

Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019—Is It an Absolute End of Pre-GST Regime?



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SABKA VISHWAS (Legacy Dispute Resolution) Scheme, 2019, among the welcoming steps of the Government, appears to be similar to the schemes introduced recently by Maharashtra, Karnataka, West Bengal and Gujarat to conclude the matters relating to VAT. Union Finance minister has proposed a dispute resolution cum amnesty scheme called Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (“LDR Scheme”) for the resolution of legacy cases of mainly the central excise and service tax. In this write-up, the authors wish to discuss and highlight criticality the ambiguity and outcome of the proposed Scheme. Read on...



In spirit of the ease of doing business and to let the exchequer loaded with fund simultaneously giving relief to the businesses from the legacy of litigation, the SABKA VISHWAS (Legacy Dispute Resolution) scheme 2019 will be one among the welcoming steps of the Government. This scheme seems to be broadly similar to schemes recently introduced by the states of Maharashtra, Karnataka, West Bengal and Gujarat to conclude matters related to VAT.

Finance Minister in her maiden finance bill has proposed a dispute resolution cum amnesty scheme called “*The Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019*” (LDR Scheme). The introduction of LDR Scheme, 2019 was with the following words-

“GST has just completed two years. An area that concerns me is that we have huge pending litigations from pre-GST regime. More than

3.75 lakh crore is blocked in litigations in service tax and excise. There is a need to unload this baggage and allow business to move on. I, therefore, propose, a Legacy Dispute Resolution Scheme that will allow quick closure of these litigations. I would urge the trade and business to avail this opportunity and be free from legacy litigations.”

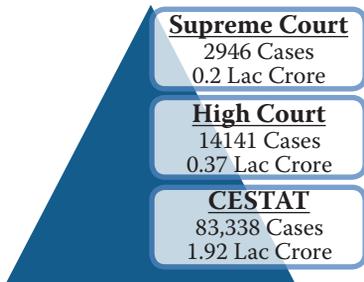
This scheme has been introduced for resolution and settlement of legacy cases of mainly of Central Excise and Service Tax, further includes various central legislatures. The proposed Scheme covers past disputes of taxes which have got subsumed in GST namely Central Excise, Service Tax and Cesses. All persons are eligible to avail the scheme except a few, almost every pending litigation has been covered except a few which are *sub judice* for final consideration before any appellate forum as on 30.06.2019.

Union Budget 2019

Motivation behind Introduction of LDR Scheme, 2019

The government's efforts to make business and commerce easy have been widely acknowledged. The next frontier on the ease of doing business is addressing pendency, delays and backlogs in the appellate and judicial arenas. These are hampering dispute resolution and contract enforcement, discouraging investment, stalling projects, hampering tax collections but also stressing taxpayers, and escalating legal costs.

The picture of the pendency of case of indirect taxes shown in figure as of the quarter ending March 2017, a total of 1.45 lakh appeals were pending with the Commissioner (Appeals), CESTAT, HCs and the SC together, that were valued by the Department at 12.62 lakh cores as on last quarter of 2017. The following are the pending cases at all level of the courts and tribunal in the indirect taxes-



Further more interesting fact is success rate of the Department at all three levels of appeal-Appellate Tribunals, High Courts, and Supreme Court-- and for both direct and indirect tax litigation is under 30%. In some cases it is as low as 12%. The Department unambiguously loses 65% of its cases. Over a period of time, the success rate of the Department has only been declining, while that of the assesses has been increasing.

Petition rate & Success rate of tax department in indirect tax cases		
Court/ Tribunal	² Petition rate	³ Success rate
Supreme Court	63%	11%
High Court	39%	46%
CESTAT	20%	12%

¹ Chapter 9- Ease of Doing Business' Next Frontier: Timely Justice of Economic Survey 2017-18

² Petition rate means, % of petition filed by the revenue department in case decided in favor of assessee

³ Success rate means, % of cases where the appeals decided in favour of revenue department.

