

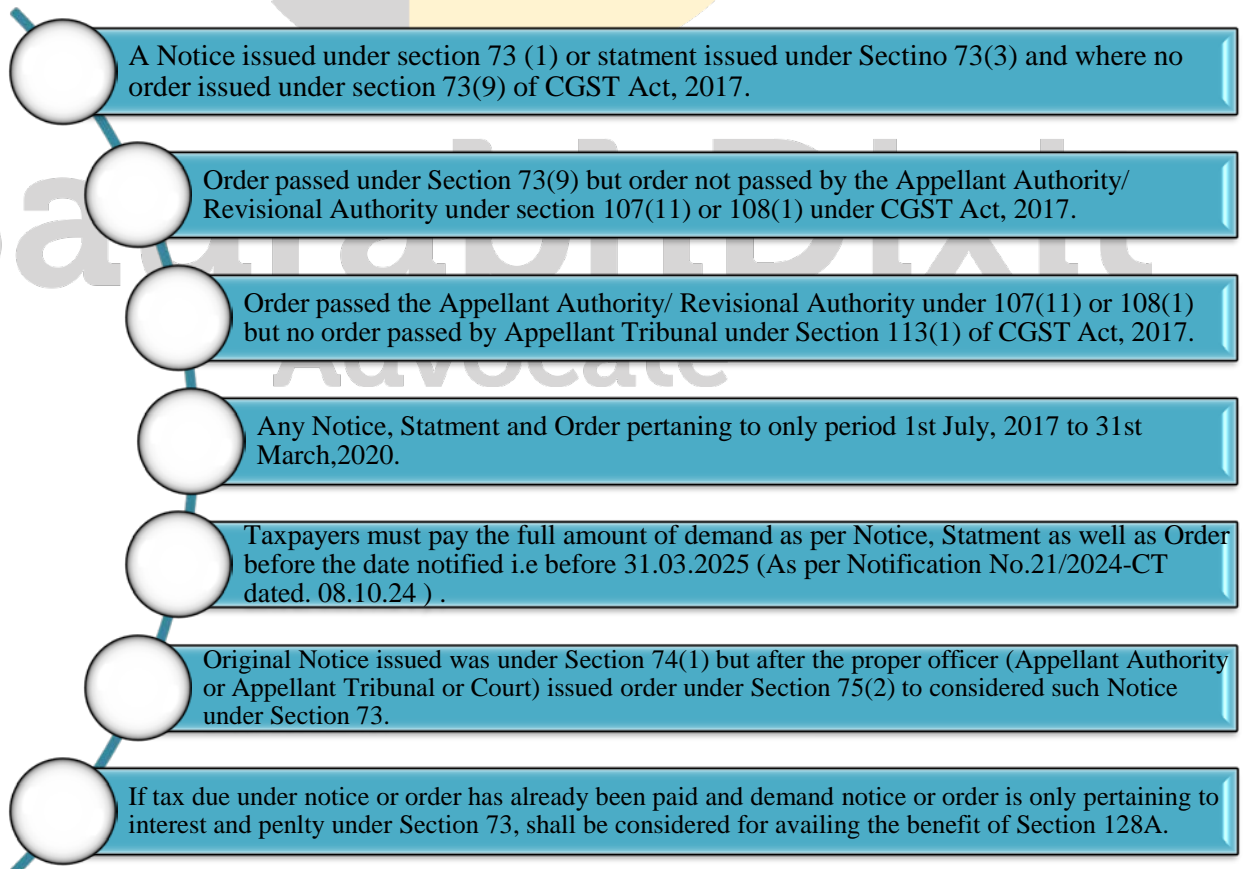
GST AMNESTY SCHEME UNDER SECTION 128A:-

That the 53rd GST Council meeting proposed new Section 128A in the Central Goods and Service Tax (CGST) Act, 2017 for conditional waiver of Interest and Penalty for the period of July'2017 to March' 2020 (initial Phase of GST), where taxpayers, consultant as well as department officer face various challenges to implementation of GST.

