

**Webinar \_ICMAI**  
**Amnesty Scheme**  
**u/s 128A of CGST Act, 2017**

**FRIDAY, 03.01.2025 at 3.00pm onwards**



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# New Amnesty Scheme u/s 128A of CGST Act, 2017

- **Section 146 of Finance Act, 2024 brought new section 128A in CGST Act, 2017 wef 01.11.2024 (read with rule \_ 164)**
- **It brought an amnesty scheme for tax payers to reduce litigation and give some relief under some of the cases covered u/s 73 of CGST Act, 2017 by **waiving of interest charged u/s 50 and penalty under this Act.****
- **It is in addition to the benefits given under newly inserted section 16(5) and 16(6) on account of ITC effective from 08.10.2024..**

## New Amnesty Scheme u/s 128A of CGST Act, 2017

**New amnesty scheme u/s 128A is effective from 01.11.2024 and covers tax period from 1<sup>st</sup> July 2017 to March, 2020 or part thereof**

## New Amnesty Scheme u/s 128A of CGST Act, 2017

- This amnesty scheme **does not includes** cases having notices for
  - interest/penalty for late/delay in filing of returns
  - Penalty u/s 129.
  - Unpaid tax or interest on which amount is recoverable u/s 75(12) as recovery of taxes for self assessed taxes.
- **It does not include cases where interest and penalty has already been paid.**
- It does not include cases where any amount is payable by a **person on account of erroneous refund**
- It does not include cases where **appeal against the order (u/s 73 or u/s 107 and 108 as the case may be)** is filed and not withdrawn.

**Amnesty scheme covers the following cases:**

- If tax is not paid, short paid or **erroneously refunded\*** or where ITC is wrongly availed or utilised for any reasons and no fraud is involved, proper officer has demanded such amount of tax with interest and penalty :
  - by issuing a notice u/s 73(1) of CGST Act, 2017
  - by issuing a statement u/s 73(3) of CGST Act, 2017 for a period **other than period covered under notice u/s 73(1)**
  - Order is passed u/s 73(9) by adjudicating authority to pay taxes as mentioned in said order with Interest and penalty.

\* Not covered under the scheme section 128A(2)

**contd...02**

**Section 128A amnesty scheme covers the following cases**

- **appeal is filed u/s 107(1) with appellate authority against an order passed by the adjudicating authority u/s 73(9)**
- **Order is passed by appellate authority u/s 107(11)**
- **Order is passed by revisionary authority u/s 108(1)**
- **Appeal is filed with Appellate Tribunal u/s 112 (1) against an order passed by appellate authority u/s 107(11) or by revisionary authority u/s 108(1) but no order has been passed by Appellate Tribunal u/s 113(1).**

**contd...03**

## Section 128A amnesty scheme covers the following cases

- **Cases where Appellate authority or Appellate Tribunal or courts concludes that the notice issued u/s 74(1) is not sustainable for the reasons mentioned u/s 74 for fraudulent purposes and proper officer in pursuance to such order has to determine the tax payable under section 73(1).**
- **Penalty u/s 73, 122 and 125 are covered.**

## Conditions to avail the scheme.....

If a person chargeable with tax **fulfil the following conditions**, is eligible for the benefits of the said scheme:

- He has to pay the **full amount of tax on or before 31.03.2025**, payable as per the notice or statement or the order issued u/s 73 or 75(2) as the case may be,
- He also has to pay any **additional amount of tax** if any arises out of any order passed by any authority under the law against an appeal filed by the proper officer under the provisions of the laws with in three months of said order



- He has to **withdraw an appeal or writ petition** if any filed before Appellate Authority or Appellate Tribunal or a court, as the case may be on or before 31.03.2025.
- No appeal is to be filed against an order passed under this amnesty scheme.
- **If said notice, statement or order demanded taxes for more than one reasons or grounds, a person has to pay full taxes as per said notice \_rule 164(3)**
- **If taxes are demanded for more than one tax periods, he has to pay full taxes as mentioned in notice. No partial payments are allowed \_rule 164(4)**

