

# Sabka Vishwas -

JUNE 2019

CA. (DR.) GAURAV GUPTA

# Amnesty – Is it valid?

**All India Federation of Tax Practitioners V Union Of India [1997] 228 ITR 68, as upheld by Hon'ble Supreme Court:**

*“It is difficult to find out the best solutions for unearthing black money. The Scheme may be unjust, to some extent, to honest taxpayers, but, according to the Parliament, that is required for adjustment or compensating for further injustices to the society by parallel economy of unaccounted money.*

*Keeping the aforesaid well-settled law in mind, it would be difficult to arrive at a conclusion that, as more benefits are given to tax-evaders, the provisions of the Scheme are arbitrary and violative of article 14. It is adopted by the Parliament after taking into consideration the economic and social conditions prevailing in the society.”*

# Amnesty – Is it valid?

## **CC v Nalwa Steels and Power Limited [CP 21847 of 2017]**

- ▶ Department withdrew 386 cases having low tax effect
- ▶ On account of revised monetary limits – to bring down litigation

# Amnesty – Is it valid?

## Budget Speech 2019

141. 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.

# Applicability

# Applicability – Laws covered

- ▶ Central Excise Act, 1944
- ▶ Central Excise Tariff Act, 1985
- ▶ Chapter V of the Finance Act, 1994 and rules thereunder – Service Tax
- ▶ Agricultural Produce Cess Act, 1940
- ▶ Coffee Act, 1942
- ▶ Mica Mines Labour Welfare Fund Act, 1946
- ▶ Rubber Act, 1947
- ▶ Salt Cess Act, 1953
- ▶ Medicinal and Toilet Preparations (Excise Duties) Act, 1955

# Applicability – Laws covered

- ▶ Additional Duties of Excise (Goods of Special Importance) Act, 1957
- ▶ Mineral Products (Additional Duties of Excise and Customs) Act, 1958
- ▶ Sugar (Special Excise Duty) Act, 1959
- ▶ Textiles Committee Act, 1963
- ▶ Produce Cess Act, 1966
- ▶ Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
- ▶ Coal Mines (Conservation and Development) Act, 1974
- ▶ Oil Industry (Development) Act, 1974
- ▶ Tobacco Cess Act, 1975

# Applicability – Laws covered

- ▶ Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976
- ▶ Bidi Workers Welfare Cess Act, 1976
- ▶ Additional Duties of Excise (Textiles and Textile Articles) Act, 1978
- ▶ Sugar Cess Act, 1982
- ▶ Jute Manufacturers Cess Act, 1983
- ▶ Agricultural and Processed Food Products Export Cess Act, 1985
- ▶ Spices Cess Act, 1986
- ▶ Finance Act, 2004 - Education Cess
- ▶ Finance Act, 2007 - Secondary and Higher Education Cess
- ▶ Finance Act, 2015 - Swachh Bharat Cess
- ▶ Finance Act, 2016 – Krishi Kalyan Cess



# Applicability – Who Can declare

All persons shall be eligible to make a declaration under this Scheme except the following, namely:—

- ▶ who have filed an **appeal** before the appellate forum and such appeal has been **heard finally** on or before the 30th day of June, 2019;
- ▶ who have been **convicted** for any offence punishable under any provision of the indirect tax enactment for the matter for which he intends to file a declaration;
- ▶ who have been issued a **show cause notice**, under indirect tax enactment and the **final hearing** has taken place on or before the 30th day of June, 2019;
- ▶ 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 or audit** and the amount of duty involved in the said enquiry or investigation or audit **has not been quantified on or before the 30th day of June, 2019;**

# Applicability – Who Can declare

- ▶ 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**;
- ▶ who have **filed an application** in the **Settlement Commission** for settlement of a case;
- ▶ persons seeking to make declarations with respect to excisable goods set forth in the **Fourth Schedule to the Central Excise Act**, 1944; (tobacco and manufactured tobacco substitutes; mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes)

