

Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

- September 21, 2019
Chamber of Tax Consultants
Kalyan Tax Practitioners Association



1

***"More than (Rs) 3.75 lakh crore is blocked in litigations in service tax and excise. There is a need to unload this baggage and allow business to move on".
"I, therefore, propose, a Legacy Dispute Resolution Scheme that will allow quick closure of these litigations. I would urge the trade and business to avail this opportunity and be free from legacy litigations,"***

- Finance Minister Ms. Nirmala Sitharaman

2

Broad Features of the Scheme

- Unloading of baggage of litigation under Central Excise, Service Tax and various cesses under the Erstwhile laws
- Tax Relief has been provided ranging from 40% to 70% depending on case to case
- Waiver of Interest, Penalties, Late Fee, Prosecution
- Applying in the Scheme will not mean acceptance of issue in hand and will not impact future/other litigations on hand

3

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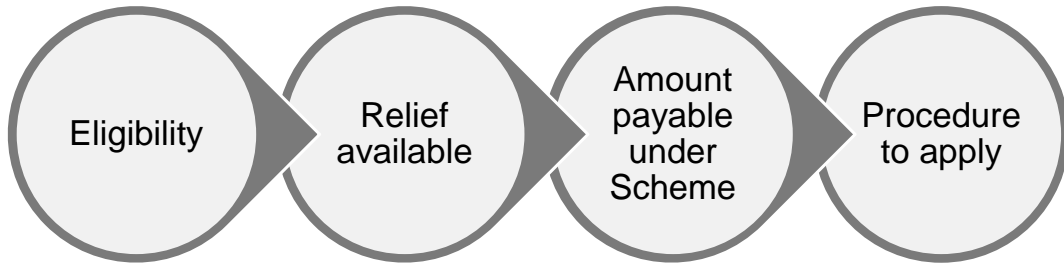
Contents available in Public Domain

- Chapter V of Finance Act, 2019 – Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019
- Notification 4/2019 dated 21.08.2019 – Notifying the effective date of the Scheme
- Notification 5/2019 dated 21.08.2019 – Notifying the Sabka Vishwas (Legacy Dispute Resolution) Rules, 2019
- Circular No 1071/4/2019 – CX.8 dated 27.08.2019
- FAQ's dated 08.08.2019
- FAQ's dated 30.08.2019

4

4

Process Flow to opt for the Scheme



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5

Eligibility

6

Eligibility to apply for the Scheme

- The Eligibility to opt for the Scheme can be broadly classified into 2 parameters:

- *Taxes/Duties covered – Section 122 of Finance Act, 2019*
- *Persons/Cases covered – Section 125 of Finance Act, 2019*

| Taxes Covered | Taxes Not Covered |
|---------------|-----------------------------|
| Excise Duty | Customs Duty |
| Service Tax | Goods and Service Tax (GST) |
| Cesses | |

7

List of Enactments covered under the Scheme

| Sr No | Enactment | Nature of Levy | Type of Duty |
|-------|-------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|--------------|
| 1 | Central Excise Act, 1944 or Central Excise Tariff Act, 1985 | Levied on goods manufactured in factory | Excise Duty |
| 2 | Chapter V of Finance Act, 1994 | Levied on various services provided by one person to another | Service Tax |
| 3 | The Agriculture Produce Cess Act, 1940 | Levied on all articles included in the Schedule to the Agriculture Produce Cess Act, 1940 and which are exported from India | Cess |
| 4 | The Coffee Act, 1942 | Levied on the produce of coffee and also on the sale of coffee | Excise Duty |
| 5 | The Mica Mines Labour Welfare Fund Act, 1946 | Fund for financing activities to promote welfare of labour employed in the Mica Mining industry | Cess |
| 6 | The Rubber Act, 1947 | Levy for the development and control of rubber industry | Excise Duty |

