

DISCRIPENCY IN SABKA VISHWAS SCHEME

Many of the Assesseees are worried whether they can avail the SVLDRS scheme under LITIGATION OR ARREARS, if the order is received on or before 30.06.2019 and the statutory time limit for filing appeal was available upto two or three months. i.e. after 01.07.2019. In the recent CBIC FAQ dt. 24.12.2019 in Question No.6, the Department answered that those cases could come under Arrear Category. The said FAQ is stated as follows:-

“Q6. What is the scope under the Scheme when adjudication order determining the duty/tax liability is passed and received prior to 30.06.2019, but the appeal is filed on or after 01.07.2019?

Ans:- Such a case is not eligible under the Litigation category. However, such a person may choose to withdraw the appeal, and furnish to the department an undertaking to not file any further appeal in the matter. In this case, he can make a declaration under the Arrears category.”

Let us take it little forward...

Sec 121(c) of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 defines ‘**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;

It is very clear from the above definitions, none of the above cases are relevant to the cases filed before the statutory time limit. i.e. filed appeal after 01.07.2019.

The above cases are relevant only for those who are having not filed an appeal before the statutory time limit. The department also discussed the same in the recent CBIC FAQ dt. 24.12.2019 in Question No.60 which is stated as follows:-

Q.60 I want to file a declaration under the Scheme for an order against which I do not want to file an appeal even though the time period for filing of appeal is not over. Can I make such a declaration?

Ans. You can file a declaration under the Scheme provided you give in writing to the department that you will not file an appeal. This declaration shall be binding on you. The will also be subject to the completion due process of review of the order by the department.

Let us see Section 123(a)(i) and 125 of the Finance Act, 2019:-

123. For the purposes of the Scheme, “tax dues” means—

(a) where—

(i) a single appeal arising out of an order is pending as on the 30th day of June, 2019 before the appellate forum, the total amount of duty which is being disputed in the said appeal;

125. (1) All persons shall be eligible to make a declaration under this Scheme except

the following, namely:—

(a) 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;

(b) 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;

(c) 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;

(d) who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund;

(e) 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;

(f) a person making a voluntary disclosure,—

(i) after being subjected to any enquiry or investigation or audit; or

(ii) having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it;

(g) who have filed an application in the Settlement Commission for settlement of a case;

(h) persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944.

From the above it is clear that the said cases are not excluded in Section 125 and is covered under 123(a)(i).

Hence it can conclude that if appeal is filed after 01.07.2019 (within the statutory time limit) where the appeal is pending as on 30.06.2019.

Assesseees will get clarity on the above matter only after getting remedy from the High Court or Supreme Court.