



SABKA VISHWAS (LEGACY DISPUTE RESOLUTION) SCHEME, 2019 – NEW BEGINNING?

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Introduction:

“As may be appreciated, this scheme is a bold endeavour to unlock baggage relating to the legacy taxes viz. Central excise and Service Tax that have been subsumed under GST and allow business to make a new beginning, and **focus on GST**. Therefore, it is incumbent upon all officers and staff of CBIC to partner with the trade and industry to make this Scheme a grand success” – reads para 2 of the CBIC circular no. 107/14/2019-CX dated **27.08.2019**

With State Government of Karnataka, Gujrat, Maharashtra and West Bengal taking up the initiative to ease business hurdles of taxpayers by introducing amnesty scheme post enactment of GST to conclude matters relating to VAT and Entry Tax in case of West Bengal, Central Government has once again after a span of 5 years beginning with the introduction of Voluntary Compliance Encouragement Scheme (hereinafter ‘VCES’) in year 2013 introduced a make believe scheme named ‘Sabka Vishwas (Legacy Dispute Resolution Scheme, 2019 (hereinafter ‘SVLDRS’) in the Finance Act, 2019 to unlock Rs. 3.75 lakhs crore from indirect tax enactments such as service tax and excise duty. What makes the two aforesaid scheme different from each other is, that under VCES Scheme relief was only available from interest and penalty, but SVLDRS covers even the taxes and prosecution along with interest and penalty.

In this article, the author craves to make the scheme on-the-go with an in-depth analysis covering all the possible issues that may come up in its readers mind:-

Life-Span of the Scheme:

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| Start date: | 01.09.2019 [Ref: Section 120(2) read with notification no. 04/2019 Central Excise – NT dated 21.08.2019] |
| End date: | 31.12.2019 [Ref: sub-rule (1) of Rule 3 of Sabka Vishwas (Legacy Dispute Resolution Scheme Rules, 2019)] |
| Comment: Act is silent upon the date beyond which the application under the scheme cannot be filed. Yet the same is provided for in the rules. So, Can rules go beyond the Act? No. | |
| Is there scope for extension of the time limit for filing of application? Yes! Central Government may derive its power of extension of time limit from section 134 of SVLDRS and in the “interest of taxpayers” may (Attention!) do so. | |

Important definitions pertaining to the Scheme:

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| Section 121 (c) | <p>“amount in arrears” means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment on account of –</p> <ol style="list-style-type: none"> No appeal having been filed by the declarant against an order or an order in appeal before expiry of the period for filing of appeal An order in appeal relating to the declarant attaining finality The declarant having filed return under the indirect tax enactment on or before the 30.06.2019 wherein he has admitted a tax liability but not paid it. |
| Section 121 (d) | <p>“amount of duty” means the amount of central excise duty, the service tax and the cess payable under the indirect tax enactment.</p> <p>Comment: On perusal of the said definition, it observed that ‘CENVAT’ is not being covered within the said definition as the said definition speaks of amount of duty payable but CENVAT credit is ‘not a duty payable’. Reference of CENVAT inclusion can be drawn from para 5 of the CBIC circular dated 27.08.2019 wherein ‘amount of duty (including CENVAT)’ is laid down.</p> |

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| Section 121 (e) | <p>“amount payable” means the final amount payable by the declarant as determined by the designated committee and as indicated in the statement issued by it, in order to be eligible for the benefits under this scheme and shall be calculated as the amount of tax dues less the tax relief.</p> <p>Comment: Upon interpretation of this definition, the final amount payable by the declarant would mean the tax dues <i>less</i> relief available. However, if we move further into the scheme, it also provides for adjustment of pre-deposit or any other deposit already paid (proviso to section 124 (2)). Therefore, amount payable = Final amount payable calculated as tax dues (-) Relief (-) Pre-deposit (-) any other deposit.</p> |
| Section 121 (g) | <p>“audit” means any scrutiny, verification and checks carried out under the indirect tax enactment, other than enquiry or investigation, and will commence when a written intimation from the central excise officer regarding conducting of audit is received.</p> <p>Comment: the expression ‘enquiry or investigation’ has also been defined separately.</p> |
| Section 121 (m) | <p>‘enquiry or investigation’ under any of the indirect tax enactment, shall include the following actions, namely:-</p> <ol style="list-style-type: none"> i. search of premises; ii. issuance of summons; iii. requiring the production of accounts, documents or other evidence; iv. recording of statements; <p>Comment: the definition of audit [section 121 (g)] specifically excludes enquiry or investigation, but the definition of ‘enquiry or investigation’ is an inclusive definition and wide enough to even include audit (scrutiny, verification, checks) within its ambit.</p> <p>Now further when we read clause (ii) and (iv) it states issuance of summon and recording of statement. Readers may be aware of the fact that during summon proceedings statement are recorded so as to establish ‘reason to believe’ before initiation of any proceeding. Therefore, clause (ii) and (iv) are to read in conjunction with each other as per my view.</p> |
| Section 121 (o) | <p>“order” means an order of determination under any of the indirect tax enactment, passed in relation to a show cause notice issued under such indirect tax enactment.</p> <p>Comment: read only the phrase marked as bold for interpretation. Else the reader would be kept wandering as to the expression used ‘order of determination - of what?’</p> |
| Section 121 (r) | <p>“quantified” with its cognate expression, means a written communication of the amount of duty payable under the indirect tax enactment.</p> |

