required to file application in FORM GST DRC-03A for such tax amount which he desires to get adjusted against tax demand as per FORM GST DRC-07/</i></p>	<p><i>Yes.</i></p> <p><i>In cases where order in FORM GST DRC-07, FORM GST DRC-08 or FORM GST APL-04, as the case may be, has been issued and such taxpayer has paid required amount through FORM GST DRC-03, such applicant is required to adjust the said amount towards the demand created in the Electronic Liability Register, as per the second proviso to sub-rule (2) of rule 164, before filing the application in FORM GST SPL-02.</i></p>

	FORM GST DRC08/ FORM GST APL-04?	
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5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

6. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

7.5. GSTN ADVISORY DATED 08.11.2024 –

ADVISORY FOR WAIVER SCHEME UNDER SECTION 128A Nov 8th, 2024

For reducing the tax disputes and to provide a big relief to the taxpayers, GST Council in its 53rd meeting held on 22nd June, 2024 had recommended for waiver of interest and penalties in the demand notices or orders issued under Section 73 of the CGST Act, 2017 (i.e. the cases not involving fraud, suppression or wilful misstatement, etc.) for the Financial years 2017-18, 2018-19 and 2019-20. To avail this waiver, the condition is that the full tax demanded is paid on or before 31.03.2025.

In view of the above, Rule 164 of CGST rules, 2017 was notified through Notification No. 20/2024 dated. 8th October 2024, effective from 1st November 2024. This rule provides procedural guidelines for the said waiver scheme. As per the waiver scheme, if a notice or order is issued under Section 73 for the financial years 2017-18, 2018-19 and 2019-20, the taxpayers are required to file an application in FORM GST SPL-01 or FORM GST SPL-02, respectively on the common portal within three months from notified date, which is 31.03.2025.

In this regard it is to inform that Form GST SPL-01 and Form GST SPL-02 are under development and same will be made available on the common portal tentatively from the first week of January 2025. In the meantime, taxpayers are advised to pay the tax amount demanded in the notice, statement, or order issued under Section 73 on or before March 31st, 2025, to ensure that they receive the waiver benefits by paying their taxes before the deadline.

Taxpayer can pay the demanded tax amount through the “payment towards demand” facility in case of demand orders and through Form GST DRC-03 in case of notices. However, if payment has already been done through Form GST DRC-03 for any demand order then taxpayer need to link the said Form GST DRC 03 with such demand order through Form GST DRC-03A, which is now available on the common portal.

Thanking You,
Team GSTN

7.6. GSTN ADVISORY DATED 29.12.2024 –

ADVISORY FOR WAIVER SCHEME UNDER SECTION 128A
Dec 29th, 2024

1. Taxpayer's attention is invited to the advisory on the above subject issued by GSTN on 08.11.2024. The link for the said advisory is given here:

<https://services.gst.gov.in/services/advisoryandreleases/read/546>

2. Under the waiver scheme, for a demand notice or statement or order which has been issued under Section 73 for the tax periods between July 2017 & March 2020, the taxpayers are required to file an application either in FORM GST SPL-01 or SPL02 in GST portal accordingly. **Presently, Form GST SPL 02 is made available in the GST portal. Form GST SPL 01 will be available soon in the GST portal.**

3. The process of filing SPL-02 electronically is detailed in below document:

https://tutorial.gst.gov.in/downloads/news/help_document_on_filing_of_spl_02.pdf

4. Difficulty if any faced by the taxpayers may be reported to <https://selfservice.gstsystem.in> by raising a ticket under category **"Issues related to Waiver Scheme"**.

Thanking You,
Team GSTN

7.7. GSTN ADVISORY DATED 14.01.2025 –

ADVISORY FOR WAIVER SCHEME UNDER SECTION 128A
Jan 14th, 2025

1. Taxpayer's attention is invited to the advisory on the above subject issued by GSTN on 29.12.2024. The link for the said advisory is given here:

<https://services.gst.gov.in/services/advisoryandreleases/read/564>

2. It is to inform that both **Forms GST SPL 01 and GST SPL 02 are available in the GST portal** and the taxpayers are advised to file applications under waiver scheme.

3. *One of the eligible conditions for filing application under waiver scheme is to withdraw the appeal applications filed against the demand order/notice/statement for which waiver application is to be submitted. In this regard, it is to inform that for the appeal applications (APL 01) filed before First Appellate authority, withdrawal option is already available in the GST portal. However, for the appeal applications (APL 01) filed before 21.03.2023, withdrawal option is not available in GST portal. For such cases, the taxpayers are advised to submit their request for withdrawal of appeal applications to the concerned Appellate Authority. The Appellate authority will forward such requests to GSTN through State Nodal officer for withdrawal of such appeal applications (i.e. filed before 21.03.2023 and not disposed off) from backend.*
4. *Difficulty if any faced by the taxpayers may be reported to <https://selfservice.gstsystem.in> by raising a ticket under category **“Issues related to Waiver Scheme”**.*

*Thanking You,
Team GSTN*

AUTHOR



Anmol Gupta is an expert in indirect taxation, with extensive experience in handling complex litigation matters. Throughout his distinguished career, he has independently managed a variety of tax disputes - drafting persuasive replies and appeals and successfully representing clients before numerous tax authorities.

Anmol Gupta serves as the Chairman of the GST Committee at the Progressive Federation of Trade & Industry (PFTI) and as the Convenor of the GST Chapter in Gurugram for the Federation of Indian Industry (FII).

A speaker and prolific writer, Anmol has delivered numerous lectures at ICAI and other professional forums. His insights have enriched several co-authored publications, and his research-oriented articles addressing critical and debated issues in indirect taxation have been featured on leading platforms and in esteemed journals.

In this book, Anmol Gupta distills his vast practical experience and deep knowledge of GST, offering readers a comprehensive and insightful guide that bridges theoretical understanding with real-world application.



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