AMNESTY SCHEME

Service Tax Voluntary Compliance Encouragement Scheme, 2013

PRESENTED BY

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BACKGROUND

The Finance Act, 2013 has provided “Amnesty Scheme for Non Filers and Stop Filers”.

Purpose : To encourage voluntary compliance and broaden the tax base.

Section 94 to 104 of Chapter VI of Finance Act, 2013 provides legal backing to this Amnesty Scheme.

Chapter VI of Finance Act, 2013

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

NOTIFICATION NO. 10/2013 DATED 13.05.2013

- The above notification brings into action the proposed Amnesty Scheme.
- This scheme will now be called as "Voluntary Compliance Encouragement Rules, 2013".

These rules provide for

- form and manner of declaration,
- form and manner of acknowledgement of declaration,
- manner of payment of tax dues and
- Form and manner of issuing acknowledgement of discharge of tax dues.

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.

Disclosure to be made in the scheme covering period from 1st October, 2007 to 31st December, 2012.

Persons Not Eligible To Make Declaration

- Person against whom order of determination u/s 72, 73 or 73A has been passed before 1st March, 2013.
- Person who have filed the return u/s 70 and disclosed his true liability but has not paid the disclosed amount of service tax or any part thereof.
- Person to whom notice or order of determination has been issued in respect of any period on any issue, no declaration shall be made on same issue for any subsequent period.
- 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 and such inquiry, investigation or audit is pending as on 1st March, 2013.

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 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 in installments. The defaulter is required to pay 50% of tax dues by 31st, December, 2013 and rest 50% by 30th June,2014.

Step -5

- On full payment of taxes, the designated authority will issue acknowledgement of discharge 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 upto 31st December, 2014 .

No waiver of interest;

However, immunity from penalty & prosecution still be granted up to 31st December, 2014.

*** "Designated authority"** means an officer not below the rank of Asst. CCE as notified by the CCE for the purposes of this Scheme

SECTION 98 - BENEFIT OF AVAILING THE SCHEME

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.

DEPARTMENT'S CLARIFICATION

The department vide circular no. 169/4/2013-ST dated13.05.2013 has provided certain clarifications in relation to Voluntary Compliance Encouragement Scheme (VCES).

Issue: Whether a person who has not obtained service tax registration so far can make a declaration under VCES?

Clarification: Any person who has tax dues 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.

Issue: 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.

Clarification: 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 there under.

Issue: Whether an assessee to whom show cause notice or order of determination has been issued can file declaration in respect of tax dues which are not covered by such SCN or order of determination?

Clarification: In terms of section 106 (1) of the Finance Act, 2013 and second proviso thereto, the tax dues in respect of which any show cause notice or order of determination under section 72, section 73 or section 73A has been issued or which pertains to the same issue for the subsequent period are excluded from the ambit of the Scheme. Any other tax dues could be declared under the Scheme subject to the other provisions of the Scheme.

Issue: What is the scope of section 106 (2)(a)(iii)? Whether a communication from department seeking general information from the declarant would lead to invoking of section 106 (2) (a)(iii) for rejection of declaration under the said section.

Clarification: Section 106 (2) (a)(iii) of the Finance Act, 2013 provides for rejection of declaration if such declaration is made by a person against whom an inquiry or investigation in respect of service tax not levied or not paid or short-levied or short paid, has been initiated by way of requiring production of accounts, documents or other evidence under the chapter or the rules made there under, and such inquiry or investigation is pending as on the 1st day of March, 2013.

Section 72 of the Act envisages requisition of documents and evidences by the Central Excise Officer if any person liable to pay service tax fails to furnish the return or having made a return fails to assess the tax in accordance with the provision of the Chapter or rules made there under.

Rule 5A of the Service Tax Rules, 1994 prescribes for requisition of specified documents by an officer authorized by the Commissioner for the purposes specified therein.

The provision of section 106 (2)(a)(iii) shall be attracted only in such cases where accounts, documents or other evidences are requisitioned by the authorized officer from the declarant under the authority of any of the above stated statutory provisions and the inquiry so initiated against the declarant is pending as on the 1st day of March, 2013.

No other communication from the department would attract the provisions of section 106 (2)(a)(iii) and thus would not lead to rejection of the declaration.

An instance was brought to notice wherein a declaration was returned probably on the ground that it was incomplete.