Snapshot of meaning of eligibility, meaning of tax dues, relief available

| Type of Cases | Eligibility (Section 125) | Meaning of tax dues (Section 122) | Relief (Section 124) |
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| Enquiry or investigation or audit | <p>Amount of duty quantified on or before 30.06.2019</p> <p>[Comment: it is a well appreciated fact that amount of duty has never been ‘quantified’ in case of enquiry or investigation, however amount of duty in case of audit can be derived from audit memo issued by the departmental authority.]</p> | Amount quantified on or before 30.06.2019 | <p>Amount quantified till 30.06.2019 is or less than Rs. 50 lacs = 70% of tax dues.</p> <p>Amount quantified till 30.06.2019 is more than Rs. 50 lacs = 50% of tax dues.</p> |
| Show cause notice (only related to penalty or late fees) | <p>Received before 30.06.2019 and final hearing is pending before 30.06.2019</p> <p>Or,</p> <p>Order Attained finality</p> | <p>The amount demanded in the SCN received before 30.06.2019</p> <p>[Comment: Through Show cause notice amount is never demanded it is a</p> | Where amount of duty in said notice notice has been duly paid or nil, then relief will be the total amount of penalty and fees. |

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| | [Comment: What is meant by 'final hearing' has not been defined? The noticee may file an application of being reheard, or may even make further submissions and request for Personal Hearing] | mere proposal to tax a particular issue] | [Comment: Where the amount in the Show cause notice is paid in full (say, under protest), and the relief is 100%, even then the declarant will not be eligible for refund (proviso to section 124(2) (b))] |
| Show cause notice (relating to erroneous refund or refund) [Comment: Erroneous refund SCN means the noticee has claimed refund but the department has come across certain facts of material mis-statement or fraud relating to such refund granted, while SCN for refund means a notice for certain deficiency in refund application, or the application becoming liable to be rejected] | NA [Comment: The Scheme states that if a person has been issued a SCN under indirect tax enactment for an erroneous refund or refund shall not be eligible for the scheme, there is a school of thought that says if the noticee has been served a notice under Central Excise Act, 1944 then the noticee becomes ineligible as a declarant under Chapter V of Finance Act, 1994, as per my view this view is not tenable due to reason that the scheme does not use the words ' any indirect tax enactment '. Hence as per my view the declarant is eligible for the Scheme. CBIC circular dated 27.08.2019 clarifies the same view in para 10 (b) that the disqualification is for the case and not for the person . | NA | NA |
| Show cause notice [Comment: The scheme is silent as to issue of SCN only related to interest , moreover its discussion is also not provided in section 125] | Received before 30.06.2019 and final hearing is pending before 30.06.2019 Or, Order Attained finality [Comment: What is meant by 'final hearing' has not been defined? The noticee may file an application of being reheard, or may even make further submissions and request for Personal Hearing] | The amount demanded (consider only tax amount) in the SCN received before 30.06.2019 [Comment: Through Show cause notice amount is never demanded it is a mere proposal to tax a particular issue] | Amount of duty is or less than Rs. 50 lacs = 70% of tax dues. Amount of duty is more than Rs. 50 lacs = 50% of tax dues. [Comment: What shall be the relief if SCN is issued merely for the reason of interest?] |
| Appeal Cases (before Commissioner (Appeals), High Court, Supreme Court) | Final hearing is pending before 30.06.2019 Or, Order in appeal attained finality [Comment: What is meant by 'final hearing' has not | Where a single appeal is filed and pending against the order: The amount of tax under appeal Where more than one appeal is pending (one | Amount of duty is or less than Rs. 50 lacs = 70% of tax dues. Amount of duty is more than Rs. 50 lacs = 50% of tax dues. |

