NAVIGATING THE CONDITIONAL WAIVER UNDER SECTION 128A OF CGST ACT, 2017

Shrinu Patro, B.B.A. LL.B., KIIT School of Law, Bhubaneshwar, India

Shubham Kumar, B.B.A. LL.B., KIIT School of Law, Bhubaneshwar, India

ABSTRACT

After introducing the Goods and Services Tax (GST) in July 2017, many older indirect taxes were replaced, although taxpayers had to deal with issues such as technology problems on the GST website, delayed return submissions and ITC issues. With Section 128A added to the CGST Act, people could be given waivers of interest and penalties if they paid their taxes in time for specified periods. Then again, one cannot use this waiver when there is a deliberate lie, cover-up or when the facts are hidden. Section 73 involves claims related to not paying or underpaying taxies and Section 128A only concerns these claims. If taxpayer makes a false statement to evade taxes, Section 74 comes into play and the waiver is prevented. It has contributed to the reduction of extra litigation by giving people a chance to settle their dues without facing any interest or penalties, if they first give up their appeals. It additionally helps small and medium companies voluntarily comply, since they may have had trouble with GST in the beginning. There are still problems such as the variations in tax regulations between states, how many hearings are required and the subjective powers of internal revenue officials to choose which taxpayers are given waivers. Having more specific rules can help deal with unclear points involving partial payments, appeal withdrawals and rectification orders. Many believe Section 128A attempts to help taxpayers paying fines and reduce court cases, although it needs adjustments to do this properly.

Keywords: waiver, penalty, Taxpayers, litigation, GST

INTRODUCTION

On 1st July 2017 goods and services Tax (GST) came into force in India with certain alterations and progression with the motto of having – One Nation One Tax. The introduction of Goods and Services Tax (GST), had substituted various other indirect taxes which were earlier collected by the union and state. With these new tax systems, taxpayers were faced with distinct challenges amid the commencing year of application of GST such as experiencing a technical issue in the GST portal creating delays in returns filing or making payments leading taxpayers to pay interest and penalties, besides the taxpayers are also facing additional tax payments with penalties and interest in terms related to Input Tax Credit (ITC). After taking into consideration the government brought about 128A in the CGST Act. Under this provision, a demand notice was served to the taxpayers receiving under section 73 or other pertinent section. If taxpayers meet the full demand mentioned in the notice before the specified date mentioned in the demand notice then no interest will be levied from taxpayers under section 50 of the CGST Act and no penalty will be imposed upon them. However, under certain deviations, the waiver of interest fails to apply if there is fraud, willful misstatement, or suppression of facts due to default in payments or making payments that are less than the invoiced amount. Then section 74 becomes applicable to this instance and the taxpayers don't benefit from conditional waiver. In terms of continuous Appeals or proceedings associated with the demand notice, then conditions related to the waiver are limited, and on filing an appeal or application further taxes need to be paid within the prescribed period of three months from the date when the order is passed.

KEY PROVISIONAL OF SECTION 128A OF CGST ACT 2017

With many disputes over GST and interest payments and many cases of not receiving a show cause notice as required by section 73, evidence is lacking for section 74 to be applied in cases. It is not permitted to waive interest as provided by section 128A of the CGST Act in such cases. Section 128A of the CGST Act 2017 was created mainly to prevent unnecessary legal disputes in tax collection cases where tax remains unpaid or taken in error, not dishonestly. Some believe this objective can be met if an interest waiver is allowed (with no penalty charged) once the tax has been paid and no notice requesting a show cause explanation has been sent for appropriating the paid tax. Plus, any outstanding interest can be claimed from the tax due date up to the tax payment date if, when applying section 74 of the Act, fraud, intentional misrepresentation or hiding material facts are not proven. What is most important are rules about when, where and how the waiver can be applied, plus conditions needed to take advantage of it and exclusions that affect its use.

Scope And Application Of The Waiver

Taxpayers mentioned in Section 128A get demands that fall under Section 73 of the main act. The section covers situations where taxpayers do not attempt to hide facts, intentionally mislead or use fraud. Any tax period between July 1, 2017 and March 31, 2020 falls under the waiver, so the taxpayer must pay all of the tax. This part of the law is made to help out taxpayers facing non-fraudulent tax cases, for instance, by using ITC credit incorrectly or paying late, as it reduces penalties and interest related to such cases.

Conditions For Availing The Waiver

The taxpayer has to meet a few requirements to be accepted for the waiver. The first requirement is to pay the full amount indicated in the Section 73 notice or demand. The deadline for taxpayers to pay these dues is as set by the government which is on or before March 31, 2025. It is also necessary for them to stop all on-going litigation for such claims. Quick Resolution is designed to facilitate the settlement of disputes, encouraging individuals to resolve their issues independently and avoid lengthy litigation. More in-depth details about this subject are shown further in the text.

