



# THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

## GST & INDIRECT TAXES COMMITTEE

### Webinar on Unblocking benefits of GST Amnesty Scheme u/s 128A

**Date:** 28<sup>TH</sup> MARCH 2025

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**1. SECTION 128A:** *Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods (W.E.F. 01-11-2024)*

(1) Notwithstanding anything to the contrary contained in this Act, **where any amount of tax is payable** by a person **chargeable with tax** as per,

- a) a notice/statement issued under section 73(1)/ 73(3) [SCN/ANNEX], where no order under section 73(9) has been issued; or
- b) an order issued under section 73(9), where no order under section 107(11) or 108(1) [Appeal/Revision] has been issued; or
- c) an order issued under section 107(11) or section 108(1), where no order under section 113(1) [TRIBUNAL] has been issued



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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 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, 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 section 74(1), and an order is issued or required to be issued by the proper officer in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court as per section 75(2), the said notice or order shall be considered to be a notice or order, referred to in clause (a) or clause (b) of this sub-section: (REDTERMINATION)



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**Provided further that,** If the Department has filed appeals, revisional proceedings or other proceedings {107(3), 112(3), 117(1), 118(1) or 108(1)} and the amount of **tax payable is increased**, the conclusion of the proceeding under this Section will be subject to payment of the additional amount **within three months** from the date of the said Order.

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



## 128A: Restrictions

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

(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).

(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 of section 107(1) or section 112(1) shall lie against an order referred to in clause (b) or clause (c) of sub-section (1), as the case may be.



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## Notification No. 21/2024–Central Tax Dt. 08/10/24

Sl. No.	Class of registered person	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 section.
(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.	31.03.2025
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 1<sup>st</sup> day of November, 2024.



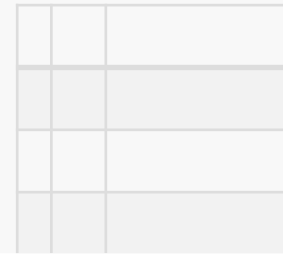
**Rule 164: Procedure & conditions for closure of proceedings under section 128A in respect of demands issued under section 73.**

<b>128A(1)(a)</b>	Notice Stage	Pay tax Demand of Tax by 31-03-25. File waiver application within 3 months of 31-03-25.	SPL-01 (Pay DRC-03 before filing)
<b>128A(1)(b) or (c)</b>	Order passed or In Appeal/Writ Stage		SPL-02 (Pay tax through ELR or DRC-03A in case DRC-03 is paid before filing)
<b>12A(1) Proviso 1</b>	74 converted to 73 in Appeal/Writ	Pay tax demand within 6 months order of redetermination u/s. 73	Application in SPL-02 within 6 months of redetermination of tax u/s. 73
<b>12A(1) Proviso 2</b>	If Department goes in appeal	Pay additional tax demand within 3 months of order	If not done order in SPL-05 or SPL-06 will become void.



<b>164(3)</b>	If Demand is Erroneous Refund+ other reason not covered in 128A	<ul style="list-style-type: none"><li>• Pay full amount of tax before filing SPL-01 or 02.</li><li>• Pay interest/penalty pertaining to issue not covered in 128A in 3 months of SPL-05 or 06.</li><li>• If not, waiver becomes void.</li></ul>
<b>164(4)</b>	If Demand of Partial Amnesty Period (upto 31/03/20) and <b>Partial Non-Amnesty Period</b>	<ul style="list-style-type: none"><li>• Pay full amount of tax <b>related to period mentioned in said sub section</b> before filing SPL-01 or 02.</li><li>• <b>No refund of tax, interest &amp; penalty if already paid before commencement of Second Amendment Rules.</b></li><li>• Pay interest/penalty pertaining to period not covered in 128A in 3 months of SPL-05 or 06.</li><li>• If not, waiver becomes void.</li></ul>
<b>164(5)</b>	If Demand includes 16(4)	<ul style="list-style-type: none"><li>• Pay tax demand excluding amount not payable as per 16(5) or 16(6). No need to file rectification in such case. Make sure ITC has been denied solely on account of contravention of Section 16(4) &amp; not on any other grounds.</li></ul>





## Appeal Withdrawal: Proofs and Conditions: (As Amended by Second Amendment Rules 27-03-25)

- SPL-02 to be filed with proof of withdrawal of appeal (APL-01W). If order of withdrawal is pending then upload withdrawal order in **1 month of such order**.
- If Demand of Partial Amnesty Period (upto 31/03/20) and **Partial Non-Amnesty Period**, 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.**
- **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 intimation 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.”



