

BOMBAY CHAMBER OF COMMERCE & INDUSTRY

Representation on provisions relating to Waiver of Interest and Penalty under GST [Amnesty Scheme]

Sl.	Subject	Issue and Rationale	Recommendations
1.	Extension of due date for making tax payment under the amnesty scheme.	<ul style="list-style-type: none"> The last date to make payment of tax as per the amnesty scheme is 31st March 2025. It is relevant to note that the last date for issuing order for 2019-20 u/s 73 by the authorities was 31st August 2024 and the last date for filing appeals against such order was 30th November 2024. Due to deadline and a conservative approach field officers have issued orders which are inflated and without even giving any appropriate opportunities to the assesseees. In above cases, it is very unlikely that cases will be heard by the appellate authorities and orders issued before 31st March 2025. Even if the taxpayer wants to opt for the amnesty on part of the demand, the same may not be possible as he will have to accept the demand as per the adjudication order in absence of availability of time for appeal proceedings. The entire purpose of amnesty will get defeated. 	<p>The Chamber recommends extending the date of payment of tax under amnesty scheme from 31 March 2025 to 31 March 2026.</p> <p>This will facilitate additional time for taxpayers to get the demands rectified in the appeal proceedings and then pay the tax.</p> <p>Separately, suitable clarifications or instructions may be issued fast track resolution mechanism (hearings and disposal) should be implemented for appellate proceedings for disposal of cases under section 73 with proper appreciation of submissions by the taxpayers.</p>

Sl.	Subject	Issue and Rationale	Recommendations
		<ul style="list-style-type: none"> Similar situation may arise for orders u/s 73 issued for FY 2017-18 and 2018-19 which are pending for disposal before the first appellate authority. 	
2.	Issue based settlement under the Amnesty Scheme.	<ul style="list-style-type: none"> Several issues are often disputed in a single Show cause Notice with varying degrees of merit. There are many common issues for the industry on which demand is raised in show cause notices (SCNs). The inability to settle disputes selectively prevents taxpayers from taking advantage of the scheme for genuine cases while contesting those with stronger grounds before the Appellate Forum. 	The Chamber recommends modifying amnesty scheme to allow issue wise settlement under the Scheme.
3.	Applicability of amnesty scheme on interest and penalty demands arising out of self-assessed liability (voluntary assessment)	<ul style="list-style-type: none"> As per section 128A(1), <i>“Notwithstanding anything to the contrary contained in this Act, where any amount of tax is payable by a person chargeable with tax in accordance with...”</i> On plain reading of the above language, it appears that the amnesty scheme is applicable only in cases where any amount of tax is demanded as per any notice or order. In many cases, taxpayers have Suo moto paid tax without payment of interest and penalty. Although Circular No. 238/32/2024-GST has clarified that such cases would be covered for the benefit under the amnesty scheme, however, it specifically states that the waiver of interest or 	It is suggested that benefit of waiver of interest and penalty should be extended even in cases where such amounts are payable on account of self-assessed liability.

Sl.	Subject	Issue and Rationale	Recommendations
		penalty will not be available where the demand of interest is on self-assessed liability recoverable under Section 75(12).	
4.	Consolidated notices or orders for multiple years.	<ul style="list-style-type: none"> As per rule 164(4), where the demand of tax pertains partially for the period covered under amnesty scheme and partially for the period other than the one covered under the scheme, an application may be filed only after payment of the full amount of tax demanded. The challenge in particular is for the period covered under amnesty and not covered under amnesty in a single order. Accordingly, if an assessee wants to opt for amnesty scheme, he will have to pay tax along with interest and penalty for all those years which are not covered under the scheme. It is also not clear whether taxpayer will be able to contest demands for the years not covered by the scheme. Recently, in the case of UNO Minda Limited (Seating Division) vs. JC GST & CE (2024-VIL-1055-MAD) the Madras High Court instructed the Proper Officer to issue separate Show Cause Notices (SCNs) for each financial year for allowing the taxpayer to avail the benefit of amnesty scheme for the eligible years. 	<p>Chamber recommends amending rule 164(4) and 164(7) for allowing taxpayers to:</p> <p>(i)exclude the tax, interest & penalty pertaining to period not covered under the amnesty scheme from the total tax payable in terms of scheme, and</p> <p>(ii)expressly allow taxpayer to contest the demand for the period in a consolidated notice/ order, not covered by amnesty scheme.</p> <p>Alternatively, tax authorities may be instructed to issue separate notices/ orders for each year so that the assessee may take benefit of the scheme for the eligible years and be able to contest the demand for the remaining years.</p>