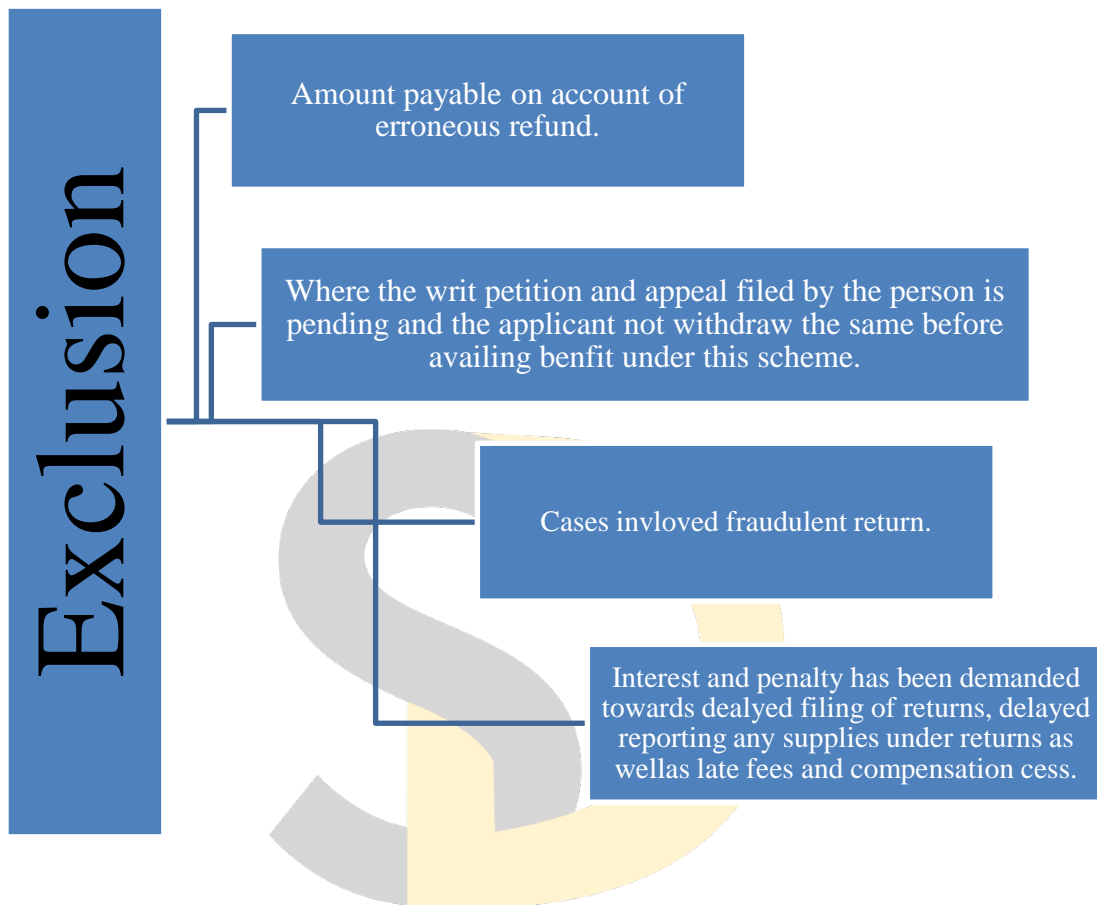
That the Government was introduced Section 128A in the Central Goods and Service Tax (CGST) Act, 2017 vide Finance (No.2) Act, 2024 and condition and procedure for closer of proceedings under Section 128A issued vide recent Notification No. 20/2024-CT dated. 08.10.24. Further, various doubts related to Section 128A of the CGST Act, 2017 is clarified by CBIC vide issuing recent Circular No. 238/32/2024-GST dated. 15.10.24. This is effective from the date of 1st November, 2024.

That the basically this scheme is applicable to only demand raised under Section 73 of CGST Act, 2017. Let's understand Eligibility, condition and procedure for application under Scheme, which are as follows:

