

THE FINANCE (NO. 2) BILL, 2024

New Section 128A. Waiver of Interest or Penalty for Certain Tax Periods.

Recommendation of
53 GST Council Meeting



Background

- GST Council in its 53rd meeting held on 22nd June 2024 has recommended for waiving interest and penalties for demand notices issued under Section 73 of the CGST Act (i.e. the cases not involving fraud, suppression or willful misstatement, etc.) for the fiscal years 2017-18, 2018-19 and 2019-20, if the full tax demanded is paid upto 31.03.2025
- Accordingly, in the Finance Bill 2024 vide clause 142, after section 128 of the Central Goods and Services a **new Section 128A is inserted.**
- **Disclaimer:**
- This presentation wishes to provide a brief synopsis on the new Section 128 A inserted vide clause 142 of Finance Bill 2024 for easy understanding.
- The viewers are advised to read the relevant notification and circular for all legal purpose.

Insertion of new section 128A.

142. After section 128 of the Central Goods and Services Tax Act, the following section shall be inserted, namely:—

Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods.

“128A. (1) Notwithstanding anything to the contrary contained in this Act, where any amount of tax is payable by a person chargeable with tax in accordance with,—

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

Legal provisions of new Section 128A of CGST Act, 2017

Overview

Key Provisions.

- If a person pays the full tax amount specified in a notice or order for non-fraudulent cases by a date to be notified by the government, they will be exempt from paying interest and penalties.
- Applicable for tax periods from July 1, 2017, to March 31, 2020.
- Specific conditions must be met, including payment deadlines and withdrawal of certain appeals.

Specific Clauses.

—Clause (a):

- Covers notices issued under Section 73(1) or statements under Section 73(3), provided no final order under Section 73(9) has been issued.

—Clause (b):

- Covers orders issued under Section 73(9) with no subsequent appeal or revision orders under Sections 107(11) or 108(1).

—Clause (c):

- Covers appellate or revisional orders under Sections 107(11) or 108(1), with no further orders under Section 113(1). (

Section 128A continues...

—Provided that where a notice has been issued under subsection (1) of section 74, 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, the said notice or order shall be considered to be a notice or order, as the case may be, referred to in clause (a) or clause (b) of this sub-section:

Provisos.

—First Proviso:

- Cases under Section 74 involving fraud or willful misstatement are treated similarly if the appellate authority determines Section 73 is applicable instead.

—Second Proviso:

- Additional tax determined by appellate authorities must be paid within three months to benefit from the waiver.

—Third Proviso:

- No refunds will be given for interest and penalties already paid.

Exclusions and Finality

—Exclusions:

- Not applicable for amounts payable due to erroneous refunds.
- Not applicable for cases with ongoing appeals or writ petitions that have not been withdrawn.

—Finality:

- Once the specified tax amount is paid and proceedings are concluded, no further appeals against the relevant orders are allowed.

The Synopsis

New Section 128 A



Sub-section (1) Clause (a).

—Provision:

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

—Explanation:

- This clause applies when a notice or statement indicating tax dues has been issued under Section 73(1) or 73(3), and no final order has been issued under Section 73(9). If the taxpayer pays the full tax amount indicated by the notice or statement by a specified date, interest and penalties would be waived.

Sub-section (1) Clause (b).

—Provision:

- "an order passed under sub-section (9) of section 73, and where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been passed;"

—Explanation:

- This clause applies when an order indicating tax dues has been issued under Section 73(9), and there have been no further appeal or revision orders under Section 107(11) or Section 108(1). If the taxpayer pays the full tax amount as per the initial order by a specified date, interest and penalties would be waived.

Sub-section (1) Clause (b).

—Provision:

- "an order passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of section 113 has been passed,"

—Explanation:

- This clause applies when an appellate or revisional order indicating tax dues has been issued under Section 107(11) or Section 108(1), and there have been no further orders under Section 113(1). If the taxpayer pays the full tax amount as per the appellate or revisional order by a specified date, interest and penalties would be waived.

