

The Chamber of Tax Consultants

Workshop on Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

- Subject** : Scheme in brief
- Date & Day** : Saturday, 7th September, 2019
- Venue** : Walchand Hirachand Hall, Indian Merchant Chambers,
Churchgate, Mumbai 400 020
- Presented by** : CA Naresh Sheth

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Sabka Vishwas
(Legacy Dispute
Resolution)
Scheme, 2019

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Preamble

- Legacy litigation under Excise and Service tax is a great concern for nation as a whole
- 1.50 lakhs cases involving disputed tax dues of INR 3.75 lakhs crores are pending at various forums
- Tax payers are burdened with huge litigations mostly arising out of frivolous demands
- Judiciary and tax administration is clogged with enormous pendency of the cases
- On introduction of GST, some states introduced Amnesty / Dispute Resolution Scheme for VAT litigations
- Finance (No.2) Act, 2019 ['the Act'] introduced one-time scheme for:
 - Resolution and faster settlement of Central Excise and Service Tax dispute legacy cases
 - Providing an opportunity for voluntary disclosure

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Preamble

- The Scheme offers an opportunity to taxpayers to close never-ending costly litigation by:
 - Availing substantial **tax relief ranging from 40% to 70%** of disputed tax dues/ arrears
 - Complete **waiver of interest, penalty and prosecution**
 - Closure of further proceedings in respect of such disputes
- Government's sincerity is apparent from **Circular No. 1071/4/2019-CX.8 dated 27.08.2019:**
 - Action plan is chalked out at Para 11 of above referred Circular
 - All officers and staff of CBIC to partner with trade & industry to make the scheme a grand success
 - Administrative machinery to fully focus on helping taxpayers in smooth implementation of the Scheme
 - An intensive out-reach programme for creating awareness among trade & industry through polite emails, phone calls, letter and SMS

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Scope of Presentation

- Analysis of relevant provisions, Rules, Circulars and FAQs with reference to:
 - Cases eligible for scheme
 - Relief under the scheme
 - Amount payable under the scheme
 - Procedure under the scheme
- Approach to assess viability of the scheme
- Way forward for assesses and consultants
- Scheme related issues will be dealt by the learned panel in the next session

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Legal framework

- Chapter V of Finance (No. 2) Act, 2019 ['the Act'] enacting the Scheme
- Notification No. 04/2019 Central Excise-NT dated 21.08.2019
 - Notifying effective date and duration of the Scheme
- Notification No. 05/2019 Central Excise-NT dated 21.08.2019
 - Notifying Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 ['the Rules']
- Circular No. 1071/4/2019- CX.8 dated 27.08.2019 ['the Circular']
- FAQs released by CBIC (through flyer) on 08.08.2019

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Scheme – Effective period



- The scheme came into force w.e.f. **01.09.2019**
 - N/No. 04/2019 CE-NT dated 21.08.2019

- The last date for making declaration under the scheme is **31.12.2019**
 - N/No. 05/2019 CE-NT dated 21.08.2019

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Taxes / Duties / Cesses covered under the Scheme

**Section
122 of
the Act**

- The scheme mainly covers tax disputes relating to:
 - **Excise duty and Cesses**
 - **Service tax and Cesses**
- Tax disputes under **Customs Act** and **State tax legislations** such as VAT, Entry tax, Octroi, Luxury tax, entertainment tax, etc. are not covered under the scheme
- Tax disputes under **Goods and Services Tax** is also not covered under the scheme
- The scheme also covers tax disputes under following Acts:

1	the Agricultural Produce Cess Act, 1940;	6	the Rubber Act, 1947;
2	the Coffee Act, 1942;	7	the Salt Cess Act, 1953;
3	the Mica Mines Labour Welfare Fund Act, 1946;	8	the Agricultural and Processed Food Products Export Cess Act, 1985
4	the Spices Cess Act, 1986;	9	the Sugar (Special Excise Duty) Act, 1959;
5	the Sugar Cess Act, 1982;	10	the Jute Manufacturers Cess Act, 1983;

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Taxes / duties / cess covered under the Scheme [Cond...]

