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Make the amnesty equitable

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TWO significant decisions taken by the GST Council in its meeting held on 26.06.2024, as informed to the public through the [Press Note](#) are as below.

B. Measures for facilitation of trade:

1. Insertion of Section 128A in CGST Act, to provide for conditional waiver of interest or penalty or both, relating to demands raised under Section 73, for FY 2017-18 to FY 2019-20 : Considering the difficulties faced by the taxpayers, during the initial years of implementation of GST, the GST Council recommended, waiving interest and penalties for demand notices issued under Section 73 of the CGST Act for the fiscal years 2017-18, 2018- 19 and 2019-20, in cases where the taxpayer pays the full amount of tax demanded in the notice up to 31.03.2025. The waiver does not cover demand of erroneous refunds. To implement this, the GST Council has recommended insertion of Section 128A in CGST [Act, 2017](#).

7. Relaxation in condition of section 16(4) of the CGST Act:

a) In respect of initial years of implementation of GST, i.e., financial years 2017- 18, 2018-19, 2019-20 and 2020-21:

The GST Council recommended that the time limit to avail input tax credit in respect of any invoice or debit note under Section 16(4) of CGST Act, through any return in FORM GSTR 3B filed up to 30.11.2021 for the financial years 2017-18, 2018-19, 2019-20 and 2020-21, may be deemed to be 30.11.2021. For the same, requisite amendment in section 16(4) of CGST Act, retrospectively, w.e.f. 01.07.2017, has been recommended by the Council.

The above two moves are very significant and seek to address two major pain points faced by the taxpayers. It is hoped that the relevant statutory amendments in this regard would be introduced through the Finance Bill, 2024 / Budget 2024.

In order to ensure that the benefit is made available to all taxpayers, without any discrimination, who are affected by the above issues, the following suggestions are given.

The demands of interest and penalty (where tax demands are made under Section 73) and denial of ITC under Section 16 (4) of the Act for the three initial years, are the cases which are entitled for the benefit of the new provisions.

Such demands might be pending at various levels, viz.,

(i) Show Cause notices demanding such dues, which are eligible for the benefit benefits of the new provisions, may be pending adjudication.

(ii) An order might have been passed and no appeal would have been filed by the taxpayer and the confirmed demands which are eligible for the benefits of the new provisions may still remain unpaid.

(iii) Appeals / Writ Petitions against show cause notices or orders confirming such demands which are eligible for the benefits of the new provisions may be pending.

The statutory provisions to be introduced in this regard should be worded clearly, so that all the above categories of taxpayers are entitled for the scheme. Otherwise, it would lead to unnecessary litigation.

Further, there may be cases, where the demands are proposed / confirmed under Section 74 of the Act and the taxpayers may be contesting the invocation of Section 74. In those cases, if the invocation of Section 74 is held unsustainable and the demands are confirmed under Section 73 of the Act, by the adjudication or appellate authorities, before 31.03.2025, such taxpayers should also be made eligible to

opt for the benefit of the new provision, i.e. Section 128A. suitable instructions may also be issued to the adjudicating / appellate authorities to decide such cases, on priority, well before 31.03.2025.

[The views expressed are strictly personal.]

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