<b>SPL-03 164(8)</b>	Defect Memo	If PO not satisfied, he has to issue SPL-03 within 3 months from the date of receipt of application and give opportunity of being heard.
<b>SPL-04 164(9)</b>	Reply to SPL-03	Reply to Defect memo, within 1 month of SPL-03.
<b>SPL-05 164(10) &amp;(11)</b>	Acceptance	Order for Conclusion. (SPL-01 case, no need to pass DRC-7) (SPL-02 case, ELR shall be modified)



<b>SPL-05 164(13)</b>	Time Limit	<ul style="list-style-type: none"><li>• SPL-03 (Defect memo) not required then, SPL-05 within 3 months of SPL-01 OR SPL-02.</li><li>• SPL-03 issued, within 3 of SPL-04 where reply submitted or within 4 months of issuance of SPL-03 where no reply received in SPL-04.</li><li>• If appeal withdrawal order pending, the time period from the date of filing of the application under SPL-01/02 till the date of submission of the order for withdrawal of the appeal/writ, shall not be included.</li><li>• If no order issued as per above timelines, deemed approval and conclusion.</li></ul>
<b>SPL-07 164(12)</b>	Rejection Order	As above
<b>Appeal N.A.</b>	SPL-05 Case	No appeal can be filed against order of acceptance.
<b>Appeal Not filed</b>	SPL-07 case & appeal against it not filed within 107(1)	<ol style="list-style-type: none"><li>1. If any original appeal which was withdrawn for filing the SPL-02, it shall be restored.</li><li>2. If there was no such original appeal, recovery will be initiated.</li></ol>



<b>Appeal</b>	SPL-07 Case (Where SPL-01/02 was filed against notice/order for which <b>no original appeal</b> was filed)	<ol style="list-style-type: none"><li>1. File APL-01 within timelines of 107(1). Check if pre-deposit required as per provisions.</li><li>2. Appeal can only be filed against subject matter of rejection of waiver and not on merits of original notice/order.</li><li>3. If appeal accepted, Appellate Authority will issue SPL-06 and modify ELR.</li><li>4. If appeal rejected, go in further appeal or accept the demand.</li></ol>
<b>Appeal</b>	SPL-07 Case (Where SPL-02 was filed against notice/order for which appeal was <b>filed &amp; withdrawn</b> )	<ol style="list-style-type: none"><li>1. If appeal accepted, Appellate Authority will issue SPL-06 and modify ELR</li><li>1. If appeal against SPL-07 rejected, APL-04 will be issued. Original appeal which was withdrawn will be restored <b><u>subject to</u></b> undertaking in SPL-08 (within 3 months) that no further appeal against rejection order of Appellate Authority.</li></ol>
<b>Appeal</b>	Writ Withdrawn and SPL-07 case.	No provision for restoration if SPL-07 passed. Only appeal can be filed against rejection order.



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## **Circular No. 248/05/2025-GST Dt. 27-03-2025**

<b>Whether Tax paid through return in GSTR-3B instead DRC-03, prior to the notification of 128A i.e.01/11/2024, would be eligible for the benefit under section 128A of the CGST Act?</b>	It is clarified that a taxpayer who has made the payment through GSTR-3B before the date of coming into force of section 128A i.e. 01/11/2024, shall also be eligible to avail the benefit under the said section. Not on or after 01/11/2024
<b>Whether the entire amount of tax demanded is required to be discharged where notice/order pertains to period covered partially under 128A &amp; partially outside</b>	Rule 164 (4) and proviso to Rule 164(7) have been amended to allow the taxpayer to file an application under FORM SPL-01 or FORM SPL-02 as the case may be after making payment of his tax liability for the periods covered under section 128A.
<b>Whether the appeal is required to be withdrawn for the entire period</b>	The taxpayer after filing FORM SPL-01 or FORM SPL-02 as the case may, shall intimate the appellate authority or Tribunal his intent to avail the benefit of Section 128A and that he does not intend to pursue the appeal for the period covered under the said Section i.e. FY 2017-18 to 2019-20. The Appellate Authority or Appellate Tribunal as the case may, shall after taking note of the said request, pass such order for the period other than that mentioned in the said sub-section, as it thinks just and proper