**Section
122 of
the Act**

11	the Bidi Workers Welfare Cess Act, 1976;	19	the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978;
12	the Produce Cess Act, 1966;	20	the Tobacco Cess Act, 1975;
13	the Finance Act, 2004;	21	the Textiles Committee Act, 1963;
14	the Finance Act, 2007;	22	the Oil Industry (Development) Act, 1974;
15	the Finance Act, 2015;	23	the Mineral Products (Additional Duties of Excise and Customs) Act, 1958;
16	the Finance Act, 2016;	24	the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972;
17	the Medicinal and Toilet Preparations (Excise Duties) Act, 1955;	25	the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
18	the Coal Mines (Conservation and Development) Act, 1974;	26	the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976;

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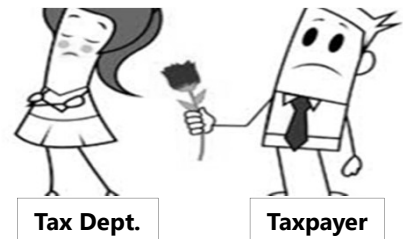
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Eligibility

**Section
125 of
the Act**

➤ **All Persons** (Registered or Unregistered) are eligible for scheme for any dues **except who have:**

- Filed an appeal before the appellate forum **and final hearing** is done on or before the **30.06.2019**
- Received SCN **and final hearing** is done on or before the **30.06.2019**
- Been convicted for the matter for which he intends to file a declaration
- Received SCN for an erroneous refund / refund
- Been subjected to an enquiry / investigation / audit where amount of duty **not quantified** on or before **30.06.2019**



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Eligibility [Cond...]

Section
125 of
the Act

- Made voluntary disclosure in following cases:
 - After being subjected to any enquiry / investigation / audit; or
 - Having filed a return where duty payable is disclosed, but not paid it
- Filed an application in the Settlement Commission for settlement of a case
- If matter is related to excisable goods covered in the IV Schedule to the Central Excise Act, 1944
 - Tobacco and manufactured tobacco substitutes
 - Petroleum products

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Eligibility – Relevant definitions

Section
121 of
the Act

➤ **“audit”** means any:

- scrutiny
- verification
- 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

➤ **“enquiry or investigation”**, under any of the indirect tax enactment, shall include the following actions, namely-

- Search of premises
- Issuance of summons
- Requiring the production of accounts, documents or other evidence
- Recording of statements

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Eligibility – Clarifications through Circular

Section
125 of
the Act

- Whether tax payer can avail benefit of scheme in respect matters transferred to call book?
 - **Para 6 of the Circular** - Scheme is wide enough to cover call book cases
- Whether Section 125 makes **a person** or **a case** ineligible to apply under the Scheme?
 - **Para 10(b) of the Circular** - Exception for eligibility u/s 125 is for 'the case' and not 'the person'. Therefore, if a person is not eligible to go for Scheme in respect of a case, such ineligibility will not impact his eligibility for opting the Scheme in respect of any other case
- In case of appeals, where final hearing is concluded but the order is awaited as on 30.06.2019. However, such hearing in matter is rescheduled even after the final hearing due to new bench, change in officer or any other reason. Whether the appellant is eligible to go for Scheme?
 - **Para 10(e) of the Circular** - This restriction will apply to only those cases, where the appellate forum has heard the matter finally as on 30.06.2019

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Eligibility – Clarifications through Circular

Section
125 of
the Act

- If a person filed application with Settlement Commission for settlement of a case under Service tax. However, proceedings before the Commission is abated due to rejection of the application or any other reason. Whether one can apply under the scheme?
 - **Para 10(f) of the Circular** - All cases which are outside the purview of the Settlement Commission shall be covered under the scheme
 - Further, any pending appeals, reference or writ petition filed against order of Settlement Commission are also eligible under the scheme
 - An arrears emerging out of order of Settlement Commission are also eligible under the scheme

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Eligibility – Clarifications through Circular

**Section
125 of
the Act**

- Cases under an enquiry, investigation or audit where the duty demand has been quantified on or before the 30th day of June, 2019 are eligible under the Scheme. What does the term 'Quantified' mean?
 - Section 2(r) defines "quantified" as a written communication of the amount of duty payable under the indirect tax enactment
 - **Para 10(g) of the Circular** - Written communication will include
 - **a letter intimating duty demand;** or
 - **duty liability admitted by the person** during enquiry, investigation or audit; or
 - **audit report etc.**
- If a "SCN" or "appeal" relates to multiple matters, whether assessee can avail benefit of scheme in respect of selected matter or he has to file declaration for all matters under dispute?
 - **Para 10(h) of the Circular** - Declarant has to file declaration for all the matters covered under the SCN

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Meaning of "Tax Dues"

**Section
123 of
the Act**

Sr. No.	Particulars	Tax dues
1	Where a single appeal arising out of an order is pending as on 30.06.2019 before the appellate forum i.e. Commissioner (Appeals), Tribunal, High Court or Supreme Court - where final hearing not done till 30.06.2019	Disputed duty / tax
2	Where more than one appeal arising out of an order: <ul style="list-style-type: none"> • One by the declarant; and • Departmental appeal are pending as on the 30.06.2019 before the appellate forum - where final hearing not done till 30.06.2019	Sum of duty / tax disputed by Declarant and Department

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Meaning of "Tax Dues" [Cond...]