Sl.	Subject	Issue and Rationale	Recommendations
5.	Notices/ orders covering demand for erroneous refund.	<ul style="list-style-type: none"> As per rule 164(3), where the demand of tax is partially on account of erroneous refund and partially for other reasons, an application may be filed only after payment of the full amount of tax demanded. Accordingly, assessee will not be able to contest the demand on account of erroneous refund although such issue is not covered by the scheme. 	<p>The Chamber recommends amending rule 164(3), for allowing taxpayers to contest the demand on account of erroneous refund which is not covered by amnesty scheme in a consolidated notice/ order.</p> <p>Alternatively, tax authorities may be instructed to issue separate notices/ orders separately for erroneous refund so that the assessee may take benefit of the scheme for the remaining issues covered under the scheme and be able to contest the demand on account erroneous refund.</p>
6.	Filing of appeal by the department after taxpayer opting for amnesty scheme.	<ul style="list-style-type: none"> As per second proviso to section 128A, if the Department has filed appeal, revisional proceedings or other proceedings and the amount of tax payable is increased, the taxpayer would need to pay the additional amount within three months from the date of said order. Provisions are silent on the fact whether department can prefer appeal after the application for waiver under the scheme is submitted by taxpayer with respect to any order. Once the Order w.r.t. which the amnesty is sought, all the issues, irrespective of whether they are decided in favour or against the taxpayer, should be treated as settled and no further litigation should lie against such order. This will 	<p>Chamber suggests clarifying that the Department cannot prefer appeal against any order once taxpayer opts for amnesty scheme.</p>

Sl.	Subject	Issue and Rationale	Recommendations
		<p>be in accordance with the objective of the Government to reduce the backlog of litigation.</p> <ul style="list-style-type: none"> If such appeal filing by the department is allowed, there will always be uncertainty for the taxpayer who has opted for the scheme as also the objective of reducing the litigation through the Scheme will get completely defeated. 	
7.	Pending department appeal.	<ul style="list-style-type: none"> As per Section 128(3), benefit of the amnesty scheme may not be availed where an appeal or writ petition filed by the assessee is pending before Appellate Authority or Appellate Tribunal or a court and has not been withdrawn on or before 31 March 2025. However, no such provision for withdrawal of appeal is specified in case of pending departmental appeal. This again creates uncertainty for the taxpayer who wants to opt for the scheme. 	It is suggested to amend section 128A and rule 164 requiring Department to withdraw all the pending appeals once the assessee files an application under the scheme.
8.	Refund of interest and/ or penalty already paid for cases covered under the amnesty scheme.	<ul style="list-style-type: none"> As per third proviso to section 128(1), where interest and penalty has already been paid for the cases covered under the amnesty scheme, no refund of the same shall be available. This creates disparity in treatment between compliant taxpayers who have paid applicable interest and penalty and those who have not. 	The Chamber recommends allowing refund of interest and penalty paid by taxpayers before implementation of amnesty scheme which otherwise would be waived off basis the scheme.

Sl.	Subject	Issue and Rationale	Recommendations
9	Cases where Amnesty application is rejected and the appeal filing timeline has expired.	<ul style="list-style-type: none"> • Rule 164(12) states that the officer may reject the application for amnesty by issuance of SPL-07. A taxpayer may file appeal against the said rejection order in accordance with section 107(1). Further sub-rule (15) specifies that if appeal against SPL-07 is not filed, then the original appeal filed against DRC-07, if any, shall be restored. • However, there may be cases where the taxpayer did not file an appeal against DRC-07 with the intent to avail the benefit of amnesty scheme. If the amnesty application is ultimately rejected, and in the meanwhile, the timeline to file appeal lapses, the current provisions do not address extension of such timelines. Due to this, the taxpayer may permanently lose the recourse to appeal. 	The Chamber recommends allowing the taxpayer to file appeal against the original order in DRC-07 within such extended time as has been lost due to amnesty proceedings.
