NAGPUR BRANCH OF WIRC OF ICAI
SEMINAR ON SERVICE TAX
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VOULANTARY COMPLIANCE ENCOURAGEMENT SCHEME 2013

By,

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Finance Ministers Speech on the VCES on Budget day :-

"183. While there are nearly 17,00,000 registered assessees under service tax, only about 7,00,000 file returns. Many have simply stopped filing returns. We cannot go after each of them. I have to motivate them to file returns and pay the tax dues. Hence, I propose to introduce a one-time scheme called 'Voluntary Compliance Encouragement Scheme'. A defaulter may avail of the scheme on condition that he files a truthful declaration of service tax dues since 1.10.2007 and makes the payment in one or two instalments before prescribed dates. In such a case, interest, penalty and other consequences will be waived. I hope to entice a large number of assessees to return to the tax fold. I also hope to collect a reasonable sum of money."

VCES is the One time Scheme for the truthful declaration of the service tax dues. As we move ahead with the discussions on the proposals of the scheme it would be revealed that this scheme is extremely defaulter friendly. The person who wants to Opt for the scheme has to file a declaration in the prescribed format to the designated authority.

Viewing the scheme from one side it appears to be extremely attractive for defaulters to comply with and gain immunity from Interest, Penalties & other proceedings in the process. Another view could be that an amnesty scheme such as the scheme reflects weak enforcement capabilities of the government. If that be the case, then the entire objective behind spreading the service tax base would be futile.

Let us discuss the proposals of the scheme in detail……..

Q.1 What are the governing Provisions for VCES ?

Ans:-VCES shall be governed by :

(a) Chapter VI (Newly inserted) of Finance Act 1994 (**Sec 104 to 114**)

(b) Service Tax Voluntary Compliance Encouragement Rules 2013

Q.2 What kind of Service tax is covered under this scheme ?

Ans :- As per section 105(1)(e) of the chapter VI "TAX DUES" means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013.

Therefore, in simple terms, any person may file a declaration in pursuance of this scheme to declare his tax dues for the period ranging between 01.10.2007 to 31.12.2012 (both dates included).

Q.3. I have some CENVAT erroneously accumulated in my returns, which is carrying forward till date, whether I can use VCES scheme for regularizing my credit?

Ans:- This is scheme is for the payment of service tax under this chapter and not for the reversal of the CENVAT and hence such reversal is not eligible here. However since the amount has not been utilized there may not be the implication of interest and penalty.

Q.4. Whether a person who is liable to pay tax as a recipient of service is eligible to avail the VCES scheme?

Ans:- The memorandum to the budget states that the scheme is available to non-filers, stop-filers, non-registrants and service providers. However, on perusal of the scheme it states that tax dues means any amounts due under the chapter V or any other chapter which means that even amounts paid by the recipient of service shall be covered by this scheme. Example : Service tax short paid by service recipient for GTA Service, Import of services, Sponsorship etc.

Q.5. Who is eligible to opt for the scheme?

Ans:- When the scheme was announced, it was assumed that the same would be applicable only to existing assessees in default as a phrase was used while announcing the scheme i.e. **"stop filers, non filers and persons making untrue disclosure".**

However, **Rule 3 of the Service Tax Voluntary Compliance Encouragement Rules 2013** states that any person who wishes to make a declaration in pursuance of this scheme and is not already registered, shall first get himself registered under Rule 4 of the Service Tax Rules 1994. Same view has been taken in the clarification to issue no. 1 in **Circular No. 169/4/2013-ST** dated 13.05.2013 which has been issued for giving certain clarifications with regard to implementation of the VCES. Thus the persons who are not registered & persons who are registered but has not paid their tax dues or had not filed returns for the period 1st Oct 2007 to 31st Dec 2012 can opt for the scheme.

Q.6. Who are not eligible to opt for the scheme?

Ans:-These provisions are incorporated in Sec 106 of the chapter VI . The following persons are ineligible to opt for the scheme.