**Section
123 of
the Act**

Sr. No.	Particulars	Tax dues
3	Where a SCN has been received on or before 30.06.2019 - where final hearing not done till 30.06.2019	Duty / tax payable as per SCN
4	Where an enquiry / investigation / audit is pending and amount of duty is quantified on or before 30.06.2019	Disputed duty / tax as quantified
5	Where the amount has been voluntarily disclosed by declarant	Total amount of duty / tax declared
6	Where amount in arrears is due	Amount in arrears

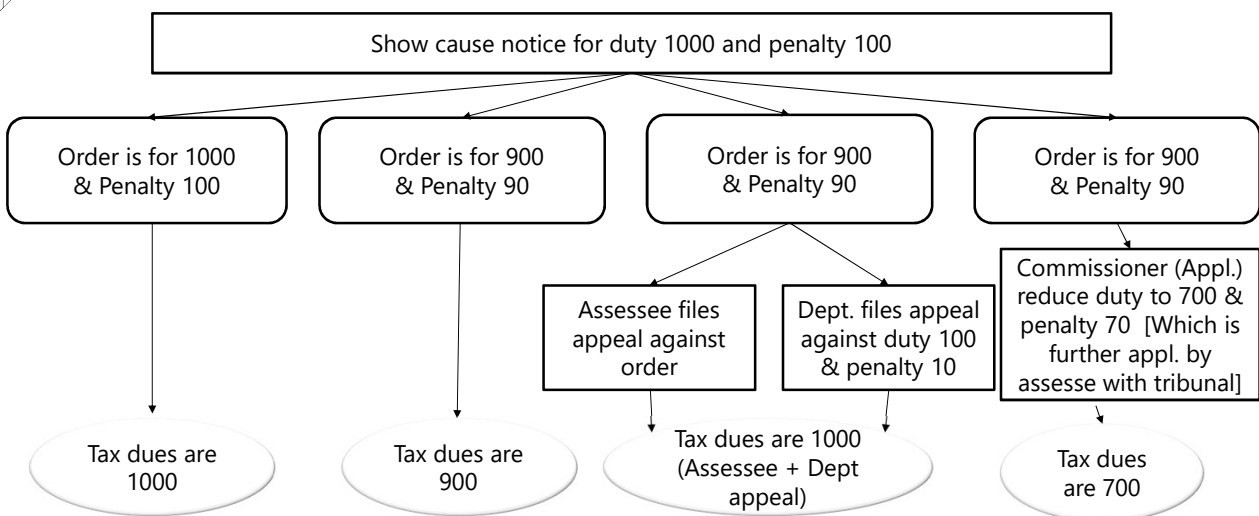
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Examples of "Tax Dues"

**Section
123 of
the Act**



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Relief when tax dues are ≤ Rs.50 lakhs

**Section
124 of
the Act**

Case	Relief	Settlement amount
<ul style="list-style-type: none"> • Where tax dues are related to a SCN pending as on the 30.06.2019 • Appeal arising out of SCN pending as on the 30.06.2019 • Where tax dues are linked to an enquiry, investigation or audit and the amount quantified on or before 30.06.2019 	70% of tax dues	30% of tax dues
<ul style="list-style-type: none"> • Where tax dues are relatable to amount in arrears: <ul style="list-style-type: none"> ▪ Non-filing of appeal against an order / an order in appeal before expiry of time for filing appeal; or ▪ An order in appeal relating to the declarant attaining finality; or ▪ Unpaid tax liability disclosed in a return filed on or before 30.06.2019 	60% of tax dues	40% of tax dues

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Relief when tax dues are > Rs.50 lakhs

**Section
124 of
the Act**

Case	Relief	Settlement amount
<ul style="list-style-type: none"> • Where tax dues are related to a SCN pending as on the 30.06.2019 • Appeal arising out of SCN pending as on the 30.06.2019 • Where tax dues are linked to an enquiry, investigation or audit and the amount quantified on or before 30.06.2019 	50% of tax dues	50% of tax dues
<ul style="list-style-type: none"> • Where tax dues are relatable to amount in arrears: <ul style="list-style-type: none"> ▪ Non-filing of appeal against an order / an order in appeal before expiry of time for filing appeal; or ▪ An order in appeal relating to the declarant attaining finality; or ▪ Unpaid tax liability disclosed in a return filed on or before 30.06.2019 	40% of tax dues	60% of tax dues