8

List of Enactments covered under the Scheme

| Sr No | Enactment | Nature of Levy | Type of Duty |
|-------|--------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| 7 | The Salt Cess Act, 1953 | Levy of Cess for raising funds to meet expenses incurred on salt | Cess |
| 8 | The Medicinal and Toilet Preparations (Excise Duties) Act, 1955 | To provide for the collection of levy and duties of excise on medicinal and toilet preparation containing alcohol, narcotic drugs or narcotics | Excise Duty |
| 9 | The Additional Duties of Excise (Goods of Special Importance) Act, 1957; | Additional levy on goods of special importance specified by Government | Excise Duty |
| 10 | The Mineral Products (Additional Duties of Excise and Customs) Act, 1958 | Additional duty of excise and customs on certain mineral products | Excise Duty |
| 11 | The Sugar (Special Excise Duty) Act, 1959 | Special duty of excise on certain sugar | Excise Duty |

9

9

List of Enactments covered under the Scheme

| Sr No | Enactment | Nature of Levy | Type of Duty |
|-------|----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|--------------|
| 12 | The Textiles Committee Act, 1963 | Imposition of Cess for manufacture of Textile and textile Machinery in India | Cess |
| 13 | The Produce Cess Act, 1966 | Imposition of cess on certain produce specified in schedule on which duty of customs or duty of excise is levied | Cess |
| 14 | The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 | Imposition of cess on limestone and dolomite consumed in factories | Cess |
| 15 | The Coal Mines (Conservation and Development) Act, 1974 | Imposition of excise duty on coal produce for conservation and development of coal industry | Excise Duty |
| 16 | The Oil Industry (Development) Act, 1974 | Levy of duty of excise on crude oil and natural gas | Excise Duty |
| 17 | The Tobacco Cess Act, 1975 | Imposition of Cess on Virginia tobacco produced and sold in India | Cess |

10

10

List of Enactments covered under the Scheme

| Sr No | Enactment | Nature of Levy | Type of Duty |
|-------|--------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|--------------------|
| 18 | The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976 | Duty of excise on iron ore and manganese ore | Excise Duty / Cess |
| 19 | The Bidi Workers Welfare Cess Act, 1976 | Levy of Cess on beedi manufactured in India | Cess |
| 20 | The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 | Additional duty of excise levied on textile articles | Excise Duty |
| 21 | The Sugar Cess Act, 1982 | Levy of Cess on all sugar manufactured in India | Cess |
| 22 | The Jute Manufacturers Cess Act, 1983 | Levy of Cess on articles of jute manufactured in India | Cess |
| 23 | The Agricultural and Processed Food Products Export Cess Act, 1985 | Levy of Cess on agriculture and processed food products specified in schedule | Cess |

11

11

List of Enactments covered under the Scheme

| Sr No | Enactment | Nature of Levy | Type of Duty |
|-------|---------------------------|------------------------------------------------------|--------------|
| 24 | The Spices Cess Act, 1986 | Imposition of Cess on all spices exported from India | Cess |
| 25 | The Finance Act, 2004 | Levy of Education Cess | Cess |
| 26 | The Finance Act, 2007 | Levy of Secondary and Higher Education Cess | Cess |
| 27 | The Finance Act, 2015 | Swachh Bharat Cess on specified services | Cess |
| 28 | The Finance Act, 2016 | Krishi Kalyan Cess on specified services | Cess |

12

12

Persons/Cases covered – Section 125

- All **Persons** shall be eligible to make the declaration under the Scheme, except the following:

Whether exception shall apply qua a person or qua a case.

- Circular No 1071/4/2019-Cx.8 dated 27.08.2019 clarified this position in para 10(b) to state that the exception from eligibility is for “the case” and not “the person”.
- FAQ's dated 30.08.2019 in Q46 has further seconded the clarifications provided by the Circular and stated that the exception from eligibility is qua a case and not qua a person

13

13

Broad Categorization of Cases

| Category of Cases covered | Cases intended to be covered | Exceptions mentioned in Section 125(1)(a) to 125(1)(h) i.e. not eligible for the Scheme | Relevant Section |
|---------------------------|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| Litigation | Matters which are disputed and pending as on 30.06.2019. | <p>Appeal/SCN which is finally heard before 30.06.2019</p> <p>SCN has been issued for erroneous refund or refund</p> <p>Application before Settlement Commission is made</p> | <p>125(1)(a) / 125(1)(c)</p> <p>125(1)(d)</p> <p>125(1)(g)</p> |

14

14

Issues in Litigation

SCN is issued covering multiple matters, whether declaration can be made qua an issue of qua a SCN

- FAQ dated 30.08.2019 issued by CBIC in Q4 has stated that the declaration cannot be made for selective matters but for all matters put together i.e. SCN wise.

