



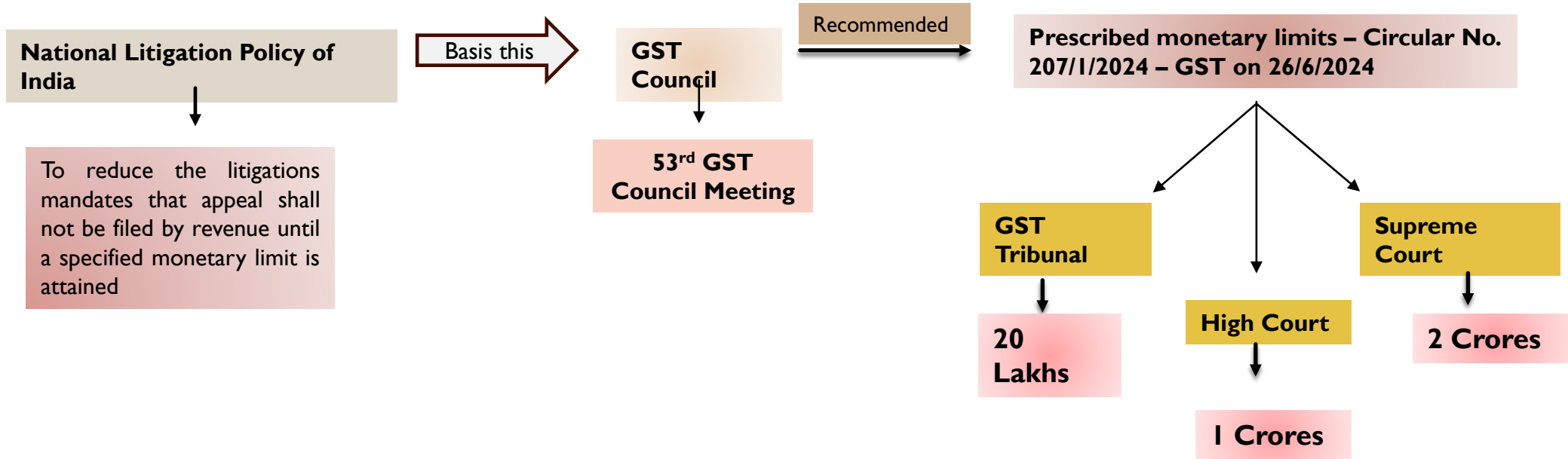
**SINGHANIA'S GST
CONSULTANCY & CO.**

Waiver from Interest & Penalty in GST Scheme

INTRODUCTION

- **Maximum disputes in tax laws** – As it directly impacts business 'profits' & 'growth'.
- **From Government's perspective** - Blocks 'government revenue' and has 'administrative efforts'. At times, the cost involved in the revenue realization exceeds the revenue actually realized.
- **Economic survey 2017-18** - Need to address issues of backlogs, pendency and delays in the appellate & judicial forums for 'ease-of-doing business'
- **Litigations effects:** Discourage investments, stall projects, stress taxpayers, escalates legal costs, hampers tax collection, etc.
- **Amnesty's Objective:** Amnesty scheme provides an opportunity to regularize past non-compliances keeping into account that there are frivolous demands based on Officer's view rather than correct position of law.
- **Validity:** Constitutionally valid as per ***All India Federation of Tax Practitioners v Union of India and others, 1998 (104) E.L.T. 595 (Del.)***
- **Amnesty schemes prior to GST regime:** Amnesty scheme provides an opportunity to regularize past non-compliances.
 - Sabka Vishwas (Legacy Dispute Resolution), 2019
 - Kar Vivad Samadhan Scheme, 1998
 - Vivad se Vishwas Scheme, 2024 in Income Tax, 1961.

Monetary Limit to File an Appeal by the GST Department



Further measure taken to reduce the burden of litigations:

1. Insertion of section 16 (5) and 16 (6) of CGST Act, 2017 to amend time limit for availing ITC as per section 16 (4) of the said act.
2. Granting “as is where is” basis exemption for various goods and services.
3. Issuance of circulars to clarify the doubts in the minds of trade and industry.
4. Amnesty scheme for filing the appeals which were missed to be filed – Notification No. 53/2023 – CT (R) on 2nd November, 2023.

