

WIRC of ICAI



Service Tax Voluntary Compliance Encouragement Scheme, 2013

At
Khimji Kunverji Vikamsey Auditorium, ICAI Tower,
Nr. Standard Chartered Bank, BKC, Mumbai

9th August, 2013

Prepared by
BY
CA MANISH GADIA

Service Tax Voluntary Compliance Encouragement Scheme, 2013 [ST VCES]

1. Coverage of Scheme

The scheme is available in respect of any Service Tax, Education Cess and S.H.E. Cess or any other amount collected as service tax, Education Cess and S.H.E. Cess representing for period 1st October, 2007 to 31st December, 2012 which is outstanding or unpaid as on 1st March, 2013.

2. Scheme is not available to:

- 2.1. A person who has filed his service tax return in Form ST-3 and who has declared his true liability without payment of such liability (either in part or full), such person shall not be eligible for ST VCES in respect of the period covered under such return.
- 2.2. Person who have been issued notice or an order of determination u/s 72, 73 or 73A on any issue for any period, then such person cannot avail benefit of ST VCES for same issue for future periods. However, no such restriction is applicable for same issue for period prior to period covered under notice or order.
- 2.3. Every person who has been issued a notice or order of determination of tax payable u/s 72, 73 or 73A in respect of the amount sought to be declared under ST VCES.
- 2.4. Every person against whom an inquiry or investigation has been initiated in respect of service tax not levied or not paid or short levied or short paid by way of
 - a. Search of premises
 - b. Issuance of Summons
 - c. Required to produce accounts, documents or other evidence and such inquiry is pending as on 1st March, 2013.

Requisition of production of accounts, documents or other evidence only under Section 72 of the Finance Act, 1994 or under Rule 5A of

Service Tax Rules, 1994 shall be termed as inquiry or investigation attracting provisions of Section 106(2)(a)(iii) of Finance Act, 2013.

No other communication is covered within the ambit of Section 106(2)(a)(iii) of Finance Act, 2013 which may lead to rejection of declaration.¹

2.5. Every person against whom an audit has been initiated and such audit is pending as on 1st March, 2013.

3. Procedure for ST VCES

- 3.1. Declaration in Form VCES-1 to be made on or before 31st December, 2013 and to be acknowledged by designated authority (generally, Assistant Commissioner) in Form VCES-2 within 7 working days.
- 3.2. Pay atleast 50% of the tax payable as declared under ST VCES by 31st December, 2013 and intimate with proof of payment.
- 3.3. Balance tax due to be paid by 30th June, 2014.
- 3.4. In case of default in depositing final installment, then pay along with prescribed interest from 1st July, 2014 onwards and make such payment by 31st December, 2014.
- 3.5. Intimate with proof of payment, details of all payments made under ST VCES along with copy of acknowledged declaration (Form VCES-2).
- 3.6. On full payment of tax dues and interest, acknowledgement of discharge of service tax liabilities to be issued to the person in Form VCES-3 within 7 working days.

4. Implications of ST VCES

- 4.1. Immunity from penalty, interest and proceedings including late fee² for non-filing of Service tax return in respect of amount declared and tax paid under ST VCES.

¹ S. No. 4 of Circular No. 169/4/2013-ST dated 13th May, 2013.

- 4.2. On issuance of acknowledgement of discharge, such matter not to be reopened before any court or authority in respect of period covered under such declaration made under ST VCES.
- 4.3. No refund of any amount paid under ST VCES under any circumstances.
- 4.4. Amount declared under ST VCES but not paid shall be recoverable u/s 87.
- 4.5. Commissioner of Central Excise shall issue a notice (deemed to be notice u/s 73 or 73A) within 1 year from the date of making declaration if he believes that the declaration is false.

5. Other important points for consideration

- 5.1. If a person is not a registered assessee, then it has to take registration first and then can opt for the VCES³.
- 5.2. Declarant cannot use CENVAT credit for payment of amount declared under VCES – Rule 6(2) of the Service Tax Voluntary Compliance Encouragement Rules, 2013.
- 5.3. Cases where the assessee is liable to pay only late filing fees for returns and there are no tax dues, such assessee cannot opt for VCES.

² S. No. 2 of Circular No. 169/4/2013-ST dated 13th May, 2013.