As has already been directed by the Board, vide the said letter dated 22.8.2013 (para 2.4 of the letter), the designated authority shall ensure that no declaration is returned. In all cases, declaration should be promptly received and duly acknowledged. Request for clarification should be dealt with promptly. Defects in the application, if any, should be explained to the declarant and possible assistance be provided in rectifying these defects. The effort must be to accept a declaration, as far as possible, and recover the arrears of tax.

An apprehension was raised that declarations are being considered for rejection under section 106 (2) of the Finance Act, 2013, even though the “tax dues” pertain to an issue or a period which is different from the issue or the period for which inquiry /investigation or audit was pending as on 1.3.2013.

Section 106(2) prescribes four conditions that would lead to rejection of declaration, namely,

(a) an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of,-

(i) search of premises under section 82 of the Finance Act,1994 ; or

(ii) issuance of summons under section 14 of the Central Excise Act, 1944; or

(iii) requiring production of accounts, documents or other evidence under the Finance Act, 1994 or the rules made there under; or

(b) an audit has been initiated,

and such inquiry, investigation or audit was pending as on the 1st day of March, 2013.

These conditions may be construed strictly and narrowly. The concerned Commissioner may ensure that no declaration is rejected on frivolous grounds or by taking a wider interpretation of the conditions enumerated in section 106(2). If the issue or the period of inquiry, investigation or audit is identifiable from summons or any other document, the declaration in respect of such period or issue alonewill be liable for rejection under the said provision.

Examples:

(1) If an inquiry, investigation or audit, pending as on 1.3.2013 was being carried out for the period from 2008-2011, benefit of VCES would be eligible in respect of ‘tax dues’ for the year 2012, i.e., period not covered by the inquiry, investigation or audit.

(2) If an inquiry or investigation, pending as on 1.3.2013 was in respect of a specific issue, say renting of immovable property, benefit of VCES would be eligible in respect of ‘tax dues’ concerning any other issue in respect of which no inquiry or investigation was pending as on 1.3.2013.

It is also reiterated that the designated authority, if he has reasons to believe that the declaration is covered by section 106(2), shall give a notice of intention to reject the declaration within 30 days of the date of filing of the declaration stating such reasons to reject the declaration. Commissioners should ensure that this time line is followed scrupulously.

Whether benefit of VCES would be available in cases where documents like balance sheet, profit and loss account etc. are called for by department in the inquiries of roving nature, while quoting authority of section 14 of the Central Excise Act in a routine manner.

The designated authority/ Commissioner concerned may take a view on merit, taking into account the facts and circumstances of each case as to whether the inquiry is of roving nature or whether the provisions of section 106 (2) are attracted in such cases.

Whether the benefit of the Scheme shall be admissible in respect of any amount covered under the definition of 'taxes dues', as defined in the Scheme, if paid by an assesses after the date of the Scheme coming into effect, (i.e., 10.5.2013), but before a declaration is filed

Yes, benefit of the Scheme would be available if such amount is declared under the Scheme subsequently, along with the remaining tax dues, if any, provided that Cenvat credit has not been utilized for payment of such amount.

Example:

A person has tax dues of Rs 10 lakh. He makes a payment of Rs 2 lakh on 15.5.2013, without making a declaration under VCES. He does not utilize Cenvat credit for paying this amount. Subsequently, he makes declaration under VCES on 1.7.2013. He may declare his tax dues as Rs 10 lakh. Rs 2 lakh paid before making the declaration will be considered as payment under VCES.

Whether declaration can be made in such case where service tax pertaining to the period covered by the Scheme along with interest has already been paid by the parties, before the Scheme came into effect, so as to get waiver from penalty and other proceedings?

As no "tax dues" is pending in such case, declaration cannot be filed under VCES. However, there may be a case for taking a lenient view on the issue of penalties under the provision of the Finance Act, 1994. In this regard attention is invited to section 73 (3) and section 80 of the Finance Act, 1994.

Issues

Service Tax paid under scheme on a service which has been held in any judicial forum that service tax is not payable, whether refund can be claimed of the amount so paid ?

Audit was conducted by department, but there was no discrepancies found by the audit party and the audit was concluded giving Nil audit report. Now for such audit period can I claim the benefit of this scheme?

I am proving exempted service, but had erroneously collected service tax on the same, but did not remit to Govt. Will I be eligible for this scheme?

I have some CENVAT erroneously accumulated in my returns, which is carrying forward till date, whether I can use VCES scheme for regularizing my credit?

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