



## **THE CHAMBER OF TAX CONSULTANTS**

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

**07/09/2019, Saturday**

#### **Questions for Panel Discussion**

##### **A. VALIDITY**

1. Whether the scheme can be challenged before the Courts as discriminating against honest and dutiful taxpayers who have paid full tax in normal course? If the Court strikes down the scheme what would be the consequences specifically -
  - (i) Whether department will be able to issue fresh SCNs, launch enquiries, start audits / investigations?
  - (ii) In case where appeals are withdrawn, whether said appeals will be reinstated?
  - (iii) Whether declarant would get the refund of tax paid under the scheme?
  - (iv) Whether declarant would be liable to pay full tax, interest or penalty?
  - (v) Whether all litigations covered under the scheme will restart?

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##### **B. ELIGIBILITY**

2. (i) If a “SCN” or “appeal” relates to multiple issues, whether an assessee can avail the benefit of the scheme in respect of selected issues or he would have to file a declaration for all the issues under dispute?

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- (ii) However where for the same issue there are two SCNs can the assessee opt to go for the scheme only for one SCN?

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- (iii) Where a declaration under the scheme has been filed in respect of one SCN, later on, can a separate declaration be filed for another SCN which may cover the same issue or another issue?

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- (iv) Where there are 4 SCNs which are disposed of by the Commissioner (Appeals) by a common order and the matter is in appeal before the Tribunal as on 30.6.2019 whether demands in respect of one of the SCN covered under the order can be offered for resolution under the scheme.

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- (v) In case of 2 SCNs on the same issue, one for Rs. 70 lakhs and the other for Rs. 30 lakhs there would be 2 declarations - for the first one Rs. 35 lakhs would be paid and for the other one Rs. 9 lakhs would be paid - Is it correct?

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**(vi)** In case of SCN demanding duty/tax from the main assessee – a company and proposing penal action to the co-noticee – a director, can the benefit of Scheme be availed by the co-noticee even though the main Assessee does not opt to avail the Scheme? Attention is drawn to circular no. 1071/4/2019-CX.8 dated 27.8.2019 - para 11(i) which clarifies that co-noticees can avail the scheme only when duty demand is settled by main tax payer. Is this interpretation correct?

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3. Where a tax payer, who has filed a return declaring certain tax as payable but has not paid it, will he be eligible under the scheme in the following circumstances:

- Tax return of April to September 2016 is filed on or before 30.06.2019
- Tax return for October to March 2017 is filed on or after 01.07.2019

[Attention is drawn to sections 121(c)(iii), 124(1)(c), 124(1)(e) and 125(1)(f)(ii)]

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4. SCN received by tax payer on or after 15.07.2019. Whether the scheme is available if the SCN was pursuant to:

- EA - 2000 audit completed on or before 30.06.2019;
- Pre-SCN consultation done on or before 30.06.2019;
- Investigation or anti-evasion proceedings on or before 30.06.2019;

- Periodical SCN wherein requisite information furnished to department before 30.06.2019
- The SCN was issued on 29.06.2019

Please give your views on each of the above cases.

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5. Declarant can apply for scheme in respect of pending SCN or appeal which are not finally heard till 30.06.2019. The term “FINAL HEARING” is not defined under the Scheme or relevant Indirect tax enactment. Moreover, there is no procedure of intimating tax payer about conclusion of hearing. What is the best method to ensure the eligibility on this criteria?

What are your views in the following cases:

- (i) In many cases SCNs are heard but no order is passed or the department has kept it pending for some information to be filed.
- (ii) In case declarant has not appeared for consecutive three hearings, what would be considered as date of final hearing?
- (iii) Whether tax payer can avail benefit of scheme in respect of matters transferred to call book though the matter was heard once?
- (iv) Where the Tribunal has reserved its orders in respect of hearings that took place before 30.6.2019?

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6. Whether the declaration can be filed in the following cases where adjudication order received on 15th June 2019 and due date for filing the appeal is 14.9.2019 –

- (a) Appeal filed within prescribed time (say) 10.09.2019

- (b) Appeal filed after 15.09.2019
- (c) Appeal not filed at all
- (d) Appeal filed before 30.06.2019.

In all above cases demand has not been paid.

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7. In a case where appeal is pending before the Commissioner (Appeals) as on 30.6.2019 but subsequently in September 2019 the hearing takes place and the demand is confirmed, whether an assessee can go for the scheme on the premise that the appeal was pending on 30.6.2019?

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8. Whether appellant can go for scheme where he withdraws the appeal in September 2019 in case where appeal already heard by appellate authority before 30.06.2019 so as to contend that tax was in arrears as on 30.06.2019 in cases where order has not been passed?

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9. (i) An unregistered person collected service tax on invoices citing bogus service tax registration number. He has not deposited such amount collected as representing service tax. On being caught by department, he gets a SCN which is pending as on 30.06.2019. Whether such a person can take benefit under the scheme - he pays 30% instead of 100% of tax collected [Attention is drawn to Section 73A]
- (ii) Does it make a difference if he is registered?

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10. Section 123(a) defines the term “tax dues” in respect of appeal arising out of an order. The term “order” as well as “order in appeal” has been defined u/s 121(o) and 121(p) respectively. Whether section 123(a) is wide enough to consider both these terms?

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11. Adjudication order demanding recovery of **refund** granted is challenged in appeal which is pending as on 30.06.2019. Whether appellant is eligible to go for the scheme?

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12. (i) Whether declarant can withdraw his petition filed with settlement commission to qualify for the scheme?
- (ii) Whether declarant can apply under the scheme if in respect of a matter he made an application to settlement commission which has been rejected by the Commission or Proceeding has been abated due to any other reason?