1) On whom a show cause notice or order of determination of service tax (Commonly known as OIO) has been issued on or before 01.03.2013.

2) Those who have filed their return for the period between Oct 2007 to Dec 2012 & disclosed the service tax liability , but not paid the service tax liability for such period so far.

3) If a show cause notice or order has been issued / passed in respect of any part of the period between 01.10.2007 to 31.12.2012, for the same issue, the service provider cannot opt for the scheme, for remaining period for which no notice or order is issued.

For example, if a show cause notice has been issued covering the period 01.01.2008 to 31.12.2008, denying abatement, the person cannot opt for this scheme for the period 01.01.2009 to 31.12.2009, accepting the denial of abatement.

VCES

4) Service providers on whom any enquiry, investigation, or audit has been initiated
and such enquiry, investigation or audit is pending as on 01.03.2013.

Now what do u mean by Enquiry or Investigation pending :

=> if any search has already been conducted in terms of Section 82.

=> If any summons has already been issued under section 14 of the CE Act, as made
applicable to service tax.

=> If any accounts, documents or other details have already been called for by the
department.

VCES

⇒ An audit has already been initiated.

In other words, those service providers who have not paid their service tax liability for the prescribed period and have not at all caught the attention of the department till 01.03.2013 alone can opt for the scheme.

Q.7. Whether the department can Reject the declaration filed ?

Ans:-Yes the Designated officer can reject the declaration. Section 106(2) casts a very crucial restriction on utilization of the present VCES. Under the provisions of this sub-section, the designated authority shall invariably reject any declaration (by order and after recording his reasons) in the following circumstances:

(a) Where any inquiry or investigation in respect of short levy or short payment of tax has been initiated against the person making declaration by way of:

i. Search u/s 82 of the Act

ii. Issuance of summon u/s 14 of the Central Excise Act 1944

iii. Notice requiring production of accounts, documents or any other evidence.

and such inquiry or investigation is pending as on 01.03.2013.

(b) Where an audit has been initiated in respect of the person making such declaration and such audit is pending as on 01.03.2013.

One matter that might start tickling our brains is that in a country like ours where everyday thousands of inquiry letters are being issued by the department on the assessee, whether we would be able to find any person who can actually pass the litmus test of section 106(2)? The answer lies in **Circular No. 169/4/2013-ST dated 13.05.2013.** The clarification issued in respect of query no. 4 is vital for this purpose. The query was:

What is the scope of section 106 (2)(a)(iii)?

Whether a communication from department seeking general information from the declarant would lead to invoking of section 106 (2) (a)(iii) for rejection of declaration under the said section?

The clarification to this issue was:

Section 106 (2) (a)(iii) of the Finance Act, 2013 provides for rejection of declaration if such declaration is made by a person against whom an inquiry or investigation in respect of service tax not levied or not paid or short-levied or short paid, has been initiated by way of requiring production of accounts, documents or other evidence under the chapter or the rules made thereunder, and such inquiry or investigation is pending as on the 1st day of March, 2013.

The relevant provisions, beside section 14 of the Central Excise Act as made applicable to service tax vide section 83 of the Finance Act,1994, under which accounts, documents or other evidences can be requisitioned by the Central Excise Officer for the purposes of inquiry or investigation, are as follows,-

(i) Section 72 of the Act envisages requisition of documents and evidences by the Central Excise Officer if any person liable to pay service tax fails to furnish the return or having made a return fails to assess the tax in accordance with the provision of the Chapter or rules made thereunder.

(ii) Rule 5A of the Service Tax Rules, 1994 prescribes for requisition of specified documents by an officer authorised by the Commissioner for the purposes specified therein.

The provision of section 106 (2)(a)(iii) shall be attracted only in such cases where accounts, documents or other evidences are requisitioned by the authorised officer from the declarant under the authority of any of the above stated statutory provisions and the inquiry so initiated against the declarant is pending as on the 1st day of March, 2013.

