

TRADE CIRCULAR

No. JC (HQ)-5/AR-2/GST/2024/ADM-8/B-167

dated 25/11/2024.

Trade Circular No. 31 T of 2024.

To,

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Subject : Clarification of various doubts related to Section 128A of the CGST Act, 2017.

Ref. : Circular No. 238/32/2024-GST dt. 15th October, 2024 issued by the CBIC.

Central Board of Indirect Taxes and Customs (CBIC) has issued the above referred Circular. For the uniformity, it has been decided that the said Circular issued by the CBIC is being made applicable, *mutatis mutandis*, in implementation of the MGST Act, 2017. Copy of the referred CBIC Circular is attached herewith.

This Trade Circular is clarificatory in nature. Difficulty if any, in the implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax, Maharashtra.



(ASHEESH SHARMA)
Commissioner of State Tax,
Maharashtra State, Mumbai.

No. JC (HQ)-5/AR-2/GST/2024/ADM-8/B-167

dated 25/11/2024.

Trade Circular No. 31 T of 2024.

Copy forwarded to the Joint Commissioner of State Tax (Mahavikas) with a request to upload this Trade Circular on the Departments Web-site.

Copy forwarded to,-

- (a) The Deputy Secretary, Finance Department, Mantralaya, Mumbai-21 for information.
- (b) Accounts Officer, Sales Tax Revenue Audit, Mumbai and Nagpur.



(KIRAN SHINDE)

Joint Commissioner of State Tax-HQ-5
Maharashtra State, Mumbai.

F. No. CBIC-20001/6/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the 15th October, 2024

To,

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Clarification of various doubts related to Section 128A of the CGST Act, 2017.

Based on the recommendations of the GST Council made in its 53rd meeting, Section 128A has been inserted in the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') with effect from 01.11.2024 to provide for waiver of interest or penalty or both, relating to demands under section 73 of the CGST Act pertaining to Financial Years 2017-18, 2018-19 and 2019-20, subject to certain conditions.

1.2 Subsequently, based on the recommendations of the GST Council made in its 54th meeting, Rule 164 has been inserted in Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules') with effect from 01.11.2024 vide notification No.20/2024-Central tax dated 8th October 2024, providing for procedure and conditions for closure of proceedings under section 128A of CGST Act.

1.3 Further, vide notification No. 21/2024-Central tax dated 8th October 2024, 31.03.2025 has been notified under sub-section (1) of section 128A of CGST Act as the date on or before which the full payment of tax demanded in the notice/ statement/ order needs to be made by the taxpayer in order to avail the benefit of waiver of interest or penalty or both under the said section. Also, for cases where the application is made as per the first proviso to the sub-section (1) of the section 128A of CGST Act, the date on or before which the full payment of tax demanded in the order issued by the proper officer redetermining the tax under section 73 of CSGT Act needs to be made by the taxpayer, has been notified as six months from the date of issuance of such order by the proper officer redetermining the tax under section 73 of CGST Act.

2.1 Various doubts have been raised by the trade and the field formations in respect of implementation of provisions of Section 128A of the CGST Act, relating to waiver of interest or

penalty or both in respect of demands under section 73 of the CGST Act pertaining to Financial Years 2017-18, 2018-19 and 2019-20.

2.2 In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the CGST Act, hereby issues the following clarifications and guidelines.

2.3 Unless otherwise specified, all the sections mentioned in this circular refer to sections of the CGST Act and all the rules mentioned herein refer to the rules of CGST Rules.

3. The procedure to be followed by the taxpayers and the tax officers to avail and implement the benefit provided under Section 128A, is as follows:

3.1 **Filing of application:**

3.1.1 Section 128A provides for “Waiver of interest or penalty or both relating to demands raised under **section 73**, for certain tax periods”. Therefore, provisions of Section 128A are applicable in cases where notices/ statements have been issued under Section 73, for the FYs 2017-18, 2018-19 and 2019-20, in the following situations:

(a) Where a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, but where no order under sub-section (9) of section 73 has been issued;

(b) Where an order has been issued under sub-section (9) of section 73, in respect of the notice/ statement issued under section 73, but where no order has been issued by the Appellate Authority/ Revisional Authority under sub-section (11) of section 107 or sub-section (1) of section 108;

