SERVICE TAX

VCES

VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME

Service tax bharo, nai shuruaat karo

# Service Tax Voluntary Compliance Encouragement Scheme, 2013

# Amnesty Scheme

CA PRANAV BISARIA

# BUDGET SPEECH 2013

**While there are nearly 17,00,000 registered assesses under service tax, only about 7,00,000 file returns. Many have simply stopped filing returns. We cannot go after each of them. I have to motivate them to file returns and pay the tax dues. Hence, I propose to introduce a one-time scheme called 'Voluntary Compliance Encouragement Scheme. A defaulter may avail of the scheme on condition that he files a truthful declaration of service tax dues since 1.10.2007 and makes the payment in one or two instalments before prescribed dates. In such a case, interest, penalty and other consequences will be waived. I hope to entice a large number of assesses to return to the tax fold. I also hope to collect a reasonable sum of money."**

**P. Chidambaram**

**The H'ble Finance Minister**

# ABOUT THE SCHEME

**Through the VCE Scheme, the CBEC intended to provide all persons liable to pay service tax with an opportunity to rectify all the defaults made by them such as:**

1. **Non-payment of service tax liability**

2. **Short-payment of service tax liability**

3. **Non-filing of service tax returns**

4. **Failure to obtain registration under Service Tax laws**

# GOVERNING PROVISIONS

The Governing provisions of VCE Scheme 2013 are:

1. It was introduced by Budget 2013-2014.
2. VCE Scheme was brought into effect upon enactment of the Finance Bill, 2013 [Section 104 to 114, Chapter VI, The Finance Act, 2013 (17 of 2013)]
3. It received the assent of The President of India on 10th May, 2013.
4. It was introduced by CBEC via Notification No. 10/2013-ST, Dated 13th May, 2013.
5. Further explanations were given on this scheme via Circular No. 169/4/2013-ST, Dated 13th May 2013

   Circular No. 170/5/2013-ST, Dated 8th August 2013

   Circular No. 174/9/2013-ST, Dated 25th November 2013

# APPLICABILITY OF SCHEME

**The person who has not paid the tax dues.**

**Tax Dues means the amount of Service tax due including the amount received from other but not paid to the credit of Central Government (Section 73A).**

**Period of Due:**

**1st October 2007 to 31st December 2012**

# BENEFITS OF SCHEME

1. Waiver of Interest on delayed payment of Service Tax.

   Section 75: Interest @18% w.e.f 01.04.2011. Earlier it was 13%.

2. Waiver of Penalty towards non-payment of Service Tax.

   Section 76: penalty shall be imposed at a minimum of Rs. 200 per day during which such failure continues, or @2% p.m., whichever is higher, starting with the first day after the due date till date of actual payment. However, the penalty cannot exceed the service tax which was payable.

# BENEFITS OF SCHEME

3. Waiver of Penalty towards failure to obtain registration under Service Tax Laws.

   Section 77: Penalty which may extend up to Rs.10,000 or Rs.200 for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance.

4. Waiver of Penalty towards non-filing/delayed filing of Service Tax Returns.

   Rule 7C: Explained later

# BENEFITS OF SCHEME

5. **Immunity from Proceedings:**

   **All proceedings provided under Chapter V of Finance Act, 1994.**

6. **Upon receipt of Form VCES3, no proceedings can be initiated thereafter in respect of period of declaration after expiry of One Year from date of declaration.**

# DESIGNATED AUTHORITY

**Section 105(1)(c)**

**Means An Officer not below the rank of Assistant Commissioner of Central Excise**

**As notified by Commissioner of Central Excise for this purpose.**

**Thus, Designated Authority means**

**Commissioner**

**Additional Commissioner**

**Joint Commissioner**

**Deputy Commissioner**

**Assistant Commissioner**

# VCES FORMS

**VCES 1** — **Form of Declaration**

Declaration in respect of tax dues is to be made in this form. [Section 107(1)]

**VCES 2** — **Form of Acknowledgement of Declaration**

Designated Authority on receipt of declaration shall issue an acknowledgement in form VCES2 within a period of 7 days from the date of receipt of declaration. [Section 107(2)]

