

Background Material for
**SERVICE TAX VOLUNTARY COMPLIANCE
ENCOURAGEMENT SCHEME (VCES), 2013**

at

Study Circle Meeting Organised by
Mulund CA CPE Study Circle of WIRC of ICAI

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Introduction :

The Service tax Voluntary Compliance Encouragement Scheme, 2013 (VCES) has offered a lifeline to persons who have not complied with the law in the past, to set their service tax records straight. "VCES"-A tool, designed by the Central Government which was announced in this Union budget, aims to iron out the various past non-compliance under service tax.

What is the Amnesty Scheme about?

- Service tax Amnesty Scheme (known as 'Service Tax Voluntary Compliance Encouragement Scheme, 2013') [VCES for short] has been introduced in Finance Act, 2013. The scheme is effective from 10th May 2013.
- Section 104 to section 114 of The Finance Act,1994 deals with the said scheme.

Important Terms of the Scheme (Section 105)

- "Tax Dues" means the service tax due or payable under the Chapter and amounts collected under section 73A & includes Education and Secondary & Higher Education Cess.
- "Chapter" means Chapter V of the Finance Act, 1994;
- "Declarant" means any person who makes a declaration of tax dues in a manner prescribed u/s 107(1). Such declaration must be submitted to the designated authority on or before 31st December, 2013.

- Period covered under the scheme:

VCES is applicable in respect of tax dues for the period 1-10-2007 to 31-12-2012 but not paid as on 1st March, 2013. It is to be noted that, for the tax dues pertaining to period after 31-12-2012, normal provisions of the Act are applicable and shall not be covered under the Scheme.

- "Designated Authority" means any officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purpose of this scheme.[In Mumbai for both the Jurisdiction of Mumbai I and II, The Service Tax Commissionerate has designed the Asst. /Dy. Comm. of Service Tax (Technical) Room No. 303, New Central Excise Building, 115, Maharshi Karve Road, Churchgate, Mumbai – 400020. Refer Trade Notification No.4/2013- ST dtd. 27-5-2013].

Person who may make declaration of tax dues (Section. 106):

Any person who is liable to pay tax dues for the period from 1-10-2007 to 31-12-2012, but has not paid the same till 1-3-2013 and is not otherwise ineligible as per S. 106. This would include a service receiver who is liable to pay service tax under reverse charge mechanism.

Person who is not eligible to make declaration of tax dues : (Section 106)

- any person who has filed the returns disclosing his true liability but not paid service tax dues as per the returns;
- if the unpaid amount pertains to subsequent period on the same issue for which a notice is served or order is passed for the previous period;
- any such enquiry or investigation in respect of service tax not levied or not paid or short levied or short paid has been initiated and pending as on 1st march, 2013 by way of,
 - Search;
 - Issuance of summons u/s. 14 of CE Act;
 - When production of accounts, documents or other evidence is required by the department;
 - Initiation of audit

In case of pendency of an inquiry or investigation or audit as on 1st March 2013, the designated authority shall reject the declaration for reasons to be recorded in writing. The scope of the above provisions is explained in CBEC Circular No. 169/4/2013-ST dtd. 13.5.2013 and 170/5/2013-ST dtd. 8.08.2013, that such inquiry or investigation or audit should be pending for non-payment or short payment of service tax by the declarant (himself). That no other communication from the department would attract the provisions of S.106.(2)(a)(iii).

Benefits/Immunity under the scheme (Section 108 & Section 111)

- Scheme grants immunity from penalty, interest and any other proceedings under chapter V of the Finance Act, 1994 for the declared amounts.
- The declaration made shall become conclusive upon issuance of acknowledgement of discharge of such tax dues ,
- Further, On issuance of acknowledgement of discharge, the declaration to become conclusive and no matter shall be reopened in any proceedings relating to the period covered by such declaration, subject to the provisions of section 111
- However, As per Section 111 of the Act, Where CCE believes that the declaration made by a declarant is substantially false, he may, after recording the reasons of his belief in writing, serve a notice requiring him to show cause why he should not pay the tax dues and such notice shall be deemed to be issued U/s.73 or 73A.
- No such notice to be issued after expiry of one year from the date of declaration.

