
Amnesty Schemes under GST

22nd November 2024

Amnesty Schemes

- *Delayed availment of input tax credit*
- *Input tax credit during period under cancellation of registration subsequently restored*
- *Waiver of interest and penalty*

Delayed availment of input tax credit : S. 16(5)

- ***(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed upto the thirtieth day of November, 2021.***
 - ITC for invoices or debit notes pertaining to FY 2017-18, 2018-19, 2019-20 & 2020-21
 - Availed in Form GSTR 3B
 - Filed up to 30th November 2021, is eligible for credit

ITC during cancellation of registration : S 16(6)

- ***(6) Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,—***

(i) filed upto thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration,

Whichever is later

ITC during cancellation of registration : S 16(6)

- In case of registration cancelled and revoked subsequently, and
- Where ITC on any invoice/debit note was not restricted under 16(4) on date of order of cancellation
- ITC shall be available on such invoice/debit note in GSTR 3B, :
 - Filed upto 30th November following end of FY of such invoice/debit note,
 - Within 30 days of revocation of GST registration certificate, **whichever is later**

Amnesty Scheme: Section 16 (5) & 16(6)

- **Where no demand notice/statement has been issued under section 73 or 74 including intimation in FORM DRC-01A**
 - Proper Officer shall take cognizance under section 16(5) and (6)
- **Where demand notice/ statement under section 73 or 74 has been issued but no order has been issued by the Adjudicating Authority**
 - Adjudicating Authority shall take cognizance under section 16(5) and (6) and pass order in section 73 or 74
- **Where order under section 73 or 74 has been issued and appeal has been filed under section 107 with the Appellate Authority but no order under section 107 has been issued by the Appellate Authority**
 - Appellate Authority shall take cognizance of section 16(5) and (6) and pass appropriate order under section 107

Amnesty Scheme: Section 16 (5) & 16(6)

- **Where order under section 73 or 74 has been issued and Revisional Authority has initiated proceedings under section 108 but no order under section 108 has been issued by the Revisional Authority**
 - Revisional Authority shall take cognizance of section 16(5) and (6) and pass appropriate order under section 108

- **Where an order under section 73,74,107 or 108 has been issued but no appeal has been filed**
 - Taxpayer may apply for rectification under special procedure as per Notification No. 22/2024 Central Tax dt. 08th October 2024
 - Rectification application to be filed within six months from 08th October 2024
 - Along with such application, information to be uploaded as per Annexure A to the Notification

Amnesty Scheme: Section 16 (5) & 16(6)

- No refunds of tax paid or ITC reversed due to contraventions of section 16(4) already made, even if that credit is now available under section 16(5) or (6).

Section 150 of the Finance (No. 2) Act, 2024

- However, restriction of refund would not apply to pre deposit made by taxpayer for filing Appeal before Appellate Authority or Appellate Tribunal, where such appeals are decided in favor of taxpayer.

Amnesty Scheme: Section 128A of the CGST Act

- ***(1) Notwithstanding anything to the contrary contained in this Act,***
 - Starts with a non obstante clause i.e. this provision would prevail over any other contrary provision of the CGST Act

- ***where any amount of tax is payable by a person chargeable with tax in accordance with,—***
 - Does tax should actually be payable on the date of application?
 - All taxes paid before 31st March 2025 shall be considered
 - Tax would include IGST & Compensation Cess
 - Amount recovered from any other person on behalf of taxpayer before 31st March 2025 can also be considered as tax paid under 128A

Amnesty Scheme: Section 128A of the CGST Act

- ***(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***
 - SCN or statement issued under 73(1) or 73(3) but no order passed
 - Not applicable to notice or statement issued under section 74 i.e. where allegations of fraud, suppression or willful misstatement have been alleged

- ***(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***
 - Adjudication order has been passed but no appellate or revisional order has been passed
 - No requirement that an appeal was actually filed i.e. applicable even if the time limit for filing appeal has passed and no appeal was filed

Amnesty Scheme: Section 128A of the CGST Act

- ***(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,***
 - Appeal or revisional order has been passed but no order passed by the GST Tribunal

- ***pertaining to the period from 1st July, 2017 to 31st March, 2020, or a part thereof,***
 - The dispute should pertain to the period from 1st July 2017 to 31st March 2020
 - If notice covers period beyond stated above, the waiver would be available only for the above period
 - Interest or penalty or both for other periods to be paid within three months from order under the scheme, else waiver granted would become void

Amnesty Scheme: Section 128A of the CGST Act

- ***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,***
 - Waiver would be subject to full payment of tax as per the notice or statement or the order
 - If notice or statement or the order covers period beyond the amnesty scheme, full amount of tax, interest and penalty would be payable for the period not covered by the scheme
 - All issues in the notice etc. would have to be covered
 - Amount payable under this scheme would be computed after deducting relief available under section 16(5) or 16(6)
 - However, no deduction of demand of ITC due to any other reason would be made
 - Taxpayer not required to file rectification for relief in 16(5) & 16(6)

Amnesty Scheme: Section 128A of the CGST Act

- ***on or before the date, as may be notified by the Government on the recommendations of the Council,***
 - Notification No. 21/2024-Central Tax dated 8th October 2024 has notified
 - 31st March 2025 for notice, statement or the order
 - 6 months from the date of redetermination order
 - Application to be filed electronically against SCN/Statement in GST SPL – 01 within three months from 31st March 2025
 - Along with details of tax paid in DRC 03 up to 31st March 2025
 - Application against adjudication or appellate order to be filed electronically in GST SPL – 02, within six months from date of communication of redetermination order
 - Payment to be made by crediting the electronic liability ledger against the debit entry created by the order within six months from date of communication of redetermination order