**VCES 3** — **Form of Acknowledgement of Discharge**

Designated Authority shall issue within a period of 7 days from the date of furnishing details of payment. [Section 107(7)]

# WHO CAN MAKE DECLARATION ?

**Section 106(1)**

**Any person may declare his tax dues in respect of which no notice or an order of determination under Section 72 or section 73 or Section 73A of the Chapter has been issued or made before 1st Day of March 2013.**

# SECTION 72

## Best Judgment Assessment:

**If any person, liable to pay service tax**

**a) fails to furnish the return under section 70;**

**b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made there under, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary . . .**

# SECTION 72 Cont..

…**and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.**

# SECTION 73

## Service tax not levied or paid or short levied or short paid or erroneously refunded

**Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within ‘eighteen months’ from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice . . .**

# SECTION 73 Cont..

**. . . Provided that where any service tax has not been levied or paid or has been short-levied or short paid or erroneously refunded <u>by reason of (a) fraud; (b) collusion; (c) wilful mis-statement; (d) suppression of facts; (e) contravention of any of the provisions of this Chapter or of the rules</u> made there under with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, <u>for the words "eighteen months", the words "five years" had been substituted.</u>**

# SECTION 73A

**Service Tax collected from any person to be deposited with Central Government:**

**Any person who is liable to pay service tax under the provisions of this Chapter or the rules made there under, and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service under the provisions of this Chapter or the rules made there under from the recipient of taxable service in any manner as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government . . .**

# SECTION 73A Cont..

. . . The same has not been so paid, the Central Excise Officer shall serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government.

# WHO CAN NOT FILE DECLARATION ?

**Proviso to Section 106(1)**

1. **Person who has filed ST-3 and disclosed true liability.**

   **But has not paid the disclosed amount.**

2. **To whom notice has been issued on any issue for any period, then no declaration on same issue for any subsequent period**

# GROUNDS OF REJECTION

**Section 106(2)**

1. **Inquiry or Investigation has been initiated by way of**

   **Search of Premises, or**

   **Issuance of Summons, or**

   **Requiring production of accounts, documents and other evidences.**

2. **Audit has been initiated.**

**All the above pending on 1st Day of March 2013**

# PRODUCTION OF BOOKS AND DOCUMENTS

**Is the communication from department seeking general information from declarant would lead to rejection of declaration..?**

**No**

**The Clarifications issued clarifies that, declaration can be rejected if books of accounts and documents are requisitioned by Central Excise Officer under:**

**(a) Section 72 read with Section 83 – Best Judgment Assessment, or**

**(b) Rule 5A – Access to Registered Premises.**

# PRODUCTION OF BOOKS AND DOCUMENTS

**Thus, if the books of Accounts and other documents have been requisitioned under above sections, then only it provides the ground for Rejection of Declaration.**

**Seeking of Books and other documents in case of roving enquiries does not provide any ground of rejection of declaration**

# CONDITIONS FOR CLAIMING AMNESTY

1. Declaration in Form VCES 1 to be filed On or Before 31st December 2013. [Section 107(1)]

2. CENVAT Credit cannot be utilized for payment. [Circular 170/5/2013]

3. Amount paid under this scheme shall not be refunded. [Section 109]

# CONDITIONS FOR CLAIMING AMNESTY

4. **If amount declared in Form VCES1 not paid on or before 1st January 2015, the same shall be recovered as per Section 87 of Finance Act 1994 (Recovery of any amount due to Central Government). [Section 110]**

5. **If CCE has reasons to believe, he may, for reasons to be recorded in writing, that the declaration made is substantially false, serve a notice on the declarant regarding such declaration. [Section 111]**

   **No action will be taken after expiry of One Year from the date of declaration.**

   **'Substantially False' not clarified by department.**

# PROCEDURE FOR CLAIMING AMNESTY

1. Declaration to be filed in Form VCES1 **to Central Excise Officer notified as designated authority.**

2. Declaration to be accompanied by a sheet showing calculation of the amount declared as due.

   **It is mandatory to furnish** separate calculation sheet for each category of service.

# PROCEDURE FOR CLAIMING AMNESTY

3. Calculation sheet must be on HALF YEARLY Basis.

For Ex: If declaration is to be furnished for the period 1st October 2008 to 30th September 2009.

