

Clarificatory Circular issued on section 128A of the Central Goods and Services Tax Act

Section 128A of the Central Goods and Services Tax Act 2017 (The Act) was inserted vide section 146 of Finance (No. 2) Act 2024, which provides for a conditional waiver of interest or penalty or both for demands that are raised under section 73 the Act. The benefit of this Amnesty Scheme extends for Financial Years commencing from 2017-18 to 2019-20.

In order to clarify various doubts relating to the amendment and to ensure uniformity in the implementation of the section, the Central Board of Indirect Taxes and Customs issued certain clarifications and guidelines on 15th October 2024, which are summarised hereunder.

Filing Application:

Category	Cases covered	Form required to be filed
A	where a show cause notice or a statement of tax not paid has been issued u/s 73 of the Act, demanding tax, for which no order has been passed.	Form GST SPL 01
B	Where tax payable by taxpayer has been determined after considering the representation of the taxpayer, but no order has been issued by the Appellate Authority/ Revisional Authority.	Form GST SPL 02
C	Where an order has been issued by an Appellate Authority/ Revisional Authority, in cases where notice/ statement was issued u/s 73, but then no order has been passed by the Appellate Tribunal.	Form GST SPL 02

Conditions to be fulfilled:

- The application for the amnesty scheme has to be filed within three months from 31st March 2025 (i.e., 30th June 2025).
- However, for cases which involve re-determination of a case from fraud to a non-fraud case, the deadline is six months from the date on which the re-determination order is communicated.
- Where an appeal or a writ petition has been preferred by the taxpayer against the orders that are amenable to the amnesty scheme, then such appeal needs to be withdrawn before making an application under this Amnesty Scheme and a proof for such withdrawal must be uploaded along with the application form.

- Where multiple notices /statements/ demands have been issued u/s 73 of the Act, the taxpayer is required to file an application in the respective form for each of the notices /statements/ demands so issued.

Mode of Payment of Taxes:

Category	Mode of payment
A	Payment to be made through Form GST DRC 03
B	By making payment against the debit entry created in the Part II of the Electronic Liability Register (ELR) by the demand order.
C	By making payment against the debit entry created in the Part II of the ELR by the demand order.

- In cases where the taxpayer, whose case is covered under Category B or C, has paid the liability through Form GST DRC 03 the taxpayer shall be required to file an application in FORM GST DRC-03A, in order to adjust the amount already paid vide the FORM GST DRC-03, towards the demand created in the ELR-Part II.
- This needs to be done before filing an application in FORM GST SPL-02.
- The date of payment of full amount of tax will be the date on which the amount has been paid through Form GST DRC-03.

Processing of Application and Relevant Forms:

Stages		Relevant Form
1.	The proper officer may reject the application, within three months from the date of receipt of the said application after giving an opportunity of personal hearing to the applicant.	Form GST SPL 03
2.	The applicant can file a reply to Form GST SPL 03 within one month from the date of receipt of the notice	Form GST SPL 04
3.	The proper officer shall issue an order, accepting the said application, if he is satisfied that the applicant is eligible for waiver of interest or penalty or both u/s 128A of the Act.	Form GST SPL 05
4.	The proper officer may reject the application of he is of the view that applicant is not eligible for	FORM GST SPL-07

	waiver of interest or penalty or both u/s 128A of the Act.	
5.	Order passed on conclusion of the proceedings	FORM GST SPL-06

Appeal against orders issued under Rule 164:

- No appeal can be preferred by the taxpayer against an order issued in form GST SPL 05 (acceptance of the application).
- But an appeal can be preferred against orders issued in form GST SPL 07 (rejection of application) regarding the applicability of waiver of interest or penalty or both u/s 128A and not on the merits of the original notice/ statement/ order.

Other Clarifications:

- Any amount of tax demanded which is paid by the taxpayer even before the introduction of section 128A of the Act will be considered for making an application under the Amnesty Scheme.
- The amount of tax recovered from other persons on behalf of the applicant shall be considered as tax paid towards the said demand.
- If the taxpayer has already paid interest or penalty or both, then it can neither be refunded nor be adjusted towards the amount payable as tax.
- Where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest or penalty involved, the same can be considered for availing the benefit of section 128A.
- However, the benefit of waiver of interest and penalty shall not be applicable where the interest has been demanded either due to delayed filing of returns, or due to delayed reporting of any supply in the return.
- Partial waiver of interest or penalty after paying part of the demand will not be allowed under this scheme.

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