



CA Vinamar Gupta

Amnesty Scheme for Waiver of Interest/Penalty

Applicable for Periods 2017-18, 2018-19 and
2019-20

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,—

Comments:

1. Section 128A overrides the entire GST law
2. It is applicable only where tax is payable and is not applicable where tax is not payable. Only exception is cases falling under Instruction 2/2205 dated 08-02-2015
3. Section 128A is applicable only for person chargeable with tax. Tax recovered from other persons under garnishee proceedings also covered by amnesty scheme [Para 4.2 of Cir. 238/32/2024 dated 15-10-24]
4. Section 128A applies to matters involving IGST/Cess also [Para 4.10 of Cir. 238/32/2024 dated 15-10-24]
5. Transitional Credit issued are also covered [Para 4.11 of Cir. 238/32/2024 dated 15-10-24]
6. Amnesty does not cover the IGST on imports. In such cases, demand is not issued under section 73 of the CGST Act, but is issued under the provisions of Customs Act, 1962 [Para 4.14 of Cir. 238/32/2024 dated 15-10-24]

Cases where Notice u/s 73 only issued without order

(a) a notice issued under sub-section (1) of section 73 (SCN) or a statement issued under sub-section (3) of section 73 (Summary statement of charges for other tax periods on same grounds) , and

where no order under sub-section (9) of section 73 has been issued; or

Form and details to be filed for 128A(1)(a) [R.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.

Cases where O-I-O has been issued but
no order passed by FAA/Revisional

Authority

(b) an order passed under sub-
section (9) of section 73

(adjudicating authority), and

where no order under sub-section
(11) of section 107 (First Appellate

Authority) or sub-section (1) of

section 108 (revisional authority)

has been passed; or

Cases where Order passed by FAA/RA
but no order passed by GSTAT

- (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,

Form and details where order passed by AA/FAA/RA [R.164(2)]

- (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 subsection (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:

Credit to Electronic Liability ledger by
payment against debit entry [first

Proviso to R.164(2)]

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:

Credit through application in DRC-03A [2nd Proviso to R.164(2)]

- **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**.

Application in DRC-03A for appropriating credit through DRC-03 against debit entry [R.142(2B)]

*Where an amount of tax, interest, penalty or any other amount payable by a person under section 52 or section 73 or section 74 or section 74A] or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, has been paid by the said person **through an intimation in FORM GST DRC-03 under sub-rule (2)**, instead of crediting the said amount in the electronic liability register in **FORM GST PMT - 01** against the debit entry created for the said demand, the said person may file **an application in FORM GST DRC-03A** electronically on the common portal, and the amount so paid and intimated through **FORM GST DRC-03** shall be credited in Electronic Liability Register in **FORM GST 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**:*

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/ FORM GST DRC-08/ FORM GST APL-04**? [Para 4.16 of Cir 238/32/2024 dated 15-10-24]

- Yes.
- 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**.

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 [31-03-25 as per 53rd GST Council minutes],**

- 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**

Where charges of fraud etc. are not established [1st Proviso to S. 128A(1)]

Provided that where a notice has been issued under subsection (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 court in accordance with the provisions of sub-section (2) of section 75, (Conversion of proceedings from fraud etc. to non fraud) 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

Why notice/order shall not be considered to covered by 128A(1)(c)

Ans: Because above proviso to talks about direction of FAA/GSTAT/court, while 128A(1)© is applicable to non issue of order of GSTAT.

Date Notified by NN 21/2024-CT dated 8-10-24

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

<i>Sl. No.</i>	<i>Class of registered person</i>	<i>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</i>
(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.	31-3-2025
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 person, deeming as if the notice were issued under sub-section (1) of section 73 of the said Act.	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.

2. This notification shall come into effect from the 1st day of November, 2024.

Comments on Time limits for making tax payment

- For notices/orders under 73 while there is time limit to pay tax till 31-03-2025.
- There is no such time limit for redetermination order passed due to directions issued u/s 75(2)

Time limit for filing application [R.164(6)]

- (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.

Payment of tax on with in 3 months where tax becomes payable due to revenue appeal [2nd Proviso to Section 128A(1)]

- 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:

Analysis of 2nd proviso to Section 128A

- If say matter is decided in favour by AA
- Order of AA is reviewed u/s 107(2) and appeal is filed by revenue u/s 107(3) before FAA
- FAA passes and order against registered person
- Due to order of FAA additional tax becomes payable by registered person
- Registered person pays the additional tax with in 3 months from the date of order of FAA
- Registered person can avail the amnesty scheme without payment of interest/penalty.
- There is no specified date for availing amenesty in such matters and it is open ended

Consequence of Additional Tax not paid in time limit [R. 164(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.

Clarification regarding additional tax in Para 4.8 of Cir 238/32/2024 dated 15- 10-24]

- 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?