Provisos to Sub-section (1) First Proviso:

—Provision:

- "Provided that where a notice has been issued under sub-section (1) of section 74, 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, the said notice or order shall be considered to be a notice or order, as the case may be, referred to in clause (a) or clause (b) of this sub-section:"

—Explanation:

- Ensures that cases involving fraud or willful misstatement (Section 74) are treated similarly for the purpose of waiving interest and penalties if they meet the conditions specified in clauses (a) or (b).
- If an Appellate Authority, Tribunal, or court examines the case and concludes that the charges of fraud, willful misstatement, or suppression of facts are not proven against the person, then the proper officer redetermine the notice as if it were issued under section 73(1) instead of section 74(1).

Provisos to Sub-section (1) Second Proviso:

—Provision:

- "Provided further that the conclusion of the proceedings under this sub-section, in cases where an application is filed under sub-section (3) of section 107 or under sub-section (3) of section 112 or an appeal is filed by an officer of central tax under sub-section (1) of section 117 or under sub-section (1) of section 118 or where any proceedings are initiated under sub-section (1) of section 108, against an order referred to in clause (b) or clause (c) or against the directions of the Appellate Authority or the Appellate Tribunal or the court referred to in the first proviso, shall be 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:"

—Explanation:

- If an additional tax amount is determined by an appellate authority, tribunal, or court, the taxpayer must pay this additional amount within three months to benefit from the waiver of interest and penalties.

Provisos to Sub-section (1) Third Proviso:

—Provision:

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

—Explanation:

- Taxpayers cannot claim a refund for interest and penalties they have already paid, even if they pay the tax due by the specified date.

Sub-section (2)

—Provision:

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

—Explanation:

- The waiver provisions do not apply to amounts payable due to erroneous refunds.

Sub-section (3)

—Provision:

- "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).“

—Explanation:

- If a taxpayer has an ongoing appeal or writ petition that they have not withdrawn, they cannot benefit from the waiver of interest and penalties.

Sub-section (4).

—Provision:

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

—Explanation:

- Once the taxpayer pays the specified tax amount and the proceedings are concluded, they cannot file an appeal against the relevant orders under Section 107(1) or Section 112(1).



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Comparison with SVLDRS Scheme

—The SVLDRS scheme launched in 2019 for resolving legacy disputes under Service Tax and Central Excise provided broader relief, including waivers on interest and penalties. It covered cases under litigation, audit, or investigation, with certain exclusions.

—Key Differences:

• Scope:

- SVLDRS was more comprehensive, offering relief for a wider range of cases, including partial waivers for litigation or investigation.

• Requirement:

- Section 128A requires full payment of tax dues, which might be financially challenging for some taxpayers.

Section 128A

—Full Tax Payment Required:

- Requires the full payment of tax dues, which may be financially challenging for some taxpayers.

—Limited Scope:

- Applies only to non-fraudulent GST cases for the specified period, limiting its applicability.

Other issues

—Definition of "Suppression":

- Non-declaration of required facts or information in returns or documents can lead to notices under Section 74, which are not covered by this waiver until adjudicated and reclassified.

—Recent Notices:

- A large number of notices issued based on discrepancies in returns and e-way bills are pending finalization, complicating eligibility for the scheme.

—Denial of ITC:

- GSTR 2A Vs GSTR-3B
- Non-Filing of GSTR-by suppliers.
- Issues with denied Input Tax Credit (ITC) based on HSN code discrepancies without proper verification affect taxpayer decisions.

—Lack of Tribunal:

- The absence of a constituted tribunal hinders the resolution of appeals and finalization of notices.

Summary of Section 128A.

—Purpose:

- Provides relief from interest and penalties for certain tax periods if the taxpayer pays the full tax amount by a specified date.

—Applicability:

- Covers notices and orders issued under Section 73, related to non-fraudulent cases for the period from 1st July 2017 to 31st March 2020.

—Conditions:

- Tax must be paid by a date specified by the government, and any additional tax from appellate orders must be paid within three months.

—Exclusions:

- Does not apply to erroneous refunds or pending appeals not withdrawn by the specified date.

—Finality:

- Once the tax is paid and proceedings are concluded, no further appeal is allowed against the specified orders.

—Please note that the procedural requirements are not yet notified for opting this scheme. Expected after the enactment of the Finance Bill.



Awaits

Thank
you



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