

# GST UPDATE

OCTOBER 2024



**Delhi, Pune, Bangalore**

## **GST Circular No. 238/32/2024 – Clarifications on Waiver of Interest or Penalties under Section 128A**

Section 128A of the CGST Act, 2017 was introduced based on recommendations from the 53rd GST Council meeting, effective November 1, 2024. It provides for the waiver of interest or penalties related to demands under Section 73 for Financial Years 2017-18, 2018-19, and 2019-20, subject to certain conditions.

Additionally, Rule 164 was inserted into the CGST Rules through Notification No. 20/2024, outlining the procedure for closing proceedings under Section 128A. As per Notification No. 21/2024, taxpayers must fully pay the tax demand by March 31, 2025, to avail the waiver. If the proper officer redetermines the tax, the deadline is extended to six months from the date of redetermination.

On October 15, 2024, the CBIC issued Circular No. 238/32/2024-GST to clarify the implementation of Section 128A of CGST Act, 2017. The waiver becomes effective from 1st November, 2024.

### **Applicability**

The section is applicable to taxpayers facing demands under Section 73 of CGST Act for FY 2017-18, 2018-19, 2019-20.

The benefit is available only when the full payment of the tax demand is made by the taxpayer on or before 31st March, 2025.

If an application is made as per the first proviso to Section 128A(1), the taxpayer must make the full payment within six months of receiving an order redetermining tax under Section 73

### **Application**

Taxpayers need to submit their waiver applications electronically using FORM GST SPL-01 or FORM GST SPL-02.

Form GST SPL-01 shall be filed by taxpayers where a notice/statement u/s 73 has been issued, however, no order has been passed.

Form GST SPL-02 shall be filed if order has been issued u/s 73, 107 or 108 of CGST Act, but no order has been issued u/s 113.

Separate applications must be filed for each notice, statement, or order issued and for each financial year.

The application must be submitted within 3 months from the date specified u/s 128A(1), i.e., by 31.03.2025. However, if a notice has been issued u/s 74 and the Appellate Authority, Appellate Tribunal, or a court directs to redetermine the tax as though the notice was issued u/s 73, in line with section 75(2) then as per the proviso to Rule 164(6), the application in FORM GST SPL-02 can be submitted within 6 months from the communication of the order.

Taxpayers who have filed appeals or writ petitions related to the demand are required to withdraw them before submitting an application for the waiver.

### **Payment**

For Notices not yet adjudicated under Section 73(1)(a), the taxpayer must pay the demanded tax via FORM GST DRC-03.

For adjudicated orders under Section 73(1)(b) and (c), payments should be made through the Electronic Liability Register (ELR). If tax has already been paid via DRC-03, the taxpayer must file FORM GST DRC-03A to adjust the amount before applying for a waiver.

Payments must be made by 31st March, 2025. For cases requiring redetermination, payment must occur within six months of the relevant order.

Taxpayers can deduct amounts payable due to contravention of then section 16(4) which no longer payable under Section 16(5) or (6) due to retrospective amendment, from total tax payable to determine full payable amount, provided ITC was denied solely due to Section 16(4). No rectification application is required to be filed.

Applications for waivers under Section 128A can only be filed after full payment of the tax, including erroneous refunds, if applicable.

### **Processing of Application**

The proper officer for processing applications for a waiver under Section 128A varies depending on the form submitted:

- For FORM GST SPL-01, the officer responsible for issuing the order under Section 73 handles the application.
- For FORM GST SPL-02, the officer in charge of recovery under Section 79 is responsible.

Upon receiving the application, the officer examines it and may issue a FORM GST SPL-03 notice within 3 months from application date if it is subject to rejection, giving the applicant an opportunity for a personal hearing. The applicant can respond in FORM GST SPL-04 within one month.

If the officer accepts the waiver application, they will issue FORM GST SPL-05. If rejected, the officer will issue FORM GST SPL-07. The order must be issued within the timeframe set by Rule 164; otherwise, the application will be considered as deemed approved.

Further, the following issues with respect to availing the benefit of waiver of interest or penalty or both provided under Section 128A, are also clarified hereby:

Is the benefit under Section 128A applicable if the tax was paid before Section 128A came into effect?	Yes, any tax paid before or after Section 128A's effective date will count towards the demand, as long as it is paid by the date specified under Section 128A(1).
Can tax recovered by officers on behalf of the taxpayer count towards the demand?	Yes, if the tax officers recover the tax due on behalf of the taxpayer, it is considered as payment towards the demand, provided it is recovered by the specified date under Section 128A(1)
Can interest or penalty payments be adjusted against the tax payable under Section 73?	No, interest or penalty amounts cannot be adjusted against tax payable. There is no refund for interest or penalty under Section 128A.
Is Section 128A applicable if the tax has been paid but the demand pertains only to interest or penalty?	Yes, the waiver can apply in such cases. However, it doesn't cover interest demanded due to delayed return filing or reporting of supplies (under Section 75(12)).
Can partial payment of tax demand allow for a partial waiver of interest or penalty?	No, the full amount of tax must be paid to avail the waiver of interest or penalty under Section 128A.
Can the waiver be applied when the notice covers multiple periods, some of which are outside Section 128A's applicability?	Yes, but the full amount of tax for all periods must be paid. The waiver only applies to the periods covered under Section 128A.
Can a waiver application be filed if the demand involves an erroneous refund?	Yes, but the full tax demand, including for the erroneous refund, must be paid to avail the waiver. The waiver will apply only to other tax components.
What happens if the Appellate Authority increases the tax liability after the waiver is granted?	The waiver will remain valid only if the additional tax determined by the Appellate Authority is paid within three months. Failure to pay voids the waiver.
Is the waiver applicable when an SLP is pending before the Supreme Court?	Yes, the waiver can be availed after withdrawing the SLP and filing the appropriate waiver application.
Does Section 128A apply to matters involving IGST and Compensation Cess?	Yes, the waiver under Section 128A applies to demands involving CGST, SGST, IGST, and Compensation Cess.
Does Section 128A cover demands involving transitional credit?	Yes, if the transitional credit was availed during the period covered by Section 128A, the waiver can apply.
Are penalties under other provisions covered under Section 128A?	Yes, penalties under Sections 73, 122, and 125 are covered, but late fees or redemption fines are not.

Can payment for the waiver be made using Input Tax Credit (ITC)?	Yes, the tax can be paid through ITC, except for demands involving RCM or erroneous refunds, which must be paid in cash.
Is the waiver applicable to IGST payable under the Customs Act?	No, Section 128A does not cover demands made under the Customs Act.
Can tax demanded under Section 73 be reduced due to the retrospective insertion of Section 16(5) and 16(6)?	Yes, the payable amount can be reduced by deducting any amounts no longer payable under Section 16(5) or 16(6).
Is an application in FORM GST DRC-03A required when adjusting tax paid via FORM GST DRC-03?	Yes, FORM GST DRC-03A must be filed to adjust the tax paid via FORM GST DRC-03 before submitting the waiver application.

This circular aims to streamline the waiver process and ensure consistent implementation of Section 128A across various field formations, benefiting taxpayers facing tax demands under Section 73 for the specified financial years.