- 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.
- 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.
- 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

No refund of Interest/penalty already
paid [3rd Proviso]

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

Amnesty is not applicable for erroneous refunds [S.128A(2)]

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

Withdrawal of appeal/writ mandatory for availing amnesty [S.128A(3)]

- (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).**

As per Para 4.9 of Circular 238/32/2024 dtd . 15-10-24. if SLP is pending before SC, then SLP also needs to be withdrawn

Evidence of Withdrawal to accompany amnesty application SPL-01/02 [R. 164(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

Filing of Belated Order of Withdrawal issued [Proviso to R. 164(7)]

- **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**

Appeals by assessee barred against orders of AA/FAA

(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**

Comments: No bar against revenue filing appeal u/s 107(3)/112(4). Settlement of un favourable order by resorting to 2nd proviso to S.128A by making payment of additional tax within 3 months

Instruction 2/2205 dated 07-02-2025
for clarification on matters where
department agitating interest/penalty

Whether the benefit of section 128A be
extended to taxpayers in cases where the tax
amount has been paid but the department has
gone in Appeal on the basis of wrong arithmetic
calculation of interest, or where penalty is either
not imposed or imposed less than the
prescribed threshold etc. ?

- **3.** The matter has been examined by the Board. It has been observed that at Sl. No. 4 of the Table under para 4 in the aforesaid circular, it is clarified that 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, the same shall be considered for availing the benefit of section 128A.** Hence, it is evident that in cases where the taxpayer has paid the full amount of tax and only interest and/or penalty is in dispute by the taxpayer, then he is eligible to avail the benefit of Section 128A of the CGST Act. On the similar pattern, it is felt that just because the department has gone in appeal or is in the process of filing an appeal, a taxpayer who is otherwise eligible for availing the benefit of section 128A, should not be denied the benefits. Further the intention of the said provision is to reduce litigation and a taxpayer should not be denied the benefit of the provision on mere technicalities.
- **4.** Based on the above, it is decided that in cases where the tax amount has been fully paid by the taxpayer on demands made under section 73 of the CGST Act and the department is in appeal or under the process of filing an appeal only on account of wrong interest calculation and/or wrong imposition or non-imposition of penalty amount under the provisions of CGST Act or IGST Act and the taxpayer fulfils other conditions of section 128A and the rules made thereunder, the proper officer may proceed towards withdrawing such appeal filed and in case where the order under section 73 is under review stage only, accept the same.

Full payment of tax to be made where partially ineligible demand i.e. Erroneous Refunds/Period not covered by S.128A involved [R. 164(3)/(4)]

- (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.

Payment of Interest/Penalty on ineligible cases [R.164(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.
- The same issue has been clarified in Para 4.6 and 4.7 of Cir 238/32/2024 dated 15-10-24 also.

Deduction allowed for Belated credit of ITC allowed under 16(5)/16(6) [R. 164(5) & Para 4.15 of Cir 238/32/2024]

R. 164 (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.

Para 4.15 of Cir 238/32/2024

- 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
- 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.

SCN for rejection of amnesty application SPL-01/02 [R.164(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.

Reply to SCN [R. 164(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.

Concluding Order [R.164(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

Consequential Effect of SPL-05

[R.164(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.

Rejection Order [R.164(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.

Time limits for Issue of approval/rejection order

- (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.

Deemed approval [R.164(14)]

- (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.

Restoration of Original appeal after expiry of time limit for filing appeal against rejection order [R.164(15)(a)]

- (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.

Appeal filed against rejection order [R.164(15)(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.

Proper Officer

- *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."

Multiple notices/order for period [Circular 238/32/2024 dtd. 15-10-24]

Para 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.

Taxes paid before effective date of section 128 to be considered

[Para 4.1 of Circular 238/32/2024 dtd. 15-10-24]

- In this regard, it is to be mentioned that all such amount paid towards the said demand up to 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.

Recovery of tax from other persons before notified date to be considered [Para 4.2 of Circular 238/32/2024 dtd. 15-10-24]

- 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.**

Interest/Penalty recovered not to be appropriated towards tax [Para 4.3 of Cir 238/32/2024 dtd 15-10-24]

- 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.

Waiver of Interest/Penalty to be allowed where tax already paid [Para 4.4 of Circular 238/32/2024 dated 15-10-24]

- 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, the same shall be considered for availing the benefit of section 128A.

Waiver of Interest not pertaining to tax dues not available [Para 4.4 of Cir 238/2024 dated 15-10-24]

- 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.

Partial Waiver not allowed [Para 4.5 of Circular 238/32/2024 dated 15-10-24]

- 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.
- 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, then it is not allowed

Waiver of Penalty, late fee, redemption fine [Para 4.12 of Cir 238/32/2024 dated 15-10-24]

- Whether Section 128A will cover waiver of penalties under other provisions, late fee, redemption fine etc?
- 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.
- However, late fee, redemption fine etc are not covered under the waiver provided under Section 128A.

Mode of Payment under Amnesty

[Para 4.13 of Cir 238/32/2024 dated
15-10-24]

- 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.
- 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.



**Thank
you**