

GST UPDATE ON CLARIFICATION ISSUED FOR SABKA VISHWAS SCHEME: -

The much awaited amnesty scheme for reducing the pending litigation in Central Excise and Service Tax Laws, Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 has been implemented from 1st September, 2019. As the scheme is new, clarification has also been issued vide Circular No. 1071/4/2019-CX. 8 dated 27.08.2019 to address various confusions prevalent in the minds of assesseees planning to opt for the amnesty scheme. We have already carried our extensive series of updates on this amnesty scheme after presentation of Union Budget and so we are not covering the basic features of this scheme. The present update seeks to highlight the important clarifications issued by the government.

1. **Declaration under this scheme does not mean that issue has attained finality on merits:-** It is clarified that if a case is closed under this amnesty scheme, it does not imply that the assessee/department has accepted the disputed position. Hence, revenue authorities are not prevented from issuing show cause notice on the same issue for the subsequent period or for different matter in the same period thereby indicating that this amnesty scheme seeks to reduce the litigation under erstwhile regime but does not curtails origination of fresh litigation under erstwhile law.
2. **Restriction as regards SCN issued for erroneous refund is only case specific and not person specific:-** The provision contained in section 125(1)(d) states that all persons shall be eligible for filing declaration under this scheme except who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund. It has been clarified that if a person has been issued show cause notice for an erroneous refund and another show cause notice for some other issue, the person can apply for amnesty scheme for the other issue. The restriction is not on person and rather on filing declaration for SCN pertaining to erroneous refund.

3. **SCN issued for late fee/penalty includes appellate proceedings also:-**

The provision contained in section 124(1)(b) clarifies that the person can opt for amnesty scheme not only for SCN issued for late fee/penalty but also if the said SCN is pending before any appellate proceedings. This sub-section also covers show cause notice which originally involved duty demand and the amount of duty became nil or duty was fully paid by the assessee. In such cases, the waiver from interest and penalty will be granted on filing declaration under this scheme.

It is further clarified that in case of penalty show cause notice issued to co-noticees, the benefit under this scheme can be availed by the co-noticee under this scheme only if the main noticee has paid the demand. Further, co-noticee can also opt for this scheme if the main noticee has settled the matter before the Settlement Commission and has paid the dues in which co-noticees were not party to the proceedings before the Settlement Commission.

4. **Final hearing for the case should be concluded as on 30.06.2019 for debarring assessee to file declaration under this scheme for pending appeals/SCN:-**

It is clarified that at times final hearing for the case is convened again due to change of officer or re-scheduling of bench. In such cases, assessee can file declaration as the final hearing has not been concluded as on 30.06.2019.

5. **Application rejected by Settlement Commission eligible under this scheme:-**

The declaration cannot be filed under this scheme where application has been filed before Settlement Commission. However, if the Settlement Commission has not accepted the application or has not passed order within stipulated time due to which the proceedings abate, in such cases the assessee may file declaration under the amnesty scheme. Further, any pending appeals or petitions filed against any arrears emerging out of the orders of Settlement Commission are also eligible under this scheme.

6. **Quantification of duty demand includes any written communication:-**

Only cases under an enquiry, investigation or audit where duty demand

has been quantified on or before 30.06.2019 are eligible under the Scheme. The term 'quantification' includes any written communication such as letter intimating duty demand by department or letter accepting duty demand by assessee. Hence, a formal audit report is not required for filing declaration under this scheme.

7. **Separate declaration for each case to be filed:-** Rules framed for this scheme prescribe filing of separate declaration for each case. However, it is clarified that if a show cause notice covers multiple matters, the declarant will have to file declaration for entire show cause notice and not for certain matters.
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