

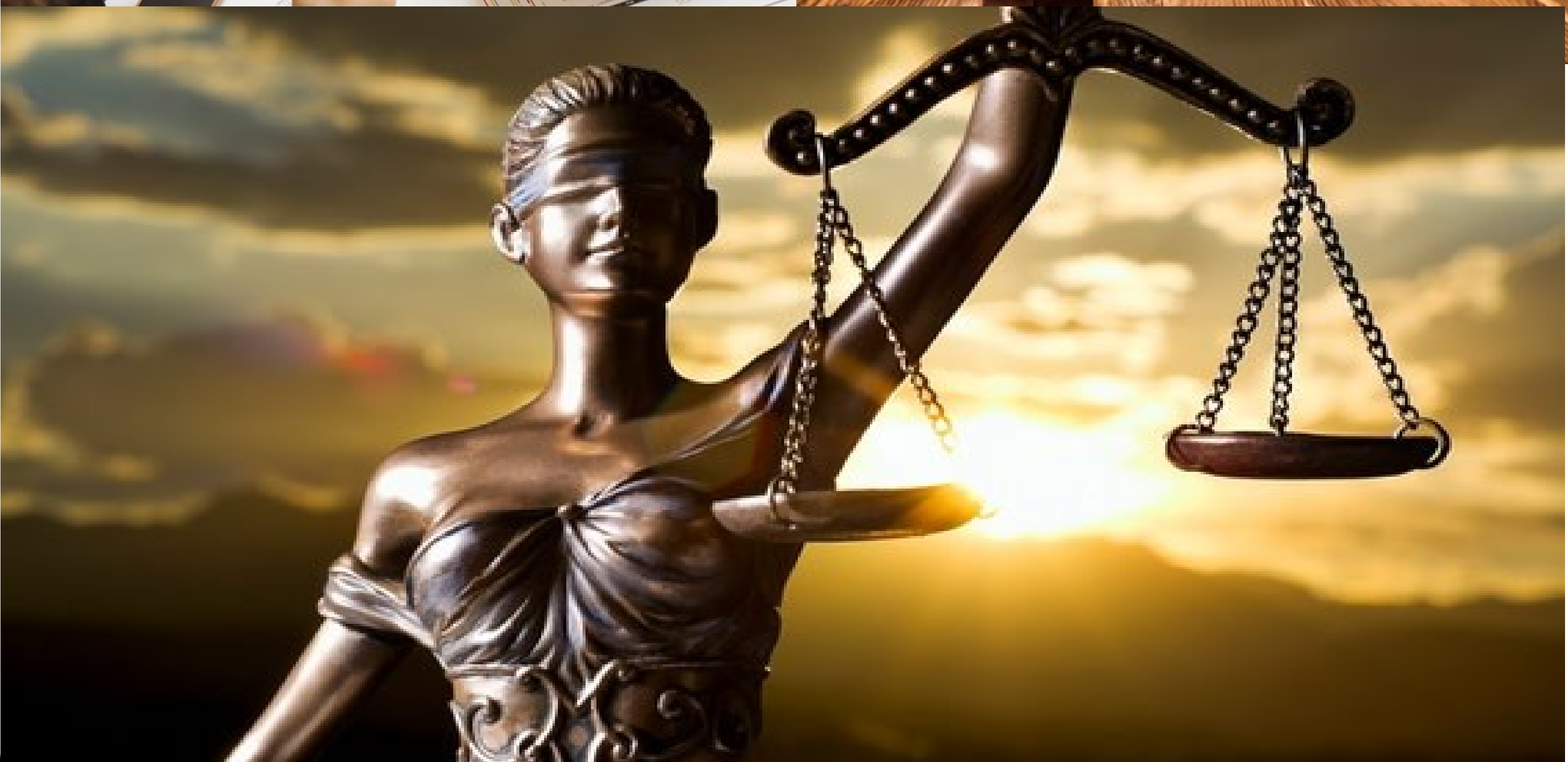

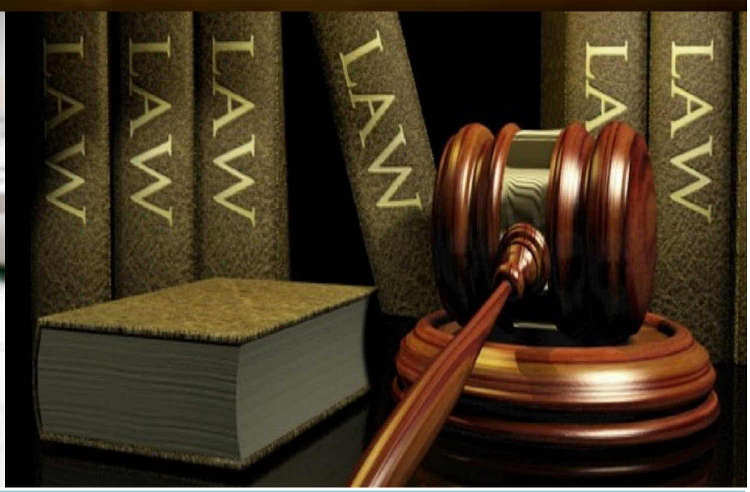

NITYA's Insight | Issue 79 |

Amended Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

December 23, 2019

SABKA VISHWAS (LEGACY DISPUTE RESOLUTION) SCHEME, 2019

The Government vide the Finance Act, 2019 has implemented the *Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ('Scheme')* for settlement of disputes of old Indirect Tax laws (excise and service tax). The Scheme came into force from September 1, 2019 and will remain effective till December 31, 2019.

With each passing day, the Government is striving to remove any doubts by issuing Circulars at regular intervals. Recently, on December 12, 2019, the CBIC issued Circular No.1074/07/2019-CX to provide further clarifications.

We have shared following updates on the Scheme till now:

- NITYA's Insight | Issue 46 | Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 dated September 20, 2019
- NITYA's Insight | Issue 69 | Amended Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 dated November 25, 2019

In these updates, we shared a detailed booklet, capturing the key salient features of the Scheme, relief available thereunder and key points covered under Government's Circular and FAQs.

In furtherance to the recently issued Circular, we have updated our booklet, highlighting the recent clarifications made by inserting a red flag for ease of reference *(clarifications have been updated in the respective Sections)*.

A. Salient features of the Scheme

Sl. No.	Particulars	Details
1.	Relevant provisions	• Notification No.4/2019-CE (NT) dated August 21, 2019 appointed September 1, 2019 as the date on which the Scheme would come into force • Notification No.5/2019-CE (NT) dated August 21, 2019 notified the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 ('Rules') • Circular No.1071/4/2019-CX dated August 27, 2019 ('Circular 1'), 1072/05/2019-CX dated September 25, 2019 ('Circular 2'), 1073/06/2019-CX dated October 29, 2019 ('Circular 3') and 1074/07/2019-CX dated December 12, 2019 ('Circular 4') clarified various aspects relating to the Scheme • Frequently Asked Questions ('FAQs') were issued to answer some of the questions posed by the taxpayers as well as the Revenue authorities *(The above documents are available at http://cbic.gov.in/htdocs-servicetax/Legacy-Dispute)*