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Relief irrespective of amount of tax dues

Section
124 of
the Act

Situation	Relief	Settlement amount
Where tax dues are related to a SCN for late fee or penalty only and amount of tax (as stated in SCN) has been paid or is NIL	late fee or penalty	Nil
Where tax dues are payable on account of a voluntary disclosure by the declarant (i.e. disclosure in declaration)	Interest / Penalty	100% of Tax dues

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Relief under Scheme – Clarifications through Circular

Section
124 of
the Act

- In respect of penalty/late fee matters u/s 124(1)(b) which specifically covers SCN for late fee or penalty, whether one can apply under the Scheme for appellate proceedings?
 - **Para 10(d) of the Circular** - The provisions apply to any show cause notice for penalty/late fee, irrespective of the fact that it is under adjudication or appeal
- In case of SCN demanding duty/tax from the Main Taxpayer and proposing penal action to the Co-noticees, can the benefit of Scheme be availed by the Co-noticees if the Main Taxpayer does not avail the Scheme?
 - **Para 10(i) of the Circular** - Co-noticees can not avail the Scheme till the duty demand is not settled by Main Taxpayer
 - Once Main Taxpayer discharge duty demand (Whether under this scheme or otherwise), the Co-noticees can apply under the Scheme

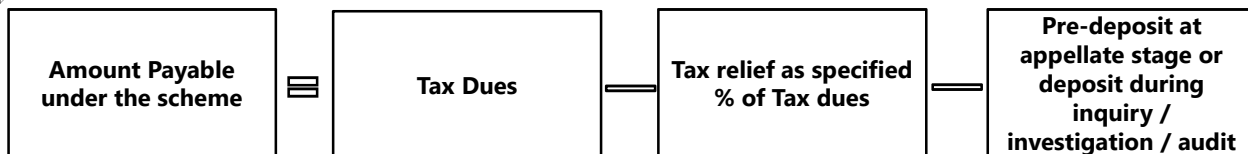
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Amount payable under Scheme

Section
127, 129
& 130 of
the Act



- If **Pre-deposit / deposit amount** exceeds the **Tax dues (net of relief)**, the difference amount will **not** be refunded
- Amount payable under the scheme is to be paid in cash only
- Amount cannot be paid from CENVAT or ITC balance
- Amount paid cannot be availed as ITC by:
 - Declarant; or
 - Recipient of goods or services
- Amount paid under the scheme is non-refundable

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Amount payable – Clarification through Circular

Section
130 of
the Act

- **Para 10(c) of the Circular** - If tax have been paid by utilising the input credit and the matter is under dispute, the tax already paid through input credit shall be adjusted by the Designated Committee at the time of determination of the final amount payable under the Scheme

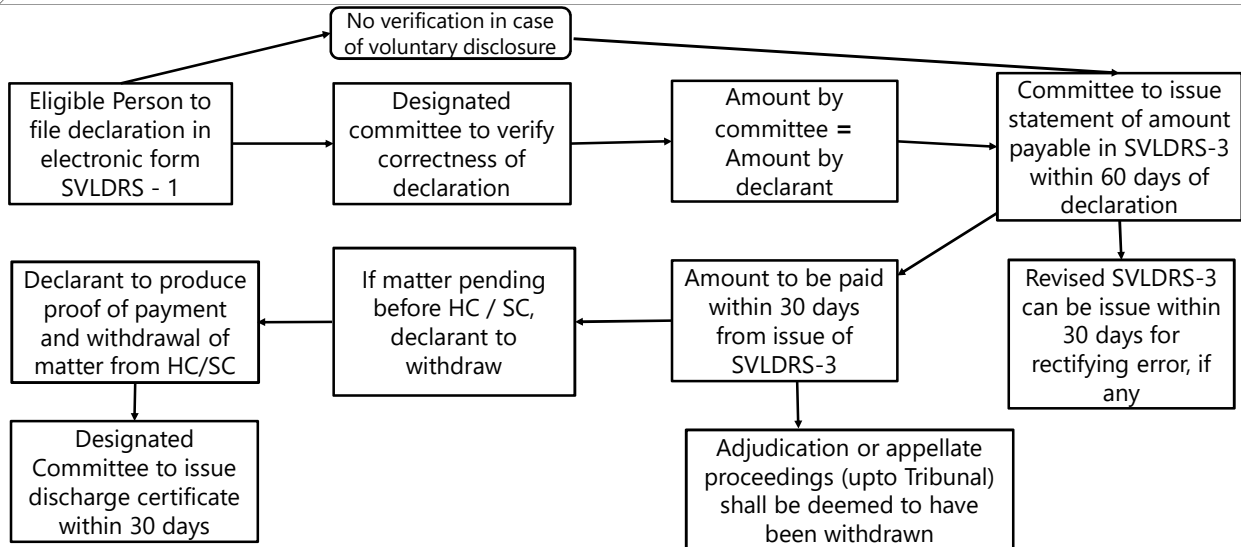
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Procedure where amount declared = amount estimated by Designated Committee

