SERVICE TAX VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME 2013

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PROVISIONS OF SCHEME AND RULES

Indirect taxes are those taxes paid by consumers when they buy goods and services.

One of the significant tax which contributed Rs. 97508.92 crores to central revenue is service tax during 2011-2012.

Welcoming step:

Finance Minister Mr.P.Chidambaram in his budget speech pointed out that there are 17 lakh registered service tax assesses and only 7 Lakh assesses are filing returns . Hence in order to motivate the assesses to comply with service tax , he has introduced Service tax Voluntary compliance encouragement scheme ,2013.The scheme has been notified by Central Government vide Notification No 10/2013 dated 13 th may 2013.Let us get into the basics of Scheme and rules .

Who is eligible ?

Any person to whom no notice or an order of determination issued/ made before 01.03.2013 under section 72/73/73A of the chapter are eligible to declare his tax dues to the designated authority in Form VCES –1 on or before 31.12.2013.

What is tax dues ?

1.Service tax due or payable under the chapter

II. Any other amount due or payable u/s 73 A

For the period from 01.10.2007 to 31.12.2012(including cess leviable under any other act), But remains unpaid as on 01.03.2013.

Thus the scheme is beneficial to those service tax defaulters who can comply with service tax and pay outstanding taxes voluntarily without penal consequences.

Who are Ineligible ?

The following persons are not allowed to declare his tax dues under the scheme:

1.any person who has furnished service tax return u/s 70 and disclosed his true liability ,but has not paid the service tax amount either in full or in part for the period covered in the return.

II. Any person to whom a notice or order of determination has been issued for any period on any issue, then he is not eligible to declare his tax dues on that issue for any subsequent period.

VCES

SPECIAL POINTS OF INTEREST:

- **PROVISIONS**
- **IMMUNITY GRANTED**
- **RECOVERY**
- **ISSUES**
- **FUTURISTIC VIEWS**

VCES

COMPLETE IMMUNITY – WELCOMING STEP FOR SERVICE TAX

PROVISIONS OF SCHEME AND RULES

Rejection of declaration:

The designated authority Can reject the declaration on following grounds:

1.If an enquiry or investigation, for service tax not levied or not paid or short-levied or short paid, is initiated in any of the following manners and is pending as on 1st March 2013:

a. a search under section 82

b. issuance of summons u/s 83

c. requiring production of accounts, documents or other evidence under the chapter or rules

2. An audit is initiated and is pending as on 1st March 2013.

The designated officer before ordering for rejection has to given an opportunity of being heard and record the reasons in writing [Section 106(2) & Circular No.170/05/2013 – ST]. Hence the principle of Natural justice being followed before rejecting any declaration.**Issue of acknowledgement**:

The designated authority on receipt of declaration and if the declaration is not rejected shall issue an acknowledgement in Form VCES -2, within a period of seven working days from the date of receipt of the declaration.

Moreover it has been clarified vide circular no.170/05/2013 that payment of tax dues not linked to issuance of an acknowledgement. Hence the declarant can pay tax dues even before issuance of acknowledgement.

Payment of tax dues:

1. Not less than 50% of tax dues—on or before 31.12.2013.
2. And the remaining tax dues—on or before 30.06.2014.

In case the declarant does not pay the tax dues as stated above , he can still pay the tax dues along with interest on or before 31.12.2014

Complete Immunity: the declarant, upon payment of the tax dues declared and the interest payable if any shall get immunity from penalty, interest or any other proceeding under the Chapter. This immunity is considered as one of the greatest welcoming step towards this scheme.

Default in payment of tax dues declared:

If the declarant fails to pay the declared tax dues, either fully or in part, , such dues along with interest thereon shall be recovered under any of the modes specified u/s 87 of the Chapter.

No scheme will be perfectly alright without any issues . VCES has the above issues regarding to its compliance .

ISSUES

1.If a person is not Registered under service tax and will he be eligible for the scheme?

YES.CBEC has clarified that the person has to register himself under service tax . The above query was also resolved through Rule 3 of Service Tax VCES rules 2013.

2.Suppose if a declarant has two units at two different locations, say Chennai and kochi. Both the units are separately registered .The Kochi unit has received a show cause notice for non-payment of tax. Will the Chennai unit be eligible for VCES?

YES. Two separate service tax registrations are two distinct assessees for the purposes of service tax levy. Hence Chennai unit will be eligible.

3.If an assesee has wrongly utilized the cenvat credit will he be eligible ?

Yes. CBEC has clarified that Any service tax that has been paid utilizing the irregular credit, amounts to non-payment of service tax. Hence the assessee can claim the benefit under the scheme.

4.Suppose the assessee has paid service tax for a particular period but failed to file return, can he take the benefit of VCES in order to avoid payment of penalty for non- filing of return?

NO. CBEC has clearly clarified that a declaration can be made only in respect of "tax dues" under the scheme. However, the assessee may seek relief under rule 7C of service tax rules.

5. An assessee finds that the declaration filed is incorrect. Can he file an amended declaration?

YES. It is expected that the declarant has to declare his tax dues correctly. In case the mistake is discovered suo-moto by the declarant himself, he may approach the designated authority, who may allow amendments to be made in the declaration, and it is necessary that the amended declaration is furnished before 31.12.2013.

6.Whether the assessee can avail cenvat credit on the inputs/ input services used for provision of output service in respect of which declaration has been made under VCES ?

No. The VCES Rules 2013 prescribe that cenvat credit cannot be utilized for payment of tax dues under the Scheme. Accordingly the tax dues under the Scheme shall be paid in cash. But cenvat credit on the input services utilized for the Output service for which declaration given will continued to be governed by Cenvat credit rules 2004.

7.A declaration made by a person against whom an au-

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ISSUES

dit has been initiated and where such audit is pending can be rejected by the designated authority. But what do we mean as initiation of audit and pendency of audit

CBEC has provided us with the clarification of the following:

Initiation of audit: The date of the visit of auditors to the unit of the taxpayer would be taken as the date of initiation of audit.

Pendency of audit:

It means an audit has been initiated before 1.3.2013 but has not culminated as on 1.3.2013. Hence we need to know the culmination of audit.

Culmination of audit: The audit process may culminate in any of the following manner.

(i) Closure of audit file if no discrepancy is found in audit;

(ii) Closure of audit para by the Monitoring Committee Meeting (MCM);

(iii) Approval of audit para by MCM and payment of amount involved therein by the party in terms of the provisions of the Finance Act, 1994;

(iv) Approval of audit para by MCM, and issuance of SCN, if party does not agree to the para so raised.

UNSOLVED ISSUES

Still Some issues are remaining unresolved . They are .

1.Appeal procedures to be adopted for rejection of declaration and appellate forum concerned

2.Allowability of multiple declaration by a single declarant.

3. Period for which Rejection of declaration can be made in case of search

Practical Benefits

When the service tax dues are being paid by the declarants before 30.09.2013 it acts as a deductible expenses in the Taxable income of tax audit assesses .Even in the case of those assesses filed return of income during the month of July 2013,they can avail the benefit by getting deduction in the subsequent assessment year. Hence the scheme acts as a benefit both in terms of Indirect and direct taxes angle.

Futuristic Views

What will be the application of this scheme when GST comes?

New start

Inspite of the certain unsolved issues, the immunity given to the service tax assesses sounds beneficial. Hope the scheme will bring in more service tax payers into tax bracket and also the revenue to go up.

ACHIEVE WITH CERTAINTY AND PROFESSIONAL EXCELLENCE

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