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| | been defined? The appellant may file an application of being reheard, or may even make further submissions and request for Personal Hearing as per the principles of natural justice] | by declarant and/or department): The total amount of duty being disputed both by the declarant and department. | |
| Voluntary Disclosure | Not being subjected to any enquiry or investigation or audit | Amount of duty disclosed | No Relief |
| | Not having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable but has not paid it. | | Amount of duty is or less than Rs. 50 lacs = 70% of tax dues. Amount of duty is more than Rs. 50 lacs = 50% of tax dues. |
| | Comment: Section 124(1) (c) (iii) is in complete disconnect with section 125 (1) (f). In other words, the scheme makes the declarant who declares the amount of duty payable in the return but not paid as ineligible but on the other hand also provides for relief. | | |
| Amount in arrears | All persons | Amount of duty in arrears | Amount of duty is or less than Rs. 50 lacs = 70% of tax dues. Amount of duty is more than Rs. 50 lacs = 50% of tax dues. |
| Other Disqualification: | | | |
| <ul style="list-style-type: none"> ➤ Person who have filed an application in the settlement commission for settlement a case. ➤ Persons seeking to make declarations with respect to excisable excisable goods set in Fourth schedule (Ex: Tobacco, Mineral products) to the Central Excise Act, 1944. | | | |

Permutations and combinations to determine the eligibility under the Scheme (Illustrative only):

| Situation | Eligibility |
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| SCN issued on 01.05.2019 | Eligible, if no final PH done |
| SCN issued on 01.07.2019 | Eligible, if duty demanded is quantified during enquiry or investigation or audit as SCN is issued as a result of enquiry or investigation or audit. |
| PH attended on 01.06.2019 | If it is a final PH then ineligible, else eligible. |
| PH fixed on many dates prior to 30.06.2019 but not attended by noticee | Eligible |
| PH fixed, ex-parte order passed on 30.06.2019 | Eligible |
| PH done on 25.05.2019, Order received on 02.07.2019 | Ineligible, as the matter has been finally heard before 30.06.2019 |
| Order issued on 28.05.2019, time available for appeal | Eligible, due to amount in arrears |
| Order issued on 28.05.2019, time available for appeal lapsed | Eligible, due to amount in arrears |
| Order dated 30.06.2019, issued on 01.07.2019 | Eligible, due to amount in arrears |
| Appeal filed on 30.06.2019 | Eligible, as appeal is pending |
| Investigation before 30.06.2019 | Eligible, only if quantified. |
| Investigation after 30.06.2019 | Ineligible |
| SCN issued before 30.06.2019, noticee makes an application to Settlement Commission | Ineligible, even if the noticee withdraws the same. However, if the application is rejected then held as eligible for the Scheme. |
| SCN issued before 30.06.2019, noticee makes an application to Settlement Commission but the order of commission not passed within time limit. | Eligible [para 10(f) of CBIC circular dated 27.08.2019] |

