

Circular No. 1071/4/2019-CX.8

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 27th August, 2019

To

The Principal Chief Commissioners/ Chief Commissioners (All)
The Principal Director Generals/ Director Generals (All)

Dear Madam/Sir,

I am directed to state that the Government has announced the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 as a part of the recent Union Budget. Further, in accordance with the Finance (No.2) Act, 2019, the Central Government has notified the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 as well as issued Notification No. 04/2019 Central Excise-NT dated 21.08.2019 to operationalize this Scheme from 01.09.2019 to 31.12.2019.

2. As may be appreciated, this Scheme is a bold endeavor to unload the 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.

3. Dispute resolution and amnesty are the two components of this Scheme. The dispute resolution component is aimed at liquidating the legacy cases locked up in litigation at various forums whereas the amnesty component gives an opportunity to those who have failed to correctly discharge their tax liability to pay the tax dues. As may be seen, this Scheme offers substantial relief to the taxpayers and others who may potentially avail it. Moreover, the Scheme also focuses on the small taxpayers as would be evident from the fact that the extent of relief provided is higher in respect of cases involving lesser duty (smaller taxpayers can generally be expected to face disputes involving relatively lower duty amounts).

4. The relief extended under this Scheme is summed up, as follows:

- (a) For all the cases pending in adjudication or appeal (at any forum), the relief is to the extent of 70% of the duty involved if it is Rs. 50 lakhs or less and 50% if it is more than Rs. 50 lakhs. The same relief is

available for cases under investigation and audit where the duty involved is quantified and communicated to the party or admitted by him in a statement on or before 30.06.2019.

- (b) In cases of confirmed duty demand, where there is no appeal pending, the relief offered is 60% of the confirmed duty amount if the same is Rs. 50 lakhs or less and it is 40% if the confirmed duty amount is more than Rs. 50 lakhs.
- (c) In cases of voluntary disclosure of duty not paid, the full amount of disclosed duty would have to be paid.
- (d) There will be full waiver of interest and penalty under all the categories of cases, as at (a) to (c) above.

5. The relief under this Scheme is illustrated, as follows:

- (i) If the amount of duty (including CENVAT credit) being litigated is Rs.50 lakhs, then the taxpayer only needs to pay only Rs.15 lakhs to settle his case.
- (ii) If the amount of duty(including CENVAT credit) being litigated is Rs. 1 crore, then the taxpayer only needs to pay only Rs. 50 lakhs to settle his case.
- (iii) If the amount of duty being litigated is 'nil', either because the show cause notice was only for penalty or because the duty was deposited at any subsequent stage, and only penalty is being contested, then the taxpayer does not need to deposit anything to settle his case. However, the taxpayer would have to make a declaration under this Scheme.
- (iv) If the duty (including CENVAT credit) involved during investigation or audit is Rs. 50 lakhs, then the taxpayer only needs to pay Rs.15 lakhs to settle his case.
- (v) If the amount in arrears is Rs.50 lakhs, then the taxpayer only needs to pay only Rs. 20 lakhs to settle his case.
- (vi) If the taxpayer makes a voluntary disclosure of Rs. 1 crore, then he will need to pay Rs. 1 crore to settle his case.

6. It may be appreciated that the ambit of this Scheme is wide enough to cover all kinds of pending disputes, including call book cases, except for a few categories. The exclusions are firstly, cases in respect of goods that are still subject to levy of Central Excise such as specified petroleum products and tobacco i.e. goods falling in the Fourth Schedule to the Central Excise Act, 1944. Secondly, cases for which the taxpayer/noticee has already been convicted in a Court of law. Thirdly, cases under adjudication or litigation where the final hearing has taken place on or before

30.06.2019. Fourthly, cases of erroneous refunds. Lastly, cases which are pending before the Settlement Commission.

7. Some of the highlights of this Scheme are that it will be fully automated with a dedicated portal (www.cbic-gst.gov.in) for online filing of declaration and communication of final decision. DG (Systems) will shortly issue a user manual for the online facility being provided to implement this Scheme. This has been done with the objectives of ensuring transparency, speed and accountability in the decision making. There are also fixed timelines for the various processes involved which are to be strictly adhered to so that the entire process of filing of declaration to communication of Department's decision and to payment gets completed within 90 days. This is important as there is no scope for extension of the time period for the sub-processes or the complete process. It is also important to appreciate that while this Scheme indicates various timelines, it is in the common interest of both the taxpayer and the Department that any declaration made thereunder is expeditiously handled well before the indicated timelines. This should be an area of focus for the Designated Committees as well as the supervisory Principal Chief Commissioner/Chief Commissioner concerned.