Section 127 of the Act



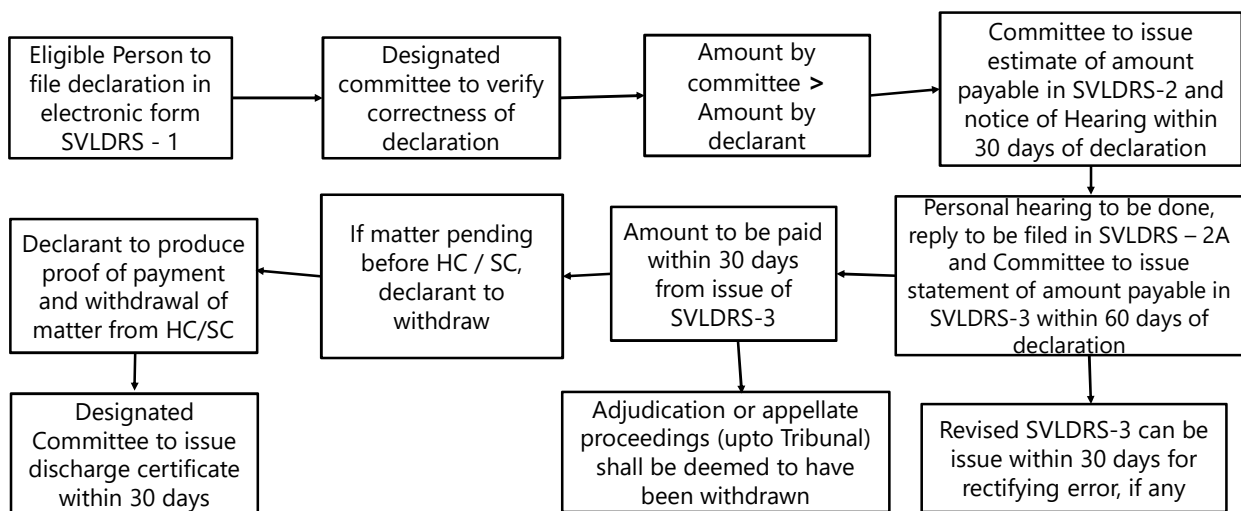
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Procedure where amount estimated by Designated Committee > Amount declared

Section 127 of the Act



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Discharge Certificate

Section
127 of
the Act

- Discharge Certificate shall be **conclusive as to matter and time period** covered in declaration
- Declarant will **not liable to following** in respect of matter and time period covered in the declaration:
 - To pay any further duty, interest and penalty
 - To be prosecuted
- Matter and time period covered by declaration **shall not be reopened** in any other proceeding
- It shall not preclude issuance of SCN:
 - For same matter for subsequent period; or
 - For different matter for same period; or
 - Any material information found to be false in case of Voluntary disclosure (deemed that declaration was never made)

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Effect of discharge certificate

Section
129 of
the Act

- No further payment of Tax or duty in respect of matter and period covered under declaration
- Complete waiver of:
 - Interest,
 - Penalty
- Closure of all proceedings related to matter and period covered under declaration
- No prosecution in respect of matter and period covered under declaration
- No reopening in respect of matter and period covered under declaration
- Nothing specified about late fees waiver
- In case of Voluntary disclosure, **declaration will become null and proceedings will be instituted within one year from issue of discharge certificate** if material particular in declaration is found to be false