AMNESTY SCHEMES IN GST

- Levy under the GST:
 - CGST, SGST, IGST & Compensation Cess
 - Interest - Waiver u/s 128A
 - Penalty - Waiver u/s 128A only for section 73; Waiver u/s 128 for section 122, 123 and 125.
 - Late Fee – There is power in section 47 to levy the late fee but no mechanism prescribed in law to collect the same? – Waiver u/s 128
 - Fine
 - Redemption Fine
- Power to provide amnesty scheme in GST? – Section 128

“The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.”
- Does the CGST Act, 2017 gives power to waive tax? No
- Does the CGST Act, 2017 gives power to waive interest? Yes, u/s 128A - Period specific only for FY 2017-18, FY 2018-19 & FY 2019-20.
- Does the CGST Act, 2017 gives power to waive penalty u/s 73? Yes, u/s 128A - Period specific only for FY 2017-18, FY 2018-19 & FY 2019-20.
- No waiver of penalty u/s 122 and 123 as on date!
- Penalty u/s 125: Waiver of penalty for non-compliance of provision of dynamic QR code on B2C invoice.
- Late fee u/s 47: GSTR-I, 3B, 4, 5, 5A, 6, 7, 9, 10. Rationalization in late fees has been done to a great extent!
- Amnesty Schemes in GST: For GSTR 4, 9, 9C, 10, appeal filing beyond timelines, revocation of registration u/s 148, etc.

SCRUTINY OF RETURN

| Notice/Orders can be issued under section | Brief provision of law | Summary of Notice – Rule 142 | Summary of Order | Waiver under section |
|---|--|--|------------------|-------------------------------|
| Section 46 | Notice to return defaulters | GSTR – 3A | ASMT – 13 | - |
| Section 52 | TCS | GST DRC-01 | GST DRC - 07 | - |
| Section 73 | Non-fraud cases of tax evasion | Pre-SCN in GST DRC – 01A SCN in GST DRC-01; | GST DRC – 07 | Section 128A |
| Section 74 | Fraud cases of tax evasion | GST DRC-01 | GST DRC – 07 | - |
| Section 76 | Tax collected but not paid to the Government | GST DRC-01 | GST DRC – 07 | - |
| Section 107 | Appeals to Appellate Authority | - | GST DRC - 07 | Section 128A |
| Section 108 | Powers of Revisional Authority | - | GST RVN-01 | Section 128A |
| Section 122 | Penalty for certain offences | GST DRC-01 | GST DRC – 07 | Section 128, clarified - 128A |
| Section 123 | Penalty for failure to furnish information return | GST DRC-01 | GST DRC – 07 | Section 128 |
| Section 124 | Fine for failure to furnish statistics | GST DRC-01 | GST DRC – 07 | - |
| Section 125 | General penalty | GST DRC-01 | GST DRC – 07 | Section 128, clarified - 128A |
| Section 127 | Power to impose penalty in certain cases | GST DRC-01 | GST DRC – 07 | - |
| Section 129 | Detention, seizure and release of goods and conveyances in transit | GST MOV-07 | GST MOV – 09 | - |
| Section 130 | Confiscation of goods or conveyances and levy of penalty | GST MOV-11 | GST MOV – 09 | - |

Details the Waiver Scheme in Section 128A

- **Situations:**
 - Notice issued u/s 73
 - Order issued u/s 73
 - Orders passed by Appellate Authority u/s 107
 - Orders passed by Revisional Authority u/s 108
 - Original notice issued u/s 74 and then based on direction of AA/GSTAT/Court u/s 75(2), notice deemed to be issued u/s 73 **[Re-adjudication]**
 - ❖ **Situation:** What if normal notice has been issued u/s 75(12) and recovery is pending u/s 79? – No covered under the scheme but if the issue is raised u/s 73, then certainly scheme can be availed.
 - ❖ **Situation:** What if the issue is regarding IGST payable under Customs Act, 1962? – Circular 238 specifies demand for payment of IGST in case of imports is not covered u/s 73, but as per Hon'ble CESTAT in the case of **M/s Mayuri Uniquoters Ltd.** has held that **IGST is a part of GST Act and not the Customs Act.**
- **Exclusion:** Cases of erroneous refunds
- ❖ **Situation:** What if notice/order has one of the issues which involves claim of erroneous refund by the officer? – Pay erroneous tax, interest & penalty in respect of erroneous refund & for other issues, pay only tax amount.