(c) Where an order has been issued by the Appellate Authority/ Revisional Authority under sub-section (11) of section 107 or sub-section (1) of section 108, in the cases where notice/ statement was issued under section 73 and where no order under sub-section (1) of section 113 has been passed by the Appellate Tribunal;

3.1.2 Additionally, as per the first proviso to sub-section (1) of Section 128A, in cases where a notice was initially issued under section 74 for FYs 2017-18, 2018-19 and 2019-20, and an order is passed or required to be passed by the proper officer under section 73 (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), those cases are also covered under Section 128A for the purpose of waiver of interest or penalty or both.

3.1.3 In cases referred to in clause (a) of sub-section (1) of Section 128A where a notice/ statement under Section 73 has been issued demanding tax *inter alia* pertaining to the period from July 2017 to March 2020, for which no order has been issued under section 73, an application in FORM GST SPL-01, may be filed electronically on the common portal, by the taxpayer.

3.1.4 In cases referred to in clause (b) of sub-section (1) of Section 128A, where an order has been issued under Section 73 demanding tax *inter alia* pertaining to the period from July 2017 to March 2020, for which no order has been issued under section 107 or section 108, an application in FORM GST SPL-02, may be filed electronically on the common portal, by the taxpayer. Similarly, in cases referred to in clause (c) of sub-section (1) of Section 128A, where an order has been issued under Section 107 or Section 108, but no order has been issued under section 113, an application in FORM GST SPL-02, may be filed electronically on the common portal, by the taxpayer.

3.1.5 The application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, shall be filed within a period of three months from the date notified under section 128A (1), i.e., within three months from 31.03.2025. However, as per the first proviso to sub-section (1) of Section 128A, where a notice has been issued under section 74, and the Appellate Authority or Appellate Tribunal or a court directs the proper officer to redetermine the tax as if the demand notice is issued under section 73, in accordance with the provisions of section 75(2), then same is covered under clause (b) of sub-section (1). Therefore, as mentioned in proviso to sub-rule (6) of Rule 164, in such cases, an application in FORM GST SPL-02, can be filed within six months from the date of communication of order of the proper officer redetermining the amount of tax to be paid under section 73.

3.1.6 Where an appeal under Section 107 or section 112 has been filed by the taxpayer, against an order referred to in clause (b) or clause (c) of sub-section (1) of section 128A, or where a writ petition has been filed by the taxpayer against a notice/ statement/ order referred to in clause (a) or (b) or clause (c) of sub-section (1) of section 128A, the taxpayer is required to withdraw the same before filing an application for waiver of interest or penalty or both, and enclose the order of withdrawal of such appeal/ writ petition in along with the application filed in FORM GST SPL-01 or FORM GST SPL-02, as the case may be. However, in cases where the applicant has filed the application or any other document, for withdrawal of an appeal or writ petition before 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 in FORM GST SPL-01 or FORM GST SPL-02, he is required to upload the copy of such application or the document filed for withdrawal of the said appeal or writ petition along with the said application in FORM GST SPL-01 or FORM GST SPL-02. It is to be mentioned that he is required to upload the final 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.

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.

3.2 **Payment of tax:**

3.2.1 With respect to a notice or statement referred to in clause (a) of sub-section (1) of Section 128A, i.e., a notice or statement that is yet to be adjudicated, the payment towards the tax demanded in the said notice shall be made by the taxpayer through FORM GST DRC-03.

3.2.2 With respect to an order referred to in clause (b) and clause (c) of sub-section (1) of Section 128A, the payment towards such tax demanded shall be made by the taxpayer, only by the making the payment against the debit entry created in the Part II of the Electronic Liability Register (ELR) by the demand order. In this regard, the procedure mentioned in para 4 of Circular No. 224/18/2024 -GST dated 11th July 2024 may be referred to. However, in cases where the payment towards tax demanded in the demand order has already been made through FORM GST DRC-03, the procedure prescribed in rule 142(2B) may be followed. In such cases, the taxpayer shall be required to file an application in FORM GST DRC-03A as prescribed in the said rule, in order to adjust the amount already paid vide the FORM GST DRC-03, towards the demand created in the ELR-Part II, before filing the application for waiver under Section 128A in FORM GST SPL-02. For the purposes of determining the date of payment of full amount of tax, the date on which the amount has been paid through FORM GST DRC-03 may be considered and not the date on which the said amount has been adjusted using FORM GST DRC-03A.

