

Amnesty Scheme under GST

In line with the Government's intent of promoting ease of doing business and making GST a good and simple tax, the Government has introduced an amnesty scheme under GST for payment of tax without any interest and penalty

Section 128A of the CGST Act, 2017 r.w. Rule 164 of the CGST Rules, 2017 provides for waiver of interest and/or penalty in case of **demands under Section 73** of the CGST Act relating to **FYs 2017-18, 2018-19 and 2019-20**.

The Central Board of Indirect Taxes and Customs (CBIC) has set a **deadline** for payment in order to benefit from this waiver:

1. **Up to March 31, 2025**, for notices or orders under specific provisions of Section 128A.
2. **Within six months** from the date of the order if it's related to redetermining tax under Section 73.

Considering the benevolent nature of the scheme where the interest and penalty have been waived in its entirety, taxpayers may undertake a review of all the pending litigations and decide if any case is fit for payment of tax under the aforesaid scheme.

The said exercise should be undertaken at the earliest since the last date for payment of tax in the said scheme (in most cases) is 31.3.2025.

The CBIC has clarified certain situations where a taxable is eligible/ineligible for amnesty scheme which is highlighted as under:

- Even if the taxpayer has already **paid the total GST** amount before introduction of the scheme and is **litigating only interest and/or penalty**, taxpayer is **eligible** for the amnesty scheme.
- **Demands pertaining to transitional credit** availed in the period covered under the amnesty scheme shall also be **eligible** for amnesty.
- Where **notice/order contains multiple issues**, **benefits of the scheme cannot be taken for part of the issues** by making payment of tax only in respect of such issues and continuation of litigation for other issues.
- Where **notice/order is issued for multiple years**, where certain years are covered under the amnesty scheme and others are not, **benefit of the scheme can only be availed if tax, interest and penalty are paid for the years which are not covered under the amnesty scheme**.
- Benefit of amnesty scheme **cannot be availed qua IGST payable on import of goods** since notice will be issued under the provisions of Customs Act, 1962.

- Any **amount recovered by tax officers** on behalf of the taxpayer against a demand shall also be **considered as tax paid towards the said demand** for the purpose of amnesty scheme.

Open questions

- The CGST Act ordinarily allows input tax credit of GST paid under Section 73 of the CGST Act. There is no clarity on whether ITC will be available with respect to the GST paid under the amnesty scheme.
- In case of appeals, pre-deposit may be paid by taxpayer at the time of appeal. Open questions remain regarding treatment of the pre-deposit if amnesty scheme is opted for. Whether the entire GST has to be paid through the prescribed mode of payment as per the amnesty scheme and subsequent refund to be claimed of pre-deposit or should such pre-deposit be subtracted at the time of payment of GST under amnesty scheme is a question that remains unanswered.

For any queries on the above matter, you may contact at nivedita.agarwal@bansimehta.com.

Trust you find the same useful.

Disclaimer:

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