## 75(12) – R1 Vs 3B, Interest on Delay filing of return 50(1), Delayed Reporting (88B)

	years:	
4	Whether the benefit provided under Section 128A will be applicable in 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?	<p>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.</p> <p>However, 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.</p>



## 75(12) – R1 Vs 3B, Interest on Delay filing of return 50(1), Delayed Reporting (88B)

(12) Notwithstanding anything contained in section 73 or section 74 <sup>2</sup>[or section 74A], where any amount of self-assessed tax in accordance with a return furnished under [section 39](#) remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of [section 79](#).

<sup>1</sup>[**Explanation.**—For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under [section 37](#), but not included in the return furnished under [section 39](#).]



## 75(12) – R1 Vs 3B, Interest on Delay filing of return 50(1), Delayed Reporting (88B)

- The ***Honorable Division Bench of the High Court of Karnataka in UOI V. LC Infra Projects Pvt Ltd., 2021 (44) GSTL 60 (Kar)*** held in para 16 that ‘before recovery of interest payable u/s 50, a show cause notice is required to be issued to the assessee’ so as to follow principles of natural justice. This decision has been accepted by the department.
- **Rajkamal Builder Infrastructure Pvt Ltd V. UOI, 2021 (50) GSTL 153 (Gujrat)**, wherein the question before the HC was whether department could have a direct recourse to Section 79 in S.75(12) cases. After extracting both the aforesaid provisions, the HC held that notice must be issued.
- Without Show cause notice, the taxpayers cannot avail the waiver and the taxpayers who are issued SCN or order can avail the benefit under amnesty scheme.
- Self paid but delayed, no benefit. Department finds and then pays tax, waiver benefit.
- Thus, equals are treated unequally under GST law as 128A is made applicable in cases where notices are issued.
- Many cases 73 notices issued for 75(12) matters. – Only circular restricts the benefit of 128A.





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# FAQ

<b>Full tax paid before 128A insertion</b>	Benefit of 128A available even if paid before demand notice/order.
<b>Tax recovered by tax officer from any other person</b>	Will be considered as payment towards demand <b>if</b> recovery before the date of notification of 128A
<b>Interest and Penalty paid or recovered</b>	No refund No Adjustment
<b>128A applicable to notice/orders under Sec. 73 only pertains to interest and/or penalty?</b>	Yes.



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# FAQ

<b>Partial Withdrawal</b>	Now permitted only to extend of years covered and years beyond 128A coverage. No partial withdrawal if entire demand within waiver period.
<b>IGST/Cess Dues</b>	Covered under 128A
<b>Transitional Credit matters</b>	Covered under 128A
<b>Late Fee/ Redemption Fine</b>	Not Covered
<b>SPL filed Before SC</b>	Withdraw SLP. Attach proof. If withdrawal order pending uploading within 1 month.



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# FAQ

<b>Penalties Covered under 128A</b>	Penalties under Sec. 73, 122, 125 etc. issued under 73 covered.
<b>Payment through Cash/Credit</b>	Both option available except in cases of demand for RCM, Erroneous refund, ECO.
<b>Import IGST dues Customs Act</b>	No.



**:GIST:**

1. Waiver applicable to notices/ demands under Section 73.
2. Demand should pertain to 01-07-17 to 31-03-2020.
3. Pay full tax, and claim waiver of interest and penalty for period covered.
4. N.A. to erroneous refund or where appeal not withdrawn.
5. ~~No partial withdrawal allowed~~. Allowed only if multiple years order beyond 128A period.
6. Multiple notice/ order, multiple applications.
7. Single notice/order for multiple years, one application.
8. Issues with DRC-03A.
9. Checking of ELR in each case.



## Advisory

**Subject: Issue in filing applications (SPL 01/SPL 02) under waiver scheme**

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1. Grievances are raised by taxpayers regarding difficulties faced while filing the waiver applications. Following grievances faced by taxpayers have come to the notice of GSTN and team is working to resolve the issues at the earliest.
  - i. Order number is not available in dropdown for selection in SPL 02.
  - ii. Order details are not getting auto populated after selection of a particular order in SPL 02.
  - iii. Payment details are not getting auto populated in Table 4 of SPL 02.
  - iv. After filing the SPL 02 for a demand order, the taxpayer is not able to make payment using "Payment towards Demand" for that order. Also, taxpayer is not able to adjust the amount paid through DRC 03, against the same demand order, using DRC 03A.
  - v. Not able to withdraw the Appeal applications (APL 01) filed before First Appellate authority against a particular order.