Exclusions And Limitations

Section 128A does not cover any claims that fall under Section 74 which handles fraud, willful lies or hiding facts. You will still need to pay any taxes for erroneous refunds. Refunds are not possible under this programme for people who have paid interest and penalties, even if they would have been eligible for the waiver had they postponed their payments. Ensuring fraud-related issues are not included narrows the purpose of the exception to genuine tax disagreements and limiting erroneous refunds helps protect government money. They show that the purpose of Section 128A is to support taxpayers and also to simplify tax administration by cutting down on court cases. At the same time, there are some issues about who is eligible and what is actually covered by the waiver which could lead to disagreements and may need to be explained further.

COMPARATIVE ANALYSIS WITH EXISTING PROVISION

Comparison Between Section 128A Of CGST Act 2017 And Section 80 Of Finance Act 1994 (Service Tax Provision).

Based on certain conditions stated in a notification, Section 128A of the CGST Act 2017 gives the GST Council authority to reduce or lift penalties or late fees. Its main purpose is to help people when missing a tax obligation is not deliberate and follows strict compliance would result in injustice. The law explains what is needed for a waiver to be given. The provisions of section 80 in the Finance Act 1994 are relevant for the service tax system that people used in India before the introduction of GST. It refers to not imposing penalties for missing service tax payments if it is proved that the missing occurred for proper causes and not by carelessness, fraud or covering up the facts. The government felt this provision could be adjusted better by using the feedback from tax officers.

Comparison Between GST Amnesty Scheme And Section 128A Of CGST Act.

The government announced a limited-time GST Amnesty Scheme in order to give people a fresh start. It covers instances when someone files returns late or fails to file at all—they may receive full or reduced penalties for making payments within the stated period in the scheme. Helping those who have not yet filed their returns is the key aim of this action. There is no sunset rule for Section 128A of the CGST Act; it is a permanent section in the Act. Penalties or late fees are included and you need a government notification or a decision from the GST Council for authorization. It allows for waiver in different cases of non-compliance where the interest, penalties and any fees are involved.

ELIGIBILITY CRITERIA FOR WAIVER OF SECTION 128A OF CGST ACT 2017

Conditions provided for the waiver under Section 128A of the CGST Act 2017 can be summarised as follows. Many amnesties only accept applications for those who did not file tax returns, those who delayed tax payments or those with basic procedural problems and they generally only waive penalties for these. In addition, this waiver covers only tax demands between July 1, 2017 and March 31, 2020 which includes FY 2017-18, FY 2018-19 and FY 2019-20. Individuals can use this waiver only for the tax periods mentioned and applications for other periods are not accepted. To state the third point, interest and penalty waivers only apply to a demand coming under Section 73 of the Act and the required tax has been paid. Parts of the law under 63, 64, 65, 74 or 76 do not qualify for the benefit of this waiver. Fourth, in order to receive the waiver, taxpayers must ensure that the full payment of tax is done by the deadline set in Section 128A(1) of the Act. In line with Section 128A(3), if there are any ongoing appeals with appellate authorities, courts or tribunals, taxpayers must settle them to get the waiver. If the notice of appeal is to be withdrawn, it must be done by the date set out in Section 128A(1). The notification also points out that the waiver is valid just for a set period and can be stopped at any moment. Taxpayers have to pay their taxes or file their returns on time to receive the waiver. In addition, penalties are normally not applied if people pay their tax bills or complete their returns in the time allowed, following the law by themselves.[1]

CHALLENGES AND AMBIGUITIES IN SECTION 128A OF THE CGST ACT, 2017.

Although Section 128A of the Central Goods and Services Tax (CGST) Act tries to solve some problems, it also contains several issues and uncertainties. One important worry is that taxpayers must pay all their taxes, especially for the issues listed in official orders. Because of this guideline, taxpayers are often confronted by notices containing many different issues. The tax laws are put into practise differently from one state to another. There can be problems as GST laws nationally and provincially are less harmonised, causing mixed signals for companies that face various requirements in different states. Having different tax laws across borders makes it more difficult for enterprises to follow the rules. Besides, adding detailed requirements to section 128A might accidentally increase the number of disputes. The way this provision works can actually cause more disputes to arise rather than less. Giving the government the right to hand out waivers and penalties adds more uncertainty because it is unknown when or if any waivers may be granted and when they might come. Not having an automatic waiver means businesses must wait longer for notifications from the government which complicates their schedules. Problems may arise for individuals or groups who seek a waiver and find that exact details on dispute resolution procedures are unclear. Problems with the tax agency can make it unclear for small enterprises how to get penalty waivers where the

[1] Srinivas Mandalika IRS, 'Proposed Sec. 128A of GST Act - Some Ruminations - TIOL' (TaxIndiaOnline, 8 September 2024) https://taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=47906 accessed 8 September 2024.

law is involved. Such arrangements may put small businesses at financial and operational risk since they do not know for certain what will happen.