8. Once the declarant produces the proof of payment and withdrawal of appeal in High Court and Supreme Court, if applicable, for in cases of lower forums the Scheme provides for deemed withdrawal of appeal, a discharge certificate will be issued indicating a full and final closure of the proceedings in question for both the Department and the taxpayer. It merits mention that every discharge certificate shall be conclusive as to the matter and time period stated therein. The declarant shall be not be liable to pay any further duty, interest or penalty. No matter and time period covered under a discharge certificate shall be reopened in any other proceedings under the said indirect tax enactments. This entails a full waiver from prosecution as well. The only exception is in case of a taxpayer's voluntary disclosure of liability as there is no way to verify its correctness, so a provision is made to reopen such declaration within one year of issue of a discharge certificate, if subsequently any material particular is found to be false.

9. Moreover, the scope of discretion has been kept to the minimum by linking the relief under this Scheme to the duty amount which is already known to both the Department and the taxpayer in the form of a show cause notice/order of determination or a written communication. The calculation of relief itself will be automated. Even in case of voluntary disclosure, no verification will be carried out by the Department. Still in the eventuality the declarant seeks the opportunity of being heard, the decision would be taken only after giving him this opportunity.

10. Further, the following issues are clarified in the context of the various provisions of the Finance (No.2) Act, 2019 and Rules made thereunder:

(a) Section 129(2)(a) provides that no person being a party in appeal, application, revision or reference shall contend that by issuing a discharge certificate,

Department has accepted the disputed position. Section 129(2)(b) further provides that issue of a discharge certificate does not prevent issuance of a show cause notice for the same matter for a subsequent period or for a different matter in the same period. It is clarified that similar position will apply in case of Department also. In other words, a declaration under this Scheme will not be a basis for assuming that the declarant has admitted the position, and no fresh show cause notice will be issued merely on that basis.

(b) Section 125(1)(d) mentions that the Scheme is not available to an applicant who has been issued a show cause notice relating to refund or erroneous refund. It has potential to lead to an interpretation that such persons will not be able to opt for the Scheme for any other dispute as well, since the restriction is on 'the person' in place of 'the case'. It is clarified that the exception from eligibility is for 'the case' and not 'the person'. In other words, if a person has been issued a show cause notice for a refund/erroneous refund and, at the same time, he also has other outstanding disputes which are covered under this Scheme, then, he will be eligible to file a declaration(s) for the other case(s). Same position will apply to persons covered under Sections 125(1)(a), (b), (c), (e) and (g).

(c) This Scheme provides for adjustment of any amount paid as pre-deposit during appellate proceedings or as deposit during enquiry, investigation or audit [Sections 124(2) and 130(2) refer]. In certain matters, tax may have been paid by utilising the input credit, and the matter is under dispute. In such cases, 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.

(d) With respect to penalty/late fee matters [Section 124(1)(b) refers], a doubt has been expressed that only show cause notices for late fee or penalty are covered under this Scheme as there is no mention of appellate proceedings. It is clarified that the provisions apply to any show cause notice for penalty/late fee, irrespective of the fact that it is under adjudication or appeal. Moreover, there can be a show cause notice that originally also involved a duty demand, and the amount of duty in the said notice became 'nil' whether on account of the fact that same has been paid under this Scheme or otherwise. Such cases are also covered under Section 124(1)(b).

(e) In case of appeals, the applicant is ineligible to apply if the final hearing is concluded but the order is awaited as on 30.06.2019. The hearings in matters are typically rescheduled even after the final hearing due to new bench, change in officer or any other reason. It is clarified that this restriction will apply to only those cases, where the appellate forum has heard the matter finally as on 30.06.2019.

(f) Section 125(g) excludes the cases where an application has been filed before the Settlement Commission for settlement. However, in many such cases, proceedings before the Commission may abate due to reasons such as rejection of the application by the Commission or due to order of the Commission not being passed within the prescribed time etc. It is clarified that all such cases which are

outside the purview of the Settlement Commission shall be covered under the Scheme under the relevant category of adjudication or appeal or arrears as the case may be provided the eligibility is otherwise established under this Scheme. Further, any pending appeals, reference or writ petition filed against or any arrears emerging out of the orders of Settlement Commission are also eligible under the Scheme.

(g) 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. Section 2(r) defines "quantified" as a written communication of the amount of duty payable under the indirect tax enactment. It is clarified that such 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.

(h) Rule 3(2) of the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 provides that a separate declaration shall be filed for each case. Many a times a show cause notice covers multiple matters concerning duty liability. It is clarified that a declarant cannot opt to avail benefit of scheme in respect of selected matters. In other words, the declarant has to file a declaration for all the matters concerning duty liability covered under the show cause notice.

