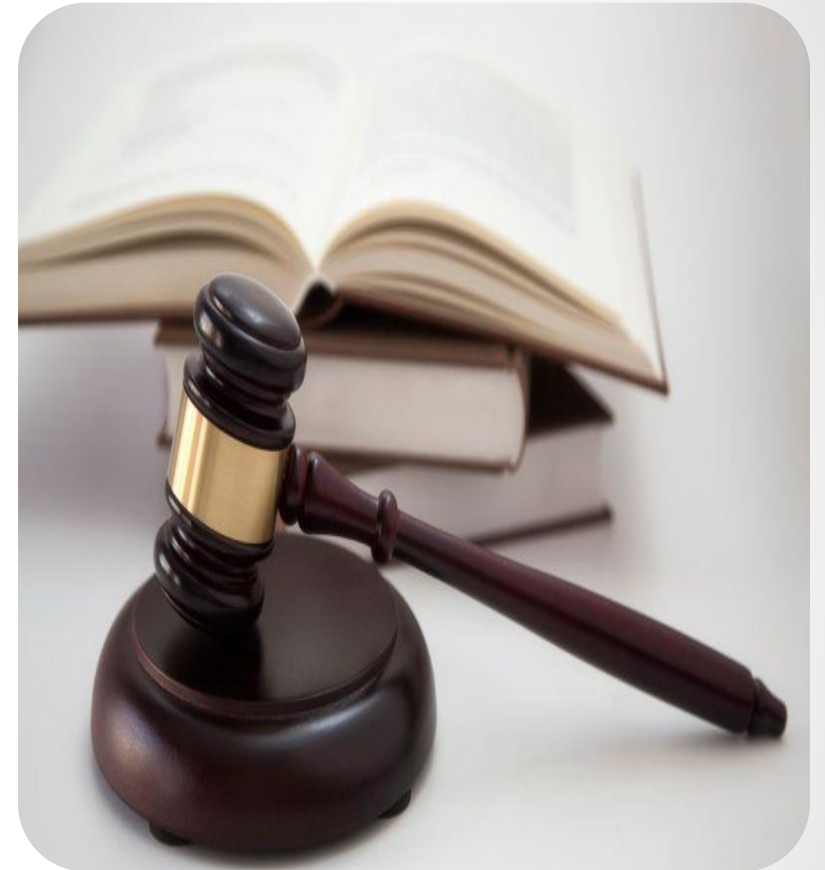


**GST WAIVER
SCHEME UNDER
SECTION 128A OF
CGST ACT, 2017.**

(Effective from 1st November 2024)



Background:

- Section 128A was introduced in the context of the Goods and Services Tax (GST) framework to address the challenges faced by taxpayers during the early years of implementation such as :
 - ✓ **Technical issues:** Problems with the GST portal, including glitches and downtime, which hindered filing and compliance.
 - ✓ **Lack of awareness:** Many small and medium enterprises were unfamiliar with the new regulations and procedures.
- **Overall, Section 128A serves as a crucial legislative measure to support taxpayers during the initial phases of GST implementation**



Introduction to Section 128A in the GST Act

The 53rd GST Council meeting, as a trade facilitation measure, proposed the insertion of section 128(A) in the CGST Act, to provide conditional waiver of interest or penalty.

This interest or penalty waiver scheme is popularly known as “Amnesty Scheme”

The proposed Section 128A was inserted in the CGST Act, 2017 vide Section 146 of Finance (No.2) Act, 2024.

Notification no. 17/2024 – Central Tax has made this section effective from 1st November 2024.

The 54th GST Council Meeting further recommended :

- ✓ Insertion of Rule 164 in the CGST Rules , 2017 along with certain Forms to provide for terms & conditions to avail the benefit of Section 128A of the CGST Act.
- ✓ To notify 31st March 2025 as the date on or before which payment of tax shall be made to avail the benefit of Section 128A of the CGST Act.
- ✓ Clarifications to be issued in connection with the availment of benefits under Section 128A of the CGST Act, by way of circular.



