



Q & A on Voluntary Compliance Encouragement Scheme, 2013

By CA Rajkamal Shah

The Government has come out with Voluntary Compliance Encouragement Scheme under Service Tax to encourage the defaulting assessee to pay the tax dues for the period prescribed in the Scheme with impunity from interest, penalties and other consequences of such non-payment. The Finance Bill, 2013– 14 introduced chapter VI in the Finance Act, 2013-14 and promulgated the Voluntary Compliance Encouragement Scheme by incorporating S.104 to 114 to effectuate what is popularly known as “VCES”. Further, Notification No. 10/2013 – ST dtd. 13.5.2013 was issued to notify the Service Tax Voluntary Compliance Encouragement Rules, 2013. The Government also issued a Circular No. 169/4/2013-ST dtd. 13.5.2013 and 170/5/2013-ST dtd. 8.08.2013, to clarify certain issues pertaining to the Scheme. Perturbed by the poor response to the scheme the Finance Minister has recently issued FAQ to allay doubts of the tax payers. The purpose of this article is to discuss the salient features of the scheme to help the tax paying community to come out clean by paying the tax dues without bothering about payment of interest and liability of penalty or other consequences of non-payment. The frequently asked questions are given at the end of the article to understand the intricacies of the scheme.

Who is eligible to make declaration?

Any person who is liable to pay tax dues for the period from 01.10.2007 to 31.12.2012, but has not paid the same till 01.03.2013 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.

Who is not eligible to make declaration under the scheme?

- any person who has filed the returns disclosing his true liability but not paid service tax dues as per the return;
- 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).

What are the benefits under the scheme?

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, however, subject to the power of re-open the declaration being “substantially wrong” as contained in S. 111.

Further, no matter shall be reopened thereafter in any proceedings under the Act before any authority or court relating to the period covered by such declaration [S. 108(2)].

What do we understand by the terms “Tax Dues”, “chapter”, “Declarant”, Designated Authority” ?

- “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 Karveroad, Churchgate, Mumbai-400 020. Refer Trade Notification No. 4/2013 – ST dtd. 27.5.2013].

What are the consequences when tax dues are declared but not paid?

In case of tax dues declared but not paid, such dues along with interest liability shall be recovered from the declarant under the normal recovery proceedings under the Act, i.e. by applying garnishing provisions as provided u/s. 87.

What are the consequences on failure to make true declaration?

As per S. 111, if the Commissioner of Central Excise has reasons to believe that declaration made under the scheme was "*substantially false*", he may after recording the reasons in writing, serve notice requiring the declarant to show cause why he should not pay tax dues not paid or short paid. However, no such notice shall be issued after the expiry of one year from the date of declaration.

Such Show-cause notice shall be deemed to be issued u/s.73, or as the case may be u/s.73A of the chapter.

What is the procedure to make payment of declared of dues?

- person who is not registered under service tax, he should get 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 this section shall be passed within one month from the date of declaration by 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
- On submission of details of full payment of service tax (and interest thereon, if applicable) along with a copy of acknowledgement, the designated authority shall issue an **acknowledgment of discharge of such dues** in form No. VCES-3. Such

acknowledgement 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.

[The rate of interest in case of late payment of amount declared would be as prescribed in S. 75 i.e. if the value of taxable services in any financial year is upto 60 lakhs then rate of interest applicable is 15% and in other cases 18%. The value of taxable service shall include all taxable services including whatever already declared earlier, if any.]

Which are the other important provisions under the scheme?

- CENVAT credit shall not be utilized for payment of tax dues under the scheme.
- Amount paid under the scheme is not refundable under any circumstances.

What powers are given to Central Government?

S. 113 provides for power to remove any difficulty in giving effect to the scheme which is not inconsistent to the scheme, within a period of two years from the date of the scheme coming into force. S. 114 contains powers to make rules. However, every such order or rule shall be laid before both the House of Parliament within the prescribed period and be subject to their approval.

Q & A on various issues of VCES and their probable answers

The following are the issues collated by the writer from different sources and his own experience in the practice. The answers are the writer's personal views and should be regarded as thought provoking and under no circumstance as final answer. Each issue should be viewed on the basis of the facts of the case and may need detailed examination or professional help.

1. Can a person file form VCES-1 by declaring NIL tax dues?

No. A person cannot file form VCES-1 if there is mere Nil tax dues. To file VCES-1 Form there has to be some amount of tax dues.

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?

No, except in case of the period in relation to which the tax dues are declared. Even as per CBEC Circular No.170/5/2013-ST dtd. 8th August 2013- The immunity from interest and penalty is only for "tax dues" declared under VCES.

