

## DECLARATION UNDER THE SCHEME

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### 2.1 DECLARANT TO BE SUBMIT DECLARATION

The first step in Amnesty Scheme is that declarant should file declaration.

**Declarant** - ‘Declarant’ means a person who is eligible to make a declaration and files such declaration under section 125 of Finance (No. 2) Act, 2019 - section 121(h) of Finance (No. 2) Act, 2019.

**Declaration** - ‘Declaration’ means the declaration filed under section 125 of Finance (No. 2) Act, 2019 - section 121(i) of Finance (No. 2) Act, 2019.

**Person** - ‘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 - section 121(q) of Finance (No. 2) Act, 2019.

#### 2.1-1 Declaration alone cannot basis for issue of show cause notice - Immunity from SCN

A declaration under this Scheme will not be a basis for assuming that the declarant has admitted the position, and no fresh show cause notice will be issued merely on that basis - para 10(a) of CBI&C of Circular No. **1071/4/2019-CX.8, dated 27-8-2019.**

It is really a good clarification. Let us hope it is followed by officers in proper spirit.

## 2.1-2 Taxes to which the scheme is applicable

As per section 122 of Finance (No. 2) Act, 2019, the ‘Sabka Vishwas’ 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 (which consists of service tax provisions) 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.

## 2.2 WHO IS ELIGIBLE TO SUBMIT DECLARATION UNDER AMNESTY SCHEME

The declarant has to file separate declaration of each ‘case’.

For the purpose of Rule 3 of Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019, a ‘case’ means -

- (a) a show cause notice, or one or more appeal arising out of such notice which is pending as on 30-6-2019; (*but not when final hearing has taken place, though order has not been issued by 30-6-2019*) or
- (b) an amount in arrears (*confirmed liability*) or
- (c) an enquiry or investigation or audit where the amount is quantified on or before the 30-6-2019 (but not if amount was not quantified) or
- (d) a voluntary disclosure (without any investigation, enquiry or audit)

See *Explanation* to rule 3 of Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019.

**Amount in arrears** - ‘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 - section 121(c) of Finance (No. 2) Act, 2019.

**Order** - ‘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 - section 121(o) of Finance (No. 2) Act, 2019.

**Order in appeal** - ‘Order in appeal’ means an order passed by an appellate forum with respect to an appeal filed before it - section 121(p) of Finance (No. 2) Act, 2019. The appeal should be pending on 30-6-2019. Thus, if appeal is filed after 1-7-2019, declaration under the scheme cannot be filed - answer to Q 7 of FAQ released by CBI&C on 23-8-2019.

**Appeal should be pending as on 30-6-2019** - The appeal should be pending on 30-6-2019. Thus, if appeal is filed after 1-7-2019, declaration under the scheme cannot be filed - Q 7 of FAQ released by CBI&C on 23-8-2019.

Possibly, appellant can withdraw the appeal and then file declaration.

### **2.2-1 Each Show Cause Notice is separate ‘case’ - That SCN cannot be further split**

One Show Cause Notice cannot be split into various ‘cases’.

CBI&C, *vide* para 10(i) of Circular No. **1071/4/2019-CX.8**, dated **27-8-2019** has clarified as follows—

Many a times a show cause notice covers multiple matters concerning duty liability. It is clarified that a declarant cannot opt to avail benefit of scheme in respect of selected matters. In other words, the declarant has to file a declaration for all the matters concerning duty liability covered under the show cause notice.

## 2.3 WHO CANNOT MAKE DECLARATION UNDER THE SCHEME

All persons shall be eligible to make a declaration under the ‘*Sabka Vishwas*’ scheme except the following, as per section 125(1) of Finance (No. 2) Act, 2019.

### 2.3-1 Appeal heard finally but no order till 30-6-2019, cannot make declaration

Persons who have filed an appeal before the appellate forum and such appeal has been heard finally on or before 30-6-2019 cannot make declaration - section 125(1)(a) of Finance (No. 2) Act, 2019. [Funny provision. If order has been issued by appellate authority or if appeal is pending, he can go for the scheme but not when hearing is completed].

The intention seems to be increase in litigation, not reducing it.

To get over this hurdle, assessee may file miscellaneous application before Appellate Authority with some submissions and apply for personal hearing [principles of natural justice]. Then it can be argued that hearing is not completed.

In my view, this discrimination can be challenged in writ petition, as it seems to be without any rhyme or logic. I cannot see any rational basis in such arbitrary discrimination.

**Appellate forum** - ‘Appellate forum’ means the Supreme Court or the High Court or the Customs, Excise and Service Tax Appellate Tribunal or the Commissioner (Appeals) - section 121(f) of Finance (No. 2) Act, 2019.

### 2.3-2 Person convicted of offence under provision of indirect taxes cannot make declaration

Person who has been convicted for any offence punishable under any provision of the indirect tax enactment cannot submit declaration *for the matter for which he intends to file a declaration* - section 125(1)(b) of Finance (No. 2) Act, 2019.

He can file declaration in respect of other matter.