2.	Laws covered under the Scheme	• Central Excise Act, 1944 • Central Excise Tariff Act, 1985

		• Chapter V of the Finance Act, 1994 • Additional Duties of Excise (Goods of Special Importance) Act, 1957 • Finance Act, 2001, 2004, 2005, 2007, 2010, 2015 & 2016 (Education Cess, Senior and Higher Secondary Education Cess, SBC and KKC) • 27 different types of Cesses and enactments enumerated under Section 122(b) of the Finance Act 2019 • Finance Act, 2001, 2005 and 2010 and 5 more enactments have been added to the Scheme vide Notification No. 06/2019-CE dated December 4, 2019 • Any other Act notified by the Central Government ***Note:*** *The Scheme does not apply to the Customs Act, 1962 and goods on which excise duty presently applies (covered under the Fourth Schedule of the Central Excise Act, 1944).*
3.	Persons eligible for the Scheme	• Persons who have filed an appeal or against whom an appeal has been filed before Appellate Forum [Supreme Court, High Court, CESTAT and Commissioner (Appeals)] and final hearing has not taken place till June 30, 2019 • Persons who have received Show Cause Notice ('SCN') and final hearing has not taken place till June 30, 2019 • Persons against whom enquiry or investigation or audit has been conducted and amount of duty is quantified before June 30, 2019 • Persons who make voluntary disclosure • Persons who have arrears of tax dues including arrears reported in returns as amount due but not paid
	Where Final Audit Report (FAR) is issued before June 30, 2019, taxpayer does not agree with it and SCN is consequently issued post June 30, 2019, whether the taxpayer can opt for the Scheme?	Audit will be construed to be pending till the issuance of SCN. Therefore, such matters would be covered under the category 'audit, enquiry and investigation'.
	Whether separate declaration is needed	Keeping administrative convenience in view, a person can file single declaration for more than one return where tax is due.