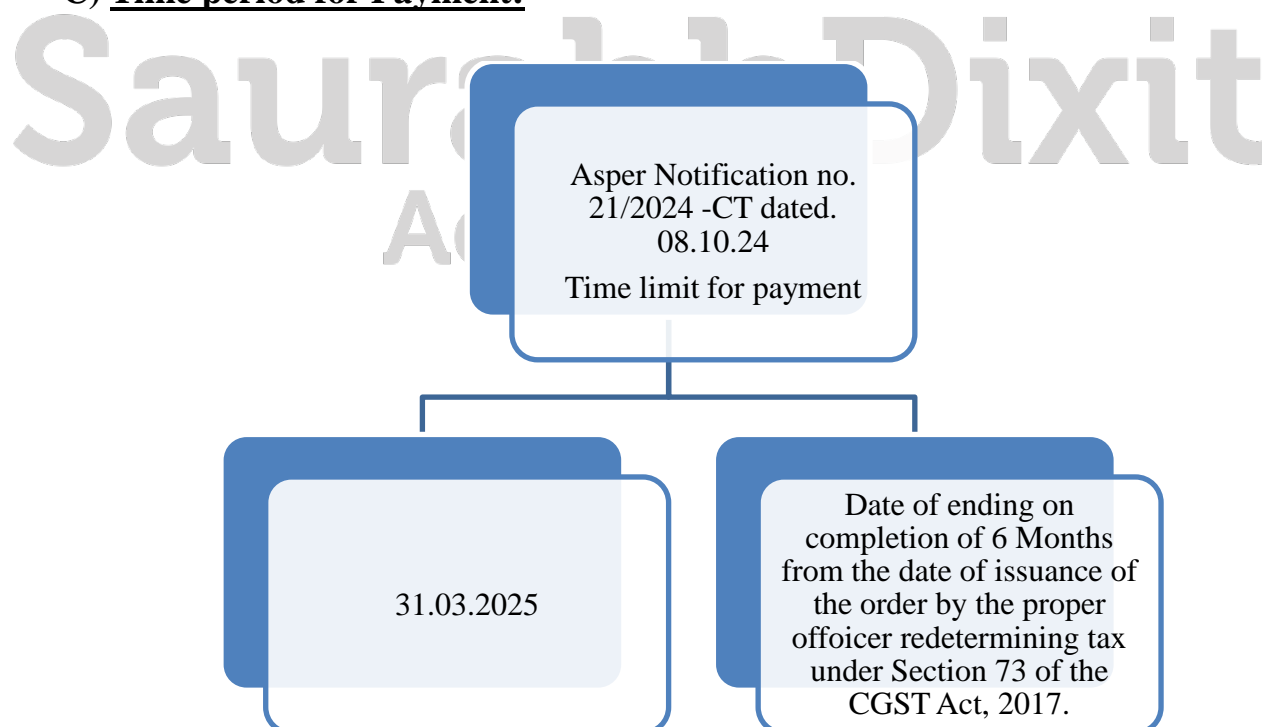
A) Eligibility:-

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- 1. A Notice issued under section 73 (1) or statement issued under Section 73(3) and where no order issued under section 73(9) of CGST Act, 2017.
 - 2. Order passed under Section 73(9) but order not passed by the Appellant Authority/ Revisional Authority under section 107(11) or 108(1) under CGST Act, 2017.
 - 3. Order passed the Appellant Authority/ Revisional Authority under 107(11) or 108(1) but no order passed by Appellant Tribunal under Section 113(1) of CGST Act, 2017.
 - 4. Any Notice, Statement and Order pertaining to only period 1st July, 2017 to 31st March, 2020.
 - 5. Taxpayers must pay the full amount of demand as per Notice, Statement as well as Order before the date notified i.e before 31.03.2025 (As per Notification No.21/2024-CT dated. 08.10.24).
 - 6. Original Notice issued was under Section 74(1) but after the proper officer (Appellant Authority or Appellant Tribunal or Court) issued order under Section 75(2) to considered such Notice under Section 73.
 - 7. If tax due under notice or order has already been paid and demand notice or order is only pertaining to interest and penalty under Section 73, shall be considered for availing the benefit of Section 128A.

B) Exclusion :



C) Time period for Payment:



D) How to make payment under the Scheme:

Notice or Statment referred in Section 128A(1) and yet to be adjudicated.

- Payment of duty shall be made through DRC-03.

Order referred under in Section 128A (b) and (c) i.e order issued by Appellant Authority, Revisional Authority as well as Adjudicating Authority.

- Payment of duty shall be made by crediting the amount in the electronic liability registered against the debit entry created by the said order. For that pls referred procedure mentioned in Para 4 of Circular No. 224/18/2024- dated. 11.07.2024.
- If the payment against the order already made through DRC-03, taxpayer may required to file DRC-03A as precribed under Rule 142(2b) and credit of the said amont against debit entry created under the said order.