There will be very few such persons indeed, as such persons are normally beyond ordinary laws.

### **2.3-3 Person to whom SCN issued and final hearing has taken place cannot submit declaration**

Person who have been issued a show cause notice, under indirect tax enactment and the final hearing has taken place on or before 30-6-2019 cannot submit declaration - section 125(1)(c) of Finance (No. 2) Act, 2019.

Absurd provision. If SCN is pending or order issued, he can submit declaration but not when hearing is over. I cannot understand logic behind this.

Is the intention to increase litigation or reduce litigation?

To get over this silly provision, assessee may make further submissions (stating they are important) to adjudicating authority and apply for personal hearing [principles of natural justice]. Then it can be argued that hearing is not completed.

In my view, this discrimination can be challenged in writ petition, as it seems to be without any rhyme or logic. I cannot see any rational basis in such arbitrary discrimination.

### **2.3-4 Person who has been issued SCN for erroneous refund or refund cannot make declaration**

Person who has been issued a show cause notice under indirect tax enactment for an erroneous refund or refund cannot submit declaration under the Scheme - section 125(1)(d) of Finance (No. 2) Act, 2019.

I cannot understand how a person claiming refund will submit any declaration under the scheme, as declaration can be only when some amount is payable by him and not receivable by him.

### **2.3-5 Person who has been under investigation, enquiry or audit but amount not quantified cannot make declaration**

Person who has 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 30-6-2019 cannot make declaration under the scheme - section 125(1)(e) of Finance (No. 2) Act, 2019.

[Unable to understand logic. A person can make declaration if amount quantified but *not* when amount is not quantified]. Unexplainable and illogical discrimination.

Really he should be allowed to make 'voluntary disclosure' instead of 'declaration'.

**Quantified** - 'Quantified', with its cognate expression, means a written communication of the amount of duty payable under the indirect tax enactment - section 121(*r*) of Finance (No. 2) Act, 2019.

**Amount of duty** - 'Amount of duty' means the amount of central excise duty, the service tax and the cess payable under the indirect tax enactment - section 121(*d*) of Finance (No. 2) Act, 2019.

### **2.3-6 Person who has filed application with Settlement Commission cannot make declaration**

Person who has filed an application in the Settlement Commission for settlement of a case cannot make a declaration - section 125(1)(*g*) of Finance (No. 2) Act, 2019.

[why put unnecessary restrictions, if intention is to reduce litigation?]

However, in many such cases, proceedings before the Settlement Commission may abate due to reasons such as rejection of the application by the Commission or due to order of the Commission not being passed within the prescribed time etc. In that case, the matter reverts to the original authority. In such cases, declaration under the scheme is permissible. Similarly, if any other appeal or SCN is pending in respect of similar matter, declaration under the scheme can be filed - para 10(*f*) of CBI&C Circular No. **1071/4/2019-CX.8, dated 27-8-2019.**

### **2.3-7 No declaration in respect of petroleum and tobacco products**

Person seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944 cannot make declaration under the Scheme - section 125(1)(*h*) of Finance (No. 2) Act, 2019.

Schedule IV of Central Excise Act covers (*a*) tobacco and manufactured tobacco substitutes, which are covered in Chapter

24 of Customs Tariff Act (and Chapter 24 of erstwhile Central Excise Tariff Act) and (b) petroleum products which are covered in Chapter 27 of Customs Tariff Act (and Chapter 27 of erstwhile Central Excise Tariff Act).

### **2.3-8 The restrictions above apply to particular ‘case’ and not to a person**

The restrictions in making declaration under section 125(1) of Finance (No. 2) Act, 2019 apply to a ‘case’ and not to a ‘person’. Thus, if a person is debarred from making declaration under a particular clause in a particular ‘case’, he can make declaration in respect of other ‘case’ if he is otherwise eligible.

It has clarified that the exception from eligibility is for 'the case' and not 'the person'. For example, if a person has been issued a show cause notice for a refund/erroneous refund and, at the same time, he also has other outstanding disputes which are covered under this scheme, then, he will be eligible to file a declaration(s) for the other case(s). Same position will apply to persons covered under Section 125(1)(a), (b), (c), (e) and (g) - para 10(b) of CBI&C, *vide* para 10(i) of Circular No. **1071/4/2019-CX.8, dated 27-8-2019**.

### **2.3-9 No declaration if appeal filed after 1-7-2019**

The appeal should be pending on 30-6-2019. Thus, if appeal is filed after 1-7-2019, declaration under the scheme cannot be filed - Q 7 of FAQ released by CBI&C on 23-8-2019.

Possibly, appellant can withdraw the appeal and then file declaration.

## **2.4 VOLUNTARY DISCLOSURE**

Though the provisions in Chapter V of Finance (No. 2) Act, 2019 do not clearly say so, there is distinction between ‘declaration’ and ‘voluntary disclosure’.

***No relief in ‘tax dues’ when tax dues voluntarily disclosed without audit, investigation etc.*** - Where the tax dues are payable on account of a voluntary disclosure by the declarant, on his