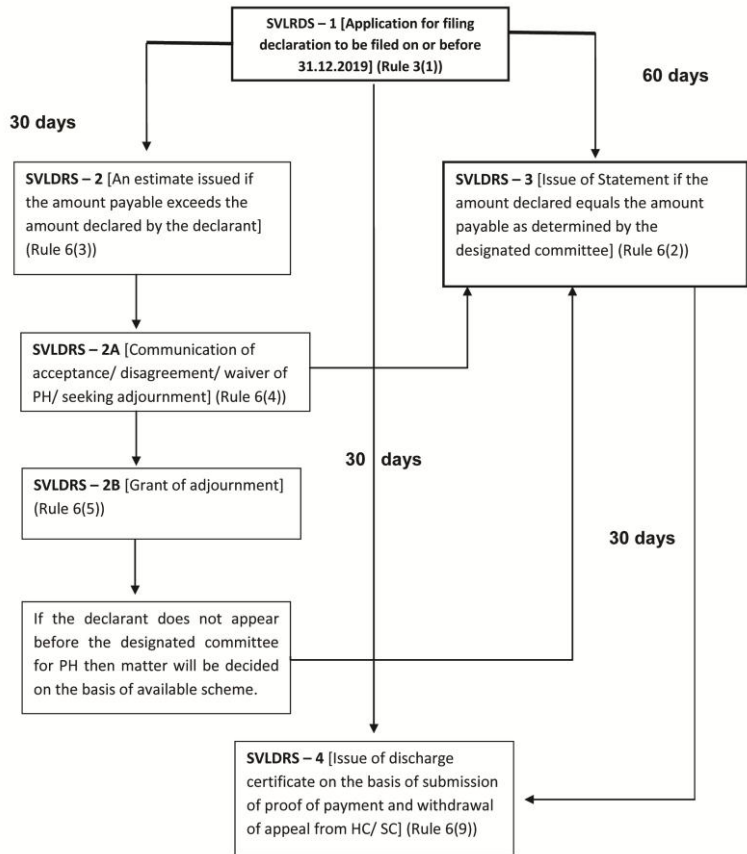
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| Order of Settlement commission passed, appeal pending or writ has been filed against the said order. | Eligible [para 10(f) of CBIC circular dated 27.08.2019] |
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Administration of the Scheme:

For the smooth and efficient implementation a 'Designated Committee' is being set up in exercise of the powers conferred under section 127 of SVLDRS read with Rule 5 of SVLDRS Rules. Its constitution shall be as follows:

| Tax dues more than Rs. 50 Lacs (before applying relief) | Tax dues Rs. 50 lacs or less (before applying relief) |
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| 1. Pr. Commissioner/ Commissioner of Central Excise and Service Tax. 2. Additional Commissioner/ Joint Commissioner of Central Excise and Service Tax. Nominated by Pr. Chief Commissioner or Chief Commissioner of Central Excise and Service Tax. Note: One committee for every commissionerate (audit commissionerate is to be excluded as per CBIC circular dated 27.08.2019) | 1. Additional Commissioner/ Joint Commissioner of Central Excise and Service Tax. 2. Joint Commissioner/ Assistant Commissioner of Central Excise and Service Tax Nominated by Pr. Chief Commissioner or Chief Commissioner of Central Excise and Service Tax. Note: One committee for every commissionerate (audit commissionerate is to be excluded as per CBIC circular dated 27.08.2019) |
| 1. The Principal Additional Director General (Adjudication)/ Additional Director General (Adjudication), Directorate General of Good and Services Tax Intelligence (DGGI), and 2. Additional Director/ Joint Director, Directorate General of Good and Services Tax Intelligence(DGGI), Delhi nominated by Pr. Director General or Director General, Directorate General of Good and Services Tax Intelligence (DGGI) | |

Procedure of filing of Declaration and availing discharge certificate:



Other relevant points relating to the Scheme:

1. No verification by the designated committee if amount of duty has been voluntarily disclosed and the matter is to be finalized within 15 days of such declaration. (ref: para 11 (iii) of CBIC circular dated 27.08.2019)
2. The applicant has to submit proof of withdrawal of writ petition, appeal, reference from HC/ SC along with proof of payment after which the discharge certificate would be issued. **[Comment:** Discharge certificate would be issued within 30 days from the date submission of proof of payment and withdrawal of appeal whichever is later]
3. Within 30 days of issue of statement in form SVLDRS – 3, designated committee can rectify its order (only arithmetical error and clerical error) **[Comment:** neither the expression ‘arithmetical error’ nor ‘clerical error’ has been defined under the scheme. Moreover, no such rectification would be possible after the issuance of discharge certificate plus no refund under any circumstances if detection of error post issuance of form SVLDRS - 4]
4. Discharge certificate in form SVLDRS – 4 shall be conclusive as to the matter and time period stated and no further tax, interest and penalty is to be paid.
5. Issue of discharge certificate will not preclude the issue of SCN for the same matter for a subsequent period or a different matter for the same period. **[Comment:** the scheme is silent as to state of affairs for previous periods]
6. If voluntary disclosure is made and subsequently found to be false within a period of one year of issue of discharge certificate then it shall be presumed that declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted. **[Comment:** Provision has been made for reopening only in the case of voluntary disclosure]
7. Amount to be paid under the scheme shall not be paid through input tax credit, and neither shall such payment be available as input tax credit to the declarant or the recipient of the excisable goods or taxable services with respect to the matter and time period covered in the declaration.
8. The amount paid shall not be refunded under **any circumstances**. **[Comment:** The scheme does not provide for the course of action, if subsequently after payment, the statement is revised and the amount payable is reduced and the declarant becomes entitled to refund. Moreover, the moot question that arises is, can the Government retain money to which it is not legally entitled to?]
9. No proceedings shall be commenced against any officer only on the ground of subsequent detection of an error in calculating the amount of duty payable, unless there is evidence of misconduct. **[Comment:** No definition for ‘misconduct’ as to which act(s) shall constitute misconduct, thus the expression becomes subjective. However, the burden of proof shall be on the declarant]
10. CBIC circular dated 27.08.2019 states that the matter is to be finalized within 15 days of the declaration even if timeline is prescribed and is to be strictly adhered to.
11. All taxes and cess which has been subsumed under GST, are the part of this scheme. **[Comment:** Customs Act, 1962 and CVD, SAD and NCCD legislation is however not covered]

