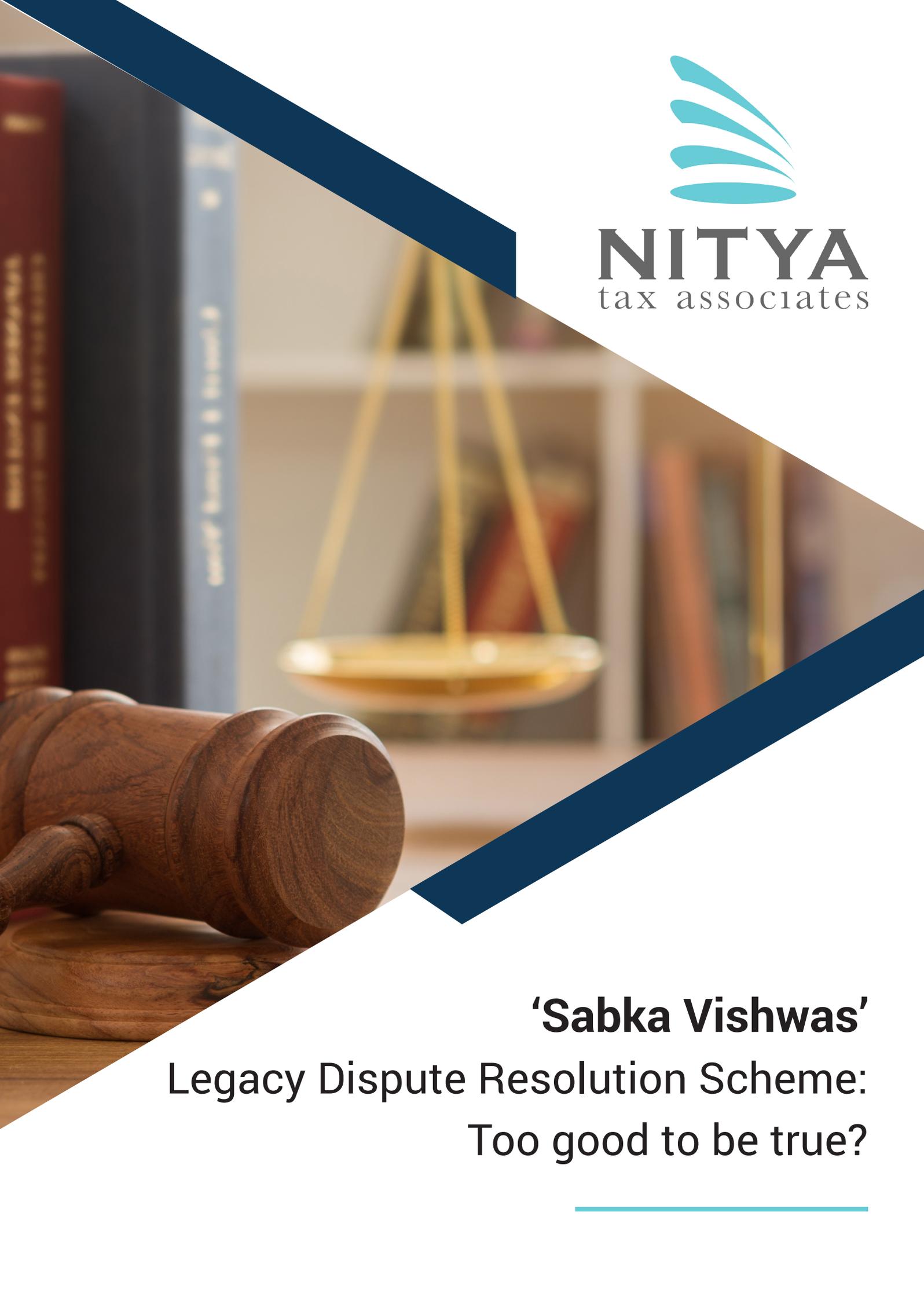




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**‘Sabka Vishwas’
Legacy Dispute Resolution Scheme:
Too good to be true?**

“Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often a real loser – in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough” – Abraham Lincoln

These wise words by the 16th President of the United States make a strong case urging the taxpayers to adopt the Legacy Dispute Resolution Scheme (‘Scheme’).

Enough has already been talked about the wondrous Scheme introduced by our Finance Minister Nirmala Sitharaman in Budget 2019, which has been given the prefix ‘Sabka Vishwas’. With the ripples it is expected to create, another discussion on the Scheme will only assist the taxpayers in making their mind on whether to adopt this scheme or not.

With the cut-throat competition and shrinking profits, no taxpayer can afford risk of extra-ordinary expenses created by unwarranted litigation. As a result, in recent years, taxpayers have largely shifted to take conservative positions and build the additional tax component in prices. Still, several taxpayers remain haunted by the horrors of impending tax dues and penalties.