No other communication from the department would attract the provisions of section 106 (2)(a)(iii) and thus would not lead to rejection of the declaration.

Therefore, it can be concluded that though the wordings of the section are quite stringent but the legislative intent **of section 106 (2)(a)(iii)** is to reject a declaration only in such circumstances where accounts, documents have been required u/s 72 (during best judgment assessment) or under Rule 5A of Service Tax Rules 1994 (by an officer authorized by commissioner in regards access to any registered premises is concerned)

Q.8 The audit party of the department has visited the premises of an assesse during 2011. No further communication has been received by them. Can that person opt for this scheme?

Ans:- It depends upon the fact whether the department has noticed any irregularity during such audit, for which the service provider intends to opt for the scheme. As far as the service provider is concerned he can opt for the scheme and file the declaration. If the department is able to prove from their files that the particular issue which is sought to be opted for this scheme has already been noticed by the audit, the application for this scheme can be rejected by the department.

Q.9. How to make a declaration and comply with the scheme:

Ans:-The procedure to be followed for filing declaration and thereafter its compliance has been laid out u/s 107 of the Chapter read with Rules 4, 5, 6 & 7 of the Service Tax Voluntary Compliance Encouragement Rules 2013.

- A declaration under this scheme shall be submitted to the Designated Officer (DO) [an officer not below Assistant Commissioner as may be notified by the Commissioner – sec 105(1)(c)]. The form to be used for this purpose is **Form VCES-1**. This declaration shall have to be filed positively by 31.12.2013.

- Upon receiving such a declaration the DO shall acknowledge the same by issuing a receipt in **Form VCES-2** within a period of 7 working days from the date of receipt of declaration.
- The declarant shall pay the tax as declared by him in Form VCES-1 as follows:
- Not less than 50% of total tax dues – on or before 31.12.2013
- Balance Tax dues shall be paid:
- By 30.06.2014 – without interest
- On and from 01.07.2014 – along with interest as applicable u/s 75 or 73B
- The declarant shall furnish particulars of such tax payment to the DO from time to time. With every such intimation, the declarant shall annex a copy VCES-2.

Q.10. I have sufficient balance in the cenvat credit account to pay the Tax dues after the declaration is made. Can I utilize the credit to pay the tax dues ?

Ans:- It is most important to note here that the declared tax dues cannot be paid by utilization of Cenvat Credit balance available with the declarant, if any. [Rule 6(2) of VCES Rules 2013]. Rule 6(2) appears to be draconian. It says CENVAT credit shall not be utilised for payment of tax dues under the Scheme. It is settled law that even in cases of clandestine clearances, CENVAT Credit is allowed. It is not known what is the intention behind such condition, but it will surely take the ENCOURAGEMENT out of the scheme if there is really any.

Q.11. Whether immunity from prosecution will also be granted?

Ans :- Yes. Immunities from all further proceedings under Chapter V of the Finance Act, 1994 will be granted, which includes prosecution also.

Q.12. What if, after filing the declaration, the tax dues are not paid, either in full or in part?

Ans:- The department can straightaway proceed to recover the same, as per the procedure under Section 87 of the Finance Act, 1994. There is no need to issue any further show cause notice.

Q.13. If the department recovers the tax dues by usage of section 87 of the FA, 1994, will the declarant get any immunity from penalty, interest or any other proceeding under the Chapter V of the Finance Act, 1994.

Ans :- The answer probably lies in the **NEGATIVE** for the reason that section 108(1) of the FA, 2013 grants such immunities if the "declarant, on his own, pays the tax dues declared by him under sub-section (1) of section 107 and the interest payable under the proviso to sub-section (4) thereof".

Q.14. I have a service tax demand confirmed against me, against which I have filed an appeal before the Tribunal which is pending. Can I opt for this scheme?

Ans :- No.

Q.15. I have lost my case before the Commissioner (Appeals) and I have not filed any further appeals. I am yet to pay the confirmed demands. Can I opt for this scheme?

