



GST NEWSLETTER SEPTEMBER 2019

INDEX

1. Articles

- Sabka Vishwas - (Legacy Dispute Resolution) Scheme, 2019.....1

2. Case Laws

- Facts of the case: Aditya Birla Nuvo Limited - Authority for Advance Ruling, Gujarat..... 3
- Facts of the case: Gujarat, Rajkot Nagarik Sahakari Bank Ltd - Authority for Advance Ruling, Gujarat.....3

3. Notifications and circulars for the month of August 2019.....4

4. Due dates of GST for the month of September 2019.....5

ARTICLES

Sabka Vishwas - (Legacy Dispute Resolution) Scheme, 2019-

The introduction of GST on 1st July 2019 meant that all forms of Indirect taxes prior to GST were subsumed and would no longer be in force. However, assesses would still not be done with Service Tax and VAT as assessments under the old tax regime were still to continue into FY 2019-20 as Service tax and VAT were still in force for part of the FY 2017-18. But now it seems that it's not just the assesses who want to leave behind the old tax regime to focus on GST. The Central Board of Indirect Taxes & Customs, under the directions of the newly appointed Finance Minister, Mrs. Nirmala Sitharaman, have introduced the Sabka Vishwas - (Legacy Dispute Resolution) Scheme, 2019 (SVLDRS) for Service tax and Central Excise.

This come as a huge relief to many tax payers, especially those who are in appeal or under audit as it provides with a unique opportunity of paying only the tax amount without the interest, penalty and applicable fine. So, what does the scheme constitute of?

Who are all eligible to apply for the scheme?

- A show-cause notice has been issued to the tax payer on or before 30th of June, 2019.
- An appeal has been made against a show-cause notice on or before 30th of June, 2019.
- Arrears of tax is pending to be paid.
- The department has made an enquiry, investigation or audit and where the amount payable by the tax payer has been quantified on or before 30th of June, 2019.
- The tax payer wishes to make a voluntary disclosure.

Who are not eligible to apply for the scheme?

- Taxpayers have cases pending on excisable goods specified under Fourth Schedule to the Central Excise Act, 1944 (this includes tobacco and specified petroleum products)
- Cases for which taxpayers have been convicted under the Central Excise Act, 1944 or the Finance Act, 1944
- Cases involving erroneous refunds
- Cases pending before the Settlement Commission

What are the benefits that the tax payer will get from the scheme?

- A complete waiver from the interest, penalty and fine on the tax amount admitted or payable by them
- Immunity from prosecution
- Tax to be paid based on tax payable limit:

| Type | Tax amount <= 50 lacs | Tax amount > 50 lacs |
|---|-----------------------|-----------------------|
| Case is pending in adjudication or appeal | 70% of the tax amount | 50% of the tax amount |
| Case is under investigation or audit | 70% of the tax amount | 50% of the tax amount |
| Any arrears to be paid | 60% of the tax amount | 40% of the tax amount |
| Voluntary disclosure | Full amount | Full amount |

What are the other conditions applicable to the scheme?

- The tax payer can adjust any deposits or duty already paid by them for such case. This may be under a pre-condition or under protest. But, in case of deposit being more than the tax payable then the excess amount will not be refunded as there is no provision for the same.
- The amount agreed paid by the tax payer as payable shall be fully paid by CASH. The Input credit/CENVAT credit cannot be utilised here.
- The dispute for which the tax payer has paid under this scheme will be closed and may not be re-opened for any reason. But, in case of voluntary disclosure, the case may be re-opened within one year.
- Proceedings under the Scheme shall not be treated as a precedent for past and future liabilities
- The final decision and order will be made within 60 days of application of the scheme
- An opportunity to personally hear the case will be provided
- The proceedings are fully automated.

Important things to note on the scheme:

- The scheme is open until 31st December, 2019
- If any of the cases, show-cause notices, appeals or adjudications have been finally heard and disposed of before 30th June, 2019 then this scheme will not be applicable to them
- If the tax payer is liable to pay only late fees and penalty on a show-cause notice then the scheme can be used get relief from the entire amount of late fees and penalty.
- Cases filed with the Settlement Commission are not eligible under this scheme and will have to settle the tax liability as per the commission's directions.

Conclusion: The CBIC and the Finance Ministry have realised the need to move away from cumbersome litigation processes to recover tax amounts. This is shown by their interest in recovering only a part of the disputed tax amount. Hence, this scheme gives a single opportunity to the tax payers to settle with the government on the tax related issues. It may also be that the CBIC intends to focus their resources on GST compliances and recovery instead of the older, subsumed tax regimes.

