Amnesty Scheme

Service Tax Voluntary Compliance Encouragement Scheme, 2013

[Chapter VI of Finance Act, 2013]

SERVICE TAX VCES | VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME

Service tax bharo, nai shuruaat karo

Background

By:- CA NEERAJ AGRAWAL

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.

The Finance Act, 2013 has provided "Amnesty Scheme for Non Filers and Stop Filers". Notification No. 10/2013 dated 13th May 2013 brings into action the proposed scheme and notified Service Tax Voluntary Compliance Engagement Rules, 2013.

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 13th may 2013.

Purpose:-

This scheme is to encourage voluntary compliance and broaden the tax base. The scheme will be ***applicable on service tax dues from October 1, 2007 to December 31, 2012.***

The salient features of the scheme:-

- ✓ Who are eligible to take the benefit of the scheme ?
- ✓ Who cannot take the benefit of the scheme?
- ✓ What is the procedure for availing the scheme?
- ✓ What is the benefit of availing the scheme?
- ✓ Provides form and manner of declaration,
- ✓ Provides form and manner of acknowledgement of declaration,
- ✓ Provides manner of payment of tax dues and
- ✓ Provides form and manner of issuing acknowledgement of discharge of tax dues.

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Coverage:-

S.No	Sections	Particulars
1	94	Short title
2	95	Definitions
3	96	Person who may make declaration of tax dues
4	97	Procedure for making declaration and payment of tax dues
5	98	Immunity for penalty, interest and other proceeding.
6	99	No refund of amount paid under the scheme
7	100	Tax dues declared but not paid
8	101	Failure to make true declaration
9	102	Removal of doubt
10	103	Power to remove difficulties
11	104	Power to make rules

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Section 96 - Persons eligible to avail benefit of scheme?

The following persons can take the benefit of this scheme-

- ✓ Stop filers
- ✓ Non Filers
- ✓ Non registrants
- ✓ Service providers who have not disclosed there full liability in the return filed by them.

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Persons not eligible to make declaration

- ✓ Person who have **filed the return u/s70** and disclosed his true liability but has not paid the amount of service tax appropriately.
- ✓ Person against whom **order** of determination **u/s 72, 73 or** 73A has been **issued** before 1stMarch, 2013
- ✓ Person to whom **notice or order** of determination has been **issued** in respect of any period on any issue i.e. if a person had **already been caught by the department** earlier on any issue then he is not eligible to file the declaration. Period here is not specifically specified, we consider it to be Oct, 2007 to 31stDec, 2012.
- ✓ An audit is initiated and is pending as on 1st March 2013.

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Persons not eligible to make declaration

- ✓ Person on whom any **inquiry or investigation** in respect of service tax **not levied, not paid or short levied or short paid has been initiated** in any of the following manner and is pending as on 1stMarch, 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.

The designated officer before ordering for rejection has to given an opportunity of being heard and record the reasons in writing. Hence the principle of Natural justice being followed before rejecting any declaration.

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Section 97 - Procedure of availing the scheme

Step 1: If the defaulter is not registered, then he is first required to get himself registered and then apply for this scheme.

Step 2: After registration, defaulter shall make a declaration (Sec 97) in Form **VCES –1.**

Step 3: On receipt of VCES the designated authority will issue acknowledgement of declaration in form **VCES –2.** This acknowledgment shall be issued within **7 days** from the receipt of declaration.

Step 4: The defaulter can pay his tax dues without interest and penalty into installments. The defaulter is **required to pay 50% of tax dues by 31st,December, 2013 and rest 50% by 30thJune, 2014**

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Section 97 - Procedure of availing the scheme

Step 5: On full payment of taxes, the designated authority will issue **acknowledgement of discharge** (Sub section (7) of section 97) in **VCES –3**. VCES – 3 shall be issued **with 7 working days** from the date of furnishing of details of tax dues in full along with interest.

On Payment after 30th June, 2014 up to 31st December, 2014

- ✓ No waiver of interest;
- ✓ However, immunity from penalty & prosecution **still be granted** up to 31stDecember, 2014.

Section 98 - Benefit of availing the scheme

- ✓ The declarant upon payment of amount in default shall **get immunity** from –**interest, penalty, any other proceedings under Service Tax**.
- ✓ On issuance of acknowledgement of discharge no matter shall be reopened thereafter in any proceedings before any authority or court relating to the period covered by such declaration, subjected to the provisions of Section 101-Failure to make true declaration.

Section 99- No refund of amount paid under the Scheme

- ✓ Any amount paid in pursuance of a declaration made under sub-section (1) of section 97 **shall not be refundable under any circumstances.**

Section 100- Tax dues declared but not paid

Where the declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues along with interest thereon shall be recovered under the provisions of section 87 of the Chapter.

Section 101-Failure to make true declaration

- ✓ Where the Commissioner of Central Excise has reasons to believe that the **declaration made** by a declarant under this Scheme was substantially **false**, he may, for reasons to be recorded in writing, **serve notice** on the declarant in respect of such declaration requiring him **to show cause** why he should not pay the tax dues not paid or short-paid.
- ✓ **No action** shall be taken under sub-section (1) **after the expiry of one year from the date of declaration**.
- ✓ The show cause **notice issued under sub-section (1)** shall be **deemed** to have been issued **u/s 73**, or as the case may be, u/s 73A of the Chapter and the provisions of the Chapter shall accordingly apply.

Section 103 & 104 Power's with CG

- ✓ **Section 103–** In order to remove any inconsistency or any difficulty the Central Government is vested with power to remove such inconsistency or difficulty by issuing the required orders.

- ✓ **Section 104–** Central Government is vested with the power to make rules for carrying out the provisions of this scheme.

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

Issue - 1

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

Yes CBEC has clarifies that any person who has tax to declare can make a declaration in terms of the provisions of VCES. If such person does not already have a service tax registration he will be required to take registration before making such declaration.

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Issue - 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.

Issue - 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.

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Issue - 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.

Issue - 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 suomoto by the declarant him-self, 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.

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Issue - 6

Whether a declarant shall get immunity from payment of late fee/penalty for having not taken registration earlier or not filed the return or for delay in filing of return?

Yes. It has been provided in VCES that, beside interest and penalty, immunity would also be available from any other proceeding under the Finance Act, 1994 and Rules made thereunder .

Issue - 7

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.

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There are also some issues which is remain unsolved, Some of them are:-

Issue - 1

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

Issue - 2

Allow ability of multiple declaration by a single declarant.

Issue - 3

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

Compliance Encouragement Scheme

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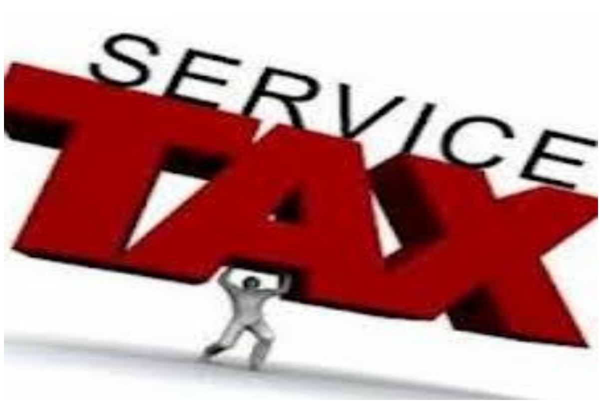
Practical Benefit

- ✓ 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.



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