Procedure and manner of payment of declared dues (Section 107)

- Any person wishing to make declaration under this Scheme shall take registration under Rule 4 of the Service Tax Rules, 1994, in case he is not already registered
- File declaration in prescribed form (VCES- 1) with designated authority on or before 31-12-2013 along with computation of such dues, return period wise and service wise, as prescribed in S. No. 3F(I) of Form ST-3 or Part B of the return form as existed during the relevant period;
- Designated authority to acknowledge receipt of application in Form VCES-2 within 7 working days of filing of declaration;
- The designated authority u/s 106(2), by an order, and for reasons to be recorded in writing, may reject a declaration if any inquiry/investigation or audit was pending against

the declarant as on the cutoff date, i.e., 1-3-2013. However such an order under the section shall be passed within one month from the date of declaration following the principles of natural justice.

- Deposit at least 50% of the tax dues declared by 31-12-2013;
- Remaining tax dues are to be paid on or before 30-6-2014;
- Any amount remaining pending from the dues payable on or before 30-6-2014, should be paid by 31-12-2014 along with interest from 1-7-2014 as prescribed u/s. 75
- No CENVAT Credit to be utilized for payment of tax dues under this Scheme.
- Further , any amount paid in pursuance of declaration shall not be refundable under any circumstances.(Section 109)
- Where the declarant fails to pay the tax dues, either full or in part, as declared by him, the same along with interest shall be recovered in accordance with provisions of Section 87 (Section 110)
- On submission of details of full payment of service tax (and interest thereon, if applicable) along with a copy of acknowledgment, the designated authority shall issue an acknowledgment of discharge of such dues in form No. VCES-3. Such acknowledgment of discharge shall be issued within seven working days from the date of furnishing the details of payment of tax dues (and interest, if applicable) as prescribed in the Notification No. 10/2013-ST dtd. 13-5-2013.
- Any service tax due/payable for the period from January,2013 & onwards, to be paid in accordance with Section 68 of the Finance Act, 1994 & Rule 6 of the Service Tax Rules, 1994.

Clarification by CBEC on various issues under VCES :

CBEC vide Circular No.169/4/2013-ST dated 13th May, 2013 and Circular No. 170/5/2013-ST dated 8th August,2013 has issued clarifications in connection with VCES ,out of which some of the Important issues are summarized as under .

S No.	Issues	Clarification
1.	Whether a person who has not	Any person who has tax dues to declare can

	obtained service tax registration so far can make a declaration under VCES?	make a declaration in terms of the provisions of VCES. If such person does not already have a service tax registration he will be required to take registration before making such declaration.
2.	Whether a declarant shall get immunity from payment of late fee/penalty for having not taken registration earlier or not filed the return or for delay in filing of return.	Yes. It has been provided in VCES that, beside interest and penalty, immunity would also be available from any other proceeding under the Finance Act, 1994 and Rules made thereunder.
3.	Whether an assessee to whom show cause notice or order of determination has been issued can file declaration in respect of tax dues which are not covered by such SCN or order of determination?	In terms of section 106 (1) of the Finance Act, 2013 and second proviso thereto, the tax dues in respect of which any show cause notice or order of determination under section 72, section 73 or section 73A has been issued or which pertains to the same issue for the subsequent period are excluded from the ambit of the Scheme. Any other tax dues could be declared under the Scheme subject to the other provisions of the Scheme.
4.	Whether the communications, wherein department has sought information of roving nature from potential taxpayer regarding their business activities without seeking any documents from such person or calling for his presence, while quoting the authority of section 14 of the Central Excise Act, 1944, would attract the provision of section 106 (2) (a)?	<ul style="list-style-type: none"> •Where accounts, documents or other evidences are requisitioned by the authorised officer from the declarant under the authority of any of statutory provisions of Section 14 of the CE Act, 1944 (issuance of Summons) or Section 72 of the Finance Act, 1994 (requisition of documents & evidence in case of failure to furnish return) or Rule 5A of the Service Tax Rules, 1994 (requisition of specified records & documents) and the inquiry so initiated against the declarant is pending as on the

		<p>1st day of March, 2013.</p> <ul style="list-style-type: none"> •Further it has been clarified that any roving information sought by the department from the potential taxpayer regarding the business activities without seeking any documents (such as accounts, financial statements etc.) or calling for his presence even by quoting Section 14 of the CE Act, <u>would not attract</u> the provisions of section 106(2)(a)
5.	Whether An assessee can avail the benefit under VCES in respect of its branch/unit upon which no show cause notice has been issued , even when such a notice has been issued upon some other branch/unit of the assessee ?	<p>Two separate service tax registrations are two distinct assessees for the purposes of service tax levy. Therefore, eligibility for availing of the Scheme is to be determined accordingly.</p> <p>An assessee can avail the benefit under VCES in respect of its branch/unit upon which no show cause notice has been issued,</p>
6.	Whether a declaration can be made under the Scheme in respect of CENVAT credit wrongly utilized for payment of service tax?	Any service tax that has been paid utilizing the irregular credit, amounts to non-payment of service tax. Therefore such service tax amount is covered under the definition of "tax dues" .
7.	Whether a party, against whom an inquiry, investigation or audit has been initiated after 1.3.2013 (the cutoff date) can make a declaration under the Scheme?	Yes. There is no bar from filing of declaration in such cases.
8.	There was a default and a Show Cause Notice was issued for the period prior to the period covered	In the context of the Scheme, the relevant period is from Oct 2007 to Dec 2012. Therefore, the 2nd proviso to section 106 (1)

