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CLARIFICATIONS ON AVAILING BENEFITS OF GST AMNESTY SCHEME UNDER SECTION 128A OF CGST ACT AND RULE 164 OF THE CGST RULES

The GST council, in its 53rd meeting, recommended insertion of Section 128A in CGST Act, to provide for conditional waiver of interest or penalty or both, relating to demands raised under Section 73, for July 2017 to March 2018, FY 2018-19 and 2019-20, considering the difficulties faced by the taxpayers, during the initial years of implementation of GST.

Thus, Section 128A in the CGST Act was inserted vide Finance (No. 2) Act, to provide for a conditional waiver of interest and penalty in respect of demand notices issued under Section 73 of the CGST Act for the Financial Years 2017-18, 2018-19 and 2019-20, except the demand notices in respect of erroneous refund. In cases where interest and penalty have already been paid in respect of any demand for the said financial years, no refund shall be admissible for the same.

Further, Rule 164 of the CGST Rules inserted vide **Notification No. 20/2024 dated October 08, 2024 w.e.f November 11, 2024** prescribes the procedure and conditions relating to filing of application for claiming relief by way of waiver of interest and penalty under Section 128A of the CGST Act for demand raised under Section 73 of the CGST Act.

Further, the Government vide **Notification No. 21/2024-central tax dated October 08, 2024 w.e.f November 11, 2024**, notified the time limit for payment of tax to avail benefit of waiver of interest and penalty under Section 128A.

Furthermore, the CBIC vide **Circular no. 238/32/2024-GST dated October 15, 2024** (“Circular No. 238”) issued clarification on various issues for claiming benefit of waiver of interest and penalty under Section 128A for demand raised under Section 73 of the CGST Act.

Thereafter, now the Government vide **Notification No. 11/2025 dated March 27, 2025**, introduced amendment in sub-rule (4) and sub-rule (7) of rule 164 of the CGST Rules.

As per amended sub-rule (4) of the Rule 164 of the CGST Rules, the Appellant is required to make payment only for specified Period applicable for Section 128A of the CGST Act, specifically demand raised under Section 73 of the CGST Act for the period of July 2017 to March 2018, FY 2018-19 and 2019-20.

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As per Explanation inserted in Rule 164(4) of the CGST Rules vide aforesaid notification, no refund shall be available for any tax, interest, and penalty, which has already been discharged for the entire period, prior 27-03-2025 to the commencement of the Central Goods and Services Tax (Second Amendment) Rules, 2025 i.e. 27-03-2025, in cases where a notice or statement or order mentioned in sub-section (1) of section 128A, includes a demand of tax, partially for the period mentioned in the said sub-section and partially for a period other than mentioned in the said sub-section.

Further, as per sub-rule (7) of Rule 164 of the CGST Rules, the proviso has been inserted, which clearly state that where the notice or statement or order mentioned in sub-section(1) of section 128A of the CGST Act 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, the applicant instead of withdrawing the appeal, shall intimate the appellate authority or Appellate Tribunal that he does not wish to pursue the appeal for the period mentioned in the said sub-section and the relevant authority shall, after taking note of the said request, pass such order for the period other than that mentioned in the said sub-section, as he thinks just and proper. Furthermore, as per the explanation, and same would be considered as withdrawal of appeal for the purpose stated under sub-clause (3) of Section 128A, for the period of July 2017 to March 2018, FY 2018-19 and 2019-20.

Also, clarification was issued by CBIC vide ***Circular No. 248/05/2025-GST dated March 27, 2025*** (“Circular”) to provide clarifications on the difficulties faced by the taxpayer.

There are two amendments to the GST Amnesty Scheme under Section 128A read with Rule 164 of the CGST Rules and Circular No. 238. The first amendment relates to payment of GST tax demand using GSTR-3B. It must be noted that Section 128A came into force from November 1, 2024. So, the Circular now says if a taxpayer has made payment through GSTR-3B before November 1, 2024 then he/she would be eligible to apply for GST Amnesty Scheme.