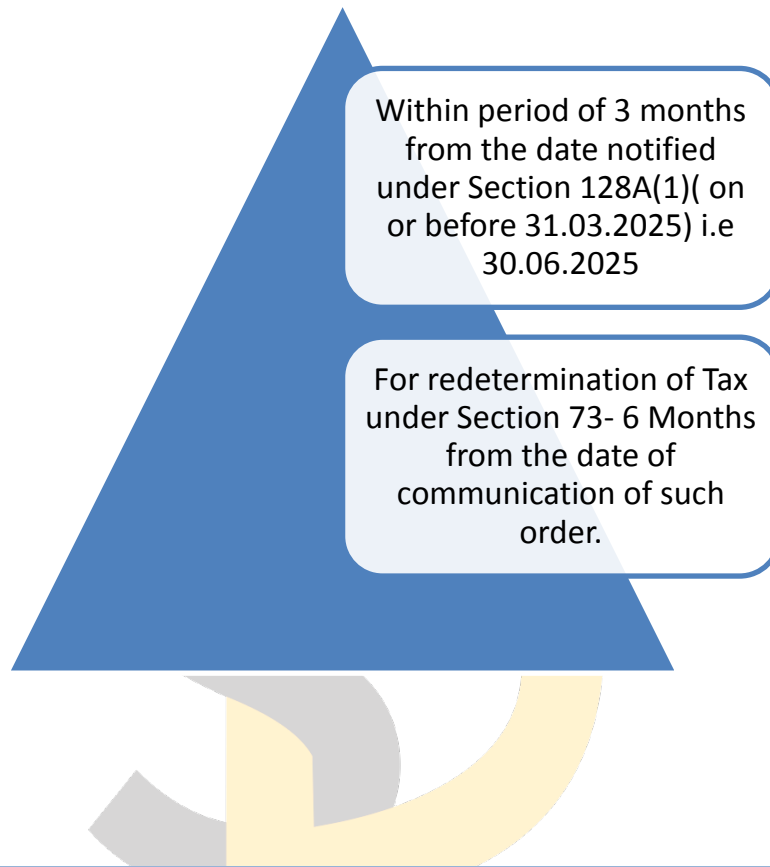
Important points

- Amount of duty shall be paid on or before 31.03.2024;
- for the purpose of determination of the date of payment in case of order - considered date on which payment made under DRC-03 not the date on which the said amount adjusted.
- All payment made towards demand before the issuance of demand notice or order or before or after Section 128A come inti force, shall be considered as amount payable under Section 128A(1) of the CGST Act, 2017.

Important points

- Any amount paid as interest and penalty during the notified period shall not refunded or not adjudsted against demand pertaining to that period.
- on payment of full amount of tax demand under notice/statment/order, taxpayer availing benefit of wavier of interest and penalty in case of partial wavier of interest & penalty in certain issue, multiple period invloved as well as multiple issue and one of them related erroneous refund issue.
- In case of notice/order includes demand on contravention of Section 16(4), amount of tax shall be calculated after deducting amount of whcih is not payable anymore as per Section 16(4).

E) Time period for filing application under the Section 128A:



F) Form:-

Sr. No.	Form	Where to file	Important Points
1	GST SPL-1	Application filed against notice / Statement.	<ul style="list-style-type: none">a. Provide details of the notice/ statement as well as payment made under DRC-03.b. Application shall be filed at any time not later than 3 months from 31.03.25.c. Firstly make a payment of full demand of Tax as per prescribed mode under abovementioned Circular as well as Rule 164 and withdraw any appeal and/or writ petition filed before the High Court and Supreme Court after that application under Section 128A in case of Notice/ Statement of demand.
2	GST SPL -2	Application filed against Order.	<ul style="list-style-type: none">a. Provide details of the order as well as withdrawal of appeal if any filed before the appropriate authority.b. Payment only made by crediting amount in Electronic Liability Register(ELR) against the debit entry created by the order. If payment made already vide DRC-03, file DRC-03A before filing application in SPL-02 and then crediting amount in ELR.

			<p>c. Application shall be filed with 3 months from 31.03.25 and in case of redetermining of tax under Section 73, within 6 months from the date of communication of order.</p> <p>d. In case of Order, firstly make payment by crediting amount in electronic liability registered against the debit entry created by the order. If any payment of Tax demand paid by the taxpayer vide DRC-03, then application under DRC-03A as per Rule 142(2B) shall be filed by the person and then Credit amount in ELR. After that withdraw any appeal or writ petition filed before the Appellant Authority, Appellant Tribunal as well as High Court & Supreme Court. Subsequently, application shall be filed under Section 128A alongwith order for withdrawal of appeal or writ petition and if order not issued than copy of application or document filed for withdrawal of the said appeal or writ petition shall be uploaded with application under Section 128A and when order issued for withdrawal, shall be filed within period of 1 months from the date of issuance of it by concern authority.</p>
3	GST SPL -3	Proper officer issued notice for rejection application filed under SLP1/2.	a. Notice issued within period of 3 months from the date of receipt of application under SPL-01/ 02 after providing opportunity of being heard.
4	GST SPL -4	Reply to be filed against SLP-3 by the taxpayers.	a. Taxpayer shall filed reply against notice issued under SPL-03 within period of 1 months from the date of receipt of such notice.
5	GST SPL -5	Proper officer issue Order for accepting Application after satisfied that application eligible for wavier of interest and penalty.	<p>a. In case of SPL-01: Summary of order as per Rule 142(5) shall not be required to issued in Form of DRC-07 on common portal.</p> <p>b. In case of SPL-02: Liability created in Part-II of ELR shall be modified accordingly.</p> <p>c. If SPL-03 not issued within period of 3 months from the date of receipt of application, proper officer shall issue order within 3 months for accepting application.</p> <p>d. If SPL-03 issued within period of 3 months and taxpayers not filed any reply against it, proper officer shall issue order within period of 4 months.</p> <p>e. Order should be issued within time limit, otherwise application deemed to be accepted.</p>