Details the Waiver Scheme in Section 128A

■ Benefit:

- Waiver of 'interest' under section 50
 - Waiver of 'penalty' under section 73
 - Waiver of 'late fee' & 'redemption fee'? – **Conditional waiver scheme – Only payment of tax dues – Conclusion of all proceedings.** Reliance can be placed on the decision of Hon'ble Gujarat High Court in the case of **Synpol Products Pvt. Ltd. v. UOI – [TS-1193-HC-2019(GUJ)-NT]** wherein it has been held that SVLDRS immunize the redemption fine also **though there is no express provision provided in the scheme.** Also, Hon'ble Allahabad High Court in the case of **M/s. Jay Shree Industries v. UOI & Anr. [TS-612-HC-2021(ALL)-EXC]**
 - ❖ **Situation:** No refund where interest & penalty has already been paid. - **All India Federation of Tax Practitioners v UOI, 1998 (104) E.L.T. 595 (Del.)**
 - ❖ **Situation:** Notice/Order demanding **only the 'interest'**? Circular clarifies no benefit where returns delayed filed, supplies delayed reported, etc. drawing reference from section 75(12) as interest on self-assessed liability. Section 128A starts with *non-obstante* clause. However, *Hon'ble MP HC KEC International Ltd. v. Designated Committee (under SVLDRS, 2019)- 2023 (71) G.S.T.L. 169 (M.P.) / (2023) 3 CENTAX 68 (M.P.), [TS-558-HC-2022(MP)-NT]* & *Karnataka High Court JSW Industrial Gases Pvt. Ltd. v. Designated Committee, Hosapete-2023 (70) G.S.T.L. 156 (Kar.) / 2023 2 CENTAX 233 (Kar.), [TS-560-HC-2022(KAR)-NT]* has held that basis the clarificatory circular by CBIC **the expression 'tax dues' shall include cases where interest has been demanded by a SCN or O-I-O.**
- **Period covered:** Benefit is available qua notice/order i.e., in respect of separate notice/orders rather than combining all notices & orders for a particular period. Not mandatory to apply for all the 3 FYs.
- FY 2017-2018,
 - FY 2018-2019,
 - FY 2019-2020

Details the Waiver Scheme in Section 128A

- **Situation:** What if notice/order covers initial 3 FYs as well as subsequent period also in one notice/order? – Rule 164(4) states that tax, interest & penalty has to be paid for uncovered period to claim benefit of waiver from interest & penalty for the relevant period. **Rule 164(4) can be challenged as being *ultra vires* as section 128A does not put any such restrictions.** Reliance can further be placed on **Titan Company Ltd. [2024 (15) CENTAX 118 (Mad.)]** wherein it has been held that **bunching is invalid, directing adjudication for each year separately.**
- **Conditions:**
 - Full payment of CGST, SGST, IGST and Compensation Cess as mentioned in the notice/order
 - No cherry picking of issues are allowed
 - Irrespective of whether payment of tax is made before 01-11-2024
- ❖ **Situation:** What if notice/order has one of the issues of section 16(4) for which relaxation has been given till 30-11-2021 in respect of initial 4 FYs vide section 16(5) & 16(6)? – Rule 164(5) states that amount payable as per section 73 shall be calculated after deducting amount not payable in accordance with section 16(5) and 16(6).
- ❖ **Situation:** Amount recovered by the officers as tax due from any other person on behalf of a taxpayer? – Amount paid shall be considered as tax paid and hence, appropriation allowed.
- **Payment timeline:** Till 31-03-2025
- **Payment medium:** Electronic Credit Ledger & Electronic Cash Ledger (Only through Cash - RCM, E-com operator liability u/s 9(5), erroneous refund, interest & penalty)

Details the Waiver Scheme in Section 128A

- **Application timeline:** Within 3 months from 31st March, 2025.
 - File application in GST SPL-01 (Notices) or GST SPL-02 (Orders).
 - SCN in GST SPL-03; Reply in GST SPL-04; Order accepting application in GST SPL-05.
- ❖ **Situation: What if notice/order has been issued to co-noticee?** – The Hon’ble Supreme Court in the case of **UOI v. Onkar S. Kanwar [2002 (145) E.L.T. 266 (SC)]**, held under the Kar Vivad Samadhan Scheme that even though the show cause notice may call upon the company and its directors/officers to show cause, there is a separate demand for “tax arrears” against the company and separate against the directors/officers and thus, entity/person shall file **separate declaration**.
- ❖ **Situation: What if tax dues have been paid by the principal noticee?** Benefits of the amnesty scheme shall be applicable to co-noticees also. - **Calcutta vs Bharat kumar Mahensaria 2001 (4) TMI 626-CEGAT, Kolkata**. It was held that if the tax arrear have been settled by the principal noticee under the provision of Kar Vivad Samadhan Scheme, then in such a case it will provide immunity to all other Co-noticees also.
- **Exceptional situation:**
 - In case of re-adjudication u/s section 75(2) - Within 6 months from the date of communication of the order u/s section 73
 - Amnesty benefit availed – Department simultaneously filed an appeal – If additional tax is demanded in the Order-in-Appeal, then pay tax within 3 months from the date of the said order. Taxpayer has the option to challenge such O-I-A before GSTAT.
- **Rejection of Amnesty Application:**
 - Order can be passed by rejecting the application by PO in GST SPL-07.
 - Such Order can be challenge before Appellate Authority.
 - Order by the Appellate Authority accepting the application in GST SPL-06.