	for each return filed on or before June 30, 2019 where duty / tax is unpaid? In such cases, whether tax relief will be computed basis cumulative tax due or return wise?	However, for calculating tax relief, each return will be considered individually. A single estimate / statement and discharge certificate would be issued for a declaration. **NITYA Comments:** Computation of tax relief basis each return and not cumulatively for all returns, has been kept to rule out any scope for inter return adjustment of tax liability.
	Whether separate declarations are required where audit report contains multiple paragraphs?	The taxpayers can file separate declaration for each paragraph or single declaration for two or more paragraphs.
	What should be the relevant date for testing eligibility under the Scheme where facts are subsequently changed for the following categories: • Appeal(s) pending before the Appellate Forum – Such appeal attained finality post June 30, 2019 • Audit / enquiry / investigation – Tax dues quantified before June 30, 2019. However, show cause notice issued subsequently	Eligibility should be seen basis the facts as on the relevant date i.e. June 30, 2019. Any subsequent change in facts, will not affect the eligibility status.
4.	Persons ineligible for the Scheme	• Persons convicted for offence on the same matter • Persons having proceedings relating to erroneous refunds

		• Persons who make voluntary disclosure after enquiry or investigation or audit • Persons who have filed an application in Settlement Commission which is pending • Persons who make voluntary disclosure and have arrears of tax due reported in return as amount due but not paid • Persons who have filed an appeal before Appellate Forum and final hearing has been concluded by June 30, 2019 • Persons who have received SCN for which final hearing has been concluded by June 30, 2019
	Whether there is a contradiction in the following provisions: <u>Section 124</u> – Scheme is available to persons who have reported arrears of tax in return; and <u>Section 125</u> – Persons ineligible to claim benefit of Scheme covers persons who make voluntary disclosure and have arrears of tax reported in return	A person having disclosed tax dues in return, does not fall under 'voluntarily disclosure' category since it has already disclosed the liability to the department. However, such a person can claim benefit under 'arrears' category. Therefore, there is no contradiction.
	Whether a taxpayer can opt for the Scheme where order was passed before June 30, 2019 and time-limit to file appeal has not lapsed?	A taxpayer can file declaration under the Scheme considering the amount as tax dues under 'arrears' category. The taxpayer must give an undertaking in writing that he will not file any appeal.
	In continuation of the above point, whether a taxpayer can opt for the Scheme where Order was issued before June 30, 2019	The taxpayer can opt for the Scheme. It needs to withdraw the appeal and furnish a declaration to this effect. **NITYA Comments:** A strict interpretation of the Scheme suggests that where a taxpayer files an appeal against an order passed before June 30, 2019, the benefit of the Scheme will not

<table>
<tr><td></td><td>and appeal is filed after June 30, 2019?</td><td>be available. This clarification is beneficial to taxpayers and taxpayers can avail benefit of the same.</td></tr>
<tr><td></td><td>Whether a taxpayer can opt for the Scheme where Order was issued after June 30, 2019?</td><td>The taxpayer can opt for the Scheme in the following manner:

(i) Time-limit to file an appeal has lapsed: Declaration can be filed under the ‘arrears’ category.
(ii) Time-limit to file an appeal has not lapsed: Furnish an undertaking with the department that no appeal will be filed in future and file declaration under the Scheme under the ‘arrears’ category.</td></tr>
<tr><td>5.</td><td>Restrictions</td><td>• Tax dues are not allowed to be paid through ITC
• Tax once paid, is not refundable in any circumstance
• Tax paid, will not be allowed as ITC (to self or to recipient)
• Pre-deposit will be adjusted against tax dues (except for the category of ‘arrears’). If pre-deposit exceeds tax payable, no refund will be granted</td></tr>
<tr><td>6.</td><td>Immunity</td><td>There is immunity against part of tax demand (except under the category of ‘voluntary disclosure’), full interest, full penalty and prosecution for the same matter for the period for which the declaration is filed. There is no immunity for other issues for the same period as well as other periods</td></tr>
<tr><td>7.</td><td>Authorities prescribed under the Scheme</td><td>• Designated Committee (‘DC’) will verify the correctness of declaration filed by a taxpayer
• Constitution of DC, its procedure and functioning prescribed vide Rules, are as under:
<table>
<tr><th>Tax amount due</th><th>Constitution</th></tr>
<tr><td>More than Rs. 50 lakhs</td><td>Principal Commissioner or Commissioner and Additional / Joint Commissioner</td></tr>
<tr><td>Rs. 50 lakhs or less</td><td>Additional / Joint Commissioner and Deputy / Assistant Commissioner</td></tr>
<tr><td>No limit [cases before the Directorate General of Goods</td><td>Principal Additional Director General (Adjudication) or Additional Director General</td></tr>
</table>
</td></tr>
</table>