Then 2 calculation sheets are required. One for 1st October 2008 to 31st March 2009 and another for 1st April 2009 to 30th September 2009.

# PROCEDURE FOR CLAIMING AMNESTY

4. Calculation Sheets are to be in the same format as that of Service Tax Return that was applicable during that period.

5. **Upon receipt of VCES1, appropriate authority shall issue VCES2 within 7 working days.**

   VCES2 does not certify the correctness of declaration **furnished. It is merely an acknowledgement.**

# PROCEDURE FOR CLAIMING AMNESTY

6. Assessee is required to furnish proof of payment periodically along with Copy of Form VCES 2.

7. Upon furnishing of above details, appropriate authority will issue Acknowledgement of Discharge in Form VCES 3 within 7 Working Days.

8. A person who wishes to make declaration, but not registered, must obtain registration and file declaration.

# CLARIFICATIONS

1. **Whether an assessee to whom show cause notice or order has been issued can file declaration by VCES1 in respect of dues which are not covered by such notice or order..?**

   **Yes**

   **He can file a declaration in respect of dues which are not covered by such notice or order. Assessee can not file declaration in respect of which a notice or order has been issued.**

# CLARIFICATIONS

**2. Whether assessee can make declaration on an issue which is not a part of Audit Para.**

**Yes**

**Declarant can file declaration on an issue not covered under Audit Para. He can also make declaration if Audit is initiated after 1st March, 2013.**

# CLARIFICATIONS

3. **An issue is being litigated or in dispute with department for a part of period covered under VCES, can declaration be filed on the same issue for subsequent period.**

   **No**

   **If an issue is being litigated for the period covered under VCES, No declaration can be filed on the same issue for subsequent period in terms of Proviso provided under Section 106(1).**

# CLARIFICATIONS

4. **What If, the declaration made by an assessee is incorrect..? Can he file Revised Declaration..?**

   **Yes**

   **But only in case if assessee discovers a mistake suomoto.**

   **He may approach designated authority, who after considering all the facts may allow amended declaration which must be filed on or before 31st December, 2013.**

# CLARIFICATIONS

5. **If an assessee has two or more units and notice have been issued for one unit, can he file declaration for that unit on which no notice have been issued..?**

   **Yes**

   **But only in the case where both the units are Separately Registered.**

# CLARIFICATIONS

6. **Can assessee file <u>Declaration if Service Tax is paid utilizing irregular credit</u>..?**

<u>Yes</u>

**As this amounts to non-payment of Service Tax, thus covered under "Tax Dues".**

# CLARIFICATIONS

**7. Can assessee file form VCES-1 if there are Nil tax dues..?**

**No**

**To file VCES-1 Form there has to be some amount of tax dues.**

# CLARIFICATIONS

8. **Whether declarant will be given opportunity to be heard before Rejection of Declaration by designated authority..?**

   **Yes**

   **Before any rejection of Declaration, designated authority is required to issue a notice within 30 days of filing of declaration. Declarant shall be given an opportunity to be heard before any order is passed.**

# CLARIFICATIONS

9. Is there any appeal mechanism in case of rejection of declaration..?

No

The Scheme does not have any statutory provision regarding filing of appeal against the Order of Rejection.

# CLARIFICATIONS

**10. Will the <u>amount paid under VCES1 be adjusted in case of Rejection of Declaration..?</u>**

<u>Yes</u>

**The amount so paid under the scheme will be adjusted against the liability determined by authority.**

# CLARIFICATIONS

11. What if, an assessee has paid all the taxes on time but has not filed Return. Can he file declaration..?

No

VCES not applicable if Tax is paid but return not filed. However, assessee can claim relief under Rule 7C.

