

## FAQ on Section 128A

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**THE** Finance Bill, 2024, through clause 142, seeks to introduce a new Section 128 A in the CGST Act, 2017 to provide for waiver of penalty and interest in certain cases. The said Section 128 A is reproduced below.

*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*

*(b) 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; or*

*(c) 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,*

*pertaining to the period from 1st July, 2017 to 31st March, 2020, or a part thereof, and the said person pays the full amount of tax payable as per the notice or statement or the order referred to in clause (a), clause (b) or clause (c), as the case may be, on or before the date, as may be notified by the Government on the recommendations of the Council, no interest under section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:*

*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:*

*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:*

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

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

*(3) 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).*

*(4) 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."*

The various doubts that may arise in this connection, are addressed through this FAQ.

**Q1.** What are all the categories of cases which are entitled for the waiver of interest and penalty?

**A1.** As per sub-section (1) of Section 128A, the following categories of cases are entitled for the scheme.

(a) A show cause notice issued under Section 73 (1) or a Statement of Demand issued for the subsequent period in terms of Section 73 (3), where no adjudication order has been passed under Section 73 (9).

(b) An order passed under Section 73 (9) of the Act and where no orders have been passed by the appellate authority or revisional authority under Sections 107 (11) or 108 (1) respectively.

(c) An order passed by the appellate authority under Section 107 (11) or an order passed by the revisional authority under Section 108 (1) and where no order has been passed by the Appellate Tribunal under Section 113 (1).

(d) Adjudication order passed under Section 74, where the appellate authority, or Tribunal or Courts have held that the demand is not sustainable under Section 74, but only under Section 73 and in terms of Section 75 (2), the issue is pending before the adjudicating authority to re-determine the demand under Section 73. [First proviso to Section 128A (1)]

**Q2.** An order under Section 73 (9) has been passed by the adjudicating authority but no appeal has been filed by the taxpayer and the time limit for filing such appeal is already over. Can such cases also be covered under the scheme?

**A2.** Such cases are covered by clause (b) above, where no order has been passed by the appellate authority. The scheme does not envisage that only in those cases, where only those cases where appeal has been filed and pending alone are entitled. Further, a reading of clause (c) above would reveal that since GSTAT has not been formed so far, no taxpayer would have filed any appeal before the GSTAT. But orders passed by appellate authority where no orders have been passed by the appellate tribunal would cover such cases also.

**Q3.** If the show cause notice was issued under Section 74, or if the order has been passed under Section 74, whether such cases are entitled for the benefit of the scheme?

**A3.** It may be observed from the provisions that in case of show cause notices and adjudicating orders, only those issued under Section 73 are eligible for the scheme. But no such prescription is found in clause (c) dealing with appellate authority orders. Clause (c) does not also have any reference that only those appellate orders, which are passed against original authority's orders

under Section 73 (9) are entitled. Hence, even if the demands are confirmed under Section 74 by the appellate authority, it appears that such orders are eligible for the benefit of this scheme.

**Q4.** Demands pertaining to which period are covered under the scheme?

**A4.** Only those demands pertaining to the years 2017-18, 2018-19 and 2019-20 are eligible for the scheme.

**Q5.** Whether the scheme covers cases relating to ITC, such as ITC mis-match, ineligible ITC, etc.?

**A5.** Such cases are also covered, if the notice or adjudication orders are issued under Section 73.

**Q6.** What is the cut-off date, before which the tax amount has to be paid?

**A6.** The cut-off date will be notified by the Government. As per the press note issued after 53 rd GST council meeting it is likely to be 31.03.2025.

**Q7.** If an appeal against an order under Section 73 is pending before the appellate authority, or a writ petition against such order is pending before the High Court, can the benefit of this scheme would be available?

**A7.** Yes. Subject to withdrawal of such appeal or writ petition. [Sub-Section (3) of Section 128A].

**Q8.** Whether the benefit of the scheme is available in the cases of pending departmental appeals?

**A8.** Second proviso to sub-section (1) of Section 128A deals with such situation. Wherever departmental appeals against adjudication orders passed under Section 73 or orders passed by appellate authority are pending before any appellate authority, or appellate Tribunal or High Court or Supreme Court, after the issue is decided by such appellate authority, or appellate Tribunal or High Court or Supreme Court, the tax payer may the tax within 30 days of the order of the appellate authority, or appellate Tribunal or High Court or Supreme Court as the case may be and claim the benefit waiver of interest and penalty.

It may be noted that the benefit of the scheme in respect of departmental appeals is futuristic in the sense that the benefit can be claimed within 30 days of passing of orders by the appellate authorities, Tribunal or High Court or Supreme Court, by paying the tax liability within thirty days from the date of decision of such appellate authority, or appellate Tribunal or High Court or Supreme Court. For example, an appellate authority passes an order during March 2025 and the department files an appeal before the GSTAT and the GSTAT upholds the order of the appellate authority on 01.09.2025. By paying the tax amount within 30.09.2025, the taxpayer can claim waiver of interest and penalty.

**Q9.** The tax, interest and penalty levied in terms of an order passed under Section 73 of the Act have already been recovered by the department. Can the taxpayer claim refund of the interest penalty recovered from him?

**A9.** No. [Third proviso to Section 128A (1)].

**Q10.** A show cause has been issued under section 73 of the Act or a demand has been confirmed under Section 73 of the Act, towards recovery of erroneously granted refund. Whether such cases are eligible for the benefit of this scheme?

**A10.** No. [Sub-Section (2) of Section 128].

**Q11.** A tax payer has obtained the benefit of this scheme. Later, he realised that he need not have admitted and paid the tax liability as he has a case on merit. Can he file an appeal against the order, after opting the scheme?

**A12.** No. [Sub-section (4) of Section 128A].

**[The views expressed are strictly personal.]**

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