3.2.3 Such payment shall be made on or before the date notified under section 128A (1), i.e., on or before 31.03.2025. Where applications are filed in respect of cases referred to in the first proviso to sub-section (1) of section 128A, then the applicants shall be required to make the payment on or before the date notified under section 128A (1) specifically for those cases, i.e., within six months of the communication of the order of the proper officer redetermining the amount of tax to be paid under section 73.

3.2.4 In cases where the amount of tax payable as per the notice/ statement/ order includes the amount that was demanded due to contravention of provisions of sub-section (4) of section 16, which is however not payable anymore due to the retrospective insertion of sub-section (5) and sub-section (6) to section 16, the full amount of tax payable as per the notice/ statement/ order as mentioned in sub-section (1) of section 128A for eligibility of waiver of interest or penalty or both shall be calculated after deducting the amount, which is not payable anymore as per sub-sections (5) or sub-section (6) of section 16, as per sub-rule (5) of Rule 164. In this regard, it is also to be mentioned that, where the taxpayer is deducting the amount of input tax credit which was denied on account of contravention of sub-section (4) of section 16, but which is

now available as per retrospectively inserted provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act, he is not required to file an application for rectification for the same in terms of the special procedure notified under section 148 vide notification No. 22/2024-Central tax dated 8th October 2024.

3.2.5 It is also clarified that 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. The tax officer scrutinising such applications is also required to verify that the said amount that has been deducted by the taxpayer as not payable anymore on account of retrospective insertion of sub-section (5) and sub-section (6) to section 16, was initially denied solely deducted on the basis of contravention of sub-section (4) of section 16, and not on any other grounds.

3.2.6 It is further mentioned that, in cases referred to in sub-rule (3) and sub-rule (4) of rule 164, the applicant can file the application for waiver of interest or penalty or both under section 128A, in respect of a notice/ statement/ order mentioned in sub-section (1) of section 128A, only after payment of full amount of tax demanded in the said notice/ statement/ order, including on account of demand pertaining to erroneous refund, if any, and also on account of demand pertaining to the period other than the period mentioned in sub-section (1) of section 128A, if any, in the said notice/ statement/ order.

3.3 **Processing of application and issuance of order:**

3.3.1 The proper officer for processing the application for waiver of interest or penalty or both under Section 128A, would be the proper officer to issue the order under section 73, in case the application is filed in FORM GST SPL-01, and would be the proper officer for recovery under Section 79, in case the application is filed in FORM GST SPL-02.

3.3.2 The proper officer on receipt of the application in FORM GST SPL-01 or FORM GST SPL-02, shall examine the said application. If, on examination, he finds that the said application is liable to be rejected, he shall issue a notice to the applicant, within three months from the date of receipt of the said application, in FORM GST SPL-03 on the common portal. The proper officer shall also give the applicant an opportunity of personal hearing.

3.3.3 On receipt of the notice in FORM GST SPL-03, the applicant may file his reply in FORM GST SPL-04, electronically on the common portal, within a period of one month from the date of receipt of the notice.

3.3.4 The proper officer shall issue an order in FORM GST SPL-05, accepting the said application, if he is satisfied that the applicant is eligible for waiver of interest or penalty or both under Section 128A. However, if the proper officer, based on the application and the reply in FORM GST SPL-04 received from the taxpayer, is of the view that the applicant is not eligible for waiver of interest or penalty or both under Section 128A, he shall issue an order in FORM GST SPL-07, rejecting the said application.

3.3.5 The order in FORM GST SPL-05 or FORM GST SPL-07 shall be required to be issued within the time period prescribed in sub-rule (13) of rule 164. In terms of sub-rule (14) of rule 164, in cases where no order is issued within the time limit prescribed in sub-rule (13) of rule 164, the application filed in FORM GST SPL-01 or FORM GST SPL -02, as the case may be, shall be deemed to be approved, and the order in FORM GST SPL-05 approving the said application shall be made available on the common portal.