# RULE 7C

## Amount to be paid for delay furnishing of return

**Where the return is furnished after the prescribed date, assessee is liable to pay to the credit of central government, for the period of delay:**

| | |
|---|---|
| **-15 Days from the prescribed date** | **Rs.500** |
| **-Beyond 15 Days but Before 30 Days** | **Rs.1,000** |
| **-Beyond 30 Days** | **Rs.1,000 plus Rs.100 per day** |

**Subject to the maximum of Rs.20,000**

# RULE 7C Cont..

**Provided further that where the assessee has paid the amount as prescribed under this rule for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded.**

**Provided also that where the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty.**

# CLARIFICATIONS

12. Is <u>Cenvat Credit admissible on input and input services for the provision of output Service in respect of which declaration is made..?</u>

<u>Yes</u>

**CENVAT Credit on inputs and input services used for providing Output Services in respect of which declaration is filed** <u>shall continue to be governed by Cenvat Credit Rules, 2004.</u>

**However,** <u>Tax Dues under VCES can not be paid utilizing CENVAT Credit.</u>

# CLARIFICATIONS

**As per VCE Scheme, Tax Dues can not be paid utilizing CENVAT Credit.**

**However,**

**Tax Dues amount paid under the scheme would be <u>eligible as CENVAT Credit to the Recipient of Service under Supplementary Invoice.</u>**

**<u>Credit is also admissible who pays Tax Dues under VCES as Service Recipient under Reverse Charge Mechanism.</u>**

# CLARIFICATIONS

**13. Can payment be made even if Acknowledgement (VCES 2) is not issued..?**

**Yes**

**Payment of Tax Dues is not linked with Acknowledgement. Declarant can pay Tax Dues even before the acknowledgement is issued by the department.**

# CLARIFICATIONS

14. **Can the 50% payment be made with interest after 31st December, which is required to be paid on or before 31st December, 2013..?**

**No**

**If the 50% payment is not made on or before 31st December, 2013, then the declarant will not get the benefit of this scheme.**

# CLARIFICATIONS

15. **Is it required to make Lump-sum payment of 50% and the balance amount..?**

**No**

**Payment can be made in any number of installments.**

**50% amount to be paid on or before 31st December, 2013 is the minimum amount. There is no bar on installment payment.**

# CLARIFICATIONS

16. Is benefit of Scheme available on the Part Payment made before the applicability of VCE Scheme..?

No

**The benefit is available only on the amount mentioned in the Declaration.** No, immunity from interest or penalty is there if payment is made outside VCES.

# CLARIFICATIONS

17. Is benefit of Scheme available on the Part Payment made after the applicability of VCE Scheme but before filing declaration..?

Yes

**The benefit is available if** such amount is declared under the scheme along with the remaining tax dues.

**Provided that** such amount is not paid utilizing CENVAT Credit.

# CLARIFICATIONS

18. In case of filing declaration for a part of the period covered by VCES, is there any declaration required to be given for that part which is not covered by declaration but falls under VCES period..?

No

The declaration (VCES1) itself includes the undertaking that such declaration is correct and complete. Even the designated authority is not required to ask for such undertaking.

# CLARIFICATIONS

**19. Whether declaration can be made where tax dues have been paid along with interest for the period covered by VCES, before the Scheme came into effect..?**

**No**

**As no tax dues are pending in such case, declaration can not be filed. However department may take a lenient view in case of Penalty provisions.**

**FORM VCES-1**

[In duplicate]

**Declaration under sub section (1) of section 107 of the Act.**

[See rule 4]

*(Please read the instructions carefully before filling the form)*

| | | |
|---|---|---|
| **1.** | **Name of the declarant** | |
| **2** | **Address of the declarant** | |
| **3** | **Telephone No.** | |
| **4** | **E-mail id** | |
| **5** | **Service Tax Code (STC No.)** | |
| **6** | **Details of tax dues*** | |

| | | |
|---|---|---|
| A | **Service tax** | ` |
| B | **Education cess** | ` |
| C | Secondary & Higher Education Cess | ` |
| D | **Amount under section 73A of the Finance Act,1994** | ` |
| **E** | **Total Tax dues* [A+B+C+D]** | ` |

*Furnish a calculation sheet separately [for the purposes of calculation of tax dues, the manner of calculation as prescribed in S. No. 3F (I), or as the case may be, the Part ‘B’ of Form ST-3, as existed during relevant period may be used and calculation of tax dues may be furnished tax return period wise, and service wise if the tax dues relates to more than one service.]

