

CBIC-20016/39/2024-GST-SECTION
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

Room No.159-A , North Block,
New Delhi, 7th February, 2025

To,

All the Principal Chief Commissioners /Chief Commissioners of the Central Tax

Madam/Sir,

Subject: Procedure to be followed in department appeal filed against interest and/or penalty only, related to Section 128A of the CGST Act, 2017 -regarding.

Kind attention is invited to the Section 128A of the Central Goods and Service Tax Act, 2017 (hereinafter referred as 'the CGST Act') read with Rule 164 of the Central Goods and Service Tax Rules, 2017 (hereinafter referred as 'the CGST Rules') which provides waiver of interest or penalty or both, relating to demands under section 73 of the CGST Act pertaining to Financial Years 2017-18, 2018-19 and 2019-20, subject to certain conditions. Further vide Circular No. 238/32/2024-GST dated 15th October, 2024, various doubts related to section 128A were clarified.

2. In this regard, references have been received from various field formations seeking clarification from the Board as to whether the benefit of section 128A (supra) be extended to taxpayers in cases where the tax amount has been paid but the department has gone in Appeal on the basis of wrong arithmetic calculation of interest, or where penalty is either not imposed or imposed less than the prescribed threshold etc.

3. The matter has been examined by the Board. It has been observed that at S. No. 4 of the Table under para 4 in the aforesaid circular, it is clarified that cases where the tax due has already been paid and the notice or demand orders under Section 73 only pertains to interest and/or penalty involved, the same shall be considered for availing the benefit of section 128A. Hence, it is evident that in cases where the taxpayer has paid the full amount of tax and only interest and/or penalty is in dispute by the taxpayer, then he is eligible to avail the benefit of Section 128A of the CGST Act. On the similar pattern, it is felt that just because the department has gone in appeal or is in the process of filing an appeal, a taxpayer who is otherwise eligible for availing the benefit of section 128A, should not be denied the benefits. Further the intention of the said provision is to reduce litigation and a taxpayer should not be denied the benefit of the provision on mere technicalities.

4. Based on the above, it is decided that in cases where the tax amount has been fully paid by the taxpayer on demands made under section 73 of the CGST Act and the department is in appeal or under the process of filing an appeal only on account of wrong interest calculation and/or wrong imposition or non-imposition of penalty amount under the provisions of CGST Act or IGST Act and the taxpayer fulfils other conditions of section 128A and the rules made thereunder, the proper officer may proceed towards withdrawing such appeal filed and in case where the order under section 73 is under review stage only, accept the same.

5. Difficulties, if any, in the implementation of these instructions may be informed to the Board.

Yours faithfully,

(Gaurav Singh)

Commissioner (GST Policy Wing)