



The Institute of Chartered Accountants of India GST & Indirect Taxes Committee

GOODS & SERVICES TAX UPDATE-258

Amendment and Clarification with respect to Section 128A of the CGST Act

1. Amendment in Rule 164

- (i) Sub-rule (4) of rule 164 has been amended to explicitly specify that where the notice or statement or order mentioned in sub-section (1) of section 128A includes demand of tax, partially for the period mentioned in the said sub-section and partially for the period other than that mentioned in the said sub-section, an application under sub-rule (1) or sub-rule (2) may be filed only after payment of the full amount of demanded tax which relates to the period mentioned in the said sub-section.

It has been further clarified through insertion of an explanation that no refund shall be available for any tax, interest, and penalty, which has already been discharged for the entire period, prior to this amendment, in cases where a notice or statement or order mentioned in sub-section (1) of section 128A, includes a demand of tax, partially for the period mentioned in the said sub-section and partially for a period other than mentioned in the said sub-section

- (ii) A second proviso has been added in sub-rule (7) to clarify that where the notice or statement or order mentioned in sub-section(1) of section 128A of the Act includes demand of tax, partially for the period mentioned in the said sub-section and partially for the period other than that mentioned in the said sub-section, the applicant instead of withdrawing the appeal, shall intimate the appellate authority or Appellate Tribunal that he does not wish to pursue the appeal for the period mentioned in the said sub-section and the relevant authority shall, after taking note of the said request, pass such order for the period other than that mentioned in the said sub-section, as he thinks just and proper.

It has also been clarified that the appeal application shall be deemed to have been withdrawn to the extent of the said intimation for the period from the 1st July, 2017 to the 31st March, 2020 or part thereof, for the purpose of sub-clause (3) of section 128A.

[Notification No. 11/2025-CT dated 27.03.2025](#)

2. Clarifications with respect to implementation of waiver scheme of Section 128A

Issue:

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?

Clarification:

It has been 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.

Therefore, in 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.

Issue:

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.

Clarification:

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.

Hence, 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.

Circular No. 248/05/2025-GST dated 27.03.2025

Readers can access all updated notifications on the Committee's website <https://idtc.icai.org/> under the 'GST Statutes' section.

***Vice – Chairman
GST & Indirect Taxes Committee***

***Chairman
GST & Indirect Taxes Committee***

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