ANALYSIS OF POTENTIAL LITIGATION AND UNCERTAINTIES

Including Section 128A into the Central Goods and Services Tax (CGST) Act plays a key role in helping taxpayers cope financially and creating fewer disputes when GST is first introduced. Section 128A is meant to help taxpayers who have struggled with understanding the current tax system by conditional reduction of penalties and deposits demanded under Section 73. However, applying this provision results in some legal loopholes which might eventually result in more disagreements. A main problem with Section 128A is that its scope is not always clear which raises the possibility of legal disagreements. The idea only applies to claims made under Section 73 regarding cases where no fraud, purposeful misrepresentation or hiding data are involved. The ambiguity about phrases such as "short/non-payment of tax" and "inadmissible ITC" (input tax credit) means that several explanations are possible.[2]

There may be differences among evaluators about how to categorise certain cases. Some taxpayers could state that certain events involved negligence (Section 73), yet revenue authorities can also argue that these events demonstrate conscious wrongdoing (Section 74). Because the sections often overlap, it becomes more likely for disagreements to arise and lead to lawsuits over the right ways to classify taxpayer conduct. There are also uncertainties when a taxpayer has made only a partial payment, rather than paying the whole tax. When a taxpayer pays their taxes on time but has not settled their interest and no Show Cause Notice (SCN) is issued according to Section 73, the question is whether they can still benefit from the provisions in Section 128A. Lack of clear rules could result in arguing about whether these taxpayers should be allowed the waiver. If full taxes are not settled, Section 128A does not let the person have any agreements, meaning taxpayers usually end up negotiating so they only admit to paying for parts of the tax. Another problem comes from failing to determine whether taxpayers can receive part of the waiver depending on the portion they admitted which could lead them to ask for reduced penalties and interest in relation to what they admitted was owed. Officials might make you pay the full amount before allowing any waivers. In addition, it is questionable whether candidates in the appeal process should be allowed to gain waivers. The question

[2] Motiram Kanadje, 'Analysis of Section 128A CGST: Conditional Waiver of Interest/Penalty' (TaxGuru, 8 September 2004), https://taxguru.in/goods-and-service-tax/analysis-section-128a-cgst-conditional-waiver-interest-penalty.htm,l accessed 8 September 2004.

remains if taxpayers are required to give up all their appeals or can just drop those about settled matters and maintain the rest for fights over other issues. Because the regulations are unclear, revenue authorities might choose to force taxpayers to repay all obligations which may then lead to disputes, especially if certain taxpayers wish to address just some of their taxes.

A source of disagreement is where a rectification order is made and there are still unresolved proceedings. The law does not include instructions on managing rectified demands when new liabilities are introduced, which can alter a taxpayer's financial obligations. After a waiver notification, if rectification takes place, there may be quarrels about the payment information because it is not clear enough in the requirement. People may still want to keep waivers even if their tax obligations grow and revenue authorities are expected to challenge such decisions. Also, choosing not to issue an SCN under Section 73 and claiming interest without notice raises the possibility of further litigation. There is a chance that revenue officials will use Section 79 to chase interest recovery even if an SCN is not needed first. There is no clear law in the CGST Act regarding disclosures and disclosing such information may open the tax department to challenges by those who feel their rights have been violated.[3]

Because tax payments have to be made in a narrow timeframe under Section 128A, this issue adds more difficulties. It is concerning that making full payment by March 31, 2025, is required to qualify for interest and penalty waivers since it is not simply clear what is meant by payment made. If there are hold-ups in administration or arguments over amounts, these issues have the potential to bring about legal arguments. Individuals paying taxes could suggest that as long as a payment starts before the deadline, it's on time, though revenue officials might insist that completed payments are needed by the deadline.[4]

To summarize, the purpose of Section 128A is to reduce issues in the courts by providing conditional relief for interest and penalties. However, the way this provision is written can lead to more disputes arising. The goals of Section 128A could be achieved and litigation reduced by clarifying its rules to make them easy to follow. Sections 73 and 74 share some similarities,

[3] Srinivas Mandalika IRS, 'Proposed Sec. 128A of GST Act - Some Ruminations - TIOL' (TaxIndiaOnline, 8 September 2024) https://taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=47906 accessed 8 September 2024.

