

# **GST Amnesty Scheme from 1st Nov 2024 - Nitty Gritties, Timelines, Procedures**



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## GST Amnesty Scheme – GST Council's decisions

**Decision: Procedure and conditions** for waiver of interest or penalty or both, in respect of tax demands under section 73 of CGST Act, 2017 for FYs 2017-18, 2018-19 and 2019-20 as per section 128A of CGST Act, 2017:

The GST Council recommended **insertion of rule 164 in CGST Rules, 2017**, along with certain **Forms**, providing for the procedure and conditions for availment of benefit of waiver of interest or penalty or both, relating to tax demands under section 73 of CGST Act, pertaining to FYs 2017-18, 2018-19 and 2019-20, as per section 128A of CGST Act.

The Council also recommended to notify under sub-section (1) of section 128A of CGST Act, **31.03.2025** as the date on or before which the payment of tax may be made by the registered persons, to avail the said benefit as per section 128A of the CGST Act.

The Council also recommended the issuance of a circular to clarify various issues related to availment of waiver of interest or penalty or both as per section 128A of CGST Act.

The Council also recommended that section 146 of Finance (No. 2) Act, 2024, which provides for insertion of section 128A in CGST Act, 2017, may be notified with effect from **01.11.2024**.

## GST Amnesty Scheme

1. **SCNs/ Adjudicating Orders/ Appeal Orders** issued for FY 2017-18, 18-19 & 19-20 covered.
2. Waiver of Interest & Penalty on payment of "Full Amount of Tax"
3. Incase SCN/ Order is u/s 74 of CGST Act but incase u/s 75(2) of The CGST Act Appellate Authority considers that Sec 73 is applicable, then also the consequential Order u/s 73 would be covered.
4. Payment has to be made within 31<sup>st</sup> March 2025 to get covered under the Scheme
5. Cases of Refund are not covered
6. Cases in Appeals or before Court have to be withdrawn for going into the Scheme
7. Cases once cannot closed under the Scheme cannot be appealed against
8. **31.03.2025** will be notified as the date on or before which the payment of tax may be made by the registered persons, to avail the said benefit as per section 128A (1) of the CGST Act.
9. A circular will be issued to clarify various issues related to availment of waiver of interest or penalty or both as per section 128A of CGST Act.
10. Section 128A in CGST Act, 2017, will be notified with effect from **01.11.2024**.
11. Even incase tax is paid earlier, interest & penalty relief may be available
12. No issue wise waiver, it would be SCNs/ Orders wise waiver
13. ITC ledger may be allowed for payment

## Scheme for Waiver of Interest & Penalty

- 14.** The question remains whether **Transitional Credit Disputes** are covered under the Scheme. Industry has represented for TRAN Orders to also be brought under the Scheme.
- 15.** It needs to be seen whether the “**tax payable**” under the Scheme can be paid vide ITC or has to be paid only vide Cash Ledger.
- 16.** However, Taxpayers have to be careful not to pay the “**tax payable**” vide **GSTR-3B** as it might not be covered under the Scheme. In past Scheme including TRAN Scheme, it has been witnessed that incase of procedural lapses, there are disputes.
- 17.** For past periods incase there are **disputes for time barring period of ITC u/s 16(4)** of The CGST Act for FY FY 2017-18, 18-19 & 19-20, wherein ITC will now be available u/s 16(5) & 16(6), it needs to be seen as to how this portion of the SCN/ Order shall be carved out to bring in the balance portion of the SCN/ Order under the Scheme.
- 18.** Where taxpayer has already **admitted and paid** the “Tax, Interest and penalty”, **no refund shall be granted** in such cases.

