

F. No. 267/78/2019/CX-8-Pt.III
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs

Dated, the 25th September, 2019

To

The Principal Chief Commissioners/ Chief Commissioners (All)
The Principal Directors General/ Directors General (All)

Subject: Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019-reg

Dear Madam/Sir,

I am directed to invite your attention to Board's Circular No. 1071/4/2019-CX.8 dated 27th August, 2019 on the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Subsequently, the Board has received references from field formations as well as from the trade seeking certain clarifications on the Scheme.

2. The references received by the Board have been examined, and the issues raised therein are clarified in the context of the various provisions of the Finance (No.2) Act, 2019 and Rules made thereunder, as follows:

(i) Only the persons who are eligible in terms of Section 125 can file a declaration under the Scheme. The eligibility conditions are captured in Form SVLDRS-1 (Sr. No. 8). The system automatically disallows persons who are not eligible from filing a declaration. However, there is a possibility that such ineligible persons may still make a declaration by selecting an incorrect response. For instance, under Sr. No. 8.1, the person making a declaration has to indicate whether he/she has been convicted for an offence for the matter for which the declaration is being made. If, the answer is 'Yes', then the person is ineligible and is not allowed to proceed further by the system. However, such person is able to file a declaration if he/she incorrectly indicates 'No' as the answer even though he/she has been convicted. Such declarations are void and do not merit consideration under the Scheme. Such persons may be informed of their ineligibility through a letter.

(ii) Section 124(1)(a) outlines the relief available in the case of one or more appeals arising out of a Show Cause Notice. Such an appeal may have been filed either by the party or by the department. Further, Section 127(6) provides for deemed withdrawal of such appeals filed by a declarant pending at a forum other than the Supreme Court or High Court. It is clarified that such deemed withdrawal

will also be applicable for departmental appeals. Further, where a departmental appeal, reference or writ petition is pending before the Supreme Court or High Court, the department will file an application for withdrawal of such appeal, reference or writ petition after issuance of the discharge certificate. Similarly, if prosecution has already been launched, the procedure as laid down in Circular No. 1009/16/2015-CX dated 23-10-2015 should be followed for withdrawal of prosecution after issuance of discharge certificate.

(iii) One of the category of cases for which a declaration can be made under the Scheme is where the declarant has filed a return but not paid duty. It is possible that a taxpayer may not have paid duty in case of multiple returns. It may be noted that Rule 3 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 provides that a separate declaration shall be filed for each case. Further, in terms of the Explanation to Rule 3, in case of arrears, a case means 'an amount in arrears'. Section 121(c)(iii) defines an "amount in arrears" as the duty recoverable on account of the declarant having filed a return but not paying duty. Since the amount in arrears pertains to a return, a separate declaration will need to be filed for each such return.

(iv) Section 121(c) defines an amount in arrears as the amount of duty which is recoverable as arrears of duty. Further, Section 123 defines 'tax dues' in respect of arrears as the amount which is due in arrears. In other words, tax dues is the amount of duty which is outstanding against the declarant. This is the net amount after deducting the dues that he has already paid. Such payment may be in the form of pre-deposits appropriated or paid subsequently by the taxpayer voluntarily against the outstanding amount. It is clarified that the relief available under Section 124(1)(c) will be applied to the net outstanding amount so arrived at. It may be noted that in respect of all other categories, any money paid before its appropriation is in the nature of a deposit only. Hence, in respect of declarations made under these other categories, the relief will be applied to the outstanding amount and, only thereafter the pre-deposits/deposits [Section 124(2)] shall be adjusted. The same is illustrated as follows:

- (a) Taxpayer has outstanding arrears of confirmed duty demand of Rs. 1 crore and he has already paid Rs. 60 lakhs. So, the amount of tax dues is Rs 40 lakhs. After applying applicable relief @ 60%, the amount payable under the Scheme is Rs 16 lakhs.
 - (b) Taxpayer has outstanding arrears of confirmed duty demand of Rs 1 crore apart from Rs 20 lakh penalty and interest as applicable. He has already paid Rs 1 cr towards duty. So, the amount of tax dues is zero, and the amount payable under the Scheme is zero.
- (v) It may so happen that on being pointed out by audit etc, the taxpayer may in some cases deposit the duty without interest. In such cases, a Show Cause Notice is generally issued for appropriating the duty deposited and demanding the applicable

interest. It is clarified that such cases are covered under the Scheme. However, in no case will a refund of the duty paid be made to the taxpayer.

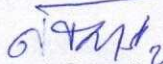
(vi) Section 125(1)(f) bars a person from making voluntary disclosure after being subjected to an enquiry or investigation or audit. Further, what constitutes an enquiry or investigation or audit has also been defined [Sections 121(g) and 121(m)]. A doubt has been expressed as to whether benefit of the Scheme would be available in cases where documents like balance sheet, profit and loss account etc. are called for by department, while quoting authority of Section 14 of the Central Excise Act, 1944 etc. It is clarified that the Designated Committee concerned may take a view on merit, taking into account the facts and circumstances of each case as to whether the provisions of Section 125(1)(f) are attracted in such cases.

(vii) Section 125(1)(a) excludes cases which are under appeal and where final hearing has taken place on or before 30th June, 2019 from the purview of the Scheme. Similar exclusion has been made applicable, mutatis mutandis, under Section 125(1)(c) to cases under adjudication. It is clarified that such cases, however, may still fall under the arrears category once the appellate or adjudication order, as the case may be, is passed and has attained finality or appeal period is over, and other requirements under the Scheme are fulfilled.

(viii) Section 121(c) (i) and (ii) define "an amount in arrears" as the amount of duty which is recoverable, inter alia, on account of no appeal having been filed by the declarant against an order or order in appeal before the expiry of the period of time for filing of appeal or the order in appeal having attained finality. There may be situations where the taxpayer does not want to file an appeal even though the time period for filing of appeal is not over. It is clarified that in such cases, the taxpayer can file a declaration under the Scheme provided he gives in writing to the department that he will not file an appeal. This declaration shall be binding on the taxpayer.

3. Difficulty if any, in implementation of this Circular may be brought to the notice of the Board.

Yours sincerely,


(Navraj Goyal)
OSD(CX)

25/9/2019