However, if the payment has been made after November 1, 2024, then this payment to be done in a manner and application be filed thereafter, as suggested in the table below:

| Provisions | Cases | Due-Date of | Mode of | Waiver | Time-Period of |
|------------|-------|-------------|---------|--------|----------------|
|------------|-------|-------------|---------|--------|----------------|

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| covered under Section 128A(1) of the CGST Act | covered under the provision | making payment | Making payment | Application to be filed under Section 128A of the CGST | filing Waiver Application |
|---|---|----------------|--|--|---|
| Clause (a) | Notice/ Statement issued u/s 73, but no adjudication order passed | 31-03-2025 | Form GST DRC-03 | Form GST SPL-01 | Within 3 months from March 31, 2025 i.e. 30-06-2025 |
| Clause (b) | Adjudication order passed u/s 73, but no Order in Appeal (OIA) passed | 31-03-2025 | Payment to be made by crediting to E-Liability Register (ELR) against the debit entry created by the said impugned order If any amount paid vide Form GST DRC-03, | Form GST SPL-02 | Within 3 months from March 31, 2025 i.e. 30-06-2025 |

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| | | | | | |
|------------|--|------------|--|--------------------|---|
| | | | then, file Form GST DRC-03A to get adjusted demanded amount of tax in ELR | | |
| Clause (c) | OIA passed but no GST Tribunal Order passed <i>(no tribunal formed as yet)</i> | 31-03-2025 | Payment to be made by crediting to E-Liability Register (ELR) against the debit entry created by the said impugned order If any amount paid vide Form GST DRC-03, then, file Form GST DRC-03A to get adjusted | Form GST SPL-02 | Within 3 months from March 31, 2025 i.e.30-06-2025 |

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| | | | demanded amount of tax in ELR | | |
|-------------------------|---|--|--|-----------------|---|
| 1 st Proviso | Notice issued u/s 74 (Fraud Case), but Order is passed or is to be passed u/s 73 (Non-Fraud Case) on the direction of Appellate Authority or Tribunal or Court [S. 75(2)] | Within 6 months of redetermined order u/s 73 | Payment to be made by crediting to E-Liability Register (ELR) against the debit entry created by the said impugned order If any amount paid vide Form GST DRC-03, then, file Form GST DRC-03A to get adjusted demanded amount of tax in ELR | Form GST SPL-02 | Within 6 months from the date of communication of the order of the proper officer redetermining such tax under section 73 |

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| | | | | | |
|-------------------------|--|---|--|-----------------|---|
| 2 nd Proviso | Revision in OIA or appeal by the Department before the First Appellate Authority or Tribunal, if any additional tax determined | Pay within 3 months of the order passed | Payment to be made by crediting to E-Liability Register (ELR) against the debit entry created by the said impugned order If any amount paid vide Form GST DRC-03, then, file Form GST DRC-03A to get adjusted demanded amount of tax in ELR | Form GST SPL-02 | Within 3 months from the date of communication of the said appellate or revision order. |
|-------------------------|--|---|--|-----------------|---|

Second clarification has been issued, in relation to as to whether the entire amount of tax demanded is required to be discharged and whether the appeal is required to be withdrawn for the entire period, where notices/statements/orders issued to taxpayers, pertains to period

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covered partially under Section 128A and partially by those outside it.

Thus, amending the earlier clarification as provided by Circular No. 238, it is clarified that in cases where the notice/statement or order etc. pertains to the period partially covered under Section 128A, Rule 164(4) and proviso to Rule 164(7) of the CGST Rules have been amended to allow the taxpayer to file an application under Form SPL-01 or Form SPL-02 be after making payment of his tax liability for the periods covered under Section 128A. The taxpayer after filing Form SPL-01 or Form SPL-02 as the case may, shall intimate the appellate authority or Tribunal his intent to avail the benefit of Section 128A and that he does not intend to pursue the appeal for the period covered under the said Section i.e., July 2017 to March 2018, FY 2018-19 and 2019-20. The Appellate Authority or Appellate Tribunal as the case may, shall after taking note of the said request, pass such order for the period other than that mentioned in the said sub-section, as it thinks just and proper.

Also, the earlier clarification issued vide point 6 of the Table at para 4 of *Circular No. 238/32/2024-GST dated October 15, 2024*, on the said issue is withdrawn.

Thus, after the said conditions are fulfilled by the Applicant falling in the aforesaid case, the Applicant is thereafter, required to file the application in the manner stated in the aforesaid table.

For detailed analysis, Please watch or video on "**Clarifications on Availing Benefits of GST Amnesty Scheme u/s 128A of CGST Act and Rule 164 by CA (Adv) Bimal Jain at: https://www.youtube.com/watch?v=dz9qYgMEgOQ&ab_channel=CABimalJain**

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