## **GST Amnesty Scheme – u/s 128A & Rule 164**

**I. Date of initiation of Amnesty Scheme is 1<sup>st</sup> November 2024**

**II. Last Date of filing Form SPL-01/ 02 is 31<sup>st</sup> January 2025 in cases**

**III. Last Date of payment of Tax is 31<sup>st</sup> March 2025 in cases**

**1. Rule 164(1) – Any person who has received an SCN/ Statement should file Form SPL-01 -**

- A. Cull out any demand u/s 16(4) & proceed separately.
- B. Pay the balance tax vide DRC-03.
- C. Withdraw any Writs filed and surrender the right to file any appeal against the consequential Order.
- D. Upload the SCN, DRC-03, proof of withdrawal of Writ and other documents.

**2. Rule 164(2) – Any person who has received an Adjudication/ Appellate Order should file Form SPL-02 -**

- A. Cull out any demand u/s 16(4) & proceed separately
- B. Let the amount of 'Demand Order' be debited against the Liability Ledger
- C. Pay such amount against the liability so created
- D. In case amount is already paid vide DRC-03, follow the DRC-03A route as per respective Circular 224 of July 2024.
- E. Withdraw any Writs filed and surrender the right to file any appeal against the consequential Order
- F. Upload the Order, DRC-03/ DRC-03A (if any), proof of withdrawal of Writ and other documents

## GST Amnesty Scheme – u/s 128A & Rule 164

IIIA. In case a single Order has a refund or an order for years other than the 3FYs under this scheme (i.e. FY 17-18 to 19-20), the appellant **must compulsorily** admit and pay tax, interest & penalty for the refund/ other years. Else 128A benefit shall not be available.

**IV.** In case application has been made to withdraw case and Order for withdrawal has not been passed, a copy of the application should be attached. **The Order would be submitted within 1 month of Order Date.**

V. In case officer wishes to reject SPL-01/ 02 being ineligible, they have to issue **SCN under SPL-03** within **3 months** of filing of application and provide PH.

VI. Reply to SCN to be filed within **1 month from SPL-03** in Form **SPL-04.**

VII. **Form SPL-05** is to be issued for conclusion of the proceedings within **3 months** of SPL-04 or within **4 months** from date of SPL-03 (no reply cases) or **3 months** of SPL-01 or SPL-02 (No SCN cases). Time delay for receiving 'Case withdrawal Order' shall not be counted.

VIII. Form **SPL-07** is to be issued for 'rejection' of the application in SPL-01 or SPL-02. However, Appeal in APL-01 u/s 107 can be filed within 3 months against SPL-07.

## GST Amnesty Scheme – u/s 128A & Rule 164

VIIA. Appellate Authority can accept the appeal and pass **SPL-06** allowing the application and concluding proceedings.

VIIB. Appellate Authority can reject the appeal and pass APL-04 and thereafter –

i. Appellant can file an appeal before GSTAT.

ii. Order stage would be restored subject to appellant filing a declaration in **SPL-08** that it would not contend the APL-04

**IX. R 168(14) is important to note – If proper officer does not comply with stringent timelines, then application itself shall be deemed closure of case.**

Similarly taxpayers must also comply with timelines to avoid disputes in the Amnesty Scheme.

**X. If taxpayers do not pay the tax amount in timeline, then SPL-05 or SPL-06 shall be null and void**

XI. In case a single Order has a refund or an order for years other than the 3FYs under this scheme (i.e. FY 17-18 to 19-20), the appellant **must compulsorily** admit and pay tax, interest & penalty for the refund/ other years.

Else 128A benefit shall not be available.

## N No 21/2024 – Central Tax – dates for payment u/s 128A & Rule 164

Class of registered person	Date upto which payment for the tax payable as per the notice or statement or the order referred to in clause (a) or clause (b) or clause (c) of section 128A of the said Act, as the case may be, can be made for waiver of interest, or penalty, or both, under the said section.
Registered persons to whom a notice or statement or order, referred to in clause (a) or clause (b) or clause (c) of section 128A of the said Act, has been issued.	31.03.2025
Registered persons to whom a notice has been issued under sub-section (1) of section 74, in respect of the period referred to in sub-section (1) of section 128A of the said Act, 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, for determination of the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73 of the said Act.	Date ending on completion of <b>six months from the date of issuance of the order</b> by the proper officer redetermining tax under section 73 of the said Act.



