

**Gokhale & Sathe Chartered Accountants**

## **Significant features of Sabka Vishwas (Legacy Resolution) Scheme 2019**

**An analysis by CA Varsha Kulkarni**

DISPOSAL OF LEGACY LITIGATIONS FROM PRE-GST ERA:

### **Significant Features of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (LDRS, 2019)**

Hon'ble Finance Minister in her budget speech of 5<sup>th</sup> July 2019, estimated that more than Rs. 3.75 Lakhs Crore is blocked in litigations under various the Pre-GST indirect tax laws. With the objective of closure of these legacy litigations, Finance Act 2019 has introduced 'Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (hereinafter referred as 'the scheme').

It is a one-time opportunity that will be offered to eligible taxpayers for conclusion of pending litigation of service tax or central excise matters. The salient features of the scheme includes certain reliefs in disputed liability of central excise duty/service tax demand, immunities from interest, penalty, prosecution and other proceedings, deemed closure of matters and time period covered under declaration filed under Scheme etc.

A detailed analysis of said scheme is discussed below:

#### **Indirect tax enactments covered under the scheme**

- ◆ Central Excise Proceedings under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985
- ◆ Service Tax proceedings initiated under Chapter V of the Finance Act, 1994
- ◆ 26 Other Miscellaneous Acts and rules made thereunder
- ◆ Any other enactment as may be notified by the Central Government

#### **Type of pending tax dues covered under the scheme**

- ◆ In terms of pending litigation, the demand under dispute includes central excise duty/ service tax demand, interest thereon on account of delay in payment as well as penalties.
- ◆ However, for determining the 'tax dues' under said scheme, only the 'amount of duty' shall be taken into consideration.

**Amount of duty = Central Excise Duty / Service Tax + Cesses**

In other words, the 'amount of duty' does not include dues pertaining to interest and penalty. Therefore, assessee who seeks to opt for the scheme, will not be required to pay any amount towards interest and penalty.

### Eligibility of Declarant

The scheme seeks to provide reliefs to the taxpayers from tax liabilities arising on account of ongoing audit/enquiry proceedings, demands under show cause notices or orders confirming demand against which assessee has filed appeal. Even in cases where there is no pending litigation, the scheme has encouraged voluntary disclosure except in certain cases. Accordingly, the cases where assessee is eligible to file declaration under the scheme, are as follows:

#### Eligibility in case of pending enquiry/audit/ show cause proceedings or appeals filed before appellate forum

	<b>Eligible Cases</b>	<b>Ineligible Cases</b>
1	Pending Enquiry/ Investigation/ Audit & Amount of Duty is quantified before 30-Jun-2019	Pending Enquiry/ Investigation/ Audit & Amount of Duty is not quantified before 30-Jun-2019
2	Show Cause notice (SCN) issued & no final hearing has taken place before 30-Jun-2019	Show Cause notice (SCN) issued & Final hearing has taken place before 30-Jun-2019
3	Appeals are filed to appellate forum (i.e. Commissioner (Appeals) / Tribunal /High Court / Supreme Court) & Appeal pending for disposal as on 30-Jun-2019	Appeals are filed to appellate forum (i.e. Commissioner (Appeals) / Tribunal /High Court /Supreme Court) & Appeal has been finally heard before 30-Jun-2019
4	OIO or OIA are passed, but no appeal/ further appeal filed. (declaration with respect to "amount in arrears")	Persons who have been convicted of any offence punishable under any provisions of the indirect tax enactment for the matter for which he intends to file a declaration
5	Order in Appeal relating to declarant has attained finality. (declaration with respect to "amount in arrears")	Cases where SCN is issued for erroneous refund or refund
6	Where amount has been Voluntarily disclosed by the declarant subject to below.	Person making voluntary disclosure a) After being subjected to any inquiry or investigation or audit. b) Having filed a return under indirect tax enactment, wherein he has indicated an amount of duty payable but has not paid.
7		Assessee who has filed an application to Settlement Commission for settlement of cases
8		Declaration w.r.t. Excisable goods set forth in Fourth Schedule to Central Excise Act, 1944

**Reliefs granted under the scheme**

Stage of proceedings /declaration in respect of which dues are declared	Tax Relief as % of Tax Dues (Tax dues = Amount of Central Excise Duty or Service Tax or Cess)	
	Tax dues = Rs. 50 Lakhs or less	Tax Dues = more than 50 Lakhs
(a) Pending Enquiry/ Investigation/ Audit & Amount of Duty is quantified before 30-Jun-2019 Or (b) Show Cause notice (SCN) issued & no final hearing has taken place before 30-Jun-2019 Or (c) Appeals are filed to appellate forum (i.e. Commissioner (Appeals) / Tribunal /High Court / Supreme Court) & Appeal pending for disposal as on 30-Jun-2019	75% ( i.e. only 25% Payable)	50% ( i.e. only 50% Payable)
Tax Dues are relatable to amount in arrears in any of the following cases: OIO or OIA are passed, but no appeal/ further appeal filed. Order in Appeal relating to declarant has attained finality	60% ( i.e. only 40% Payable)	40% ( i.e. only 60% Payable)
Voluntary Disclosure	No relief (i.e. 100% of tax dues are payable)	

In all the above cases, there appears to be relief in respect of the entire interest and penalty.

