

F. No. CBIC-20001/14/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

North Block, New Delhi,
Dated: 27th March 2025

To,

All the Principal Chief Commissioners/ Chief Commissioners
All the Principal Directors General/ Directors General

Madam/Sir,

Subject: Various issues related to availment of benefit of Section 128A of the CGST Act, 2017-reg.

Based on the recommendations of the GST Council made in its 53rd and 54th meetings, a new section 128A was inserted in the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017) and Rule 164 has been inserted in the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as CGST Rules, 2017) w.e.f. 1st November 2024 to provide for waiver of interest or penalty or both relating to demands raised under Section 73 for the period from 1st July 2017 to 31st March 2020. In this regard, circular No. 238/32/2024-GST dated 15th October 2024 has also been issued clarifying various issues related to implementation of the said provisions.

2. Representations have been received from trade and industry highlighting certain issues being faced in availing the benefit provided under section 128A of the CGST Act, 2017 such as eligibility of cases for benefit under section 128A, where payment has been made through GSTR-3B instead of DRC-03 and treatment of withdrawal of appeals filed by the taxpayer against consolidated adjudication order covering periods beyond the one specified under section 128A of the CGST Act, 2017 for the purpose of availing the said benefit.

3. Accordingly, in view of the difficulties being faced by the trade and industry 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, 2017, hereby clarifies the issues detailed hereunder.

4. Unless otherwise specified, all the sections mentioned in this circular refer to sections of the CGST Act, 2017 and all the rules mentioned herein refer to the rules of CGST Rules, 2017.

4.1 Issue 1: Whether the cases where tax has been paid through return in FORM GSTR-3B instead of through FORM GST DRC-03, prior to the notification of section 128A i.e.1st November 2024, would be eligible for the benefit under section 128A of the CGST Act?

4.1.1 Representations have been received seeking clarification as to whether cases where payment has been made through FORM GSTR 3B, before coming into force of section 128A into force, i.e. 1st November 2024, are eligible for benefit provided under said section.

4.1.2 The matter has been examined. Vide circular No. 238/32/2024-GST dated 15th October, 2024, it was clarified that any amount paid towards the said demand prior to the date notified under sub-section (1) of section 128A i.e. 1st November 2024, shall be considered as payment made towards the amount payable under sub- section (1) of Section 128A, as long as the said amount has been paid prior to 1st November 2024 and was intended to be paid towards the said demand.

4.1.3 Further, rule 164 (1) provides that in order to avail the benefit under section 128A, payments are to be made in FORM GST DRC-03 towards the tax demanded in respect of a notice or a statement mentioned in section 128A (1) (a) and rule 164(2) provides that tax payment shall mandatorily be made only by crediting the amount in the electronic liability register against the debit entry created in respect of orders mentioned in clauses (b) and (c) of sub-section (1) of section 128A. The said sub-rule also provides the procedure to be followed for cases where payment has already been made through FORM GST DRC-03.

4.1.4 From the examination of the above provisions, it is clarified that a taxpayer who has made the payment through FORM GSTR-3B before the date of coming into force of section 128A i.e. 01st November 2024, shall also be eligible to avail the benefit under the said section. However, any taxpayer who intends to avail the benefit of the said provision on or after the said section comes into force, i.e.1st November 2024 shall be required to make payments necessarily through the modes as prescribed under rule 164 of the CGST Rules.

4.1.5 Therefore, it is clarified that the cases where the payment of tax has been made through FORM GSTR 3B prior to the issuance of demand notice and/or adjudication order before the date 1st November 2024, shall also be eligible for benefit under section 128A of the CGST Act, subject to verification by the proper officer.

4.2 Issue 2: Whether (i) the entire amount of tax demanded is required to be discharged and (ii) the appeal is required to be withdrawn for the entire period, where notices/statements/orders issued to taxpayers, pertains to period covered partially under Section 128A and partially by those outside it.

4.2.1 In cases where the notice/statement or order etc. pertains to the period partially covered under Section 128A and partially beyond the said period, Rule 164 (4) and proviso to Rule 164(7) have been amended to allow the taxpayer to file an application under FORM SPL-01 or FORM SPL-02 as the case may be after making payment of his tax liability for the periods covered under section 128A. The taxpayer after filing FORM SPL-01 or FORM SPL-02 as the case may, shall intimate the appellate authority or Tribunal his intent to avail the benefit of Section 128A and that he does not intend to pursue the appeal for the period covered under the said Section i.e. FY 2017-18 to 2019-20. The Appellate Authority or Appellate Tribunal as the case may, shall after taking note of the said request, pass such order for the period other than that mentioned in the said sub-section, as it thinks just and proper.

4.2.2. Clarification issued vide point 6 of the Table at para 4 of circular No. 238/32/2024-GST dated 15th October 2024 is accordingly withdrawn.

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

6. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board.

Yours faithfully,

The logo for SAG|blog, featuring the text 'SAG|blog' in a stylized font. The 'SAG' part is in a bold, sans-serif font, followed by a vertical bar and the word 'blog' in a lowercase, sans-serif font. The 'SAG' part has a small red and white graphic element below it.

(Gaurav Singh)

Commissioner (GST)