

## Clarification by CBIC on Amnesty Scheme and on implementation of Section 16(5) and 16(6) of CGST Act

### GST Amnesty Scheme effective from 1<sup>st</sup> November 2024, for the waiver of interest and penalties for non-fraudulent GST demands for F.Y.2017-18 to 2019-20

[Circular No. 238/32/2024-GST - Dated 15<sup>th</sup> Oct 2024](#)

Section 128A was introduced based on the recommendations of the GST Council to provide a waiver of interest and penalties related to tax demands for the F.Y.2017-18, 2018-19, and 2019-20. This waiver is conditional upon specific criteria and compliance by taxpayers. Key features include the following:

#### ➤ **Applicability:**

- The waiver applies to demands under Section 73, specifically where:
  - No order has been issued.
  - An order has been issued but no appeal order has been passed.
  - An appellate order exists, but no subsequent tribunal order has been passed.
- Cases initially issued under Section 74 but redirected to Section 73 due to appellate directives are also covered.

#### ➤ **Procedure for Availing Waiver:**

- Taxpayers must file an application in the prescribed format
  - FORM GST SPL-01: For pending notices.
  - FORM GST SPL-02: For orders already issued.
- The last date for filing applications for waiver is within 3 months from 31<sup>st</sup> March 2025, or 6 months from the order of redetermination, as applicable.

#### ➤ **Payment of Tax:**

- Tax must be paid via:
  - FORM GST DRC-03 for pending notices.
  - Against the debit entry in the Electronic Liability Register (ELR) for orders.
- Payment deadlines align with the application timelines (by 31<sup>st</sup> March 2025, or 6 months post-redetermination).

#### ➤ **Adjustments:**

If a notice/order includes tax amounts for violations of Section 16(4) which are no longer payable due to the retrospective insertion of Sections 16(5) and 16(6), these amounts should be excluded while determining the tax for waivers of interest/penalties.

#### ➤ **Application Processing:**

- **Role of the Proper Officer:** Upon verification, if the proper officer deems the application liable for rejection, a notice in FORM GST SPL-03 will be issued within 3 months of receipt, along with an opportunity for a personal hearing.

- **Issuing Orders:** Approval or rejection orders will be communicated via designated forms (FORM GST SPL-05 for approval, FORM GST SPL-07 for rejection).

➤ **Appeals**

▪ **Nature of Appeals:**

- No appeals can be filed against orders approving the waiver.
- Rejection orders can be appealed, focusing solely on the eligibility for the waiver, not the original demand merits.

▪ **Restoration of Original Appeals:**

If a waiver application is rejected but later appealed successfully, the original appeal can be reinstated, contingent on specific conditions.

➤ **Other key features**

- **Applicability of Section 128A:** Taxpayers who have paid their tax in full, even before this Section came into effect, are eligible for waivers, provided payments were made before the specified date i.e. 1<sup>st</sup> November 2024.
- **Recovery from Third Parties:** Amounts recovered by tax officers from any person on behalf of the taxpayer will be considered towards tax paid under Section 128A if collected before the specified date i.e. 1<sup>st</sup> November 2024.
- **Interest and Penalty Adjustments:** 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 Applicability:** The benefit of waiver of interest and penalty will 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, where interest is related to self-assessed liability.
- **Full Payment Requirement:** Partial waivers are not allowed; the full amount demanded must be paid to qualify for any waivers.
- **Multiple Periods in Notices:** Taxpayers can apply for waivers for periods covered under Section 128A, even if other periods are included in the notice.
- **Erroneous Refund Cases:** Applications for waivers can be made even if a notice under Section 73 involves multiple issues, including an erroneous refund demand. However, the applicant must pay the full amount demanded, and a waiver for interest or penalty related to the erroneous refund is not admissible.
- **Pending Appeals:** If an appeal filed by the department results in an increased tax liability, the waiver remains valid only if the taxpayer pays the additional amount determined by the Appellate Authority within 3 months from the date of that order.
- **IGST and Compensation Cess:** Section 128A applies to matters involving IGST and Compensation Cess.
- **Transitional Credit Demands:** Demands related to wrongly availed transitional credit can qualify for waivers if they fall within the relevant time frame.

- **Other Penalties and Fees:** Section 128A covers penalties under section 73,122,125 etc., however, late fees and redemption fines are excluded.
- **Utilizing ITC for Payments:** Payments for waivers can be made using Input Tax Credit (**ITC**). However, the payments will be required to be made in cash where tax is payable under Reverse Charge Mechanism, or by electronic commerce operator (ECO) or where demand pertains to erroneous refund.
- **Import IGST:** Waivers under Section 128A do not apply to IGST payable under the Customs Act.
- **Withdrawal:** Applicant will be required to withdraw appeal, writ petition, and the Special Leave Petition pending before the Supreme Court (SC), if any, to apply for the Amnesty Scheme.

#### **CNK Comments:**

The Amnesty Scheme provides necessary relief for taxpayers, especially for those who have unintentionally erred during the initial phase of GST implementation. However, since the tax must be paid in full, taxpayers need to carefully assess the demands involved, including the associated interest and penalties. It is crucial for them to evaluate their eligibility for the amnesty scheme and ensure that they fulfill all necessary conditions. This thorough assessment will help them to make informed decisions and avoid potential pitfalls in the application process.

### **Clarification on Implementation of Sections 16(5) and 16(6) of the CGST Act**

#### [Circular No. 237/31/2024-GST - Dated 15<sup>th</sup> Oct 2024](#)

Section 16 of the CGST Act has been amended to introduce Sections 16(5) and 16(6), effective retrospectively from 1<sup>st</sup> July 2017 which stipulates that taxpayers can claim ITC for invoices or debit notes related to FY 2017-18 to FY 2020-21 until 30<sup>th</sup> November 2021, provided these claims are included in the GST returns vide [Notification No. 22/2024-Central Tax on 8<sup>th</sup> October 2024](#). CBIC has issued a special procedure for rectifying orders related to the wrong availment of ITC. Vide this Circular, CBIC has discussed various scenarios for availment of benefit on account of retrospectively insertion of Section 16(5) and 16(6) of the CGST Act.

Key clarifications include:

- Proper Officer must act on the amended provisions if no demand notice or statement under Sections 73 or 74 has been issued.
- If Show Cause Notices (SCNs) are pending, the proper officer should consider the amendments and issue appropriate orders.
- Appellate Authority (**AA**) and Revisional Authority (**RA**) must recognize the amendments and issue orders if appeals are pending without resolution.
- Taxpayers may apply for rectification of orders of AA or of RA, if no appeal has been filed with the GST Appellate Tribunal (GSTAT), within 6 months of the Notification date (i.e. 8<sup>th</sup> October 2024).
- As per Section 150 of the Finance (No. 2) Act, 2024, no refunds will be granted for taxes already paid or ITC reversed.

- Rectification applications under the special procedure apply only to cases where ITC was denied due to time limits in Section 16(4). Other issues should follow the standard procedure under Section 161.
- A stepwise procedure for filing the rectification application has been provided to ensure clarity and compliance.

**CNK Comments:**

This circular provides clarity to the taxpayers and tax authorities to navigate the updated provisions effectively, ensuring rightful claims for ITC and compliance with the amended regulations.

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