3.3.6 In cases where an application for waiver of interest or penalty or both was filed in FORM GST SPL-01 and an order approving the said application is issued by the proper officer in FORM GST SPL-05, then a summary of order in FORM GST DRC-07 need not be issued on the common portal. However, in cases where an order in FORM GST SPL-05 or in FORM GST SPL-06, as the case may be, has been issued approving an application filed in FORM GST SPL-02, the liability earlier created in the ELR – Part II by the demand order or the appellate order, as the case may be, shall stand modified accordingly.

3.3.7 It is also to be mentioned that as per the second proviso to sub-section (1) of Section 128A, the conclusion of proceedings against a demand notice/ statement/ order under this section and further issuance of such conclusion order in FORM GST SPL-05 or in FORM GST SPL-06, as the case may be, in cases where the department had filed an application/ initiated revisional proceedings against the said demand notice/ statement/ order, is conditional upon the payment of additional tax payable, if any, as determined by the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months of issuance of such order. In case, such additional tax is not paid within the specified time limit, then as per sub-rule (16) of Rule 164, the waiver of interest or penalty or both provided under section 128A as per the order issued in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, shall become void.

3.3.8 Further, while processing the said application, the proper officer shall ensure that the applicant has paid the amount of tax demanded in the notice/ statement/ order referred in sub-section (1) of section 128A (other than the amount not payable anymore due to the retrospective insertion of sub-section (5) and sub-section (6) to section 16, as referred in para 3.2.4), including the amount of tax demand pertaining to erroneous refund, if any, and also on account of demand pertaining to the period other than the period mentioned in sub-section (1) of section 128A, if any, in the said notice/ statement/ order. Further, the proper officer shall also keep in consideration that waiver of interest and penalty under section 128A is available only in respect

of demand pertaining to the period mentioned in sub-section (1) of section 128A, and the demand on issues other than on account of erroneous refund.

3.3.9 Where it is found that any amount of interest and penalty is payable by the applicant on account of some demand pertaining to the period other than the period mentioned in sub-section (1) of section 128A or pertaining to demand of erroneous refund, the detail of the same shall be mentioned in column no. 19 and column no. 20 of FORM GST SPL-05 or FORM GST SPL-06, as the case may be. Further, in such cases, an opportunity of personal hearing may be granted to the applicant, before issuance of order in FORM GST SPL-05 or FORM GST SPL-06.

3.3.10 In cases referred in para 3.3.9, the applicant is required to pay the amount of interest or penalty or both, detailed in column no. 19 and column no. 20 of FORM GST SPL-05 or FORM GST SPL-06, within a period of three months from the date of issuance of the said order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be. In case where the said amount is not paid within the period of three months from the date of issuance of the said order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, 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, as per sub-rule (17) of rule 164.

3.4 Appeal against the orders issued under Rule 164:

3.4.1 No appeal shall lie under section 107, against an order issued in FORM GST SPL-05 concluding the proceedings under section 128A. The order issued in FORM GST SPL-07, rejecting the application for waiver, shall be, however, appealable in accordance with sub-section (1) of section 107 within the time limit specified therein, by filing an application in FORM GST APL-01. In such cases, normally, no pre-deposit may be required to be paid by the taxpayer for filing the said appeal, as the said amount may already have been paid as a part of payment of tax dues involved in the demand notice/ statement / order before filing an application in FORM GST SPL-01 or FORM GST SPL-02. However, in cases where no amount of tax dues has been paid or amount of tax dues paid is less than the requisite amount for pre-deposit for filing appeal as per sub-section (6) of section 107, the remaining amount of pre-deposit will be required to be paid for filing the said appeal.

3.4.2 It is also important to note that the subject matter of the appeal will only be regarding the applicability of waiver of interest or penalty or both under Section 128A and not on the merits of the original notice/ statement/ order.

3.4.3 It is to be mentioned that, in cases where an appeal has been filed by the applicant against the order in FORM GST SPL-07, and the appellate authority holds that the proper officer has wrongly rejected the application, thereby allowing the applicant the benefit of the waiver of interest or penalty or both, the said appellate authority shall pass an order in FORM GST SPL-06. This form shall accordingly modify the liability created, if any, in the ELR-Part II.