Different SCN are issued and single Order is passed, whether Order specific or SCN specific

- No clarification provided but possible to say that application can be made SCN wise as per above clarification

15

15

Issues in Litigation

In case of Periodical SCN, whether SCN for one period can be opted and other can be litigated

- Yes, making a declaration does not mean acceptance of liability

Whether cases where Order is passed on 25.06.2019 and time limit to file an appeal expires on 24.08.2019, whether the Scheme can be opted

- if the appeal is filed before 30.06.2019 then the said case is eligible for making declaration but in case the appeal is filed after 30.06.2019
- FAQ dated 30.08.2019 issued by CBIC in Q7 has stated that the said cases shall not be eligible for the Scheme

16

16

Broad Categorization of Cases

| Category of Cases covered | Cases intended to be covered | Exceptions mentioned in Section 125(1)(a) to 125(1)(h) i.e. not eligible for the Scheme | Relevant Section |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|------------------|
| Investigations, Enquiry or Audit | Any matter which is under investigation, enquiry or audit. The term "audit" and "enquiry or investigation" has been defined u/s 121(g) & 121(m) respectively of the Finance Act, 2019 | Person subjected to audit, investigation or enquiry where quantification is not made before 30.06.2019 | 125(1)(e) |

17

17

Definitions – Audit, Enquiry or Investigation

| Section 121(g) – Audit | Section 121(m) – Enquiry or Investigation |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (g) "audit" means any scrutiny, verification and checks carried out under the indirect tax enactment, other than an enquiry or investigation, and will commence when a written intimation from the central excise officer regarding conducting of audit is received; | (m) "enquiry or investigation", under any of the indirect tax enactment, shall include the following actions, namely:— (i) search of premises; (ii) issuance of summons; (iii) requiring the production of accounts, documents or other evidence; (iv) recording of statements; |

18

18

Issues in Enquiry, Investigation and Audit

Quantification as on 30.06.2019 may be a challenge inspite of all information being made available before such date

- Scheme does not entitle such person to make a declaration and seems to be unfair

Roving Enquiries such as ST-3 and ITR/26AS mismatches

- These shall not qualify for eligibility to make application in the Scheme

19

19

Broad Categorization of Cases

| Category of Cases covered | Cases intended to be covered | Exceptions mentioned in Section 125(1)(a) to 125(1)(h) i.e. not eligible for the Scheme | Relevant Definition |
|---------------------------|-------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Amount in Arrears | The matters which are not disputed further and recoverable from the assessee. | No Exclusion | (c) "amount in arrears" means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment, on account of— (i) no appeal having been filed by the declarant against an order or an order in appeal before expiry of the period of time for filing appeal; or (ii) an order in appeal relating to the declarant attaining finality; or (iii) the declarant having filed a return under the indirect tax enactment on or before the 30th day of June 2019, wherein he has admitted a tax liability but not paid it; |

20

20

Issues in Amount in Arrears

Whether cases where Order is passed on 25.06.2019 and time limit to file an appeal expires on 24.08.2019, whether the Scheme can be opted

- In case appeal is filed late, this may qualify to be amount in arrears
- In case appeal not filed, then still it may qualify as arrears

21

21

Broad Categorization of Cases

| Category of Cases covered | Cases intended to be covered | Exceptions mentioned in Section 125(1)(a) to 125(1)(h) i.e. not eligible for the Scheme | Relevant Section |
|---------------------------|------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Voluntary Disclosure | Any person who desires to disclose the liability generally in absence of any department action | Voluntary Disclosure made by a person after being subjected to any enquiry, audit or investigation Return filed and amount is indicated as payable but has not been paid | 125(1)(f) |

22

22

Issues in Voluntary Disclosure

Contradiction with respect to amount declared as payable in return and not paid

- However, the FAQ's issued by CBIC in Q13 states as under:
Section 125(1)(f)(ii) is an exception to voluntary disclosure category. In other words, a person having filed a return but has not deposited the duty/tax cannot make a voluntary disclosure in respect of the same since the liability already stands disclosed to the Department. On the other hand, section 124(1)(c)(iii) is a sub-set of the 'arrears' category, meaning thereby that in respect of such return a declaration can only be filed under the arrears category.