The figures and pendency as discussed above are only of the pre GST regime, however GST in itself coming up with the anticipation of the massive litigation on the various front simultaneously even in the first 2 years of its inception. The issues in the ailment & eligibility of the input tax credit, transitional issues, EWAY bill & detention of the vehicle/goods, Advance rulings and Anti-profiteering, litigation is coming in the various form, which required a lot of manpower of the revenue authorities and brainstorming to avoid the lower success rate as in the PRE GST regime.

Therefore, by introducing the amnesty scheme like LDR Scheme 2019, will end up the pre GST dispute, which is taking time and manpower of the revenue authority unnecessarily, will end up the legacy of the dispute of PRE GST regime and let both revenue and taxpayer in the win-win situation as success rate of the revenue authority is not too good.

Features of the Scheme

The Scheme is a onetime 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 shall be enforced by the Central Government from a date to be notified. The authors hereby discussing the highlights and features of the proposed scheme-

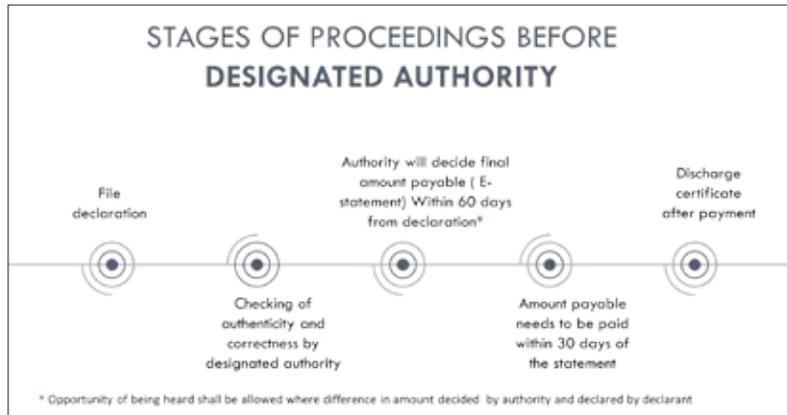
1. The Scheme shall become available from a date to be notified. The procedural details and rules regarding the Scheme shall be notified in due course
2. The scheme is applicable on service tax, Central excise and more than 20 other Central Acts (Taxation)

3. There will be designated committee to deal with the declaration made by the declarant for the dispute resolution
4. The declarant taxpayers need to file declaration in the prescribed format before the designated authority
5. The order not attained finality but not appealed, order attained finality, SCN received, and demand quantified on or before 30.06.2019 shall be eligible for this scheme.
6. The tax payable shall be decided by the difference of the tax due and tax relief by the designated authority.
7. The declarant will get a discharge certificate after payment of tax decided by the designated authority, which will immune them from liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration
8. Any amount paid under this Scheme shall not be refundable under any circumstances (even excess deposited).
9. The privileges earned through the scheme will lapsed immediately upon identification of any misstatement or false information in the declaration
10. The taxability of the issues under dispute will remain unchanged for the subsequent period and of the industry as a whole despite the issue of the discharge certificate to the declarant/ Applicant.

Mechanism and Important Aspect of the Schemes

As it is clear, under this scheme, there will be separate designated authority, which will adjudicate the matter and

issue discharge certificate, however constitution, term etc. is yet to be notified by the government. Further there is no appeal mechanism available against any statement for amount payable or discharge certificate issued by the authority. The flow of the proceedings will be as follows-



Further to understand the meaning of the tax payable and intent of entire scheme, certain important definition needs to be discussed on the outset, there are various terminology used in the proposal for LDR scheme such tax relief, tax payable etc. Following are some definition and terms as describe in the proposed scheme :

TERMS	DEFINITION
Amount in arrears	Means the amount of duty which is recoverable as arrears of duty under the indirect tax enactment on account of- <ul style="list-style-type: none"> no appeal having been filed by declarant against order in original or Order in Appeal before expiry of the time for filing of appeal finality (means no appeal filed and time for order in appeal relating to the declarant has lapsed) 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
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;
TAX RELIEF	Means the amount of relief granted under section 123

The definition given supra for term amount payable denotes the total amount become payable after the proceedings concluded by the authorities. Further to come upon the amount payable one need to first identify tax due and relief available as per scheme, following is a glimpse of the meaning of the tax due and relief in different scenario-