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# The Relief

# The Relief

S.No.	Condition	Relief
1.	where the tax dues are relatable to a show cause notice or one or more appeals arising out of such notice which is pending as on the 30th day of June, 2019, and if the amount of duty is rupees fifty lakhs or less, then,	70% of the tax dues
	more than rupees fifty lakhs, then,	50% of the tax dues
2.	where the tax dues are relatable to a show cause notice for late fee or penalty only, and the amount of duty in the said notice has been paid or is nil,	the entire amount of late fee or penalty;
3.	where the tax dues are relatable to an amount in arrears and the amount of duty is, rupees fifty lakhs or less, then,	60% of the tax dues
	the amount of duty is more than rupees fifty lakhs, then	40% of the tax dues

# The Relief

S.No.	Condition	Relief
4.	In a return under the indirect tax enactment, wherein the declarant has indicated an amount of duty as payable but not paid it and the duty amount indicated is	rupees fifty lakhs or less, 60% of the tax dues
	amount indicated is more than rupees fifty lakhs, then	40% of the tax dues
5	where the tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before the 30th day of June, 2019 is—	rupees fifty lakhs or less, 70% of the tax dues
	more than rupees fifty lakhs, then,	50% of the tax dues
6.	where the tax dues are payable on account of a voluntary disclosure by the declarant, then,	no relief shall be available with respect to tax dues.

# The Relief

## Tax dues: Meaning

S.no	Situations/Cases	Meaning
a)	Where a single appeal arising out of an order is pending as on 30 <sup>th</sup> June before appellate forum	Total amount of duty which is being disputed in the said appeal
b)	Where more than one appeal arising out of an order, one by the declarant and the other being a departmental appeal are as on 30 <sup>th</sup> June before appellate forum	Sum of the amount of duty which is being disputed by the declarant in his appeal and the amount of duty being disputed in the departmental appeal
c)	Where a show cause notice under any of the indirect tax enactment has been received by the declarant on or before the 30 <sup>th</sup> June, 2019	Amount of duty stated to be payable by the declarant in the said notice

# The Relief

## Tax dues: Meaning

S.no	Situations/Cases	Meaning
e)	Where an enquiry or investigation or audit is pending against the declarant	Amount of duty payable under any of the indirect tax enactment which has been quantified on or before the 30th day of June, 2019
f)	Where the amount has been voluntarily disclosed by the declarant	Total amount of duty stated in the declaration
g)	Where an amount in arrears relating to the declarant is due	Amount in arrears



# The Relief

## Tax dues:

**Amount in arrear:** 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 30<sup>th</sup> day of June, 2019, wherein he has admitted a tax liability but not paid it;

# The Relief

## Tax dues:

S.No	Appeal	Show Cause Notice	Order/ Disputed amount	Tax Dues if appeal filed
1.	Single Appeal	Duty Amount Rs 1500 Penalty Rs 200	Duty Rs 1500 Penalty Rs 200	Rs 1500 only
2.	Single Appeal	Duty Amount Rs 5000 Penalty Rs 300	Duty Rs 3000 Penalty Rs 100	Rs 3000 only
3.	Appeal by Declarant	Duty Amount Rs 1500 Penalty Rs 200	Duty Rs 1500 Penalty Rs 200	Rs 2000 only
	Appeal by Department	Duty Amount Rs 1500 Penalty Rs 200	Duty Rs 500 Penalty Rs 50	

# The Relief

## **Relief from further proceedings:**

- ▶ the 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
- ▶ 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.

# The Relief

## **No relief from future fresh proceedings**

- ▶ the issue of the discharge certificate with respect to a matter for a time period shall not preclude the issue of 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 Relief

## **Payment only through Cash and no refund**

- ▶ Amount paid under the scheme shall be paid through Cash only.
- ▶ It shall not be refundable under any circumstances;
- ▶ It shall not, under the indirect tax enactment or under any other Act,—
  - be taken as input tax credit; or
  - entitle any person to take input tax credit, as a recipient, of the excisable goods or taxable services, with respect to the matter and time period covered in the declaration.