GENESIS OF SECTION 128A

| Date | Reference | Activity |
|-----------------|--|--|
| June, 2024 | Recommendation: 53 rd GST Council Meetings | Recommended insertion of Section 128A of CGST Act, 2017 to provide for waiver of interest and penalty |
| August, 2024 | Section 128A: Inserted section 128A | Section 146 of Finance Act (No. 2), 2024 |
| September, 2024 | Recommendation: 54 th GST Council Meetings | Recommended insertion of Rule 164 of CGST Act, 2017 along-with forms to prescribe manner and procedure (effective from 1 st November, 2024) |
| October, 2024 | Rule 164: Inserted Rule 164 | Notification No. 20/2024 – CT dated 8 th October, 2024 |
| October, 2024 | Circular: Circular No. 238/32/2024 – GST dated 15 th October, 2024 | Circular clarifying issues with respect to availment of benefits under Section 128A |
| October, 2024 | Payment: Notification No. 21/2024 – CT | Notified the date 31-03-2025 as the due date on or before which the payment shall be made |

CASE STUDIES

I. Cases where notice/order issued is time barred

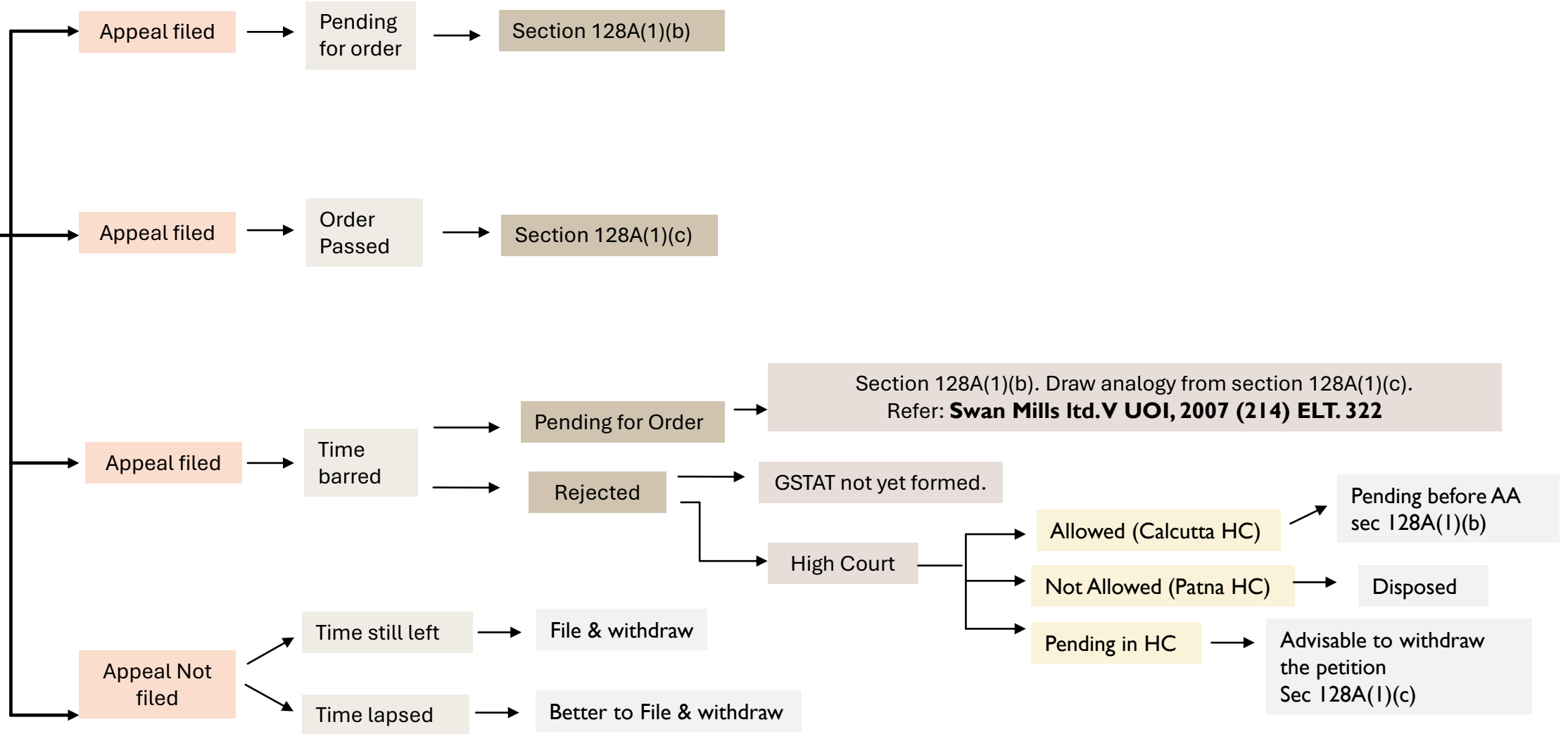
| Situations | Whether Concluded | Views |
|------------|---|--|
| ASMT - 10 | No further notice or proceedings till the specified limitation period (Time barred) | This can be litigated basis it is time barred; |
| DRC – 01A | No further notice or proceedings till the specified limitation period (Time barred) | This can be litigated basis it is time barred; |
| DRC - 01 | No further notice or proceedings till the specified limitation period (Time barred) | This can be litigated basis it is time barred; |