TYPE OF CASES	MEANING OF TAX DUE (Section 122)	RELIEF (Section 123)
⁴ Appeal Cases	WHERE A SINGLE APPEAL IS FILED AND PENDING AGAINST THE ORDER- The amount of only duty under appeal	1. Where amount of duty is or less than 50 lac: 70 % of the Tax dues 2. Where amount of duty is more than 50 lac: 50 % of the Tax dues
	WHERE MORE THAN ONE (BY DECLARANT and/or DEPARTMENT): The total amount of only duty of both appeal	
Show Cause Notice	The amount demand (only duty i.e. tax amount) in the SCN received before 30.06.2019	Where amount of duty in said notice has duly been paid or nil, then relief will be total amount of penalty and fees
Show Cause Notice (only related to penalty or late fees)	The amount demanded in the SCN received before 30.06.2019	
Inquiry & Investigation	Amount quantified on or before 30.06.2019	

⁴ Not to be considered where the final hearing has been done in on or before 30.06.2019

Union Budget 2019

Voluntary Disclosure	Amount voluntarily disclosed as duty i.e. tax only	⁵ No relief in respect of tax dues
Amount in Arrears	Amount due in arrear (Such as amount payable as per return)	<ol style="list-style-type: none"> If amount of duty/ indicated in return is less than 50 Lac: 60% of the tax dues If amount of duty/indicated in return is more than 50 Lac: 40% of the tax dues

One Can't Escape from the Consequences even after the Scheme

Following issues will remain open and prejudice despite the fact of the availment of the scheme and receipt of the discharge certificate:

- The authority may still issue a show cause notice
 - for the same matter for a subsequent time period; or
 - for a different matter for the same time period;
- 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.

The LDR scheme nowhere protects the tax evader for their subsequent default or person making false disclosure in the scheme declaration.

Disqualified Person to File Declaration

- Who have been convicted for any offence punishable under any provision of the PRE GST law for the matter for which he intends to file a declaration.
- Who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund.
- Who have been subjected to an enquiry or investigation amount of duty has not been quantified before 30.06.2019.

- Who have filed an application in the Settlement Commission for settlement of a case.
- The cases for which final hearing has been done before 30.06.2019 (SCN or Appeal).
- A person making a voluntary disclosure
 - ◆ after being subjected to any enquiry or investigation or audit; or
 - ◆ having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it

GLIMPSE - QUALIFICATION AND DISQUALIFICATION TO AVAIL THE SCHEME			
S. No.	Nature of Cases	PERSON/CASES QUALIFY TO FILE	PERSON/ CASES DISQUALIFY FOR SCHEME
1	Inquiry/ investigation	Demand quantified before 30.06.2019	Amount not quantified before 30.06.2019
2	Departmental Audit	Demand quantified before 30.06.2019	Amount not quantified before 30.06.2019
3	SCN	Received before 30.06.2019 and final hearing pending before 30.06.2019 Or Order attained finality	Received after 30.06.2019 or final hearing done before 30.06.2019
4	Appeals (Commissioner Appeals)	Final hearing pending before 30.06.2019 Or Where order in appeal attained finality	Final hearing done before 30.06.2019
5	Appeals (CESTAT)	Final hearing pending before 30.06.2019 Or Where order in appeal attained finality	Final hearing done before 30.06.2019
6	Appeals (HC/ SC)	Final hearing pending before 30.06.2019 Or Where order in appeal attained finality	Final hearing done before 30.06.2019
General Disqualifications: <ol style="list-style-type: none"> Where person has filed an application to settlement commission Where a person convicted under indirect tax enactment (Pre GST regime) for the same matter A SCN for a refund or Erroneous refund 			

Benefits of the Scheme to Industry & Revenue and to Taxpayers

To Industry and Revenue

- The scheme will be oriented on inclusion of the taxpayers, who have been entangled in the litigation of pre GST regime.

⁵ The relief in relation to voluntary disclosure is exhaustive, scheme defines relief not available instead of available relief

- This scheme will end up pre GST regime to an extent by way of disposal of the maximum number of cases, which is only legacy of the PRE GST era.
- The ease of doing business will get strengthen and entrepreneur will get rid of the legal repercussion due to pre GST dispute
- The revenue authority will ensure an estimated amount of collection, which is blocked and at stake due to pending dispute.
- There will be notional loss to revenue by analysing this scheme on pretext of time value of money and success rate of the revenue department in tax dispute.