³ Rule 3 of Service Tax Voluntary Compliance Encouragement Rules, 2013 read with S. No. 1 of Circular No. 169/4/2013-ST dated 13th May, 2013.

6. Issues

6.1. Whether it is mandatory to obtain registration before applying for VCES?

6.2. What is the accounting code under which the tax dues are to be discharged?

6.3. Whether declaration can be made for Nil Returns?

6.4. Whether declaration can be made even if ST-3 is filed (with wrong figures)?

6.5. Notice is received for non-filing of return. Whether assessee is eligible to make declaration under the scheme?

6.6. Whether declaration can be made by a person who has received inquiry letters from Data Analysis & Research Cell?

6.7. If the notice is issued before 01.03.2013 and is served upon the assessee after 01.03.2013 can the person apply under VCES?

6.8. SCN received for period April, 2009 to March 2010. Whether declaration can be made for period October, 2007 to March 2009?

6.9. In the above case, SCN issued for F.Y. 2009-10 for Rs. 100. Whereas the actual liability under same issue was Rs. 120. Whether declaration can be made for balance Rs. 20?

6.10. In above case, whether declaration can be made for any other issue which was not covered in SCN for any period?

6.11. A Person having registration in Mumbai & Delhi and inquiry is initiated in Mumbai, can he make declaration for Delhi?

6.12. In case of Inquiry of any entity, if details of entire group are asked for, whether all companies are barred from making a declaration under VCES?

6.13. In case of service tax department has asked for Books of Accounts of A Ltd, in connection with inquiry /investigation of B Ltd since A Ltd has done transaction with B Ltd. Then, in such case, whether A Ltd is barred from making declaration under VCES?

6.14. Inquiry initiated after 1st March, 2013 but before declaration.

6.15. Audit will include CERA audit also?

6.16. Mr. A has paid tax by challan on 30.04.2013 before the VCES comes into action. He filed application on 02.08.2013 and the payment made by him on 30.04.2013 is treated as payment against this declaration dated 02.08.2013. Can he do so?

6.17. What if the 50% of the tax due which is required to be paid by 31st December 2013 is not paid?

6.18. Whether there is any time limit for rejection of declaration?

6.19. Whether order passed for rejection of declaration of order is appealable?

6.20. In case declaration is rejected, whether tax paid under declaration can be adjusted against SCN issued later by department?

6.21. Whether of Cenvat credit wrongly availed and utilized can be declared under VCES?

6.22. Whether liability under RCM can also be declared in VCES declaration?

6.23. Whether Tax dues can be discharged from Cenvat Balance of prior period?

6.24. Whether declarant can avail Cenvat credit of period covered under declaration and utilize the same against liability of January 2013 onwards?

6.25. Whether service receiver can claim Cenvat of tax dues paid under RCM under VCES?

6.26. 'X' charged ST to 'Y' – 'Y' claimed Cenvat credit, 'X' did not pay earlier now declaring under VCES. Whether Cenvat credit to 'Y' can be denied?

6.27. What are the consequences of not paying tax dues as declared under VCES?

6.28. Whether benefit of threshold exemption is available to declarant?

6.29. Whether Returns are required to be filed or not?

6.30. Person has filed a declaration declaring tax dues of Rs. 5 lakhs and pays the same on 12-06-2013. Later on he realizes that the actual dues were Rs. 6 lakhs and wants to pay additional Rs. 1 lakh by filing another declaration. Can he do so?

6.31. If acknowledgements not received by 6th day?

6.32. If declared 100 lacs but CCE found there was 160 lacs to be declared then SCN on full 160 lacs or only on differential 60 lacs – interest and penalty.

6.33. A declarant is not declaring his tax dues, which is matter of interpretation, in which there are judgments in favor of assesseees and revenue, then whether it is substantially false declaration?

6.34. A person has made declaration for Mumbai office and received VCES-3 then in such case does his Delhi office also gets immunity automatically for the tax dues not even declared?

6.35. Oct. 07 to Mar. 08 – 5 years period expires on 25th April, 2013, should declare tax dues for said period.

DISCLAIMER

The opinion and views expressed in this compilation are those of the compilers. The WIRC of ICAI does not necessarily concur with the same. While every care is taken to ensure the accuracy of the contents of this compilation, neither the compilers nor the WIRC of ICAI are liable for any inadvertent errors.