## Procedure to avail the amnesty scheme u/s 128A?

A person wants to avail the scheme has to follow the procedure as under:

- He has to file an **application within a period of three months from 31.03.2025 i.e by 30.06.2025** at GST portal in FORM GST SPL-01 along with details of payment made on or before 31.03.2025 ( in FORM DRC-03 ) towards tax demanded
- He has to file an application at GST portal in FORM GST SPL-02 if got an order as per clause (b) & (c) of sub-section (1) of section 128A along with the details of tax paid through liability ledger at portal against the demand debited to said liability ledger with in a period of three months from the date of communication of order passed.

Contd..2

## Procedure to avail the amnesty scheme u/s 128A?

- In case order is passed by proper officer under first proviso of sub-section (1) of section 128A after re-determination of taxes u/s 73, application has to be filed within a **period of six months** from the date of communication of order by proper officer **\_rule 164(6)**
- Documents evidencing that a person charged with taxes u/s 73 has withdrawn appeal or writ petition as the case may be **\_rule 164(7)**

## **Taxes not payable as per section 16(5) and (6) of CGST Act, 2017**

**A person needs to reduce his tax liability to the extent of amount of taxes not payable now as per newly inserted section 16(5) and 16(6).**

**He has to pay balance amount of taxes to get the benefit of amnesty scheme u/s 128A rule 164(5)**

## Application for availing scheme can be rejected....

- if proper officer is not satisfied with the application filed in FORM GST SPL-01 or GST SPL -02 as the case may be, will issue a notice with in a period of **three months** from the date of receipt of said application in FORM GST SPL-03 and also give a personal hearing \_ **rule 164(8)**.
- If the proper officer is not satisfied with the reply filed by the applicant as furnished in FORM GST-04 within **one month** from the date of receipt of said notice, the proper officer shall issue an order in FORM GST SPL-07 rejecting the said application\_ **rule 164(12)**.

## If application is accepted.....

Once the proper officer is satisfied that the applicant is eligible for waiver of interest and penalty as per section 128A,

- he shall issue an order in FORM GST SPL-05 on the common portal accepting the said application and concluding the proceedings under section 128A \_ **rule 164(10)**.
- He shall issue such order **within three months** from the date of receipt of application in FORM GST 01 & FORM GST 02 as the case may be \_ **rule 164(13)**.
- The cases where notice in FORM GST SPL-03 is issued, Order must be passed with in period of three months from receipt of reply and if no reply received order must be passed with in four months period from date of receipt of application u/s 128A\_ **164(13)**.

**If order is not issued by the officer....**

**In case proper office failed to issue order with in time as defined under rule 164(13) i.e **three months** or four months as the case may be, it is deemed to be approved and all proceedings shall be deemed to be concluded.**

Can order of rejection of application filed u/s 128A be challenged in court?

- Yes, it can be challenged.
- Further, where no appeal is filed against the order in FORM GST SPL-07 within the time period specified in sub-section (1) of section 107, the **original appeal**, if any filed earlier by the person **shall be restored**.



What if appeal u/s 107 (1) is filed against the order of rejection of application u/s 128A passed by the proper officer?

**If the appellate authority has held that the proper officer has wrongly rejected** the application for waiver of interest, or penalty, or both, in FORM GST SPL-07, the said appellate authority shall pass an order in FORM GST SPL-06 on the common portal accepting the said application and concluding the proceedings under section 128A

**If the appellate authority has held that the proper officer has rightly rejected** the application for waiver of interest, or penalty, or both, in FORM GST SPL-07, **the original appeal**, if any, filed by the applicant against the order mentioned in clause (b) or clause (c) of sub-section (1) of section 128A, which was withdrawn for filing the application in FORM GST SPL-02 in accordance with sub-section (3) of section 128A, **shall be restored.**

If tax amount  
has been paid  
prior to the  
section 128A  
notified?