23

23

Other Exceptions

| Category of Cases covered | Exceptions mentioned in Section 125(1)(a) to 125(1)(h) i.e. not eligible for the Scheme | Relevant Section |
|--------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Exceptions applicable to all categories of cases | Any person convicted for offence | 125(1)(b) |
| | Declaration with respect to Excisable Goods set forth in Fourth Schedule to Central Excise Act, 1944 Petroleum & Tobacco Products | 125(1)(h) |

24

24

Relief Eligible

25

Relief eligible under the Scheme

“Relief Available” Vs “Tax Dues”

- Tax dues is the total outstanding duty/tax demand whereas Tax relief is the concession the Scheme offers from the total outstanding duty demand.
- The relief has been provided as a percentage of “tax dues”.
- The term “tax dues” has been defined u/s 123 of the Finance Act, 2019 and the relief available has been provided u/s 124 of the Finance Act, 2019

26

26

Litigation Category

| Category of Cases covered | Sub-Category | Tax Dues | Relief |
|---------------------------|----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Litigation | Single Appeal Pending as on 30.06.2019 | <p>Amount of Duty Disputed in Appeal.</p> <p>E.g.: SCN was issued for Rs. 1000/- and penalty of Rs. 100/-. The adjudication Order was passed confirming demand of Rs. 900/- and penalty of Rs. 90/-. Appeal is filed before 30.06.2019 against such Order. Tax Dues in such cases shall be Rs. 900/-</p> | <p>Amount of Duty is Rs. 50 Lakhs or Less, then 70% of tax dues</p> <p>Amount of Duty is more than Rs. 50 Lakhs, then 50% of Tax Dues</p> <p>E.g.: In the given example relief shall be 70% of Rs. 900/- i.e. Rs. 630/- and only Rs. 270/- shall be payable</p> |

27

27

Litigation Category

| Category of Cases covered | Sub-Category | Tax Dues | Relief |
|---------------------------|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Litigation | More than one appeal is pending as on 30.06.2019 | <p>Sum of Amount which is disputed by Applicant and disputed by Department</p> <p>E.g.: SCN was issued for Rs. 1000/- and penalty of Rs. 100/-. The adjudication Order was passed confirming demand of Rs. 900/- and penalty of Rs. 90/-. Appeal is filed by assessee for Rs. 900/- and Department filed an appeal for Rs. 100/- before 30.06.2019 against such Order. Tax Dues in such cases shall be Rs. 1000/-</p> | <p>Amount of Duty is Rs. 50 Lakhs or Less, then 70% of tax dues</p> <p>Amount of Duty is more than Rs. 50 Lakhs, then 50% of Tax Dues</p> <p>E.g.: In the given example relief shall be 70% of Rs. 1000/- i.e. Rs. 700/- and only Rs, 300/- shall be payable</p> |

28

28

Litigation Category

| Category of Cases covered | Sub-Category | Tax Dues | Relief |
|---------------------------|------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Litigation | SCN issued on or before 30.06.2019 | <p>Amount of Duty stated to be payable in the SCN</p> <p>E.g.: SCN Notice is issued for Rs. 1000/- and penalty of Rs. 100/-. Tax Dues in such case shall be Rs. 1000/-</p> | <p>Amount of Duty is Rs. 50 Lakhs or Less, then 70% of tax dues</p> <p>Amount of Duty is more than Rs. 50 Lakhs, then 50% of Tax Dues</p> <p>E.g.: In the given example relief shall be 70% of Rs. 1000/- i.e. Rs. 700/- and only Rs, 300/- shall be payable</p> |

