

# INDIRECT TAX (CUSTOM UPDATES)



## CLARIFICATION ON SECTION 128A OF THE CGST ACT, 2017 FOR DEPARTMENTAL APPEALS FILED AGAINST INTEREST AND/OR PENALTY ONLY

The Central Board of Indirect Taxes and Customs (CBIC) recently issued Instruction No. 02/2025-GST, clarifying the applicability of Section 128A of the Central Goods and Services Tax (CGST) Act, 2017. This section provides for waiver of interest or penalty, or both, in certain cases relating to demands under Section 73 of the CGST Act for the financial years 2017-18, 2018-19, and 2019-20.

### **Background:**

Section 128A of the CGST Act, along with Rule 164 of the CGST Rules, outlines the conditions for waiving interest or penalty on tax demands under Section 73. However, concerns arose regarding the applicability of this waiver in situations where the tax amount has been paid, but the department has appealed against the calculation of interest or the imposition/non-imposition of penalty.

### **Clarification by the CBIC:**

The CBIC, in its recent instruction, clarified that the benefits of Section 128A should not be denied to taxpayers solely because the department has initiated or is in the process of filing an appeal against the calculation of interest or the imposition/non-imposition of penalty.

### **Key Points of the Instruction:**

- **Focus on Tax Payment:** The instruction emphasizes that if the taxpayer has fully paid the tax amount demanded under Section 73, the department should consider withdrawing appeals that solely challenge the calculation of interest or the correctness of penalty imposition.

- **Reducing Litigation:** The primary objective of this clarification is to reduce litigation and minimize unnecessary disputes between taxpayers and the department.
- **Fair Treatment of Taxpayers:** This instruction ensures that taxpayers are not unfairly penalized for discrepancies in interest or penalty calculations when the tax liability itself has been settled.

### **Implications for Taxpayers:**

This clarification provides significant relief to taxpayers who have paid the tax liability but may be facing appeals from the department solely on grounds of interest or penalty. It promotes a more equitable and efficient tax administration by encouraging resolution of disputes and reducing unnecessary litigation.

### **Conclusion:**

The CBIC's recent instruction provides valuable guidance on the application of Section 128A of the CGST Act, particularly in cases involving appeals against interest and penalty calculations. This clarification aligns with the government's objective of fostering a taxpayer-friendly environment and reducing the burden of litigation.


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