[4] Bhupendran Sridhar, '[Opinion] Probable Effect of Section 128A of the CGST Act' (Taxmann, 3 August 2024) https://www.taxmann.com/post/blog/opinion-probable-effect-of-section-128a-of-the-cgst-act-litigati on-reduced-or-produced accessed 8 September 2024.

which can complicate their interpretation and sometimes lead to disputes between taxpayers and authorities. Additionally, challenges with paying in installments, withdrawing appeals, correcting errors, and managing multiple proceedings further complicate compliance. Offering clear and detailed guidelines from regulators can help decrease the risk of lawsuits for stakeholders dealing with the impacts of Section 128A. To ensure Section 128A meets its objectives, any ambiguities must be clarified to encourage adherence to the law and help reduce the number of delayed GST cases. Going forward, we should address all concerns raised and implement stricter tax laws so that the interests of taxpayers and the integrity of the law are both maintained.

IMPACT ON TAXPAYERS AND REVENUE AUTHORITIES

Section 128A in the CGST Act helps both the taxpayers and the revenue authorities. Doing this enables the government to reduce the tax burden on people without giving up too much revenue. The waiver of interest and penalty costs for some people is the biggest benefit of applying for instalment agreements. As a result, those firms that had inadvertent mistakes in their taxes or used unacceptable input tax credits (ITC) in earlier GST years may now resolve their problems without having to pay more. [5]Relief like this is most useful for small and medium enterprises (SMEs) which have experienced difficulties following the new tax rules.

The purpose of Section 128A is to decrease the number of legal issues by enabling taxpayers to fix their problems without going to appellate courts. It might result in a reduced number of lawsuits from both current and future claims. Many people who would have contested their interest and penalty payments in court might prefer to settle instead and save on costs, delays and uncertainties. Businesses are more motivated to pay back their dues by March 31, 2025 to avoid extra penalties because of the waiver. It may encourage people to follow regulations, particularly those who did not follow them accurately before.[6]

The design of the waiver scheme by revenue authorities is meant to speed up tax collection.

[5] PwC India, 'Recommended Effective Date for Section 128A Waiver & Clarifications on ITC on Demo Vehicles' (PwC, 11 September 2024) https://www.pwc.in/assets/pdfs/news-alert/tax-insights/2024/pwc_india_tax_insights_11_septemb er_2024_recommended_effective_date_for_section_128a_waiver_clarifications_on_itc_on_demo_ vehicles.pdf accessed 8 September 2024.

[6] 'GST Amnesty Scheme: A Positive Step Towards Reducing Litigation Before the Upcoming GST Tribunal' (ELP, 26 July 2024) https://elplaw.in/leadership/gst-amnesty-scheme-a-positive-step-towards-reducing-litigation-before -the-upcoming-gst-tribunal/ accessed 8 September 2024.

Though this approach reduces income from penalties and interest in the first place, it actually sets free large sums of money that were unavailable because of ongoing disputes and missing payments. Reward taxpayers for paying their taxes promptly and the government can avoid taking forced measures in the early years of GST when its revenue is lower. It is expected that because of this amendment, the workload for tax officials can shift from handling a high number of small appeals to dealing with more severe cases such as those involving deliberate lies or attempts to cheat the system. The purpose of the conditional waiver is to clarify which situations can be settled through the scheme to guard against legal risks. Enforcing Section 128A's rules for fraud and dishonest agents prevents revenue authorities from facing many legal challenges regarding their decision to include or exclude cases. In the future, collaborating as seen in Section 128A is hoped to increase compliance, taking some duties off the Tax Authority as taxpayers fix their filings without the need for lawsuits. The effects of Section 128A reach both the taxpayers and revenue bodies. It gives people the possibility to solve issues with taxes and it allows tax officials to make sure money is recovered and disputes are minimised. As a result of balancing these interests, Section 128A can make the GST system more efficient and fair.[7]

CONCLUSION

Based on Section 128A of the CGST Act, people who fail to submit tax reports by a certain date may be allowed conditional forgiveness of interest and penalties, as long as the overdue tax amount is received. With this waiver, small and medium enterprises can solve their previous issues and still face only minor penalties. Yet, because there are unclear rules about how far the law applies, what to do with partial payments and the need to drop appeals, these may become sources of more contention. To implement well, organisations need clear directions and possible amendments. This provision enables revenue bodies to get more tax, lessen paperwork and ensure people stay compliant in the future. All in all, this section helps handle difficulties in the early years of the GST and encourages working together among taxpayers. Making sure it is clear when put into practise will support both taxpayers and the government in achieving their aims.

[7] CA Natasha Rajvaidya, 'Major Tax Relief Alert: Understand the New Section 128A Amnesty Scheme in Budget 2024' (LinkedIn, 6 August 2024) https://www.linkedin.com/pulse/major-tax-relief-alert-understand-new-section-128a-scheme-rajvai dya-0oowf/ accessed 8 September 2024.