According to the circular issued by the government, 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. However in our opinion, it should be applied only when tax dues are declared.

3. Is service recipient eligible to take CENVAT credit of the tax paid under VCES scheme by the service provider?

As per CBEC Circular No.170/5/2013-ST dtd. 8th august 2013 the admissibility of CENVAT credit will be determined in accordance with the provisions contained in rule 9(1)(bb) and 9(1)(e) respectively of the Cenvat Credit Rules. In my view, service recipient is eligible to avail CENVAT Credit of the tax paid under VCES scheme because no restriction has been imposed for availing CENVAT credit for the tax paid under the scheme. R. 9 of Cenvat Credit Rules, 2004 prohibits Cenvat credit on amount recovered from the manufacturer, importer or service provider by reason of fraud, collusion, willful mis-statement, suppression of facts on contravention of any provision of the Act or rules made with intention to avoid payment of duty or tax. In case of VCES, payment of dues cannot be said to be partake character of such recovery.

4. Would wrong utilization of Cenvat credit in the ST-3 return eligible for declaration?

As per **CBEC Circular No. 170/5/2013-ST** 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".

5. Can amount payable under Rule 3(5), Rule 3(5A) and under Rule 6(3) of CCR be treated as 'tax dues' for the purpose of VCES? If yes, can benefit of waiver of penalty u/r 15 of CCR be availed under VCES?

No, these payments cannot be regarded as tax dues.

6. If a person has tax dues for the period 01-10-2007 to 31-12-2012 but he declares tax dues only for the period 01-10-2008 to 31-12-2012 by a declaration dated 26-10-2013. Since the period of five years from relevant date for demand for period up to 30-09-2008 is over on 25-10-2013, he did not declare or pay any service tax for the period 01-10-2007 to 30-09-2008. Can his declaration be treated as substantially false and can recovery be made by Commissioner in terms of powers conferred by section 111 of the Finance Act, 2013?

May be yes, but the consequence is issue of SCN by the Commissioner for the period which is time barred as per S. 73. Hence, in my opinion, no action can be taken in respect of such dues.

7. Mr. A has paid tax by challan on 01.05.2013 before the VCES is operational. He filed application on 11.06.2013 and the payment made by him on 09.05.2013 is treated as payment against this declaration. Can he do so? Is

there any requirement that the payment against tax dues need to be made on or after 10.05.2013 or on or after filing declaration?

Not in my opinion. The person cannot be treated as "declarant" in terms of S. 107 and the procedure prescribed therein viz. filing of VCES issue of acknowledgement in VCES – II have to be complied with. This view is confirmed by the CBEC Circular (supra). It has been further clarified that 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 of the Finance Act, 1994 and paid accordingly.

8. Does the assessee need to file the return of ST for the dues declared under the scheme?

The scheme does not provide for filing of ST-3 Returns of past periods, however, this may create complications in future in reconciling the tax dues paid with the returns filed. The declarant may declare such payment in the return as payment of other dues in the period relevant to the payment. It is desirable that a clarification is issued by the Government.

9. What tax calculation details to filed with VCES – 1? Is it advisable to make declaration for the entire period of the scheme even though the dues pertain only to a particular period within the scheme?

It is advisable to do so. But the department may insist on acceptance of declarations only for the period pertaining to the tax dues.

10. As per S. 107, the designated authority on receipt of declaration "shall" issue an acknowledgement in form VCES – 2 within a period of seven working days from the date of receipt of such declaration. The question is that if the designated authority does not issue an acknowledgement within seven working days, whether the declarant should assume that his declaration is accepted and start making payment of the tax dues as prescribed under the scheme.?

Yes, as the word used is "shall" though not clear from the scheme.

According to CBEC Circular No. 170/5/2013 - Department would ensure that the acknowledgement is issued in seven working days from the date of filing of the declaration. It further states that the **payment of tax dues under the Scheme is not linked to the issuance of an acknowledgement** and the declarant can pay tax dues even before the acknowledgement is issued by the department.

11. What about short payment of true liability for the period October to December 2012, for which the return is not yet prescribed and due.

Such short payment can be made under VCES and then shown as payment in the return as and when prescribed.

- 12. A declarant made a declaration of true tax dues in respect of one taxable service. However, due to controversy in the law for which conflicting decisions are available or difference of opinion on valuation of works contract, or on account of difference in valuation of free issue of material, the tax dues in respect of another taxable service is not correctly declared. Please examine whether the Commissioner can regard the declaration in such case as substantially false and issue notice for that undeclared service u/s. 111. Whether the declarant would be entitled to the immunity prescribed U/s. 108(2) in respect of the declaration made and tax dues paid for which the discharge certificate is already issued U/s. 107(7).**

In my opinion, no controversial issue can be regarded as "Substantially false". In any case, the power to the Commissioner is only to issue SCN for nonpayment / short payment of tax dues. At that time the matter can be explained. Immunity as regards to declared dues for which discharge certificate is issued should be available.