Note:

- **Situation in which Writ has been filed:** Vires of the law has been challenged, violation of principles of natural justice, where alternative remedy is not available.
- If the taxpayer has filed petition in the court against any of the above three cases (e.g., challenging he may withdraw the petition filed in order to avail the benefits of the amnesty scheme, irrespective of whether the notice or order u/s 73 has not yet been issued.
- The taxpayer will have to attach the copy of the petition withdrawn while filing the form under the amnesty scheme.



DRC - 07



CASE STUDIES

3. More specific situations

| Situations | Views |
|--|--|
| RVN - 01 issued | Waiver can be availed under section 128A(1)(c) |
| Order re-adjudicated as per section 75 (2) on the direction of Appellate Authority/ GSTAT/ Court | <p>As the notice has been re-adjudicated from section 74 to section 73 i.e., non-fraud therefore waiver can be availed under section 128A</p> <ul style="list-style-type: none"> • Timeline: within 6 months from the date of revised order issued |
| DRC – 07 issued <ul style="list-style-type: none"> • Ineligible ITC + Interest + Penalty • Erroneous refund + Interest + Penalty | Amount to be paid <ul style="list-style-type: none"> • Only tax amount • Full payment as no waiver available |

ABOUT THE SPEAKER

Aditya Singhania *[Founder, Singhania's GST Consultancy & Co. & Author, Taxmann]*

Aditya, holds core expertise in indirect tax laws relating to GST, and other erstwhile Indirect Tax laws. Aditya has wide range of experience in multiple sectors including Transportation, Telecom, Real Estate, Mobiles, Textiles, E-commerce, etc.

Highlights

- 8+ Years of experience in Indirect Taxation
- Author of books on GST published from TAXMANN namely:
[GST Practice Manual – 6th Edition, GST Refunds – 8th Edition, GST Audit & Annual Return – 7th Edition, GST e-invoicing – 3rd Edition, etc.]
- Experience in handling Litigation, Advisory, Health checks, Contract reviews, etc.
- Actively writes and speaks on various ongoing Indirect Tax issues
- Formerly worked as DGM, Indirect Taxes with Taxmann Technologies Pvt. Ltd.
- Formerly worked as Senior Manager, Indirect Taxes with Bharti Airtel Limited
- Actively shares his views on latest developments in GST with ETCFO, The Hindu Business Line, Hindustan Times, Economic Times, etc.
- Has been a panelist on Times Now & BTVI News Channel
- On the Board of Advisors in Taxmann's Research & Advisory wing



THANK YOU

ADITYA SINGHANIA
www.singhaniasgstconsultancy.com

(M) +91 91637 27490

(E) info@singhaniasgstconsultancy.com