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Government of Kerala

KERALA GST State Goods & Services Tax

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Circular No. 8/2025-Kerala SGST

Subject:- State GST Department, Kerala - Interest waiver scheme under Section 128A - treatment of applications submitted for waiving of arrears - cases related to self-assessed tax and interest - implementation of uniformity in processing applications - instructions issued

1. The GST Council in its 53rd meeting held in June 2024 had recommended providing for waiver of interest or penalty or both, relating to demands under section 73 of the GST Act pertaining to Financial Years 2017-18, 2018-19, and 2019-20, subject to certain conditions. Based on the recommendations Section 128A has been inserted in the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as the 'KSGST Act' or 'the Act') with effect from 01.11.2024. The procedures for availing the benefit of the scheme, method of filing application and the process flow by the proper officer have been described in Rule 164 of the KGST Rules, 2017.
2. The Central Board of Indirect Taxes and Customs, on the recommendations of the Council, has issued a circular (Circular No. 238/32/2024-GST dated 15.10.2024) for clarifying various doubts related to the newly inserted Section 128A of the Act. In the said circular in para 4.4, it is clarified that "*the benefit of waiver of interest and penalty shall not be applicable in the cases where the interest has been demanded on account of delayed filing of returns, or delayed reporting of any supply in the return, as such interest is related to*

demand of interest on self-assessed liability and does not pertain to any demand of tax dues and is directly recoverable under sub-section (12) of section 75."

3. As per sub-section 12 of Section 75 of the KSGST Act, "*Notwithstanding anything contained in section 73 or section 74 or section 74A where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.*" An explanation was also inserted into this sub-section w.e.f. 1st January, 2022.
    - ***Explanation***.- *For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.*
4. Various doubts have been received from the field officers on how to handle subject matters in the already issued section 73 demand order such as, demand confirmed for FORM GSTR-1 and FORM GSTR-3B differences, interest for delayed filing of returns/ delayed reporting of supplies in returns etc., if the taxpayer opts for amnesty under section 128A of the Act, as the above-referred circular clarifies that the present amnesty doesn't cover these issues.
5. Even though the Act precisely stated that any amount of tax in accordance with the self-assessed returns remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79 of the Act, the field officers had proceeded to determine the tax liability under section 73 of the Act even when the liability was already self-assessed and declared by the taxpayer in their GSTR-1. These steps were taken in the initial years of the implementation of the Act and before the explanation was added to sub-section (12) of section 75 of the Act by the GST Council.
6. Now, in order to handle this situation in light of the Waiver Scheme announced under section 128A of the Act and by considering the queries and doubts in this regard in the field, in exercise of the powers conferred under sub-section (1) of Section 168 of the KSGST Act, the

following instructions are issued to bring uniformity in handling these issues in the field formations and also for compliance;

a. If a single demand order under Section 73 of the Act covers multiple issues - such as GSTR-1 -GSTR-3B mismatches, discrepancies in Input Tax Credit (ITC), the availment and utilization of blocked ITC, interest due on delayed payment of tax, TDS/TCS mismatches, E-way bill mismatches etc, the taxpayer seeking the waiver scheme must pay the demanded tax on or before March 31, 2025, and subsequently file an application in FORM GST SPL-02 through the common portal.

b. In such cases , the proper officer must verify the application and the payments made through DRC-03 or against the outstanding liability to confirm whether the taxpayer has fully paid the tax demanded, including the demand related to GSTR1-3B mismatches.

c. If the taxpayer has fully paid the tax demanded, including the demand related to GSTR1-3B mismatches, but not paid the interest due on such payments and/or not paid the interest for the belated payment of tax, as the case may be, an offline communication after generating an RFN in the portal, should be served to the taxpayer; intimating that *as per Circular No. 238/32/2024-GST dated:15.10.2024 issued by Central Board of Indirect Taxes and Customs on the recommendations of the GST Council, the benefit of waiver of interest and penalty shall not be applicable in the cases where the interest has been demanded on account of delayed filing of returns, or delayed reporting of any supply in the return, as such interest is related to demand of interest on self-assessed liability and does not pertain to any demand of tax dues and if it will not be paid and communicated within 15 days of receipt of this intimation, the interest in relation to the above demand shall be recovered under sub-section (12) of section 75 in future.*

d. If the taxable person pays the applicable interest in full on receiving the intimation, as required by Section 50 of the Act, and informs the proper officer, the officer shall issue an acknowledgment in DRC-04 after verifying the payment (if the

payment is made voluntarily through DRC-03), and proceed to process the application submitted in FORM GST SPL-02. Even if the payment of tax related to GSTR1-3B mismatches along with interest or interest for the belated payment of tax, as the case may be, is not made, the proper officer must proceed with the application and follow the procedures outlined in Rule 142B of the KSGST Rules, 2017 for the recovery of self-assessed tax along with interest and/or for the recovery of interest for the belated payment of self-assessed tax, as the case may be, on deploying the functionality in the GST Back Office Portal. For this purpose, all proper officers shall maintain a separate register for cases where tax and/or interest is to be demanded under sub-section (12) of Section 75 of the Act.

e. In the cases where penalties had been confirmed either under sub-section (9) or sub-section (11) of Section 73 of the Act for non-payment of tax and interest related to GSTR1-3B mismatches, despite Sub-section (12) of Section 75 explicitly states that any unpaid self-assessed tax, in whole or in part, or any unpaid interest on such tax, shall be recovered under the provisions of Section 79. As GSTR1-3B mismatch cases fall within the ambit of recoverable amount under section 79, provisions of sub-section (1) of Section 73 is not applicable. As the provisions of section 73 are not applicable, the penalty provisions under sub-section (9) or sub-section (11) of that section are also irrelevant in these cases. However, since the explanation was introduced in sub-section (12) of section 75 much later, in certain cases, notices were issued and the penalty was imposed under section 73 of the Act. Now, in light of the explanations brought about by the Council, these cases may be proceeded as per the procedure envisaged under the law. That is, the amounts may be recovered with interest, and the penalty that could not have been imposed under the law, if it has been imposed, may be rectified or dropped.

f. The GST Council introduced the waiver scheme to reduce tax disputes and provide significant relief to taxpayers during the initial years of the implementation of the GST Act. Therefore, all proper officers shall consider applications positively and guide

taxpayers in making payments and filing applications, to reduce GST arrears within each Taxpayer Services Circle/Division/District.

g. Divisional Deputy Commissioners and district Joint Commissioners within the Taxpayer Services Vertical shall compile a list of taxpayers from whom interest is recoverable under Section 79 of the Act, but cannot currently be demanded due to the unavailability of the corresponding functionality in the Back Office Portal.

h. It is also instructed that proper officers shall initiate recovery proceedings under Section 79 of the Act for the above cases as soon as the module is deployed in the portal, without waiting for any further instructions in this regard.

i. Proper officers in the Taxpayer Services Vertical are also instructed to adhere strictly to the procedures and timelines specified in Rule 164 of the KGST Rules, 2017.

7. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the undersigned.

AJIT PATIL I A S

COMMISSIONER

To

All Concerned