29

29

Litigation Category

| Category of Cases covered | Sub-Category | Tax Dues | Relief |
|---------------------------|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Litigation | SCN issued only for late fee or penalty | <p>Not defined</p> <p>E.g.: SCN is issued for delay in filing of ST – 3 return for Rs. 20000/- per return</p> | <p>Entire amount of Late Fee of Penalty</p> <p>E.g.: In the given example relief shall be 100% of Rs. 20000/- and no amount shall be payable</p> |

30

30

Investigation, Enquiry or Audit

| Category of Cases covered | Sub-Category | Tax Dues | Relief |
|---------------------------------|------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Investigation, Enquiry or Audit | Cases where quantification is made before 30.06.2019 | <p>Amount of Duty which has been quantified</p> <p>E.g.: Audit observation letter is issued under EA 2000 Audit for Rs. 1000/-. The letter also insists on payment of interest and penalty</p> <p>Tax dues in such case shall be Rs. 1000/-</p> | <p>Amount of Duty is Rs. 50 Lakhs or Less, then 70% of tax dues</p> <p>Amount of Duty is more than Rs. 50 Lakhs, then 50% of Tax Dues</p> <p>E.g.: In the given example relief shall be 70% of Rs. 1000/- i.e. Rs. 700/- and Rs. 300/- shall be payable</p> |

31

31

Amount in Arrears

| Category of Cases covered | Sub-Category | Tax Dues | Relief |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Amount in Arrears | Arrears on account of no appeal being filed before expiry of time or Order in Appeal attaining finality or Declared in return as payable but not paid the same | <p>Amount in arrears</p> <p>E.g.: SCN issued at Rs. 1000/- and Order also confirmed at Rs. 1000/-, No appeal filed against the same</p> | <p>Amount of Duty is Rs. 50 Lakhs or Less, then 60% of tax dues</p> <p>Amount of Duty is more than Rs. 50 Lakhs, then 40% of Tax Dues</p> <p>E.g.: In the given example relief shall be 60% of Rs. 1000/- i.e. Rs. 600/- and Rs. 400/- shall be payable</p> |

32

32

Voluntary Disclosure

| Category of Cases covered | Sub-Category | Tax Dues | Relief |
|---------------------------|--------------------------|------------------------------------------------|----------------------------------------------|
| Voluntary Disclosure | Any voluntary disclosure | Amount of Duty as stated in Declaration | No relief available with respect of tax dues |

33

33

Amount Payable & Restrictions

34

Amount Payable under the Scheme

- Out of the Amount Payable so calculation after deducting the relief available, the following deductions shall be allowed
 - Amount paid as Pre-deposit at any stage of appellate proceedings
 - Amount paid as Deposit during enquiry, investigation or audit

| Particulars | Amount |
|-----------------------------------------------------------------|--------|
| Tax Dues – Single appeal pending as on 30.06.2019 | 60.00 |
| Relief eligible 50% since tax dues is in excess of Rs. 50 Lakhs | 30.00 |
| Balance Tax Payable | 30.00 |
| Pre-deposit paid | 4.50 |
| Balance Tax to be paid under the Scheme | 25.50 |

| Particulars | Amount |
|-----------------------------------------------------------------|--------|
| Tax Dues – Single appeal pending as on 30.06.2019 | 5.00 |
| Relief eligible 70% since tax dues is in less than Rs. 50 Lakhs | 3.50 |
| Balance Tax Payable | 1.50 |
| Tax paid | 2.00 |
| Excess Tax Paid (Refund not allowed) | 0.50 |

35

35

Restrictions under the Scheme

- Amount to be paid under the Scheme shall not be paid through Input Tax Credit
- Amount paid under the Scheme shall not be refunded under any circumstances
- Amount paid under the Scheme shall not be taken as Input Tax Credit nor shall the same be entitled as Input Tax Credit to the recipient