Notification No. 20/2024 – Central Tax dated 08/10/2024 w.e.f. 01/11/2024.



Notification No. 21/2024 – Central Tax dated 08/10/2024.



Circular 238/32/2024- GST dated 15th October 2024

What is in Section 128(A) ?

❖ Sub section (1):

Where any amount of tax is payable by a person chargeable with tax in accordance with –

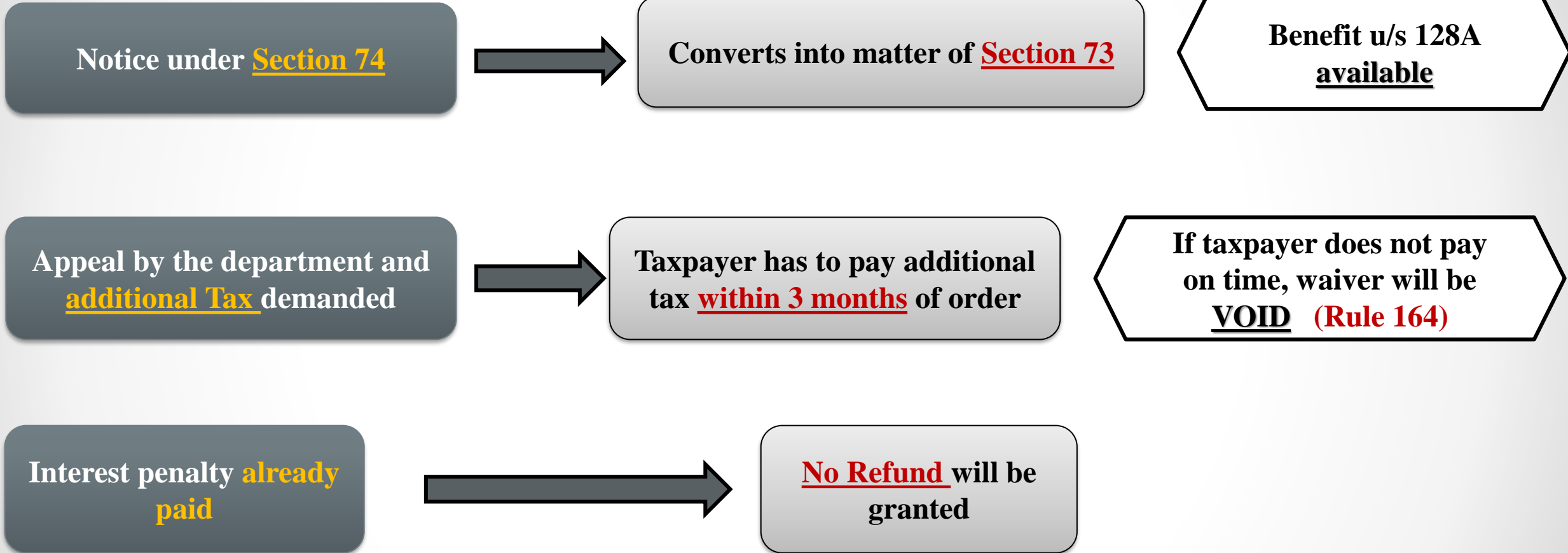
(a)
a **notice** issued under section 73 (1) or a statement issued under section 73 (3) , and where **no order** under section 73 (9) has been issued; or

(b)
an order passed under section 73(9) and where no order under section 107 (11) or section 108 (1) has been passed; or

(c)
an order passed under of section 107 (11) or section 108 (1) , and where no order under section 113 (1) has been passed,

For the period from July 1, 2017, to March 31, 2020, if the person pays the full tax amount, no interest or penalties will apply and all related proceedings will be considered concluded.

