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## Time-limit for filing waiver application of interest and penalty under Section 128A is directory, not mandatory

The Hon'ble Karnataka High Court in the case of *Sri Laxmi Borewell Agencies v. Assistant Commissioner of Central Tax & Anr. [WP No. 102773 of 2026 (T-Res), order dated April 17, 2026]* held that the time-limit prescribed for filing an application under Section 128A of the CGST Act for waiver of interest/penalty is directory and not mandatory, and rejection of such application solely on the ground of delay is untenable.

### Facts:

M/s. Sri Laxmi Borewell Agencies (**'the Petitioner'**) is engaged in the business of work contract services for drilling bore wells and is registered under GST.

The Assistant Commissioner of Central Tax & Anr. (**'the Respondent'**) conducted audit proceedings and subsequently issued show cause notice and passed Order-in-Original confirming interest liability under Section 50(1) of the CGST Act.

The Petitioner contended that, they had paid the entire tax liability determined during audit via DRC-03. The Order-in-Original confirming interest demand was neither served nor uploaded on the GST portal and, upon becoming aware of the demand, they filed an application under Section 128A for waiver of interest. The rejection of such application solely on the ground of delay is arbitrary and contrary to the scheme of Section 128A.

The Respondent contended that the waiver application ought to have been filed within three months from the notified date i.e., March 31, 2025, and since the Petitioner filed the application on July 18, 2025, the same was liable to be rejected as time-barred.

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Aggrieved by the rejection of its waiver application through FORM GST SPL-07 dated November 03, 2025, the Petitioner approached the Hon'ble High Court by way of a writ petition seeking quashing of the rejection order and consequential reliefs.

## Issue:

Whether the time-limit prescribed for filing an application under Section 128A of the CGST Act is mandatory, such that delay would render the application liable to rejection?

## Held:

The Hon'ble Karnataka High Court in **WP No. 102773 of 2026 (T-Res)** held as under:

- Observed that, *Notification No. 21/2024-Central Tax dated October 08, 2024* provides that any person who wishes to file an application may do so within a period of three months from the notified date. The expression "may" used in the provision is enabling and directory in nature, and not mandatory.
- Observed that, the department erred in interpreting the provision as a strict time-bound obligation and rejecting the application solely on the ground of delay.
- Held that, such rejection is untenable in law and directed that, FORM GST SPL-07 rejecting the application is quashed.
- Further directed the Respondent to consider the Petitioner's application dated July 18, 2025 in accordance with law and the Show Cause Notice, DRC-01 summary, and Order-in-Original shall be kept in abeyance till such consideration.

## Our Comments:

The present judgment interprets Section 128A read with Notification No.21/2024-Central Tax dated October 08, 2024 and Rule 164 of the CGST Rules, 2017. The Court places emphasis on

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the use of the term “may”, holding it to be directory, thereby rejecting a rigid limitation-based interpretation. The reasoning reflects the purposive interpretation of amnesty provisions introduced pursuant to the 53<sup>rd</sup> GST Council recommendations, which goes to say that the considering the difficulties faced by the taxpayers, during the initial years of implementation of GST, the GST Council recommended, waiving interest and penalties for demand notices issued under Section 73 of the CGST Act for the fiscal years 2017-18, 2018-19 and 2019-20, in cases where the taxpayer pays the full amount of tax demanded in the notice upto 31.03.2025. The waiver does not cover demand of erroneous refunds. To implement this, the GST Council has recommended insertion of Section 128A in CGST Act, 2017

## **Relevant Provisions:**

### **Section 128A of the CGST Act, 2017**

*“Section 128A. Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods.-*

*(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*

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*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:*

*...”*

**Rule 164, the CGST Rules, 2017 (inserted w.e.f. 01.11.2024):**

***“164. Procedure and conditions for closure of proceedings under section 128A in respect of demands issued under section 73.–***

*(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*

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*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 [related to period mentioned in the said sub-section and] demanded in the said notice or statement or order, on or before the date notified under the said sub-section.*

*Explanation, - No refund shall be available for any tax, interest, and penalty, which has already been discharged for the entire period, prior to the commencement of the Central Goods and Services Tax (Second Amendment) Rules, 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.*

*(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.*

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*(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.*

*Provided further that where the notice or statement or order mentioned in sub-section (1) of section 128A of the 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.*

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*Explanation,— For the removal of doubt, it is clarified that the appeal application shall be deemed to have been withdrawn to the extent of the said intimate ion for the period from the 1st July, 2017 to the 31st March, 2020 or part thereof, for the purpose of sub-clause (3) of section 128A.”*

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*(Author can be reached at [info@a2ztaxcorp.com](mailto:info@a2ztaxcorp.com))*

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