## To Do For Industry

1. Make a list of all cases u/s 73 as well as u/s 74. Find out the amount payable and plan for cash flows.
2. For Section 74 cases try to get an Order u/s 75(2) to convert a Sec 74 case to a Sec 73 case, to go into Amnesty. The time limit of this case going into Amnesty is **6 months** from the date of Order u/s 73.
3. Incase you have an order u/s 16(4) for time barring ITC – immediately get it rectified and get a consequential Order for others.
4. Try to file for Amnesty Scheme within November 2024 itself so that adequate time is available to make the payment of dues.
5. Incase of SCNs/Orders with refund issues or issues belonging to other years, try to get the refunds/other years demands reduced to the bare minimum so that benefit of Amnesty can be taken for the entire SCN/Order.

## 16(4), 16(5) & 16(6)

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both **after the <sup>8</sup>[thirtieth day of November] following the end of financial year** to which such invoice or <sup>4</sup>[Omitted] debit note pertains or furnishing of the relevant annual return, whichever is earlier.

...

<sup>11</sup>[(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years **2017-18, 2018-19, 2019-20 and 2020-21**, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed **up to the thirtieth day of November, 2021**.

(6) Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and **where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both**, in a return under section 39,--

(i) filed up to thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, **where such return is filed within thirty days from the date of order of revocation of cancellation of registration**,

whichever is later.]

## 16(5) & 16(6) Scheme – GST Council's Decision

### **Providing a mechanism for implementation of newly inserted sub-section (5) and sub-section (6) in section 16 of CGST Act, 2017:**

The GST Council recommended that section 118 and 150 of the Finance (No. 2) Act, 2024, which provides for insertion of sub-section (5) and sub-section (6) in section 16 of CGST Act, 2017 retrospectively with effect from 01.07.2017, may be notified **at the earliest**.

The Council also recommended that a special procedure for **rectification of orders** may be notified under section 148 of the CGST Act, to be followed by the class of taxable persons, against whom any order under **section 73 or section 74 or section 107 or section 108** of the CGST Act has been issued confirming demand for wrong availment of input tax credit on account of contravention of provisions of sub-section (4) of section 16 of the CGST Act, but where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act, **and where appeal against the said order has not been filed.**

The Council also recommended issuance of a circular to clarify the procedure and various issues related to implementation of the said provisions of sub-section (5) and sub-section (6) of section 16 of CGST Act, 2017.

### **Analysis:**

1. A notification shall be issued soon to notify for insertion of Section 16(5) and Section 16(6) of CGST Act, 2017.
2. The said clauses shall be applicable retrospectively with effect from 01.07.2017.

## 16(5) & 16(6) Scheme – GST Council's Decision

3. A circular shall be issued to clarify the procedure and various issues related to implementation of the said clauses of section 16 of CGST Act, 2017.

4. **Special procedure for rectification of orders** shall be notified, to be followed by the class of taxable persons, against whom any order under section 73 or section 74 or section 107 or section 108 of the CGST Act has been issued confirming demand for wrong availment of input tax credit on account of contravention of provisions of section 16(4) of the CGST Act, but where such input tax credit is now available as per the provisions of section 16(5) and (6) of the CGST Act.

5. The said procedure for rectification of order shall be available for the cases where an appeal against the said order has not been filed.

**It seems that where appeal has been filed, the appeal order must be received immediately by the taxpayers to follow the procedure**

## **N No. 22/2024 Central Tax – Waiver u/s 16(5) & 16(6)**

1. 16(5) & 16(6) relief is not available when a 16(4) matter is pending in Appeal.
  - 1A. Where appeal is pending, Order u/s 107 or 108 has to be received
2. File an application for the notices or orders u/s 16(4) on GST Portal alongwith Annexure A within 8<sup>th</sup> April 2025 (6 months from 22/2024)
3. Officer to pass Order u/s 161 within 3 months of application date
4. Summary in APL04 or DRC-08 to be issued

# THANK YOU



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