(i) Section 124(1) (b) provides that where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is 'nil', then, the entire amount of late fee or penalty will be waived. This section, inter alia, covers cases of penal action against co-noticees. In case of a show cause notice demanding duty/tax from main taxpayer and proposing penal action against co-noticees, it is clarified that the co-noticees can't avail the benefits of the scheme till such time the duty demand is not settled. Once, the main-noticee discharges the duty demand, the co-noticees can apply under this Scheme. This will also cover cases where the main noticee has settled the matter before the Settlement Commission and paid the dues and in which co-noticees were not a party to the proceedings before the Settlement Commission.

(j) Section 127(5) of the Scheme provides that the declarant shall pay the amount indicated in the Statement issued by the Designated Committee within a period of thirty days. If the declarant does not pay the amount within the stipulated time, due to any reason, the declaration will be treated as lapsed.

(k) In respect of matters under investigation by DGGI, there may be cases where the duty quantified relates to more than one Commissionerate. In such cases, the Designated Committee of the Commissionerate involving the maximum amount of duty will decide the case. Further, in other cases of DGGI wherein the show cause notice that has been issued covers more than one Commissionerate, a common adjudicator must be quickly appointed under intimation to the Chief Commissioner concerned and DG Systems so the Designated Committee of that Commissionerate can finalize this matter.

11. In order to make this Scheme a success, the following actions are required to be taken on priority:

- (i) It shall be ensured that the updated and complete records of the cases eligible under the Scheme are made available to the Designated Committees by 31.08.2019. It may be noted that except for voluntary disclosure, the information regarding eligible taxpayers is readily available with the field formations through show cause notices which are yet to be adjudicated, or cases which are pending at various appellate forums or the cases under investigation or audit where the duty demand has been quantified and communicated on or before 30.06.2019 or the cases of recoverable arrears.
- (ii) An intensive out-reach programme to create awareness among the trade and industry at large and the eligible taxpayers in particular needs to be carried out. In this direction it will also be desirable to communicate to the eligible taxpayers the benefits of this Scheme through a polite email or phone call or letter. For these purposes the publicity material prepared by DGTPS can be used. Also, registration details of such eligible taxpayers shall be conveyed to DG (Systems) so that periodic SMS can be sent to them, informing about this Scheme.
- (iii) Though this Scheme provides a period of sixty days for the Designated Committee to decide on a declaration filed by a taxpayer, a speedier disposal is expected by the Board. For instance, in cases of voluntary disclosure, no verification is necessitated which means that the declaration will be accepted as such. Hence, such cases must be finalized within 15 days of filing of the declaration. Similarly, as the duty amount is already known in the form of a show cause notice/order of determination or a written communication/or order in appeal or disputed amount in appeal, and the tax-relief will be calculated by the system automatically, where these particulars are found to be correct as per the declaration filed and the records available with the Department, such cases must also be finalized within 15 days of filing of the declaration. These timelines must be strictly adhered to.
- (iv) There shall be two Designated Committees of two officers each in a Commissionerate to process the declarations received thereunder (for this purpose Audit Commissionerates are to be left out). The Designated Committees have been set up based on the amount of tax dues. For removal of doubts, it is, hereby, clarified that this duty demand is before applying the tax-relief. For example, if in a show cause notice the duty demanded is Rs. 60 lakhs, the same will fall under the purview of a Committee consisting of Principal Commissioner/Commissioner and Additional/Joint Commissioner even though the final duty payable after applying tax-relief will be less than Rs. 50 lakhs. Essentially, where the

duty payable as determined by the Designated Committee comes out to be more or less than the amount declared by the taxpayer, there will no change in the composition of the Designated Committee. In other words, the same Designated Committee to which the declaration is automatically routed based on the amount mentioned therein will take a final decision in the matter. The members of the Committee will be nominated by jurisdictional Principal Chief Commissioner/Chief Commissioner and Principal Director General/ Director General, DGGI, as the case may be. It is expected that the Designated Committee will be prompt in decision making by consensus and the senior officer in the Committee will take a lead to ensure the same.

- (v) It shall be the responsibility of the Zonal Principal Chief Commissioners/Chief Commissioners and Principal Director General/ Director General, DGGI (in the case of DGGI, Delhi) to ensure the success of the Scheme. Apart from the reach-out programme outlined at (i) above, it also needs to be ensured that the members of the Designated Committee are properly trained and well versed with the Scheme and the software application. In this connection DG (NACIN) has been instructed to carry out suitable training.

12. The Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 has the potential to liquidate the huge outstanding litigation and free the taxpayers from the burden of litigation and investigation under the legacy taxes. The administrative machinery of the Government will also be able to fully focus on helping the taxpayers in the smooth implementation of GST. Thus, the importance of making this Scheme a grand success cannot be overstated. The Principal Chief Commissioners/Principal Directors General/Chief Commissioners/Directors General and all officers and staff are instructed to familiarize themselves with this Scheme and actively ensure its smooth implementation.

Yours sincerely,



(Navraj Goyal)
OSD(CX)