3.4.4 Where appeal had been withdrawn before filing an application in FORM GST SPL-02, for availing the waiver of interest or penalty or both under Section 128A, but the application for waiver is rejected by the proper officer by issuance of order in FORM GST SPL-07,

(a) in cases, where the taxpayer prefers an appeal against the said rejection order, and the appellate authority holds that the proper officer has rightly rejected the said application made in FORM GST SPL-02, and issues an order in FORM GST APL-04, then the original appeal filed by the applicant shall be restored, subject to condition that the applicant files an undertaking electronically on the portal in FORM GST SPL-08, that he has neither filed nor intends to file any appeal against such order of the Appellate Authority.

(b) in cases, where the taxpayer prefers an appeal against the said rejection order, and the appellate authority holds that the proper officer has wrongly rejected the said application made in FORM GST SPL-02, and issues an order in FORM GST SPL-06, thereby holding that the appellant is eligible for waiver of interest or penalty or both, no appeal shall lie against the said order issued in FORM GST SPL-06.

(c) in case, where the taxpayer does not prefer an appeal within the time period mentioned in sub-section (1) of section 107 against the said rejection order, then the original appeal filed by the applicant shall be restored.

4. 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:

S. No.	Issue	Clarification
1	Whether the benefit provided under Section 128A will be applicable to taxpayers who have paid the tax component in full before the date on which the said section has come into effect?	In this regard, it is to be mentioned that all such amount paid towards the said demand upto 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.
2	Whether amount recovered by the tax officers as tax due from any other person on behalf of the taxpayer, against a particular demand can be considered as tax paid towards	Yes. The said 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

	the same for the purpose of Section 128A?	on or before the date notified under sub-section (1) of section 128A.
3	Whether the amount recovered by the tax officers as interest or penalty or both, pertaining to demand under Section 73 pertaining to Financial Years 2017-18, 2018-19 and 2019-20, can be adjusted against the tax amount payable towards the demand made under Section 73 pertaining to the said financial years?	No. 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.
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?	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. 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.
5	Whether the benefit under Section 128A is available, 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?	No. Section 128A (1) clearly provides that 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.
6	Where the notice/order involves multiple periods, ranging from the period for which waiver provided in Section 128A is applicable, and includes some other tax periods for which such waiver is not applicable, whether the benefit	The taxpayer is eligible to apply for waiver of interest or penalty or both, in such cases where the demand notice/ order spans tax periods covered under Section 128A and those not covered under the said section. However, as per sub-rule (4) of Rule 164, the taxpayer shall be required to pay the full amount of tax demanded in the notice/ statement / order, as the

	of waiver of interest or penalty or both under Section 128A can be availed for the period covered under section 128A? If so, what is the tax amount payable for claiming waiver under Section 128A?	case may be, to avail the benefit of waiver of interest or penalty or both under Section 128A. Further, though the amount of tax demanded shall be required to be paid as per the notice/ statement / order, as the case may be, for whole of the period covered under the said notice/ statement / order, but the waiver of interest or penalty or both under section 128A shall only be applicable for the period specified in section 128A, and not for the period not covered under the said section. On payment of the full amount demanded in the notice/ statement/ order, if the proper officer finds that the applicant is eligible for waiver of interest or penalty or both for tax periods covered under Section 128A, he will reduce the liability to that extent in his order in FORM GST SPL-05, and the remaining liability of interest or penalty or both for tax periods not covered under Section 128A, remains payable by the taxpayer. The said amount shall be required to be paid by the applicant within three months from the date of issuance of order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be. If the said amount is not paid within the time limit as mentioned above, the order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, 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, as per sub-rule (17) of rule 164.
7	Where the notice/ statement/ order issued under Section 73 involves multiple issues and one of them is regarding demand of erroneous refund, whether an application can be filed for waiver of interest or penalty or both under Section 128A?	Yes. However, as per sub-rule (3) of Rule 164, the taxpayer shall be required to pay the full amount of tax demanded in the notice/ statement / order, as the case may be, including on account of demand of erroneous refund, to avail the benefit of waiver of interest or penalty or both under Section 128A.