Case laws:

1. Facts of the case: Aditya Birla Nuvo Limited - Authority for Advance Ruling, Gujarat.

The taxpayer has entered into a contract with Power Grid Corporation of India Limited ('PGCIL') for supplying goods & services like Ex-service and local transportation, insurance and other incidental services. The tax payer was collecting and paying GST on freight and insurance by issuing a separate invoice but PGCIL has contended that the GST is not applicable on freight and insurance. Hence, the tax payer has approached the AAR.

Provisions of the law:

As per Section 15 of the CGST Act, 2017 value of supply shall include incidental expenses charged by the supplier to the recipient.

Ruling:

The learned authority held that the above supply would constitute a 'composite supply' even if separate invoices were being issued for the same. Further, the transaction cannot be considered as a 'Pure agent' supply as the tax payer is not being reimbursed the actual cost but a not on an actual cost basis but on pre contracted fixed freight per unit of the product. Hence the GST is to be paid on the higher of the two values i.e. the actual cost of freight and insurance or the pre contracted fixed freight per unit of the product.

2. Facts of the case: Gujarat, Rajkot Nagarik Sahakari Bank Ltd - Authority for Advance Ruling, Gujarat

The tax payer provided DEMAT facilities to its customers and one such facility is the Refundable Interest Free Deposit (RIFD) where the customer makes a RIFD as security for the transactions carried out in the DEMAT and is given certain free services like 10 free transactions up to Rs. 5 lacs. The tax payer has approached the AAR to know if GST is applicable on such RIFD.

Provisions of the law:

As per Section 7 of the CGST Act, 2017 a transaction shall be construed as a supply only if the element of consideration is present. Further, under proviso to Section 2(31) of the CGST Act, 2017 deposit is not considered as consideration.

Ruling:

The RIFD is in the nature of deposit and hence no GST will be applicable on it. But, the monetary value of the act of providing the RIFD will attract GST. The free transactions are being provided as discount and hence, no GST will be applicable on the same.

It's to be noted that the AAR has not provided the method to determine the monetary value in the above case.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF AUGUST 2019

- Six Central Tax Notification.
- One Central Tax Circulars.

| Sl. No | Subject | Notifications/Circulars No. Date of Issue |
|--------|--|--|
| 1. | Seeks to waive the late fees in certain cases for the month of July, 2019 for FORM GSTR-1 and GSTR-6 provided the said returns are furnished by 20.09.2019. | 41/2019-Central Tax, dt. 31-08-2019 |
| 2. | Seeks to extend the last date in certain cases for furnishing GSTR-7 for the month of July, 2019. | 40/2019-Central Tax, dt. 31-08-2019 |
| 3. | Seeks to bring Section 103 of the Finance (No. 2) Act, 2019 in to force | 39/2019-Central Tax, dt. 31-08-2019 |
| 4. | Seeks to waive filing of FORM ITC-04 for F.Y. 2017-18 & 2018-19. | 38/2019-Central Tax, dt. 31-08-2019 |
| 5. | Seeks to extend the due date for furnishing FORM GSTR-3B for the month of July, 2019. | 37/2019-Central Tax, dt. 21-08-2019 |
| 6. | Seeks to extend the date from which the facility of blocking and unblocking of e-way bill facility as per the provision of Rule 138E of CGST Rules, 2017 shall be brought into force to 21.11.2019. | 36/2019-Central Tax, dt. 20-08-2019 |
| 7. | Seeks to remove difficulties regarding filing of Annual returns by extending the due date for filing of Annual return / Reconciliation Statement for the Financial year 2017-18 in FORMs GSTR-9, GSTR-9A and GSTR-9C to 30th November, 2019. | Order No. 7/2019 - Central Tax dt.26-08-2019 |

DUE DATES OF GST FOR THE MONTH OF SEPTEMBER 2019

| SEPTEMBER | | | | | | | 2019 |
|-----------|--------|---------------------------|---------------|----------|---------------------|----------|------|
| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | |
| 8 | 9 | 10 *GSTR-7 & GSTR-8 | 11 *GSTR-1 | 12 | 13 | 14 | |
| 15 | 16 | 17 | 18 | 19 | 20 *GSTR-3B/5/5A | 21 | |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 | |
| 29 | 30 | | | | | | |

* Monthly return for taxpayers with Annual Turnover more than Rs.1.50 Crores or Taxpayer who has opted Monthly return option.

Disclaimer:

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