Ans :- No.

VCES

Q.16.Can the department refuse to accept my declaration and refuse to grant me the immunities?

Ans:- These provisions are provided in section 107 of chapter VI . If the Commissioner is of the view that the declaration is substantially false (which means that the service tax liability declared is lower than the actual liability), then the Commissioner may issue show cause notice for recovery of such service tax and thereafter the usual adjudication proceedings will follow. But no such notice can be issued after one year from the date of filing declaration.

VCES

Q. 17. How the proceedings under the scheme will come to end?

Ans:- Having made the declaration in Form VCES-1, the service provider shall obtain an acknowledgement thereof in VCES-2 which shall be issued within 7 days of the filing of declaration.

Thereafter he has to inform the designated authority of all the payments made by him in pursuance of the declaration. Finally a discharge certificate will be issued by the designated authority in Form VCES-3 which should be the conclusion of the proceedings.

VCES

Q.18. What is the remedy for those to whom show cause has already been issued, if they do not wish to dispute their liability, either party or fully?

Ans :- They can opt to file an application before the Settlement Commission, subject to other conditions. This facility is already available now in Service Tax.

Q.19. Is there any minimum limit of service tax liability to be admitted in the scheme ?

Ans :- No.

Q.20. I have filed my returns for the period 01.10.2007 to 31.03.2008 but not paid service tax for the period. Thereafter I have neither filed my returns nor paid the service tax liability? Am I eligible to opt for the scheme? If so, to what extent?

Ans :- You can opt for the scheme for the period from 01.04.2008 to 31.12.2012. You cannot opt for the scheme for the period 01.10.2007 to 31.03.2008.

Q.21. I have not paid my service tax liability for the period from 01.01.2012 to 28.02.2013. For what period I can opt for the scheme?

Ans :- You can opt for the scheme only for the period from 01.01.2012 to 31.12.2012. The liability for the period after 01.01.2013 shall be paid along with interest and attendant penalties as may be levied.

Q.22. I have opted for the scheme & paid the 50% Tax dues before 31.12.2013. Subsequently My chartered accountant has informed me that my services are exempted. Thus can I file the refund claim for the Tax paid under the scheme ?

Ans :- No , you would not get the refund of service tax paid under the scheme in any circumstances as the relevant provisions specifically debars from granting the refund claim. It is interesting to note that under Normal Circumstances for the service tax paid erroneously there is a provision for refund of service tax u/s 11B of the central excise Act made applicable to service tax. But sec 11B is not made applicable to the Tax paid under the scheme.

Q.23. Can the service receiver take a credit of tax dues paid by me based on the supplementary invoices issued by the declarant under rule 9 of the CCR, 2004 ?

Ans:-The VCES is silent on this issue. Appropriate clarification is needed from CBEC on this issue.

Q.24. I am proving exempted service, but had erroneously collected service tax on the same, but did not remit to Govt. Will I be eligible for this scheme?

Ans:- Yes this scheme is not only for the tax, but also for the amount payable under section 73A which is for depositing the amount collected representing as service tax.

Q.25. I was subject to audit, but there was no discrepancies found by the audit party and the audit was concluded giving Nil audit report. Now for such audit period can I claim the benefit of this scheme?

Ans:- Yes the restriction is only in case the audit has been initiated, which indicate that the audit is pending and hence once the audit is concluded there is no bar on claiming the benefit of such exemption subject to satisfaction of all other requirement.

Q. 26. Is it just to waive the interest and penalties for a service provider who had evaded payment of service tax and not caught till now, whereas, those who are already caught would be liable to penalties and interest? Even if they opt for Settlement Commission, no waiver of interest would be granted. What is the respect for the law abiding service providers who have diligently paid their service tax liabilities in time?

Ans:- These sort of immunity schemes are devised with a view to avoid litigation and to garner revenue. Off course, morally, grant of immunities to evaders would discourage honest tax payers.

THANKS

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