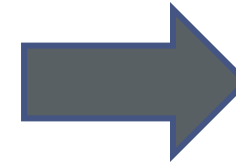
Proviso to sub section (1) of Section 128A:



❖ Sub section (2)

Section-73

- **Not paid liability**
- **Short paid liability**
- **Excess claimed ITC**



**Benefit u/s
128A available**

- **Erroneous Refunds**



**Benefit u/s
128A NOT
available**

❖ Sub section (3)

Pending Appeal or Writ petition

WITHDRAW

Eligible to avail benefit of waiver

• Rule 164:

SPL - 01 / SPL - 02

+

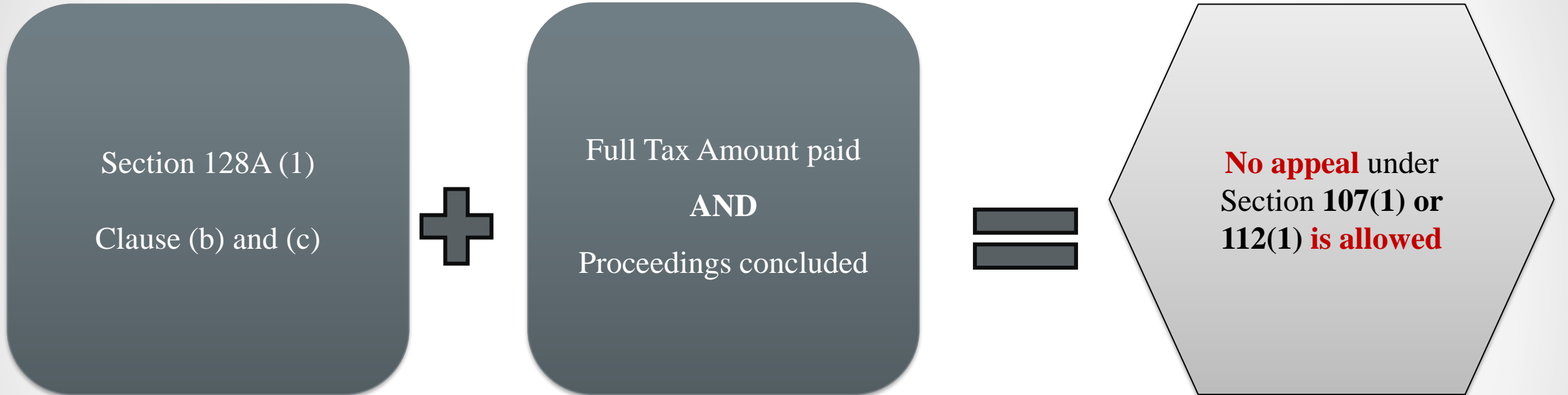
Document for withdrawal of appeal or writ petition

Order for Request for withdrawal - ACCEPTED

Order for Request of withdrawal - PENDING

- Along with SPL-01/SPL-02 submit the request for withdrawal.
- Within one month of order, submit the same.

❖ Sub section (4):



Last Date for Payment

Originally Section 73



- **31st March 2025**

Section 74 to Section 73

[1st proviso to sub section(1)]



- **Within six months** from order under Section 73

Rule – 164

issued vide

Notification no.