To Taxpayer Availing the Scheme

- ⁶The 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
- This scheme will have a great impact on liquidity, going concern and prospect planning of organisation.
- 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.
- No matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment.

Ambiguities and Challenges before the Scheme

Ambiguities Required Clarification and Challenges & Hardships

- Apparently, there is a contradiction in provision related to the relief and ineligibility to file declaration. The cases *where amount payable in respect of a filed return in pre GST regime* is specifically in the relief provision as well as in the category of debarred scenario to avail this scheme, which is practically sound against the intent of scheme and causing conflict⁷. (See *disqualification of person to file declaration discussed above*).

- A very critical aspect of the relief from interest, penalty and late fees in case of person granted with relief under this scheme, no specific discussion on this in the proposed scheme.
- The assessee will not be eligible for any sort of refund or ITC in respect of amount excess paid or remain unused after scheme such as redeposit etc., this is a factor of great consideration.
- Scheme pre-requisite in the pending cases is that these cases must have been heard on their final hearing prior to 30.06.2019, but there is no specific meaning in any act for the concept of the final hearing, it is arbitrary to establish whether final hearing has been done or not specifically for cases pending before Commissioner (Appeals).

Challenges & Hardships

- The scheme has been come up with a benchmark date of 30.06.2019, which may restrict the benefit to the assessee and adversely affect the taxpayer's decision to opt.
- There is critical requirement to formulate rules and regulation for each and every aspect to avoid further litigation, as it is happening in various other cases like Anti profiteering authority, where authority allegedly exercising excess delegation.
- This scheme apparently seems to be a dead end for declarant, as there is no mechanism apparently to withdraw the declaration, if amount payable estimated by the authority is not acceptable to the declarant.
- The scheme will NOT be available to assessee who receives adjudication order or appellate order after June 30, 2019 and where hearing may have been conducted earlier as it would be treated as 'finally heard' on the benchmark date.
- The quantum of relief for interest and penalty will play a critical role to encourage the taxpayer to adopt the scheme, if it remains

unattractive on this prospect, then scheme may face a big blow.

Conclusion and Way Forward

The Central Board of the Indirect Taxes (CBIC) possess the experience of the VCES, 2013, wherein lot of challenges and post introduction litigation arises and some of those are exist as on date too. Therefore, it become significantly important to make the rules, provision and benefits clear and pro taxpayer, if the intent behind the scheme is to dispose of the legacy of dispute, otherwise it may be a double edged sword which will result in further dispute in comparison to the resolution. The suggestion from the various stakeholders of the industry and experts must be taken prior to formulation of the rules and authority, ambiguity on the practical difficulty may lend the efforts of whole system and scheme into the vein. Further the taxpayers who are planning to adopt the scheme, needs to evaluate the legal merits in the case and have to do a cost benefit analysis inlyng time value of money and illicit cost of the mental peace.

Further if issue involve legal merits, it's better to fight a legal battle rather to go for this scheme, because the stake of the subsequent period will also be involved even after discharge certificate obtained in this scheme, as scheme does not provide immunity for the subsequent period.

Further state government should also take inspiration from the central government and also from various other states (like Maharashtra & Gujarat) who have introduced similar schemes, this will become a win-win situation for both taxpayer and government.

The legislature and CBIC needs to be on a pro taxpayer front to encourage them and to accomplish this scheme, further going by the trend of Indian lawmaking process and its implementation, the experience is not up to the mark, if things are going to be remain same, then certainly the exchequer should not expect much from this scheme. Let's see, which way the wind blows and hope for the positive participation of the both i.e. taxpayer and revenue authorities. ■

⁶ The quantum of relief from interest and penalty is ambiguous in the proposal for scheme, however notes to clause on page 107 of Finance Bill discuss about relief from payment of interest and penalty

⁷ Refer Section 124 123(1)(C)(iii) & 124 (1)(f)(ii) of the Finance Bill, 2019