

GST UPDATE ON SECOND 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. We have also explained the clarifications issued by the first circular by the government. The present update seeks to highlight another set of important clarifications issued by the government vide ***Circular No. 1072/05/2019-CX dated 25.09.2019.***

1. **Declarations with wrong facts will be considered void:-** It is clarified that if answer to a particular question is deliberately given as 'No' so that declaration under this scheme is filed, then even if the declaration is being filed, it will be considered as void and the declarant will be informed about the ineligibility through a letter.
2. **Provision as regards withdrawal of appeal will also apply for departmental appeals:-** It is clarified that the provision regarding 'deemed withdrawal' of appeals pending before Commissioner Appeals/Tribunal if application is being filed under this Scheme will also be applicable in case of declaration filed with respect to departmental appeals.

3. **Separate declaration for multiple returns wherein taxpayer have not paid duty in case of multiple returns:-** It is clarified that if a taxpayer has multiple returns wherein taxpayer has declared taxes in returns but have not paid the same. It is clarified that separate declaration is required to be filed with respect to each of such returns. However, it is to be noted that the contradiction as pointed in our earlier update has not been resolved till date. According to section 125(1)(f) of the Finance Act, 2019, person making voluntary disclosure cannot file declaration under this scheme if return has been filed by declaring the duty as payable but has not paid the said duty. Moreover, if the questionnaire to be filed before filing declaration is observed, it is found that there is restriction for filing declaration for such cases under voluntary disclosure category. However, the circular clarifies that such situation is covered under 'amount in arrears' and separate declaration is to be filed.
4. **Deduction from tax dues available for taxes already paid by the declarant:-** According to section 124(2) of the Finance Act, 2019, the amount payable by the declarant under this scheme will exclude the amount of pre-deposit made by the declarant. Now, this raised doubts regarding deduction of taxes already paid and amounts paid other than at pre-deposit stage by the declarant. This circular clarifies that all amounts paid by the declarant, whether appropriated or not will be considered for calculation of net amount payable by the declarant under this scheme. However, if the amount already paid is in excess, no refund shall be granted to the declarant.
5. **Major clarification regarding meaning of amount in arrears:-** There was lot of confusion regarding availability of benefit under this scheme

where final hearing was concluded as on 30.06.2019 but the order has been passed subsequently and the assessee wish to opt for this scheme. It is clarified that as far as the conditions of “amount in arrears” are satisfied, the benefit under this scheme can be availed. For example- If final hearing in appeal filed before the Commissioner Appeals was held on 25.06.2019 and Order in Appeal has been passed on 30.07.2019, the assessee may chose not to file appeal against the said order in appeal before the Tribunal upto the stipulated time period being 30 October, 2019, then the assessee may file declaration under this scheme after expiry of the stipulated time but before the last date of filing declaration under this scheme being 31.12.2019. It is further clarified that if the time limit for filing appeal has not expired, then the assessee may still file the declaration by giving undertaking that no appeal will be filed in future. This clarification was much awaited as it will truly lead to substantial reduction of pending litigation under erstwhile laws.

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