			and Services Tax Intelligence (DGGI)]	(Adjudication), DGGI and Additional / Joint Director, DGGI

Relief available

The relief available in different scenarios, is tabulated below:

Situation	Tax Dues	Relief available (as % of Tax Dues)	
		Tax dues Rs.50 Lakhs or less	Tax dues more than Rs.50 Lakhs
Appeal(s) before the Appellate Forum	Tax disputed in the appeal(s)	70%	50%
SCN	Tax payable in the SCN	70%	50%
Enquiry or investigation or audit initiated	Tax quantified	70%	50%
Voluntarily disclosure	Tax disclosed	No relief	
Arrears of tax due including orders not appealed against, tax reported in returns but not paid etc.	Tax in arrears (without factoring the tax already paid)	60%	40%
Show Cause Notice for penalty or late fee only	Penalty or late fee amount	Full penalty or late fee	

Important points:

- Amount payable is defined as tax dues less tax relief (Tax dues less tax relief as discussed above).
- Amount in arrears is defined to mean total amount recoverable as arrears of duty on following counts:
  - No appeal filed against an Order-in-Original or Order-in-Appeal before expiry of time for filing of appeal
  - Order attaining finality
  - Declarant filed a return admitting tax liability but has not paid it

Illustrations:

<table>
<tr><th rowspan="3">S. No.</th><th rowspan="3">Brief Description</th><th colspan="4">Relief</th></tr>
<tr><th colspan="2">Rs.50 Lakhs or less (A)</th><th colspan="2">More than Rs.50 Lakhs (B)</th></tr>
<tr><th>Demand</th><th>Amount Payable</th><th>Demand</th><th>Amount Payable</th></tr>
<tr><td>1.</td><td>Appeal before the Appellate Forum</td><td rowspan="3">▪ Tax – Rs.40 Lakhs
▪ Interest – Rs.30 Lakhs
▪ Penalty – Rs.40 Lakhs</td><td rowspan="3">▪ Rs.12 Lakhs (30% of Rs.40 Lakhs)
▪ No interest
▪ No penalty</td><td rowspan="3">▪ Tax – Rs.150 Lakhs
▪ Interest – Rs.90 Lakhs
▪ Penalty – Rs.150 Lakhs</td><td rowspan="3">▪ Tax – Rs.75 Lakhs (50% of Rs.150 Lakhs)
▪ No interest
▪ No penalty</td></tr>
<tr><td>2.</td><td>SCN</td></tr>
<tr><td>3.</td><td>Enquiry or investigation or audit initiated</td></tr>
<tr><td>4.</td><td>Voluntarily disclosure</td><td>▪ Tax – Rs.40 Lakhs
▪ Interest – Rs.30 Lakhs
▪ Penalty – Nil</td><td>▪ Tax – Rs.40 Lakhs
▪ No interest
▪ No penalty</td><td>▪ Tax – Rs.150 Lakhs
▪ Interest – Rs.90 Lakhs
▪ Penalty – Nil</td><td>▪ Tax – Rs.150 Lakhs
▪ No interest
▪ No penalty</td></tr>
<tr><td>5.</td><td>Arrears of tax</td><td>▪ Tax – Rs.40 Lakhs
▪ Interest – Rs.30 Lakhs
▪ Penalty – Rs.40 Lakhs</td><td>▪ Tax – Rs.16 Lakhs (40% of Rs.40 Lakhs)
▪ No interest
▪ No penalty</td><td>▪ Tax – Rs.150 Lakhs
▪ Interest – Rs.90 Lakhs
▪ Penalty – Rs.150 Lakhs</td><td>▪ Tax – Rs.90 Lakh (60% of Rs.150 Lakhs)
▪ No interest
▪ No penalty</td></tr>
<tr><td>6.</td><td>SCN for late fee or penalty only</td><td>▪ Penalty – Rs.20 Lakhs</td><td>▪ No penalty</td><td>▪ Penalty – Rs.150 Lakhs</td><td>▪ No penalty</td></tr>
</table>