**VERIFICATION**

I.......................(name in block letters) son/daughter of Shri....................... solemnly declare that I have read and understood the Service Tax Voluntary Compliance Encouragement Scheme as contained in Chapter VI of the Finance Act 2013, and to the best of my knowledge and belief -

(a) the information given in this declaration and the enclosures accompanying it are correct and complete and the amount of tax dues and other particulars shown therein are truly stated;

(b) the tax dues declared above do not attract the provisions of sub-section (1), including the provisos thereto, of section 106 of the Act;

(c) no inquiry, investigation or audit is pending against the declarant as on the 1st day of March 2013 as envisaged in sub-section (2) of section 106 of the Act;

I further declare that I am authorised to make this declaration and verify it on behalf of the declarant in the capacity as .............................

**Enclosures:**

| S. No. | Details of enclosure/statement annexed |
|---|---|
| 1 | Calculation sheet in respect of tax dues (refer S. No. 6 above and the instructions) |
| 2 | Any other documents (please specify) |

**Signature of the declarant/authorised person with stamp**

**Place:** **Date:**

| **Declaration No.** | | | | | | | | | **Date** | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|

*(To be assigned by the department)*

**Instructions:**

1. The Scheme has been prescribed in the Chapter VI of the Act. The provisions contained therein may please be read carefully (refer www.cbec.gov.in).
2. This Form shall be submitted to the Central Excise Officer notified as designated authority under section 105(c) of the Act.
3. The tax dues may be computed separately for each service if the tax dues relates to more than one service during the period of declaration.
4. For calculation of tax dues, the manner as prescribed at S. No. 3F (I), or as the case may be the Part 'B' of the Form ST-3, as existed during the relevant period, may be used and calculation of tax dues may be furnished tax return period wise
5. Calculation sheet showing the tax dues calculation may please be enclosed with this declaration.
6. Obtain an acknowledgment from the designated authority in form VCES -2.
7. The declarant may approach the designated authority for any clarification.

# CALCULATION SHEET

**DATE**

**Value of Taxable Services, Service Tax Payable and Gross Amount Charged**

**ASSESSEE NAME**

**SERVICE TAX REGISTRATION NO.**

**FOR THE PERIOD ……………………………..- 20……… TO ………………………. ………- 20…......**

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| (I) | Month / Quarter | **Apr 20..** | **May 20..** | **June 20..** | **July 20..** | **Aug 20..** | **Sep 20..** | **TOTAL** |
| | Service Tax Payable | | | | | | | |
| (a) | Gross amount received / paid in money ** | | | | | | | |
| | (1) against service provided | | | | | | | |
| | (2) in advance for service | | | | | | | |
| (b) | Abatement amount claimed | | | | | | | |
| (c) | Taxable value = (a) - minus (b) | | | | | | | |
| (d) | Tax Rate % | | | | | | | |
| (e) | Service Tax Payable | | | | | | | |
| (f) | Education cess payable ( @2% of service T ax) | | | | | | | |
| (g) | SHE C ess payable (@1% of service Tax) | | | | | | | |
| (h) | Amount u/s 73A of the finance Act, 1994 | | | | | | | |
| (i) | Service Tax Paid Earlier | | | | | | | |
| (j) | Challan No. | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | Date | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | **Total Tax Dues** | | | | | | | |

** The Amount received is inclusive of Service Tax.

**FOR THE PERIOD ……………………………..- 20……… TO ………………………. ………- 20…......**

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| (I) | Month / Quarter | **Apr 20..** | **May 20..** | **June 20..** | **July 20..** | **Aug 20..** | **Sep 20..** | **TOTAL** |
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| (j) | Challan No. | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | Date | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | **Total Tax Dues** | | | | | | | |

# THANK YOU

**PRANAV BISARIA**

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