36

36

Procedure for making Declaration

37

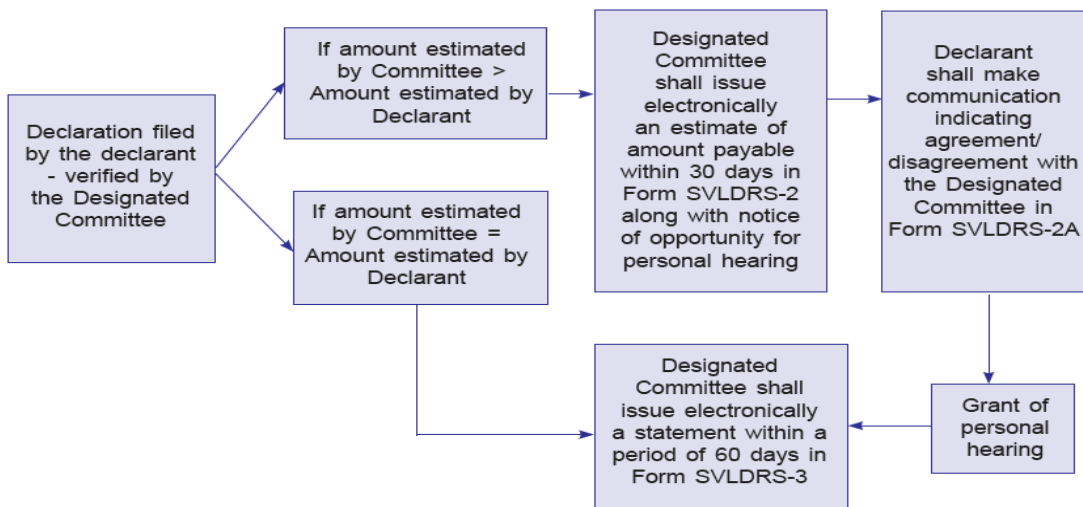
Time limit & Manner for making the declaration

- The Scheme has been notified to be effective from 01.09.2019 and the Declaration can be made latest by 31.12.2019
- Declaration should be made electronically on www.cbic-gst.gov.in
- Declaration should be made for each “case” separately, “case” means as follows:
 - Show Cause Notice/Appeal
 - Amount in Arrears
 - Enquiry, Audit or Investigation
 - Voluntary Disclosure

38

38

Procedure to make declaration



39

39

Discharge Certificate

- Declarant shall pay electronically through internet banking the amount, as indicated in Form SVLDRS-3 issued by the designated committee, within a period of thirty days from the date of its issue
- Any appeal or reference or reply to SCN filed before the appellate forum other than Supreme Court or High Court shall be deemed to have been withdrawn. Separate withdrawal needs to be made from High Court and Supreme Court
- Thereafter, the declarant shall be required to furnish electronically the proof of such withdrawal to the designated committee along with the proof of payment of tax/duty indicated in Form SVLDRS-3.
- After scrutinizing the above stated submissions, the designated committee shall issue a discharge certificate electronically in Form SVLDRS-4 within thirty days of the said payment or submission of the proof of withdrawal of appeal or writ petition or reference, whichever is later

40

40

Effects of Discharge Certificate

- Every discharge certificate issued with respect to the amount payable under the Scheme shall be conclusive as to the matter and time period stated therein.
- Declarant shall not be liable to pay any further duty/tax, interest, or penalty with respect to the matter and time period covered in the declaration.
- Declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration.
- Matter and time period covered by such declaration shall not be reopened in any other proceeding under the indirect tax enactment.

41

41

Effects of Discharge Certificate

- Here, it should be noted that issuance of discharge certificate by the designated committee with respect to a matter shall not preclude the department from issuing of show cause notice in the following cases -
 - for the same matter for subsequent period; or
 - different matter for same period.
- In case of voluntary disclosure, where information furnished in the declaration is found to be false within one year of issuance of discharge certificate, it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted.

42

42

Other Issues

Cases where amount estimated is higher than declaration made, what shall be the recourse

- No clarifications on the same. However, writ petition seems to be only option

What shall be the consequences if the declarant fails to make payment within 30 days

- Para 10(j) of Circular No. 1071/4/2019-CX.8 dated 27.08.2019 has clarified that if the payment of the amount specified in Form SVLDRS-3 is not made within thirty days, then the declaration shall be treated as lapsed
- Also, in case of voluntary contribution the declarant may be liable to penalty or interest on amount declared.

43

43



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Q & A

44

44

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