The pre-dominant reasons why pending tax litigations become critical for taxpayers are:

- Inordinate delay in deciding the matter (which leads to piling interest amounts, often multiple times the basic amount);
- Imposing handsome penalties by the department in all cases; and
- Increasing cost of litigation

Let us understand this with the help of an illustration

Particulars	Amount (in Rs.)
Service tax due in year 2012-13 (when negative list regime was introduced)	10 lakhs
Interest for 5 years (assumed at 18% p.a.) Interest rate under service tax was as high as 30% p.a. between October 1, 2014 to May 13, 2016 and was reduced to 15% p.a. from May 14, 2016	9 lakhs
Penalty of equivalent amount	10 lakhs
Total demand if taxpayer loses 2.9 times the basic tax amount	29 lakhs plus litigation costs



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The Scheme now gives an option to the taxpayer to pay 30% of the basic tax amount (in this case, Rs. 3 lakhs), and the amount of interest and penalty will be waived off.

Isn't it too good to be true?

We have not discussed the nuisances of the scheme. The relief available in various scenarios under the Scheme is covered as Annexure-1 of this article.

Attempt of the Government to reduce litigation

This Scheme is a genuine attempt of the Government to reduce litigation. Prior to this, the Government launched various schemes at Central level wherein the focus was on waiver of interest and penalty only. Similarly, in the past few years, various States such as Gujarat, Rajasthan, Bihar, Himachal Pradesh etc. came forward with Amnesty Schemes. Most of these Amnesty Schemes revolved around waiver of interest and penalty on payment of tax. There has rarely been any scheme which waives part of basic tax demand. The only exception is Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Ordinance, 2019, wherein waiver of 20-50% of tax arrears had been proposed. It is noteworthy that this is the first scheme to allow waiver of tax arrears as high as upto 70%.

Notably, it is also an attempt by the Government to speed up tax collections. The Economic Survey 2017-18 shows that the success rate of department for indirect tax litigation is only 11% and 12% in Supreme Court and CESTAT, respectively (rate is better in High Court at 46%). More than Rs. 3.75 lakh crores is blocked in excise and service tax litigation across various levels.

'A bird in the hand is worth two in the bush' seems to be the intent, and the Government must be looking to fill its coffers with this Scheme.

Careful consideration for opting the Scheme

The taxpayers need to make detailed analysis before opting for this Scheme, considering winning probabilities, similar cases at various levels, possibility of clubbing matters at different levels etc. Where taxpayers have a very good case with them, they should resist the thought of availing the benefit of the Scheme. Also, a taxpayer should consider the litigation cost involved, right up to the level of Supreme Court (if there is a possibility of department to appeal till there).

In the following cases, adoption of the Scheme can prove to be a blessing:

- Matters involving small stakes, where litigation cost is expected to be substantially higher than 30% of tax dues;
- Cases where the Courts have decided the issue against the taxpayer;
- Cases with no judicial backing at taxpayer's end;
- Penalties under Rule 26 levied on companies or personal penalties levied against directors, even if taxpayer continues to litigate the main matter;
- Waiver of interest or penalty, mainly in cases where the taxpayer is litigating only for these amounts and not disputing the basic tax demand, like interest on supplementary invoices under excise regime.

Please note that the above list is illustrative, and one should seek professional assistance to reach at a decision. For example, while the issue of Cenvat credit on outward transportation till customer's premises was decided against the taxpayer in case of CCE v. Ultratech Cement Ltd., 2018 (9) GSTL 337 (SC), some Tribunals have subsequently distinguished the matter and allowed relief. Indeed, there is a very high probability that demand under extended period and penalty will be dropped for this issue. Hence, taxpayer should not jump to avail benefit of the Scheme only because there is a negative decision, but weigh all factors and take an informed call.

Similarly, taxpayers should be very careful in filing the requisite forms under the Scheme. It will be a shame if the taxpayers are denied benefit of the Scheme only because they filled the forms incorrectly.

Concluding words

While applying for the Scheme, a certain level of consciousness is required both at Government as well as taxpayers' level. Additionally, the Government needs to mindfully implement this Scheme to prevent it from ending up on the shelf like the previous ones. One wrong step at either end may lead to impotent results.

Our Prime Minister, Mr. Narendra Modi, once said "We need P2G2 : Pro-people, good governance"

This is exactly what pro-people governance is; a green signal for the taxpayers to settle the erstwhile litigations and move forward. For GST to thrive in India, we need to break free from the shackles of piles of litigation and paperwork. The Government has done its part, the ball now lies in the taxpayer's court!

Situation	Tax Dues	Relief available (as % of Tax Dues)	
		Tax dues Rs. 50 Lakhs or less	Tax dues more than Rs. 50 Lakhs
Appeal before the Appellate Forums / Courts	Tax disputed in the appeal	70%	50%
Show Cause Notice (SCN)	Tax payable in the SCN	70%	50%
Enquiry or investigation or audit initiated	Tax quantified	70%	50%
Voluntarily disclosure	Tax amount disclosed	No relief	
Arrears of tax due including orders not appealed against, tax reported in returns but not paid etc.	Tax amount in arrears	60%	40%