	If so, what is the tax amount payable for claiming waiver under Section 128A?	Further, in such cases, the waiver of interest or penalty or both under section 128A shall only be available in respect of tax demand other than that pertaining to demand of erroneous refund. On payment of the full amount demanded in the notice/ statement/ order, if the proper officer finds that the applicant is eligible for waiver of interest or penalty or both for tax periods covered under Section 128A in respect of tax demand other than that pertaining to demand of erroneous refund, he will reduce the liability to that extent in his order in FORM GST SPL-05, and the remaining liability of interest or penalty or both, that corresponds to demand of erroneous refund, remains payable by the applicant. The said amount shall be required to be paid by the applicant within three months from the date of issuance of order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be. If the said amount is not paid within the time limit as mentioned above, the order in FORM GST SPL-05 or FORM GST SPL-06, as the case may be, 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, as per sub-rule (17) of rule 164.
8	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	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

	of tax liability within the specified time limit, what will be the status of the conclusion of proceedings under Section 128A?	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.
9	Sub-section (3) of section 128A refers to only appeal or writ petition. In this regard, whether matters where SLP filed by the applicant is pending before the Supreme Court, what is the procedure to be followed by the taxpayer to avail the waiver of interest or penalty or both?	Yes, in such cases also the applicant will be required to withdraw the said special leave petition and file an application in FORM GST SPL-01 or FORM GST SPL-02, as the case may be, along with proof of withdrawal of SLP or the copy of the application or any other document filed for withdrawal of SLP, where the order for withdrawal of SLP has not been issued at the time of filing application in FORM GST SPL-01 or FORM GST SPL-02. In such cases, the procedure mentioned in para 3.1.6 may be followed.
10	Whether the benefit provided under Section 128A will be available for matters involving IGST and Compensation Cess?	Yes. On joint reading of section 20 of the Integrated Goods and Services Tax Act, 2017 and section 11 of GST (Compensation to States) Act, 2017 along with section 128A of CGST Act, it becomes clear that the benefit provided under Section 128A of CGST Act will be available for matters involving IGST and compensation cess as well. In this regard, it is mentioned that in such cases, full payment of tax means payment of CGST, SGST, IGST and compensation cess demanded in the notice/ statement/ order, as the case may be.
11	Whether Section 128A covers cases involving demand of irregularly availed transition credit?	The transitional credit is considered to be availed on the date on which the said credit amount is credited in the Electronic Credit Ledger. On reading Rule 121 read with sub-rule (3) of rule 117, it is clear that any demand in respect of transitional credit wrongly availed, whether wholly

		or partly can be made under section 73 or, as the case may be, section 74. Therefore, it is mentioned that if the amount of transitional credit has been availed in the period covered under Section 128A and notice for demand of wrongly availed credit is issued under section 73, the same is covered under Section 128A.
12	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.
13	Whether payment to avail waiver under Section 128A can be made by utilizing ITC?	Yes. 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.
14	Whether the benefit of waiver under Section 128A be availed qua import IGST payable under the Customs Act, 1962?	No. In such cases, demand is not issued under section 73 of the CGST Act, but is issued under the provisions of

		Customs Act, 1962 and therefore, such cases are not covered under waiver of interest or penalty or both under section 128A.
15	With retrospective insertion of sub-sections (5) and (6) to Section 16 of the CGST Act, the tax demanded in notice/ statement/ order reduces. Whether the entire tax amount demanded in the notice/ statement/ order has to be paid in such cases, to avail the benefit under section 128A?	Sub-rule (5) of rule 164 mentions that the amount payable in order to avail the benefit under section 128A, shall be calculated 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. Therefore, the applicant is required to pay only the amount that is payable, calculated 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, before submitting the application. 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. It is also re-iterated that where the taxpayer is deducting the amount of ITC which was denied on account of contravention of sub-section (4) of section 16 of the CGST Act, but which is now available, as per retrospectively inserted provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act, he is not required to file application for rectification in respect of the same as per special procedure notified under Section 148 vide notification No. 22/2024-Central tax dated 8th October 2024.

16	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?	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.
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5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

6. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)