**Other key points:**

- ◆ In case the amount of central excise duty/service tax demanded under SCN are nil or already paid by declarant **and the tax dues are relatable to late fee/penalty only, the scheme provides relief in respect of entire amount of late fee/penalty.**
- ◆ While issuing the statement indicating the amounts payable by the declarant, the amount paid as pre-deposit at any stage of appellate proceeding or as deposit during enquiry, investigation or audit, shall be deducted. However, in case the pre-deposit or deposit paid earlier, exceeds total amount payable by declarant under the scheme, the declarant will not be entitled to claim refund of the difference i.e. the balance amount of such pre-deposit/deposit.
- ◆ Interestingly, Section 125(1)(f) debars a person from availing the benefit of the scheme if such person has filed the returns indicating the amount of duty as payable but has not paid the same. However, Section 124(1)(c) still provides for relief in such case upto 60% of tax dues ( where tax dues declared as payable but not paid are Rs.50 Lakhs or less) and 40% ( where tax dues declared as payable but not paid are more than Rs.50 Lakhs )

**Procedural aspects regarding filing of declaration and payment of dues under the Scheme**

- ◆ The scheme shall come into effect from 01-September-2019 and declaration .
- ◆ The form of declaration in Form SVLDRS-1 will be required to be filed electronically at <https://cbic-gst.gov.in> , on or before 31-December-2019
- ◆ The correctness of the declaration filed by declarant will be verified by the designated committee, except in case of voluntary declaration where such verification will not take place.
- ◆ Upon verification, the designated committee will be required to issue an electronic statement to the declarant, within specified time limit stating the amount estimated to be payable by declarant.
- ◆ The declarant will be required to pay the amount payable electronically, within 30 days from date of issue of such statement by committee.
- ◆ Also, within 30 days from date of issue statement indicating amount payable by declarant, the designated committee may modify its order, so as to correct only arithmetical or clerical error, apparent on the face of record. Such rectification can be done by committee either *suo-moto* or on being pointed out by declarant.
- ◆ Withdrawal of appeals/ replies filed by declarant
  - ◆ In case the declaration pertains to appeals filed before Commissioner (Appeals) or Tribunal or SCN proceedings for which declarant has submitted reply, upon filing declaration under the scheme, such appeal or reference or reply shall be deemed to have been withdrawn.
  - ◆ In case declaration pertains to writ petition or appeal or reference before High Court or Supreme court, the declarant will be required to file application before High Court/Supreme Court for withdrawal of such writ petition/ appeal / reference. Also, after withdrawal of such petition/appeal/reference with leave of court, the declarant will be required to intimate designated committee and furnish proof of withdrawal along with proof of payment.
- ◆ Within 30 days from payment of amount payable and production of proof along with proof of withdrawal of appeal/petition by declarant, the committee shall issue a discharge certificate to declarant in electronic form. and period covered under declaration.

**Payment, refund and ITC**

- ◆ The amount payable by declarant must be paid in cash electronically. In other words, such dues cannot be paid by utilising Input Tax Credit/CENVAT Credit.
- ◆ The declarant will not be entitled to claim refund of amount paid under the scheme.

- ◆ Further, the amount paid under the scheme, cannot be taken as input tax credit by declarant.
- ◆ Also, declarant cannot entitle the recipient to take ITC of amount paid by declarant under the scheme, in respect of excisable goods or taxable services, with respect to matter

**Immunity in respect of matters and time period covered under scheme**

- ◆ Upon issuance of discharge certificate by designated committee, the declarant gets immunity from following:
  - ◆ Any further duty, interest or penalty with respect to matter and period covered in the declaration
  - ◆ Prosecution with respect to matter and period covered in the declaration
  - ◆ Re-opening of matter and period covered under declaration, under any other proceedings under indirect tax enactment.
- ◆ However, the issuance of discharge certificate under the scheme, shall not preclude the issue of SCN to declarant for
  - ◆ The same matter for subsequent time period
  - ◆ Different matter for same time period
- ◆ Further, in case of voluntary disclosures by declarant, if within one year from issue of discharge certificate, it is found that any material particular furnished in the declaration is false, it shall be presumed that such declaration was never made. Thus, in such cases, proceedings under applicable indirect tax enactment will be instituted.



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