20/2024 dated

08/10/2024

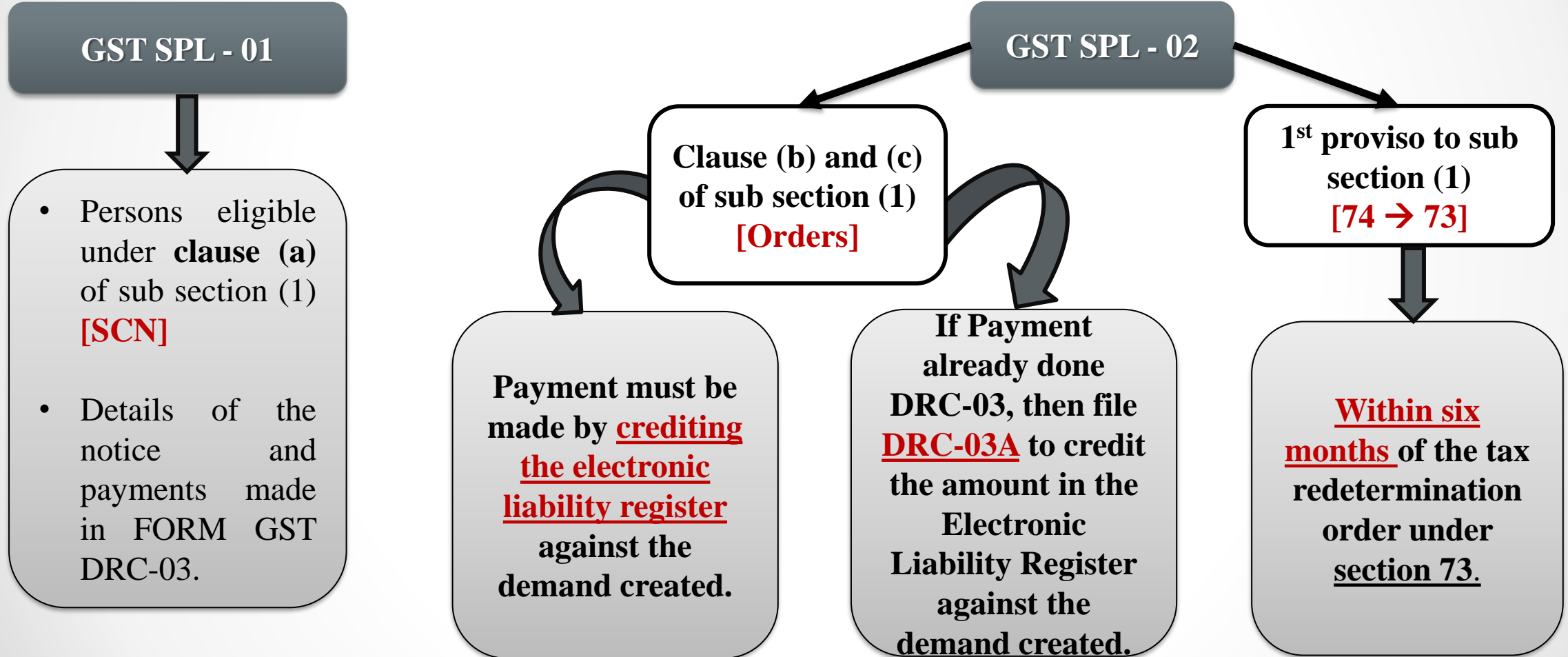
with effect from

01/11/2024.



FORMS FOR AVAILING THE BENEFITS U/S 128A:

File an application within 3 months from 31st March, 2025

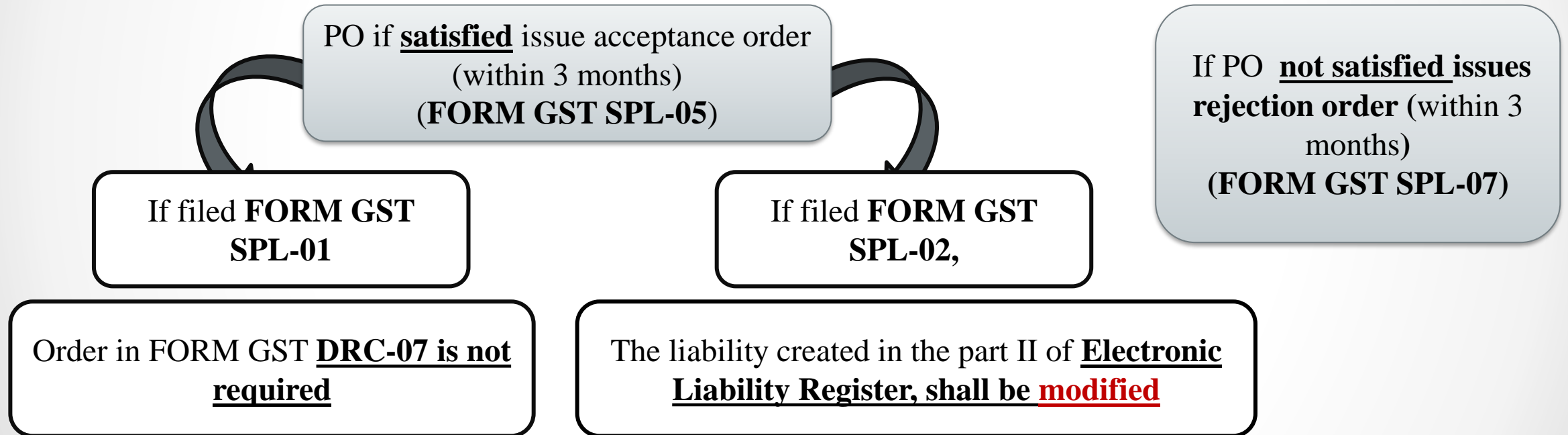


❖ Actions by the PO after filing of SPL - 01 / SPL - 02:

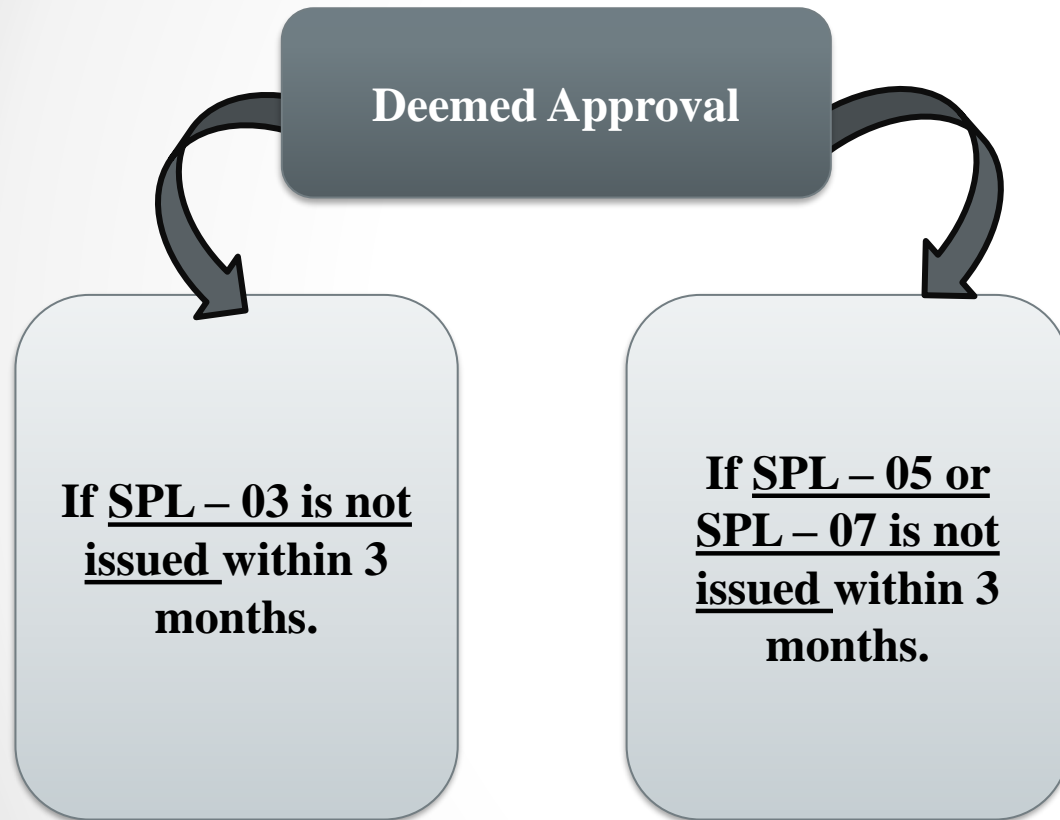
If PO believes an application is **ineligible** for waiver

Notice in the form **SPL -03** **Within 3 months** from receipt of application.

Applicant may **respond in SPL-04** within **one month** of receiving the notice.