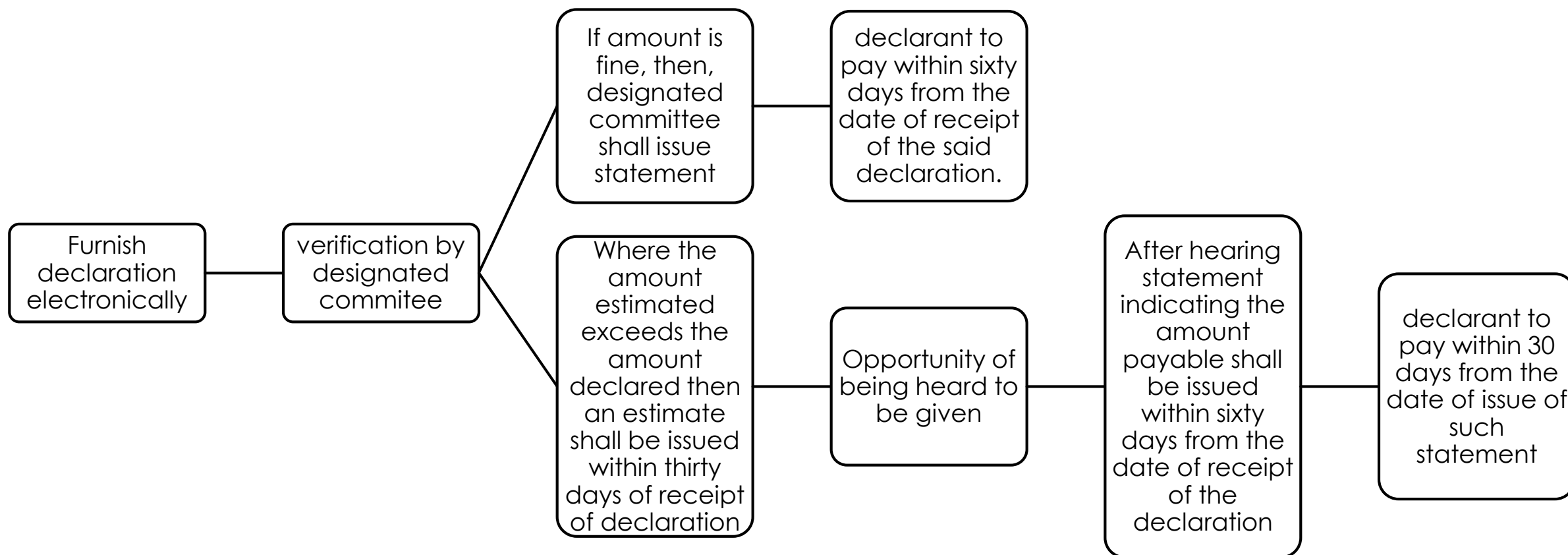
# The Relief

## Condition

Any amount paid **as predeposit** at any stage of appellate proceedings under the indirect tax enactment or **as deposit** during enquiry, investigation or audit, shall be deducted when issuing the statement indicating the amount payable by the declarant. Also, in case of any excess amount, no refund shall be allowed.

# The Process

# The Process





# The Process

- Declaration to be furnished electronically
- The designated committee shall verify the correctness of the declaration made by the declarant under section 124 in such manner as may be prescribed
- Where the declarant has filed an appeal or reference or a reply to the show cause notice against any order or notice giving rise to the tax dues, before any appellate forum, then, notwithstanding anything contained in any other provisions of any law for the time being in force, such appeal or reference or reply **shall be deemed to have been withdrawn.**
- In case of Supreme Court or high Court, such writs be withdrawn by the Applicant.
- Rectification of mistake apparent on records is permissible within 30 days of the date of issue of a statement indicating the amount payable.

# Thank you

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