			<p>f. If any interest and penalty payable by the taxpayers pertaining to period other than covered under the Section 128A(1) or related to erroneous refund, the details of the same mentioned in column No. 19 and 20 of the said form.</p> <p>g. If taxpayer not paid additional tax as demanded by the department on filing appeal against order within period of 3 months, order issued in SPL-05 become void.</p>
6	GST SPL -6	Appellant Authority pass order for accepting Application for wavier of interest and penalty.	<p>a. In case of SPL-02: Liability created in Part-II of ELR shall be modified accordingly.</p> <p>b. Order should be issued within time limit, otherwise application deemed to be accepted.</p> <p>c. If any interest and penalty payable by the taxpayers pertaining to period other than covered under the Section 128A(1) or related to erroneous refund, the details of the same mentioned in column No. 19 and 20 of the said form.</p> <p>d. If taxpayer not paid additional tax as demanded by the department on filing appeal against order within period of 3 months, order issued in SPL-05 become void.</p>
7	GST SPL -7	Proper officer issue order for rejection of application if not satisfied with reply of taxpayers.	<p>a. Order should be issued within time limit.</p> <p>b. Appeal shall be filed against the said order in accordance with Section 107(1) within time limit specified under therein in form APL-01.</p> <p>c. Pre-deposit not required to paid as full amount paid at the time of filing SPL-01 / 02. However, amount not or less paid at the time of filing SPL-01/02, pre-deposit required to be paid accordingly.</p> <p>d. Appeal only related to wavier of interest and penalty not on merit.</p>
8	GST SPL -8	Undertaking for not file any appeal against order issued under APL-04.	<p>a. If taxpayer file appeal against the SPL-07 and the authority held that proper officer correctly reject the application filed in SPL-02 by issuing APL-04, then original appeal shall be restored subject to condition that the taxpayer provide undertaking electronically for not filing appeal against the APL-04.</p>

THINGS TO BE KEPT IN MIND

1. Ensure that SCN is issued by authorities if you wish to apply under this scheme. Mere payment suo motu is not sufficient to seek waiver from interest/penalty, since without SCN/order, this scheme cannot be applied under.
2. If OIO is under Section 74 and you are in appeal, ensure you place your best defense to at least request that the issue should be treated under Section 73 instead of 74 based on non-fraud/non-suppression / interpretation etc. aspects.
3. Matter related to IGST as well as compensation Cess also covered under the Scheme providing whole amount of Tax related to IGST, CGST, SGST as well as Compensation Cess paid.
4. Demand pertaining to transitional Credit also covered under the scheme if the Credit availed the period mentioned under the Section 128A. In case where order is passed holding ITC as time barred due to violation of Section 16(4) and where the ITC was availed upto 30.11.21, since due to retrospective amendment such ITC is eligible, the scheme “excludes” such ITC amount from coverage of “payment of entire dues” (since such ITC is now eligible) and granted waiver of interest and penalty for the entire amount subject to payment of balance amount (other than Section 16(4) retrospective amendment related ITC).

Question:

1. Should I filed application or availed benefit of the Scheme, if I had already reversed Credit through GSTR-3B?

Ans: Yes, subject to above modalities, and manner of paying and reporting the same.

2. If notice/ Statement or order issue limited to interest or penalty only then benefit availed under Section 128A? -

Ans: Yes, it is covered under the said scheme. However , benefit not applicable when interest and penalty is related to delayed filing of return, delayed reporting of any supply in the return etc.

3. Whether any amount recovered by the Tax officers from the other person on behalf of taxpayers against particular demand can be considered as Tax paid?

Ans: Yes, subject to above modalities, and manner of paying and reporting the same.

4. Whether penalty related to late fee, redemption fine covered under the Scheme?

Ans: No, Scheme covered only penalty related to Section 73, 122, 125 not late fees and redemption fees.

Disclaimer: The contents of this note have been prepared on the basis of Finance (I) Act, 2024, the Press Release by the GST Council and Notifications as well as Circular issued by the CBIC. Although care has been taken to ensure the accuracy, completeness and reliability of the information available, the author assumes no liability. Therefore, users of this information are expected to refer to the extant law. The information as given above in no case shall be constructed as a professional advice or opinion.

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