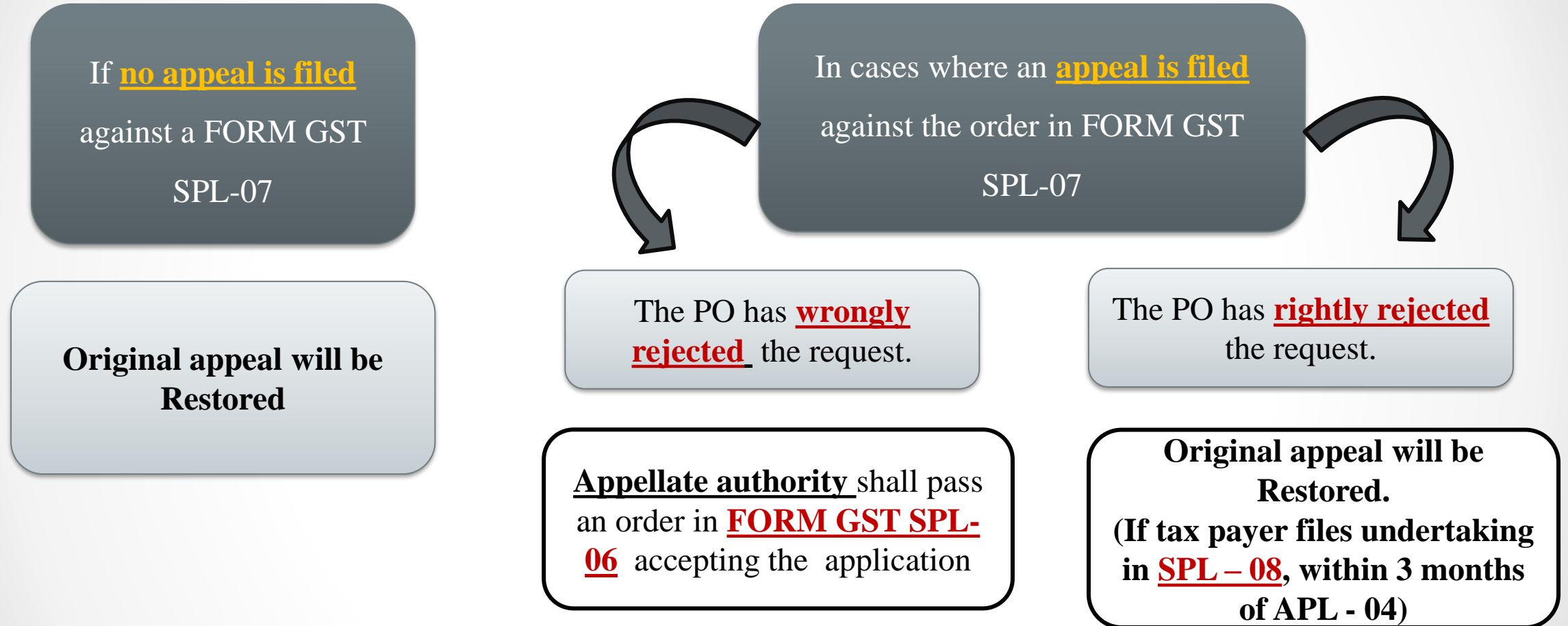
❖ Other Consequences:



NO REPLY (SPL - 04)
furnished by the tax payer
against SPL - 03

PO can issue order within
4 months from date of
GST SPL - 03

❖ Consequences after issuance of GST SPL – 07 (Rejection order):



CLARIFICATIONS:
ISSUED VIDE
CIRCULAR NO.
238/32/2024- GST dated
15th October 2024



❖ Is this benefit available if tax paid in full before the section took effect?



❖ YES

❖ Can amounts recovered by tax officers from another person on behalf of the taxpayer be considered tax paid.



❖ YES

❖ Can interest or penalty recovered by the tax officers as interest and penalty be adjusted against the tax payable for the same demands?



❖ NO, Amount paid by the taxpayer or recovered by tax officers as interest and penalty **cannot be adjusted towards tax payable and no refund** of such amount of interest or penalty is available.