Amnesty Scheme: Section 128A of the CGST Act

- If payment was already made in DRC 03, an application in DRC 03A for debit against the debit entry created for that demand
- ***no interest under section 50 and penalty under this Act, shall be payable and***
 - Entire amount of interest and penalty would be waived
 - Penalties pertaining to late filing of returns , redemption fine would not be covered
- ***all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded,***
 - All proceedings in respect of the said notice or order or statement shall be deemed to be concluded
 - The proper officer can issue a notice in GST SPL – 03 for rejecting the application
 - And also give opportunity of being heard

Amnesty Scheme: Section 128A of the CGST Act

- ❑ The taxpayer can file a reply in GST SPL – 04 within one month from the date of the receipt of the notice
- ❑ The proper officer is satisfied, he shall issue an order in GST SPL – 05
- ❑ No summary of order in DRC 07 would be required
- ❑ Liability created in part II of Electronic liability ledger would be modified
- ❑ If proper officer is not satisfied, he shall pass an order in GST SPL 07 rejecting the application
- ❑ If no notice in SPL 03 is issued, within 3 months from the date of the receipt of the application, application shall be deemed to be approved
- ❑ If notice is issued, the proper officer shall pass an order accepting or rejecting the application within
 - 3 months from the date of receipt of the reply or
 - 4 months from the date of the issue of notice, if no reply is received
- ❑ If no order is issued by the proper officer, the application shall be deemed to be accepted

Amnesty Scheme: Section 128A of the CGST Act

- ***subject to such conditions as may be prescribed:***
 - Rule 164 has been notified for prescribing the conditions for this scheme

Allegations of fraud etc. not upheld

- ***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:***
 - Where notice or statement was issued under section 74 but any appellate authority or court holds allegations of fraud etc. not sustainable, the proper office would have to pass a revised order
 - Taxpayer can apply for the scheme within 6 month from the redetermination order

Amnesty Scheme: Section 128A of the CGST Act

Tax enhanced on departmental appeal

- ***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:***
 - If tax payable is enhanced in appeal filed by the revenue , taxpayer would have to pay that additional tax within 3 months from the date of such order, even if proceedings under this scheme were concluded

Amnesty Scheme: Section 128A of the CGST Act

No refund of interest or penalty already paid

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

Not applicable to erroneous refund

- ***(2) Nothing contained in sub-section (1) shall be applicable in respect of any amount payable by the person on account of erroneous refund.***
 - This scheme is not applicable in case of recovery of erroneous refund
 - In case of a notice or order covering erroneous refund and other issues, application can be filed after making payment of full amount of tax
 - Interest or penalty or both on erroneous refund to be paid within three months from order under the scheme, else waiver granted would become void

Amnesty Scheme: Section 128A of the CGST Act

Appeal or writ or special leave petition to be withdrawn

- ***(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).***
 - Appeal or writ or special leave petition filed would have to be withdrawn before filing application under this scheme

Amnesty Scheme: Section 128A of the CGST Act

- ***(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.***
- When application under this scheme is rejected
 - The taxpayer can file appeal against the order rejecting the application
 - However, appeal shall not be on the merits of the Notice/Statement/Order but only eligibility under the scheme
 - If appeal is filed and such appeal is rejected, or no appeal is filed against the rejection order, the original appeal or writ or the special leave petition withdrawn shall be restored

Amnesty Scheme: Proper Officer

- **Proper officer for passing final order under Amnesty Scheme would be**
 - In case of Notice/Statement under Section 73
 - Officer who can pass order under 73
 - In case of Adjudication order/Appellate Order
 - Officer who can initiate recovery under 79

Amnesty Scheme: Other issues

- **Interest or penalty already paid cannot be adjusted towards tax paid**
- **Interest or penalty waiver not available in case of self assessed liability:**
 - Delayed filing of returns
 - Delayed reporting of any supply in the return
- **Part waiver of interest or penalty on part payment of taxes not allowed**
- **If transition credit is availed irregularly during July 2017 to March 2020, it can also be covered under this scheme**
- **Tax can be paid through Input tax Credit, but tax due on RCM or by ECO must be paid from Cash ledger**
- **IGST payable under Customs Act, 1962 not eligible for this scheme**

Amnesty Scheme: GSTN Advisory

- GSTN has issued advisory on 08th November 2024;
- To avail waiver of interest and penalty, tax has to be paid before 31.03.2025
- Application to be filed on common portal within three months from 31.03.2025
- GSTN has issued advisory stating that:
 - Form SPL 01 and SPL 02 would be made available from 1st week of Jan 2025
 - Taxpayers are advised to pay tax demanded in notice/statement/order before the deadline

Amnesty Scheme : Summary of Forms

Form No.	Description
Form GST SPL-01	Application for waiver of interest or penalty under Section 128A(1)(a) for notices/statements.
Form GST SPL-02	Application for waiver of interest or penalty under Section 128A(1)(b) & (c) for orders
Form GST SPL-03	Notice issued by the proper officer if the application is liable to be rejected under SPL 01 or 02
Form GST SPL-04	Reply to the notice issued in FORM GST SPL 03
Form GST SPL-05	Order accepting the application for waiver of interest or penalty under section 128A
Form GST SPL-06	Order by Appellate Authority rejecting the rejection order for waiver of interest or penalty wrongly passed in SPL 07
Form GST SPL-07	Order rejecting the application for waiver of interest or penalty.
Form GST SPL-08	Undertaking to restore original appeal post-rejection of waiver application.

Thank you

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