B. Procedure under the Scheme

The entire procedure for filing declaration and granting discharge certificate is online. A flowchart of the procedure to be followed under the Scheme, is as under:

Declaration to be filed electronically at https://cbic-gst.gov.in for each case in **Form SVLDRS-1**

↓

Auto acknowledgment bearing a unique reference number will be generated

↓

Declaration to be verified by DC based on furnished particulars except in cases of voluntary disclosure

↓

Statement to be furnished by DC electronically within 60 days from receipt of declaration in **Form SVLDRS-3** stating amount payable

↓

If amount payable (in Form SVLDRS-3) exceeds amount declared, then DC to furnish estimate of the amount payable by declarant in **Form SVLDRS-2** within 30 days of receipt of declaration along with personal hearing notice

↓

Declarant may make written submissions or waive personal hearing or seek adjournment in **Form SVLDRS-2A.**

↓

Payment to be made of the amount indicated in **Form SVLDRS-3** within 30 days of such statement

↓

Discharge Certificate to be issued in **Form SVLDRS-4** within 30 days of submission of proof of payment

C. Circular and FAQs issued by CBIC

S. No.	Issue	Clarification	NITYA comments
1.	Option for taxpayer to opt for only few issues covered in the SCN covering multiple issues.	A person needs to opt for all the issues taken up in a SCN.	-
2.	Scope of tax relief with respect to SCN for late fee and penalty where amount of duty in the notice has been paid or is Nil.	Tax relief shall be entire amount of late fee or penalty.	*There is no specific provision for a case where SCN is issued only for recovery of interest. As such cases are not restricted under the Scheme, benefit of the Scheme will be available in such cases.*
3.	Eligibility to make voluntary disclosure if taxpayer is subjected to enquiry, investigation or audit.	Such taxpayer is not eligible.	*The clarification is vague as every taxpayer is subjected to audit on a regular basis. In our view, the Scheme should not be available only where voluntary disclosure is made in respect of issue identified during enquiry, investigation or audit.*
4.	Coverage of SCN under the Scheme with respect to main noticee and co-noticee.	Relief will be available to co-noticee only if main noticee settles the tax dues.	*The said restriction is not flowing from the Scheme. In our view, co-noticee can apply for relief of penalty irrespective of main noticee opting for the Scheme.*
5.	Availability of Scheme for periodical (subsequent) notices where taxpayer does not opt the Scheme for main notice.	Benefit can be availed for subsequent notice even if benefit has not been availed for the main Notice.	
6.	Implications on opting for Scheme.	Opting for Scheme will not be considered as admission of position by the taxpayer.	*This is an important clarification since the taxpayers were doubtful as to whether they can opt for this Scheme for one period and continue litigating similar case for later period or a different jurisdiction.*

7.	Cenvat credit already reversed or pre-deposit made through Cenvat credit.	Tax already paid through input tax credit during investigation or as pre-deposit, will be considered as an amount paid under the Scheme.	*This clarification was needed since the Scheme has a condition that the amount due under the Scheme cannot be paid through credit. This clarifies that the credit already reversed will be considered as tax already deposited and will be adjusted against the amount due.*
8.	Re-scheduling of final hearing where initial hearing took place before June 30, 2019.	If final hearing took place before June 30, 2019 and there is re-scheduling of hearing due to change in bench or officer, benefit of this Scheme can be taken.	
9.	Adjustment of pre-deposit where amount deposited post issuance of SCN and adjudication is pending.	In such cases, pre-deposit could not be adjusted / appropriated due to pendency of adjudication. Such amount would be adjusted from the amount payable as stated in Form SVLDRS – 3.	
10.	Relevant date i.e. June 30, 2019 was Sunday (a public holiday).	Relevant date shall be July 1, 2019 for the Scheme instead of June 30, 2019.	
11.	Applicability of requirement to indicate PAN in Form SVLDRS – 1 (Sr No. 7 of Part A and B) in the following cases: • Units closed before introduction of PAN based excise registration • Overseas service providers	Requirement of indicating PAN is not mandatory in such cases.	

Disclaimer:

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