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13. (i) As per section 121(c), “amount in arrears” involves cases where no appeal is filed by the declarant before expiry of the period of time for filing the appeal. In this background if appeals are filed beyond the filing period can the disputed amount be treated as “amount in arrears” eligible for relief under 124(c) or relief under 124(a)?

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- (ii) Under section 121(c)(iii) amount in arrears means duty recoverable on account of an order in appeal attaining finality. What is the meaning of the term “attaining finality”?

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14. Scrutiny is initiated based on discrepancy between revenue as per Income tax returns / 26AS and Service tax returns. The first communication is received on or before 30.06.2019 showing difference in revenue and requesting to pay differential tax. Whether a declarant can go for the scheme to pay differential tax in such case?

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15. (i) In case of EA-2000 audit, when can it be said that liability is quantified? Whether one has to treat final audit report, draft audit report or any communication of tax payable as quantification of liability?

- (ii) Where disputed duty amount is quantified in final audit report (“FAR”) and is issued on or before 30.06.2019 to assessee, whether he is entitled to go for scheme if the audit is completed and not pending? [Attention is drawn to section 123(c) and 125(1)(e)?

(iii) EA-2000 audit is started in April 2019. Audit team has sent letter intimating audit observations in May 2019 stating the amount of revenue escaping the tax. Whether declarant can go for scheme?

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16. There is no formal process of intimating probable liability to taxpayer in inquiry or investigation process. How declarant can prove that his liability was quantified on or before 30.06.2019?

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17. In anti-evasion and investigation proceedings wherein the department has recorded the statements on or before 30.06.2019 asking explanations on revenue escaping the tax. There are three possible answers by taxpayer:

- He accepts the liability
- He denies the liability
- He asks for time to give comment to the question

Whether declarant can go for scheme in such case?

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18. Whether the scheme permits voluntary payment of tax dues on undisclosed revenue? If so whether this declaration is confidential and would have no effect on VAT or Income Tax?

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19. Voluntary disclosure **after** inquiry, investigation or audit is not eligible for scheme under section 125(1)(f)(i) of the Act.

The term “after” should be interpreted to mean “after **commencement** of enquiry/ investigation/ audit” or “after **completion** of enquiry/ investigation/ audit”

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**C. TAX QUANTIFIATION**

20. (i) Section 124(2) allows deduction of tax paid during enquiry, audit as or pre-deposit. Further Circular No 1071/4/2019-CX.8 also clarifies that tax paid through input credit shall be adjusted. What would be the position in respect of following:

- (a) Tax paid by utilizing CENVAT Credit but not appropriated in SCN/Order
  - (b) Tax paid by utilizing CENVAT Credit after issue of SCN but before passing of Order and hence appropriation not done
  - (c) Tax paid in Cash but not considered while issuing SCN/Order
  - (d) Tax paid in Cash after issue of SCN but before passing of Order and hence appropriation not done
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(ii) The input credit cannot be used for payment of LDRS tax. However tax already paid by utilising the input credit during enquiry/investigation/audit would be considered as eligible. Would this not be considered as discriminatory especially to a case where an assessee considers his income not liable for service tax and has a good amount of credit if tax payable on output in case liability arises?

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21. Whether amount of tax paid after receiving adjudication order (either in cash or through Cenvat) can be regarded as Other deposit to be adjusted against amount payable under the scheme?

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22. Whether tax recovered by department directly from assessee or through Garnishee provisions (not yet appropriated through returns or adjudication order) can be regarded as 'pre-deposit or other deposit' while calculating **Amount payable?**

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23. How to quantify the pending dues when Tribunal order (passed before 30/6/2019) does not quantify the relief in its order?

**D. REMEDY FOR ADVERSE DECISION OF DESIGNATED COMMITTEE**

24. (i) Unlike the erstwhile Kar Vivad Samadhan Scheme, wherein the designated authority was required to determine the amount payable by the declarant based on the information furnished in the declaration, in the present scheme, the designated committee would estimate the amount payable by the declarant and if amount estimated by the designated committee is more than the amount declared by the declarant then it would give him an opportunity

25. of hearing and thereafter issue a statement indicating the amount payable by the declarant. Can this amount payable estimated by Designated Committee be challenged in any forum?

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(ii) Whether designated committee has power to reject the declaration upfront?

If a declaration is rejected upfront by the designated committee whether there is any remedy?

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(iii) In the above scenario if the amount stated to be payable by the designated committee is not acceptable to the declarant, can he forego the declaration and continue disputing the matter before the respective authorities?

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(iv) If appellant has voluntarily disclosed revenue escaped in normal period of limitation, whether department can invoke extended period of limitation in such cases and accordingly can invoke section 129(2)(c) of the Act and annul the discharge certificate?

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## **EFFECTS OF DECLARATION**

26. What are the consequences, if declarant fails to pay the amount payable within 30 days of SVLDRS-3 issued by designated committee?
- (a) The Act or Rules does not provide for this eventuality.
  - (b) Para 10(j) of Circular No. 1071/4/2019-CX.8 dated 27.08.2019 has clarified that in such case, declaration will be treated as lapsed.
  - (c) Whether declarant who has made voluntary declaration will be liable to penalty or interest on amount declared?
  - (d) Other consequences [please refer Q. No. 1]

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27. Section 127(6) specifies that when the assessee opts for the scheme the reply filed in response to a show cause notice or the appeal filed before the Commissioner (Appeals), Tribunal, shall be deemed to have been withdrawn. What is the time limit by which the appeal needs to be withdrawn and the procedure for withdrawal of such appeal?

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