	by the Scheme, i.e. before Oct 2007 . Whether declaration can be filed for default on the same issue for the subsequent period?	shall be attracted only in such cases where a show cause notice or order of determination has been issued for the period from Oct 2007 to Dec 2012. Accordingly, issuance of a show cause notice or order of determination for any period prior to Oct 2007, on an issue, would not make a person ineligible to make a declaration under the Scheme on the same issue Therefore, declaration can be made under VCES.
9.	In a case where the assessee has been audited and an audit para has been issued, whether the assessee can declare liability on an issue which is not a part of the audit para , under the VCES 2013?	Yes, declarant can declare the "tax dues" concerning an issue which is not a part of the audit para.
10.	Whether a person, who has paid service tax for a particular period but failed to file return , can take the benefit of VCES Scheme so as to avoid payment of penalty for non- filing of return?	Under VCES a declaration can be made only in respect of "tax dues". A case where no tax is pending(NIL Tax dues), but return has not been filed, does not come under the ambit of the Scheme . However, rule 7C of the Service Tax Rules provides for waiver of penalty in deserving cases where return has not been filed and, in such cases, the assessee may seek relief under rule 7C.
11.	A person has made part payment of his 'tax dues' on any issue before the scheme was notified and makes the declaration under VCES for the remaining part of the tax dues . Will he be entitled to the benefit of non-payment of interest/penalty on the tax dues paid	No. The immunity from interest and penalty is only for "tax dues" declared under VCES. If any "tax dues" have been paid prior to the enactment of the scheme, any liability of interest or penalty thereon shall be adjudicated as per the provisions of Chapter V

	by him outside the VCES, i.e., (amount paid prior to VCES)?	of the Finance Act, 1994 and paid accordingly.
12.	Whether an assessee under dispute with the department on an issue in the erstwhile provision of the law for the part of the period covered under VCES , can avail the benefit of the scheme for the remaining period or the subsequent period , while continuing to litigate the outstanding liability under the erstwhile provision on the issue?	In terms of the second proviso to section 106 (1), where a notice or order of determination has been issued to a person in respect of any issue, no declaration shall be made by such person in respect of "tax dues" on the same issue for subsequent period. Therefore, if an issue is being litigated for a part of the period covered by the Scheme, i.e., Oct, 2007 to Dec 2012, no declaration can be filed under VCES in terms of the said proviso on the same issue for the subsequent period.
13.	Whether upon filing a declaration a declarant realizes that the declaration filed by him was incorrect by mistake , Can assessee suo-moto file an amended declaration?	The declarant is expected to declare his tax dues correctly. In case the mistake is discovered suo-moto by the declarant himself, he may approach the designated authority, who, after taking into account the overall facts of the case may allow amendments to be made in the declaration , provided that the amended declaration is furnished by declarant before the cut off date for filing of declaration, i.e., 31.12.2013.
14.	What is the consequence if the designated authority does not issue an acknowledgement within seven working days of filing of declaration? Whether the declarant can start making payment of the tax dues even if acknowledgement(VCES-2) is not issued?	Department would ensure that the acknowledgement is issued in seven working days from the date of filing of the declaration. It may however be noted that payment of tax dues under the Scheme is not linked to the issuance of an acknowledgement. The declarant can pay tax dues even before the acknowledgement is issued by the department.

