

SABKA VISHWAS (LEGACY DISPUTE RESOLUTION) SCHEME, 2019**Introduction**

The Chapter V of the Finance Bill, 2019 (Bill No. 55 of 2019) *vide* Clauses from 119 to 134 seeks to provide for **Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019**. The Scheme is a one-time measure for liquidation of past disputes of Central Excise and Service Tax as well as to ensure disclosure of unpaid taxes by a person eligible to make a declaration. The Scheme is to be enforced by the Central Government from a date to be notified.

Under the Scheme, the eligible persons can declare the tax dues and pay the same in accordance with the provisions of the Scheme. It further provides for certain immunities including penalty, interest or any other proceedings under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1944 to those persons who pay the declared tax dues.

After enactment of Finance Act, 2019, the Government will frame rules for the implementation of the Scheme as well as notify the date from which the provisions of Chapter V of the Finance Act, 2019 (after its enactment).

2. Salient Features of the Scheme at a Glance

Salient features of the proposed Scheme are as under:-

- Most liberal scheme so far for resolution of pending legal dispute.
- It offers unique opportunity to the tax payers to settle their pending Central Excise duty and Service Tax disputes.
- It covers all legal disputes under Central Excise Act, 1944 and Finance Act, 1994 pending at any appellate forum i.e. Commissioner (Appeals), CESTAT, HC and Supreme Court.
- The scheme also allows resolution of disputes where an enquiry or investigation or audit is pending against the declarant, the amount of duty payable under any of the indirect tax enactment which has been quantified on or before the 30.06.2019.
- The relief from payment of duty in dispute up to the extent of 60% is available under the Scheme.
- It also gives complete waiver from payment of interest, and penalty (except where penalty only is in dispute).
- Strict timelines for resolution of matter provided under the Scheme.
- All persons except with very few exceptions as mentioned in clause 124 are eligible to avail benefit under the Scheme.
- Negligible restrictions imposed under the scheme such as not allowing refund of duty or pre-deposit already paid or not allowing input credit of duty paid under the scheme.

- Scheme is to come into effect from the date to be notified by the Government.
- The Government to notify rules to operationalize the Scheme.

Part II

Text of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 as proposed in the Finance Bill, 2019 (Bill No. 55 of 2019).

Short title and commencement

119. (1) This Scheme shall be called the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (hereafter in this Chapter referred to as the “Scheme”).

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions

120. In this Scheme, unless the context otherwise requires,—

- (a) “amount declared” means the amount declared by the declarant under section 124;
- (b) “amount estimated” means the amount estimated by the designated committee under section 126;
- (c) “amount in arrears” means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment, on account of—
 - (i) no appeal having been filed by the declarant against an order or an order in appeal before expiry of the period of time for filing appeal; or
 - (ii) an order in appeal relating to the declarant attaining finality; or
 - (iii) the declarant having filed a return under the indirect tax enactment on or before the 30th day of June, 2019, wherein he has admitted a tax liability but not paid it;
- (d) “amount of duty “ means the amount of central excise duty, the service tax and the cess payable under the indirect tax enactment;
- (e) “amount payable” means the final amount payable by the declarant as determined by the designated committee and as indicated in the statement issued by it, in order to be eligible for the benefits under this Scheme and shall be calculated as the amount of tax dues less the tax relief;
- (f) “appellate forum” means the Supreme Court or the High Court or the Customs, Excise and Service Tax Appellate Tribunal or the Commissioner (Appeals);
- (g) “audit” means any scrutiny, verification and checks carried out under the indirect tax enactment, other than an enquiry or investigation, and will commence when a

written intimation from the central excise officer regarding conducting of audit is received;

- (h) “declarant” means a person who is eligible to make a declaration and files such declaration under section 124;
- (i) “declaration” means the declaration filed under section 124;
- (j) “departmental appeal” means the appeal filed by a central excise officer authorised to do so under the indirect tax enactment, before the appellate forum;
- (k) “designated committee” means the committee referred to in section 125;
- (l) “discharge certificate” means the certificate issued by the designated committee under section 126;
- (m) “enquiry or investigation”, under any of the indirect tax enactment, shall include the following actions, namely:—
 - (i) search of premises;
 - (ii) issuance of summons;
 - (iii) requiring the production of accounts, documents or other evidence;
 - (iv) recording of statements;
- (n) “indirect tax enactment” means the enactments specified in section 121;
- (o) “order” means an order of determination under any of the indirect tax enactment, passed in relation to a show cause notice issued under such indirect tax enactment;
- (p) “order in appeal” means an order passed by an appellate forum with respect to an appeal filed before it;
- (q) “person” includes—
 - (i) an individual;
 - (ii) a Hindu undivided family;
 - (iii) a company;
 - (iv) a society;
 - (v) a limited liability partnership;
 - (vi) a firm;
 - (vii) an association of persons or body of individuals, whether incorporated or not;
 - (viii) the Government;
 - (ix) a local authority;
 - (x) an assessee as defined in rule 2 of the Central Excise Rules, 2002;
 - (xi) every artificial juridical person, not falling within any of the preceding clauses.