It is clarified that all such amount paid towards the said demand up to the date notified under sub-section (1) of section 128A, irrespective of whether the said payment has been **done before Section 128A comes into effect, or after that**, and irrespective of whether **such payment was made before the issuance of the demand notice or demand order, or after that**, shall be considered as paid towards the amount payable in sub-section (1) of Section 128A, as long as the said amount has been paid up to 31.03.2025

- **Circular No. 238/32/2024-GST dt 15.10.2024**

If amount recovered by the tax officers as tax due from any other person on behalf of the taxpayer, against a particular demand can be considered as tax paid towards the same for the purpose of Section 128A?

**Yes, it can be.**

## New Amnesty Scheme u/s 128A of CGST Act, 2024

Whether the amount recovered by the tax officers as interest or penalty or both, pertaining to demand under Section 73 pertaining to Financial Years 2017-18, 2018-19 and 2019-20, can be adjusted against the tax amount payable towards the demand made under Section 73 pertaining to the said financial years?

**No. It is mentioned that as per the third proviso to subsection (1) of section 128A, no refund of such amount of interest or penalty or both, is available.**

Whether the benefit under Section 128A is available, if the taxpayer **intends to avail partial waiver of interest or penalty or both**, on certain issues, by making part payment of the amount demanded in the notice/ statement/ order, as the case may be, and opts to litigate for the remaining issues?

**No. Section 128A (1) clearly provides that the waiver of interest or penalty or both is only applicable when the full amount of tax demanded in the notice/ statement/ order is paid**

## New Amnesty Scheme u/s 128A of CGST Act, 2024

Where the notice/order involves **multiple periods**, ranging from the period for which waiver provided in Section 128A is applicable, and includes some other tax periods for which such waiver is not applicable .

As per sub-rule (4) of Rule 164, the taxpayer shall be required **to pay the full amount of tax** demanded in the notice/ statement / order, as the case may be, to avail the benefit of waiver of interest or penalty or both under Section 128A.

On payment of the full amount demanded in the notice/ statement/ order, if the proper officer finds that the applicant is eligible for waiver of interest or penalty or both for tax periods covered under Section 128A, he will reduce the liability to that extent in his order in FORM GST SPL-05, and the remaining liability of interest or penalty or both for tax periods not covered under Section 128A, remains payable by the taxpayer

## New Amnesty Scheme u/s 128A of CGST Act, 2024

If IGST paid on import is covered under this scheme?

**Circular No 238/32/2024 has clarified that the demand for payment of IGST in case of import is not issued under Section 73 of the GST Act, hence, the benefit of waiver of interest and penalty is not available.**

## **New Amnesty Scheme u/s 128A of CGST Act, 2024**

**Can payment of taxes as demanded u/s 73(1) or 73(3) be made from ITC to avail the amnesty scheme....?**

**Yes, taxes can be paid from Electronic Credit Ledger**



## New Amnesty Scheme u/s 128A of CGST Act, 2024

If taxes demanded u/s 73(1) or 73(3) are the liability under RCM.....

can taxes be paid from ITC to avail the amnesty scheme.....?

**No, any taxes payable under RCM or u/s 9(5) by ECO to be paid in cash, not from ITC**

## New Amnesty Scheme u/s 128A of CGST Act, 2024

If demand for erroneous refund u/s 73(1) or 73(3) be paid from Electronic Credit Ledger by utilizing ITC ....?

**No, any tax refunded erroneously, to be paid in cash only.**

**\* Cases of such refunds are not eligible to avail amnesty scheme.**

## New Amnesty Scheme u/s 128A of CGST Act, 2024

### Important Notifications and rules related to amnesty scheme

- **NOTIFICATION No. 20/2024** – Central Tax dt 8th October, 2024
- **Notification No. 21/2024**–Central Tax 8th October, 2024
- **Circular No. 238/32/2024-GST** dated the 15th October, 2024