15.	Whether declarant will be given an opportunity to be heard and explain his cases before the rejection of a declaration under section 106(2) by the designated authority?	An order under this section shall be passed following the principles of natural justice. It is clarified that the designated authority, if he has the reasons to believe that the declaration is covered by section 106(2), shall issue a notice within 30 days of filing of declaration. For the declarations filed before this circular being issued, the 30 days shall be counted from the date of this circular(i.e Circular No. 170/5/2013-ST dated 8 th August,2013.
16.	What is the appeal mechanism against the order of the designated authority whereby he rejects the declaration under section 106 (2) of the Finance Act, 2013?	The Scheme does not have a statutory provision for filing of appeal against the order for rejection of declaration under section 106 (2) by the designated authority.
17.	A declarant pays a certain amount under the Scheme and subsequently his declaration is rejected. Would the amount so paid by him be adjusted against his liability that may be determined by the department?	The amount so paid can be adjusted against the liability that is determined by the department.
18.	Section 111 prescribes that where the Commissioner of Central Excise has reasons to believe that the declaration made by the declarant was 'substantially false', he may serve a notice on the declarant in respect of such declaration. However, what constitutes a	The Commissioner would, in the overall facts of the case, taking into account the reasons he has to believe, take a judicious view as to whether a declaration is 'substantially false'. It is not feasible to define the term "substantially false" in precise terms. The proceeding under section 111 would be initiated in accordance with the principles of

	<p>'substantially false' declaration has not been specified.</p>	<p>natural justice.</p> <p>To illustrate, a declarant has declared his "tax dues" as Rs 25 lakh. However, Commissioner has specific information that declaration has been made only for part liability, and the actual "tax dues" are Rs 50 lakh. This declaration would fall in the category of "substantially false".</p> <p>This example is only illustrative.</p>
<p>19.</p>	<p>What is the consequence if a declarant fails to pay atleast 50% of declared amount of tax dues by the 31st Dec 2013?</p>	<p>One of the conditions of the Scheme [section 107 (3)] is that the declarant shall pay atleast an amount equal to 50% of the declared tax dues under the Scheme, on or before the 31.12.2013. Therefore, if the declarant fails to pay atleast 50% of the declared tax dues by 31st Dec, 2013, he would not be eligible to avail of the benefit of the scheme.</p>
<p>20.</p>	<ul style="list-style-type: none"> • Whether the CENVAT credit is admissible on the inputs/input services used for provision of output service in respect of which declaration has been made under VCES for payment of any tax liability outside the VCES? • Whether the tax dues amount paid under VCES would be eligible as CENVAT credit to the recipient of service on the basis of supplementary 	<ul style="list-style-type: none"> • The VCES Rules 2013 prescribe that CENVAT credit cannot be utilized for payment of "tax dues" under the Scheme. Accordingly the "tax dues" under the Scheme shall be paid in cash. • However, VCES does not restrict availment of <u>CENVAT credit of the amount paid under VCES, to the service recipient under a supplementary invoice.</u> Also, the CENVAT credit shall be eligible to the service recipient who pays his tax dues under VCES

	<p>Invoice or On the basis of challan(under reverse charge mechanism)</p>	<p>under reverse charge mechanism.</p> <ul style="list-style-type: none"> • It has been clarified that admissibility of such CENVAT shall be governed by the provisions of Rule 9(1)(bb) and Rule 9(1)(e) of the CCR,2004 i.e eligibility of CENVAT credit based on supplementary invoice except where the additional amount of tax is recoverable from the provider by reason of fraud, collusion etc., or a challan evidencing payment of service tax by the service recipient, respectively.
<p>21.</p>	<p>In terms of section 106 (2)(b), if a declaration made by a person against whom an audit <u>has been initiated</u> and where such <u>audit is pending</u>, then the designated authority shall by an order and for reasons to be recorded in writing, reject such declaration. As the audit process may involve several stages, it may be indicated as to what event would constitute,-</p> <p>(i) initiation of audit; and</p> <p>(ii) culmination of audit.</p>	<p><u>Initiation of audit:</u> For the purposes of VCES, the date of the visit of auditors to the unit of the taxpayer would be taken as the date of initiation of audit. A register is maintained of all visits for audit purposes.</p> <p><u>Culmination of audit:</u> The audit process may culminate in any of the following manner.-</p> <p>(i) Closure of audit file if no discrepancy is found in audit;</p> <p>(ii) Closure of audit para by the Monitoring Committee Meeting (MCM);</p> <p>(iii) Approval of audit para by MCM and payment of amount involved therein by the party in terms of the provisions of the Finance Act, 1994;</p> <p>(iv) Approval of audit para by MCM, and issuance of SCN, if party does not agree to the para so raised.</p>

		<p>The audit culminates at a point when the audit paras raised are settled in any manner as stated above.</p> <p>The pendency of audit as on 1.3.2013 means an audit that has been initiated before 1.3.2013 but has not culminated as on 1.3.2013.</p>
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