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Q & A

- 1) The proper officer has rejected the application filed under section 128A for waiver of interest and penalty and passed an order in SPL-07. Whether the same is an appealable order? If yes, then what are the time limits and pre-deposit requirements for the same?

Slide No. 13.

- 2) Can a business operating under multiple GST registrations across different States avail the waiver for all pending tax demands under section 128A through a consolidated application? Alternatively, is it mandatory to make separate payments and submit individual applications for each GSTIN to qualify for the waiver?
  - Multiple notice/ order, multiple applications.
  - Single notice/order for multiple years, one application.
- 3) Which date shall be considered as payment date, the date on which the amount has been paid through FORM GST DRC-03 or the date on which the said amount has been adjusted using FORM GST DRC-03A?
  - DRC-03 sufficient till 31-03-25. DRC-03A required before SPL-01/02.
  - 128(3) linked with 128(1) which pertains to payment of full tax. So can we state that date of withdrawal is date of payment

- 4) Whether the benefit provided under section 128A will be applicable in 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?  
(Ques 4 of the Circular 238/32/2024-GST)
- 5) Mr. A has been issued a single notice for multiple periods i.e. FY 2019-20 & 2020-21. In this case, how will the benefit of waiver be provided? Whether the amount to be paid for waiver is only in respect of FY 2019-20 or FY 2020-21 or both?  
(Ques 6 of the Circular 238/32/2024-GST) **Withdrawn = Rules Amended**
- 6) Mr. A has filed a Special leave petition (SLP) in respect of the order of High Court. Now, he wants to avail the benefit of waiver under section 128A. Is it possible for him to do so?  
(Ques 9 of the Circular 238/32/2024-GST)
- 7) Whether payment to avail waiver under section 128A can be made by utilizing Input Tax Credit (ITC)?  
(Ques 13 of the Circular 238/32/2024-GST)



8) Are cases involving transitional credit covered under section 128A?

(Ques 11 of the Circular238/32/2024-GST)

9) Does Section 128A provide relief in cases where recovery proceedings, such as bank account attachment or garnishee orders, have already been initiated against the taxpayer? If recovery actions are ongoing, will making the required payment under Section 128A automatically halt such proceedings, or is additional compliance required to stop enforcement actions?

**-Case to Case Basis**

10) In cases, where payment in DRC-03 is made under wrong head i.e., other than Voluntary Payment and Others, taxpayer is unable to adjust the amount paid through FORM GST DRC-03 against the order of demand through

DRC-03A. How can registered person avail the benefit of waiver in these cases?

- Unresolved issue. Also many problems in DRC-03A

- 11) A taxpayer has received a notice covering two issues: (i) erroneous refund and (ii) wrongful availment of ITC. To avail the benefit of the amnesty scheme under Section 128A, the taxpayer is required to withdraw any appeal filed before the forums. However, the taxpayer is not satisfied with the order concerning the erroneous refund. In such a scenario:
- i. How can the taxpayer re-file an appeal specifically for the erroneous refund issue?
  - ii. What is the time limit for filing such an appeal?
  - iii. As the taxpayer has already paid the entire demand as per the order to avail the amnesty scheme, would a pre-deposit still be required for filing a fresh appeal?
- No partial withdrawal.
- 12) Partially allowed FAA orders. – SPL-02 first or Refund application for Part Payment first.
- System shows refund after deducting interest and penalty. Hence ideally SPL-02 first
- 13) Solely 16(4) order – Rectify and file Refund application

- 14) 16(4) dismissed – Cost benefit analysis. 128A or further appeal.
- 15) OIO Online. Appeal Order Offline: Upload APL-04 first and modify ELR.
- 16) Pre- deposit due to 16(4) is more than demand on other issues. – Clarification required.
- 17) Bifurcation of Interest and penalty in case of Multiple issues in order (some covered and some not covered under 128A)
- 18) 73+ 74 order: Will also be required to pay tax before 31-03-25 (Too risky if not done so)



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# Thank You!

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