- (r) “quantified”, with its cognate expression, means a written communication of the amount of duty payable under the indirect tax enactment;
- (s) “statement” means the statement issued by the designated committee under section 126;
- (t) “tax relief” means the amount of relief granted under section 123;
- (u) all other words and expressions used in this Scheme, but not defined, shall have the same meaning as assigned to them in the indirect tax enactment and in case of any conflict between two or more such meanings in any indirect tax enactment, the meaning which is more congruent with the provisions of this Scheme shall be adopted.

Application of Scheme to indirect tax enactments

121. This Scheme shall be applicable to the following enactments, namely: —

- (a) the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or Chapter V of the Finance Act, 1994 and the rules made thereunder;
- (b) the following Acts, namely: —
 - (i) the Agricultural Produce Cess Act, 1940;
 - (ii) the Coffee Act, 1942;
 - (iii) the Mica Mines Labour Welfare Fund Act, 1946;
 - (iv) the Rubber Act, 1947;
 - (v) the Salt Cess Act, 1953;
 - (vi) the Medicinal and Toilet Preparations (Excise Duties) Act, 1955;
 - (vii) the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
 - (viii) the Mineral Products (Additional Duties of Excise and Customs) Act, 1958;
 - (ix) the Sugar (Special Excise Duty) Act, 1959;
 - (x) the Textiles Committee Act, 1963;
 - (xi) the Produce Cess Act, 1966;
 - (xii) the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972;
 - (xiii) the Coal Mines (Conservation and Development) Act, 1974;
 - (xiv) the Oil Industry (Development) Act, 1974;
 - (xv) the Tobacco Cess Act, 1975;
 - (xvi) the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976;
 - (xvii) the Bidi Workers Welfare Cess Act, 1976;
 - (xviii) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978;
 - (xix) the Sugar Cess Act, 1982;
 - (xx) the Jute Manufacturers Cess Act, 1983;
 - (xxi) the Agricultural and Processed Food Products Export Cess Act, 1985;
 - (xxii) the Spices Cess Act, 1986;
 - (xxiii) the Finance Act, 2004;
 - (xxiv) the Finance Act, 2007;

- (xxv) the Finance Act, 2015;
- (xxvi) the Finance Act, 2016;

(c) any other Act, as the Central Government may, by notification in the Official Gazette, specify.

Tax dues

122. For the purposes of the Scheme, “tax dues” means—

- (a) where—
 - (i) a single appeal arising out of an order is pending as on the 30th day of June, 2019 before the appellate forum, the total amount of duty which is being disputed in the said appeal;
 - (ii) more than one appeal arising out of an order, one by the declarant and the other being a departmental appeal, which are pending as on the 30th day of June, 2019 before the appellate forum, the sum of the amount of duty which is being disputed by the declarant in his appeal and the amount of duty being disputed in the departmental appeal:

Provided that nothing contained in the above clauses shall be applicable where such an appeal has been heard finally on or before the 30th day of June, 2019.

Illustration 1: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs.1000 and amount of penalty of Rs.100. The declarant files an appeal against this order. The amount of duty which is being disputed is Rs.1000 and hence the tax dues are Rs.1000.

Illustration 2: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs.900 and penalty of Rs.90. The declarant files an appeal against this order. The amount of duty which is being disputed is Rs.900 and hence tax dues are Rs.900.

Illustration 3: The show cause notice to a declarant was for an amount of duty of Rs.1000 and an amount of penalty of Rs.100. The order was for an amount of duty of Rs.900 and penalty of Rs.90. The declarant files an appeal against this order of determination. The departmental appeal is for an amount of duty of Rs.100 and penalty of Rs.10. The amount of duty which is being disputed is Rs.900 plus Rs.100 i.e Rs.1000 and hence tax dues are Rs.1000.

