



Lawgics

By Nidhi, Advocate



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Section 128 of CGST Act, 2017

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128. Power to waive penalty or fee or both.

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

Our Interpretation

Section 128	<p>This section empowers Government to waive penalty for certain class of taxpayers or under certain circumstances. This section provides for waiver of:</p> <ul style="list-style-type: none">penalty leviable under section 122 or section 123 or section 125, orlate fee payable under section 47; <p>to those classes of taxpayers or under such mitigating factors as notified by the Government.</p> <p>A series of notifications have been issued in the past for reduction of late fees with regard to filing of GSTR-3B, GSTR-1, GSTR-5, GSTR-5A, and GSTR-6. Few of the latest notifications for waiver of late fees are tabulated as under:</p>						
Notification No. 02/2023-Central Tax dated 31.03.2023	The registered persons who fail to file GSTR-4 for the quarters from July' 2017 to March' 2019 or for the financial years from 2019-20 to 2021-22 by the respective due dates <u>could file their GSTR-4 between 01.04.2023 to 30.06.2023</u> by just depositing late fees of Rs.250/- under CGST and Rs.250/- under SGST. NIL late fee is payable if the total amount of tax payable in the said return is NIL.						
Notification No. 07/2023-Central Tax dated 31.03.2023	<p>Late fees on GSTR-9, leviable for the financial year 2022-23 onwards:</p> <table border="1"><thead><tr><th>Class of registered persons</th><th>Amount of late fees</th></tr></thead><tbody><tr><td>Registered persons having an aggregate turnover of up to Rs.5.00 crores in the relevant financial year</td><td>Rs.25.00 per day, subject to a maximum of an amount calculated at 0.02 percent of turnover in the State or Union territory</td></tr><tr><td>Registered persons having an aggregate turnover of more than Rs.5.00 crores and upto Rs.20.00 Crore in the relevant financial year</td><td>Rs.50.00 per day, subject to a maximum of an amount calculated at 0.02 percent of turnover in the State or Union territory</td></tr></tbody></table> <p>Amnesty to GSTR-9 non-filers:</p> <p>The registered persons who failed to file GSTR-9 by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020- 21 or 2021-22, can file the same between 01.04.2023 to 30.06.2023 on payment of the total amount of late fees of Rs. 10,000/- under CGST and Rs. 10,000/- under SGST.</p>	Class of registered persons	Amount of late fees	Registered persons having an aggregate turnover of up to Rs.5.00 crores in the relevant financial year	Rs.25.00 per day, subject to a maximum of an amount calculated at 0.02 percent of turnover in the State or Union territory	Registered persons having an aggregate turnover of more than Rs.5.00 crores and upto Rs.20.00 Crore in the relevant financial year	Rs.50.00 per day, subject to a maximum of an amount calculated at 0.02 percent of turnover in the State or Union territory
Class of registered persons	Amount of late fees						
Registered persons having an aggregate turnover of up to Rs.5.00 crores in the relevant financial year	Rs.25.00 per day, subject to a maximum of an amount calculated at 0.02 percent of turnover in the State or Union territory						
Registered persons having an aggregate turnover of more than Rs.5.00 crores and upto Rs.20.00 Crore in the relevant financial year	Rs.50.00 per day, subject to a maximum of an amount calculated at 0.02 percent of turnover in the State or Union territory						
Notification No. 08/2023-Central Tax dated 31.03.2023	Taxpayers who failed to file the final return in GSTR-10 by the due date could file the same between 01.04.2023 to 30.06.2023 with late fees of Rs. 500/- under CGST and Rs. 500/- under SGST.						

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