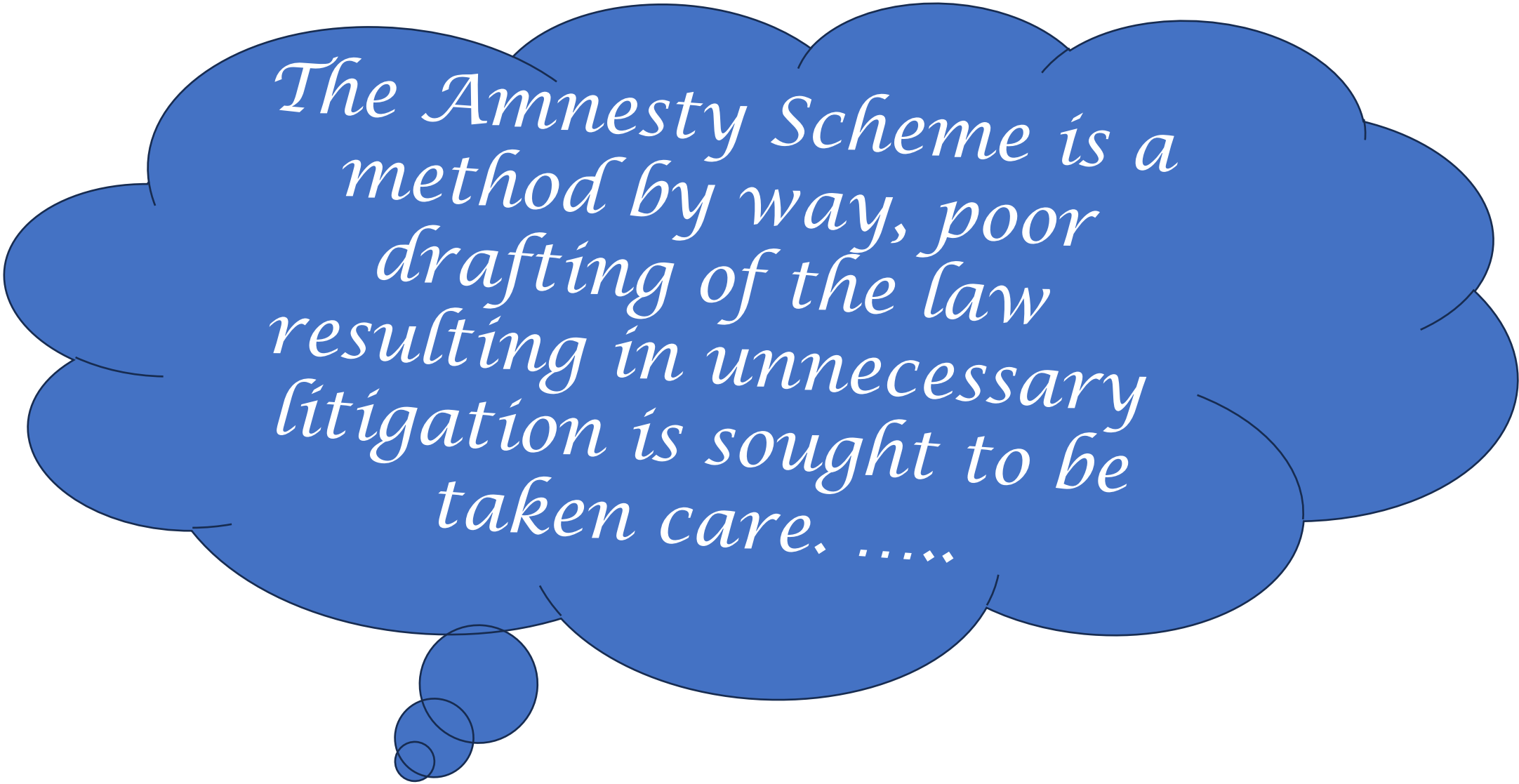
**Question for the house....**

If order is passed by the proper officer on 30.08.2024 for FY 2021.....

Now Taxable person wants to avail the scheme.....

How he should proceed....?



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*The Amnesty Scheme is a method by way, poor drafting of the law resulting in unnecessary litigation is sought to be taken care. ....*

*Thanks a lot.....*

*Learning is a continuous process....*