❖ Is the benefit under Section 128A applicable **if the tax has already been paid** and the notice under Section 73 **pertains only to interest and/or penalty?**



❖ YES, however , **no benefit** u/s 128A where interest has been demanded **for delay filing of returns or delayed reporting of any supply.**

❖ Matters where SLP filed by the applicant **is pending before the Supreme Court**



- **YES**
- Required to withdraw the said special leave petition before filing SPL 01/02.
- Proof of order of withdrawal.
- If not issued , then acknowledgement.

❖ Whether the benefit will be available for matters **involving IGST and Compensation Cess?**



- **YES**
- **Full tax payment means “payment of CGST, SGST , IGST and Compensation cess” demanded in the notice/order.**

❖ Does Section 128A cover demands for irregularly **availed transitional credit**?



❖ YES , if notice issued u/s 73 and the said credit has been availed during the period specified u/s 128A.

❖ Whether Section 128A will cover waiver of penalties under **other provisions, late fee, redemption fine etc?**



❖ Any penalty including penalties under section 73, section 122, section 125 etc, demanded under the demand notice/ statement/ order issued under section 73 is covered here , **however no relief for late fee and redemption fee.**

❖ Whether payment to avail waiver under Section 128A can be made **by utilizing ITC**?



- The demanded tax can be paid from the **cash ledger, ITC, or both.**
- **Reverse Charge Mechanism, ECO u/s 9(5) or erroneous refunds** must be paid only from the **cash ledger**

❖ Whether the benefit of waiver under Section 128A be availed qua import IGST payable under the Customs Act, 1962?



❖ **NO**, In such cases, demand is not issued under section 73 of the CGST Act, but is issued under the provisions of Customs Act, 1962.

❖ Where the demand involves amount pertaining to violation of section 16(4), pertaining to which relief has been granted through section 16(5) and 16(6).



- **YES**
- Tax payable will be calculated **after deducting** amount u/s 16(5) and 16(6).
- Also required to **show breakup** of the same in SPL-01/SPL-02 (as applicable)

Whether the benefit under Section 128A is available, if the taxpayer intends to avail partial waiver of interest or penalty or both, on certain issues, by making part payment of the amount demanded in the notice/ statement/ order, as the case may be, and opts to litigate for the remaining issues ?



- **No.**
- Section 128A (1) clearly provides that the waiver of interest or penalty or both is only applicable when the full amount of tax demanded in the notice/ statement/ order is paid.

“FULL” Tax required to be paid under sub section (1) EVEN IF:

- Involves **multiple issues** and one of them is regarding demand of **erroneous refund.**



- **Yes available , Waiver applies only to tax demands, unrelated to erroneous refunds**

- If the notice involves **multiple periods** , including with period where this 128(A) applies.



Waiver will be applicable to the extent where section 128(A) applies

- Taxpayer **intends to avail partial waiver** of interest or penalty or both.

- **Payment to be made even after availing the waiver of Interest and Penalty u/s 128A:**

If order includes erroneous refund issues
then

Waiver applies only to tax demands
unrelated to erroneous refunds

If the notice involves multiple periods,
then

Waiver will be applicable to the
extent where section 128(A) applies

- PO finds waiver suitable → Reduce liability in SPL – 05 (Remaining payment details will be provided in Column No. 19 and 20)
- Remaining amount → Pay within 3 months from SPL-05/SPL-06 → Otherwise waiver becomes VOID

- **What Option if Single SCN / Order have Multiple Issue which for waiver / Litigation:**

The Taxpayers need to get the order adjudicated or appeal disposed

prior to 31st March 2025 and

pay for the issue for which they want to avail the option of waiver of interest as well as penalty, follow the procedure.

THANK YOU

***Disclaimer:** The views and opinions expressed in this article are those of the compiler and do not necessarily reflect the official policy or position of any agency/department of the government. The same should not be considered as legal advice in no case. All possible efforts are made to make the compilation error free and incase if there is any left , we regret for the same and request to point out the same at our mail.*