Issues clarified by CBIC vide circular dated 27.08.2019

| Issue | Clarification |
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| No person being party in appeal, application, revision or reference shall contend that by issuing a discharge certificate, department has accepted the disputed position. | Same principle applies to the department also. In other words the department shall not issue fresh SCN merely on the basis that the declarant has admitted the position. |
| Pre-deposit has been made utilising the input credit. | Tax already paid through input credit shall be adjusted by the designated committee at the time of determination of final amount payable under the scheme. |
| The person is ineligible for the scheme if final hearing is concluded on 30.06.2019. The hearing is rescheduled due to change in bench, officer or any other reason. | The restriction shall apply only to those cases where the appellate forum has heard the matter finally as on 30.06.2019 [Comment: This clarification is issued in respect of appeal proceedings, the same principle may be used in the case of adjudication proceedings too in my considered view] |
| Section 2(r) defines ‘quantified’ to mean written communication of the amount of duty payable under the indirect tax enactment. | It shall also include letter intimating duty demand, or duty liability admitted by the person during enquiry or investigation or audit or audit report. |
| SCN covers various matters concerning duty liability. Can the declarant choose the matter for which he | A declarant cannot opt to avail benefit of scheme in respect of selected matters. The declarant has to file a |

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| intends to file declaration? | <p>declaration concerning all the matters in the show cause notice.</p> <p>[Comment: The author begs to differ with the said clarification, as section 123(a) uses the phrase “..... the total amount of duty which is being disputed.....”. Thus, it can be inferred that only the issues which is a subject matter of dispute can be taken up in the scheme]</p> |
| Demand proposed against main noticee and penal action proposed against co-noticees. Can co-noticees avail the scheme? | Co-noticees can't avail the benefit of the said scheme till such time the demand is not settled by the main noticee. |
| State of application if payment not made due to any reason within the stipulated time period of thirty days? | <p>The declaration shall lapse.</p> <p>[Comment: the circular does not clarify as to whether the proceedings shall revive upon such lapse of the application, further the circular does not speak as to whether a fresh application could be filed due to lapse of original application]</p> |
| Duty of the matter under investigation by the DGGI, relates to more than one commissionerate. | The designated committee of the commissionerate wherein the duty involved is maximum will decide the case. |
| SCN issued by the DGGI, relates to more than one commissionerate. | A common adjudicator is to be appointed under intimation to the chief commissioner concerned and DG systems so the designated committee of that commissionerate can finalise the matter. |

Conclusion:

The major concern for which the scheme is introduced is to lighten the burden of pending litigation, were most of the litigation is frivolous and ultimately decided in the favour of assessee. The next question that arises is that if the success rate of the department is so less even at the tribunal level (12%) then why would a taxpayer opt for this scheme?

With the advent of GST, already many 'advance adverse rulings' has been witnessed along with many writs being filed before the high court thus opening another Pandora of litigation. With this backdrop, the scheme of the government is a well appreciated move. Readers are advised to go through the scheme documents thoroughly before opting for the scheme and keeping in mind the merits and other legal factors of the case which are pending as on 31.06.2019.

Hopefully our concerns voiced above are addressed!

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