Illustration 4: The show cause notice to a declarant was for an amount of duty of Rs.1000. The order was for an amount of duty of Rs.1000. The declarant files an appeal against this order of determination. The first appellate authority reduced the amount of duty to Rs.900. The declarant files a second appeal. The amount of duty which is being disputed is Rs.900 and hence tax dues are Rs. 900;

- (b) where a show cause notice under any of the indirect tax enactment has been received by the declarant on or before the 30th day of June, 2019, then, the amount of duty stated to be payable by the declarant in the said notice:

Provided that if the said notice has been issued to the declarant and other persons making them jointly and severally liable for an amount, then, the amount indicated in the said notice as jointly and severally payable shall be taken to be the amount of duty payable by the declarant;

- (c) where an enquiry or investigation or audit is pending against the declarant, the amount of duty payable under any of the indirect tax enactment which has been quantified on or before the 30th day of June, 2019;
- (d) where the amount has been voluntarily disclosed by the declarant, then, the total amount of duty stated in the declaration;
- (e) where an amount in arrears relating to the declarant is due, the amount in arrears.

Relief available under Scheme.

123. (1) Subject to the conditions specified in sub-section (2), the relief available to a declarant under this Scheme shall be calculated as follows:

- (a) where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June, 2019, and if the amount of duty is,—
- (i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;
 - (ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;
- (b) where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil, then, the entire amount of late fee or penalty;
- (c) where the tax dues are relatable to an amount in arrears and,—
- (i) the amount of duty is, rupees fifty lakhs or less, then, sixty per cent. of the tax dues;
 - (ii) the amount of duty is more than rupees fifty lakhs, then, forty per cent. of the tax dues;
 - (iii) in a return under the indirect tax enactment, wherein the declarant has indicated an amount of duty as payable but not paid it and the duty amount indicated is,—
 - (A) rupees fifty lakhs or less, then, sixty per cent. of the tax dues;
 - (B) amount indicated is more than rupees fifty lakhs, then, forty per cent. of the tax dues;
- (d) where the tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before the 30th day of June, 2019 is—
- (i) rupees fifty lakhs or less, then, seventy per cent. of the tax dues;
 - (ii) more than rupees fifty lakhs, then, fifty per cent. of the tax dues;

- (e) where the tax dues are payable on account of a voluntary disclosure by the declarant, then, no relief shall be available with respect to tax dues.

(2) The relief calculated under sub-section (1) shall be subject to the condition that any amount paid as pre-deposit at any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit, shall be deducted when issuing the statement indicating the amount payable by the declarant:

Provided that if the amount of pre-deposit or deposit already paid by the declarant exceeds the amount payable by the declarant, as indicated in the statement issued by the designated committee, the declarant shall not be entitled to any refund.

Declaration under Scheme

124. (1) All persons shall be eligible to make a declaration under this Scheme except the following, namely:—

- (a) who have filed an appeal before the appellate forum and such appeal has been heard finally on or before the 30th day of June, 2019;
- (b) who have been convicted for any offence punishable under any provision of the indirect tax enactment for the matter for which he intends to file a declaration;
- (c) who have been issued a show cause notice, under indirect tax enactment and the final hearing has taken place on or before the 30th day of June, 2019;
- (d) who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund;
- (e) who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019;
- (f) a person making a voluntary disclosure,—
 - (i) after being subjected to any enquiry or investigation or audit; or
 - (ii) having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it;
- (g) who have filed an application in the Settlement Commission for settlement of a case;
- (h) persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944;

(2) A declaration under sub-section (1) shall be made in such electronic form as may be prescribed.

Verification of declaration by designated committee

125. (1) The designated committee shall verify the correctness of the declaration made by the declarant under section 124 in such manner as may be prescribed:

Provided that no such verification shall be made in case where a voluntary disclosure of an amount of duty has been made by the declarant.

(2) The composition and functioning of the designated committee shall be such as may be prescribed.

Issue of statement by designated committee

126. (1) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, equals the amount declared by the declarant, then, the designated committee shall issue in electronic form, a statement, indicating the amount payable by the declarant, **within a period of sixty days from the date of receipt of the said declaration.**

(2) Where the amount estimated to be payable by the declarant, as estimated by the designated committee, exceeds the amount declared by the declarant, then, the designated committee shall issue in electronic form, an estimate of the amount payable by the declarant **within thirty days of the date of receipt of the declaration.**

(3) After the issue of the estimate under sub-section (2), the designated committee shall give an opportunity of being heard to the declarant, if he so desires, before issuing the statement indicating the amount payable by the declarant:

Provided that on sufficient cause being shown by the declarant, only one adjournment may be granted by the designated committee.

(4) After hearing the declarant, a statement in electronic form indicating the amount payable by the declarant, shall be issued within a period of sixty days from the date of receipt of the declaration.

(5) The declarant shall pay electronically through internet banking, the amount payable as indicated in the statement issued by the designated committee, within a period of thirty days from the date of issue of such statement.

(6) Where the declarant has filed an appeal or reference or a reply to the show cause notice against any order or notice giving rise to the tax dues, before the appellate forum, other than the Supreme Court or the High Court, then, notwithstanding anything contained in any other provisions of any law for the time being in force, such appeal or reference or reply shall be deemed to have been withdrawn.