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Forms under the Scheme

the
Rules

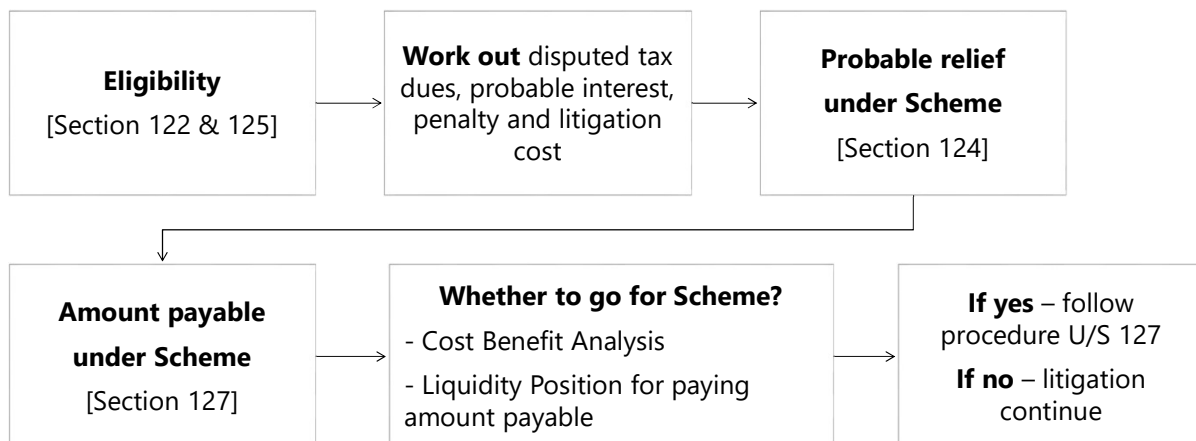
Sr.	Forms	Purpose of filing of form	Filed / Issued by	Section	Rule
1	SVLDRS – 1	Declaration under the Scheme	Declarant	S. 125	R. 3
2	SVLDRS – 2	Intimation of amount payable, if exceeds the amount declared	Designated Committee	S. 127(2)	R. 6 (3)
3	SVLDRS – 2A	Reply against Form SVLDRS – 2 or adjournment request to DC	Declarant	S. 127(3)	R. 6 (4)
4	SVLDRS – 2B	For granting adjournment to declarant	Designated Committee	S. 127(3) Proviso	R. 6 (5)
5	SVLDRS – 3	Intimation of statement of amount payable	Designated Committee	S. 127(1)/(4)	R. 6(2)
6	SVLDRS – 3	Revision of statement of amount payable in 1 month (arithmetical or clerical error)	Designated Committee	S. 128	R. 6 (6)
7	SVLDRS – 4	Issue of discharge certificate	Designated Committee	S. 127(8)	R. 9

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Decision making – Flow Chart



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Way forward – Optimizing benefits of the Scheme

- List out status of inquiries, investigations and audits
- Take stock of all pending litigations from SCN stage to Appeals lying at various forums
- Assess probable outcomes of each case based on merits / demerits of the case and classify it under categories of strong, weak or unpredictable cases
- Assess risk appetite, strength and weakness to pursue litigation and take litigation hassles
- Estimate litigation cost
- Liquidity position
- Work out cost benefit analysis
- Professional support for sound decision making

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Way forward - Strong case

- Strong case on account of:
 - Favourable retrospective amendment in the Act
 - Subsequent favourable notification / clarification / circular
 - Matters settled by Tribunal / High Court / Supreme Court
 - Demand arisen out of mis-comprehension of facts and arithmetical errors
 - Time-barred demands
 - Frivolous demands
- Not advisable to go for Scheme in such cases **except where:**
 - Stake involved (pre-deposit and amount payable under scheme) is nominal; and
 - Litigation cost and hassles are substantial

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Way forward – Weak case

- Weak case on account of:
 - Merits; and
 - Facts
- Advisable to go for scheme as not opting for scheme may entail:
 - Full payment of tax
 - Interest, which could probably be equal to or more than tax amount on finality of matter
 - Penalty equivalent to tax amount
 - Substantial litigation cost and hassles
 - Probability of prosecution

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Way forward - Case where outcome is unpredictable

- Final outcome of litigation in following cases may be unpredictable:
 - Where two interpretations are possible on issue involved
 - Absence of clarification from department on legal position
 - No settled jurisprudence
 - Difference in view between two or more High Courts or Tribunals
 - Issue pending before Hon'ble Supreme Court
- One has to take considered call on such cases:
 - Expert advice as to probable outcome of case
 - Litigation cost involved
 - Cost benefit analysis
 - Risk appetite
 - Liquidity position

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Words of Caution

- Views expressed in the presentation are the personal views of faculties based on his interpretation of law
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