(7) Where the declarant has filed a writ petition or appeal or reference before any High Court or the Supreme Court against any order in respect of the tax dues, the declarant shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the Court, he shall furnish proof of such withdrawal to the

designated committee, in such manner as may be prescribed, along with the proof of payment referred to in sub-section (5).

(8) On payment of the amount indicated in the statement of the designated committee and production of proof of withdrawal of appeal, wherever applicable, the designated committee shall **issue a discharge certificate in electronic form, within thirty days of the said payment and production of proof.**

Rectification of errors

127. Within thirty days of the date of issue of a statement indicating the amount payable by the declarant, the designated committee may modify its order only to correct an arithmetical error or clerical error, which is apparent on the face of record, on such error being pointed out by the declarant or *suo motu*, by the designated committee.

Issue of discharge certificate to be conclusive of matter and time period

128. (1) Every discharge certificate issued under section 126 with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein, and—

- (a) the declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration;
- (b) the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration;
- (c) no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment.

(2) Notwithstanding anything contained in sub-section (1),—

- (a) no person being a party in appeal, application, revision or reference shall contend that the central excise officer has acquiesced in the decision on the disputed issue by issuing the discharge certificate under this scheme;
- (b) the issue of the discharge certificate with respect to a matter for a time period shall not preclude the issue of a show cause notice,—
 - (i) for the same matter for a subsequent time period; or
 - (ii) for a different matter for the same time period;
- (c) in a case of voluntary disclosure where any material particular furnished in the declaration is subsequently found to be false, within a period of one year of issue of the discharge certificate, it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be instituted.

Restrictions of Scheme

129. (1) Any amount paid under this Scheme, —

- (a) shall not be paid through the input tax credit account under the indirect tax enactment or any other Act;
- (b) shall not be refundable under any circumstances;
- (c) shall not, under the indirect tax enactment or under any other Act, —
 - (i) be taken as input tax credit; or
 - (ii) entitle any person to take input tax credit, as a recipient, of the excisable goods or taxable services, with respect to the matter and time period covered in the declaration.

(2) In case any pre-deposit or other deposit already paid exceeds the amount payable as indicated in the statement of the designated committee, the difference shall not be refunded.

Removal of doubts

130. For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in sub-section (1) of section 123, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to the matter and time period to which the declaration has been made.

Power to make rules

131. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: —

- (a) the form in which a declaration may be made and the manner in which such declaration may be verified;
- (b) the manner of constitution of the designated committee and its rules of procedure and functioning;
- (c) the form and manner of estimation of amount payable by the declarant and the procedure relating thereto;
- (d) the form and manner of making the payment by the declarant and the intimation regarding the withdrawal of appeal;
- (e) the form and manner of the discharge certificate which may be granted to the declarant;

- (f) the manner in which the instructions may be issued and published;
- (g) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

(3) The Central Government shall cause every rule made under this Scheme to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to Issue orders, instructions, etc.

132. (1) The Central Board of Indirect Taxes and Customs may, from time to time, issue such orders, instructions and directions to the authorities, as it may deem fit, for the proper administration of this Scheme, and such authorities, and all other persons employed in the execution of this Scheme shall observe and follow such orders, instructions and directions:

Provided that no such orders, instructions or directions shall be issued so as to require any designated authority to dispose of a particular case in a particular manner.

(2) Without prejudice to the generality of the foregoing power, the Central Board of Indirect Taxes and Customs may, if it considers necessary or expedient so to do, for the purpose of proper and efficient administration of the Scheme and collection of revenue, issue, from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in the work relating to administration of the Scheme and collection of revenue and any such order may, if the said Board is of opinion that it is necessary in the public interest so to do, be published in the prescribed manner.

Removal of difficulties

133. (1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Protection of officers

134. (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Central Government for anything which is done, or intended to be done in good faith, in pursuance of this Scheme or any rule made thereunder.

(2) No proceeding, other than a suit shall be commenced against the Central Government or any officer of the Central Government for anything done or purported to have been done in pursuance of this Scheme, or any rule made thereunder, without giving the Central Government or such officer a prior notice of not less than one month in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause.

(3) No proceeding shall be commenced against any officer only on the ground of subsequent detection of an error in calculating the amount of duty payable by the declarant, unless there is evidence of misconduct.

Part C: Relevant Reference Material

- The Finance Bill, 2019 available on www.indiabudget.nic.in

Note:

- Though all precautions have been taken to make this document error free, still some errors might have crept into this document. Therefore, users of this document are requested to see the relevant Gazette notifications before any legal use.
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