- 13. As per S. 108(2) r. w. S. 111(2), no matter shall be re-opened thereafter in any proceedings under Ch. V of FA 1994, before any authority or court relating to period covered by such declaration. It means that the declarant making declaration for the entire period of October 2007 to December 2012 (though he may be having tax dues for only a single return period), would get permanent immunity for any proceedings under the Act for the declaration period after the expiry of one year from the date of declaration.**

Yes, in my opinion if such declaration is accepted and discharge certificate is issued, no matter pertaining to that period can be re-opened as per S.108.

- 14. If department calls for information or books of account of entity 'X' in connection with investigation/inquiry into affairs of 'Y' whether 'X' is eligible for scheme?**

Yes, this view is confirmed by both the clarifications issued by the Board with regards to VCES so far. As per the CBEC Circular (supra) the unit that has not been issued a show cause notice shall only be eligible to make a declaration under the Scheme.

- 15. Whether simple visit by service tax officials to service provider's premises debar the assessee from applying for the scheme?**

No. As simple visit by officials to the service provider's premises does not account to investigation or inquiry.

- 16. Audit of the assessee was conducted in February, 2013 and NIL audit report dated 07.03.2013 is issued to this assessee. This assessee wants to pay service tax for the period 01.04.2008 to 30.09.2012 which was not paid by it and the audit party could not detect such non-payment or short payment of service tax. Can this assessee get benefit of VCES?**

Yes, as per the CBEC Circular (supra).

- 17. Can assessee on whom search was initiated on 01.04.2013 take benefit of this scheme?**

YES, for the dues pertaining to the scheme period.

- 18. The audit is initiated in 2010 by issuance of a letter calling for information which is also submitted. However, no audit has commenced so far. Whether such person is eligible for making a declaration under the scheme?**

Yes, as per the CBEC Circular No. 170/5/2013 - For the purposes of VCES, the date of the visit of auditors to the unit of the taxpayer would only be taken as the date of initiation of audit. A register is maintained of all visits for audit purposes.

- 19. Sometimes an assessee is asked to furnish certain records as prescribed in R. 5A of STR to ascertain that whether the assessee is liable to pay any service tax. Whether a general enquiry without any specific charge or indication would be sufficient to disentitle the assessee from making a declaration? S. 106(2) appears to cover on the cases of specific enquires only It is to be noted that, every enquiry refers to S. 14 of CE Act.**

An enquiry of roving nature from potential taxpayer regarding their business activities without seeking any documents from such person or calling for his presence would not disentitle the tax payer to enter into the scheme as clarified by the CBEC Circular (supra).

- 20. What are the consequences of failure on the part of declarant to pay 50% tax on or before 31.12.2013?**

According to CBEC Circular No. 170/5/2013 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.

21. What if the tax liability for the period Oct-Dec'12 is not paid till the date?

If the tax dues pertaining to the period Oct - Dec'12 is not yet paid then such person is eligible to avail the benefits of VCES scheme as per the scheme.

22. Having declared tax dues u/s. 107(1), whether the declarant shall be eligible for immunity if he fails to make full payment within the prescribed period and the remaining payment is recovered from him in accordance with S. 87 of the Act?

Not free from doubt but it appears from S. 108 that such person shall be eligible for immunity for the payment made. Even S. 110 provides for power of recovery only but the scheme nowhere provides for withdrawal of immunity.

23. Whether the service receiver who is required to make payment under reverse charge can opt for VCES for non-payment of tax dues?

YES, this has been conformed by the CBEC Circular (supra).

24. Whether any kind of document / supporting is required to be attached with the declaration form or if the declarant attached any document / supporting, the same would be accepted and entertained?

The details as required to be filed in terms of Serial No. 3F (I) of new ST-3 or part B of old ST-3. No other supporting or documents seems to be acceptable to the department.

25. Whether rejection of application is quasi judicial function. Whether principles of natural justice will be followed. Whether such rejection is appealable?

According to CBEC Circular (supra), 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.

26. ABC Ltd. has three different premises in Ahmadabad, Rajkot and Jamnagar respectively. ABC Ltd. is providing services from each office and such offices are separately registered with respective service tax range. Further, it has received a show -cause notice dated 25-02-2013 in respect of some alleged short payment of service tax for Ahmadabad office but has not received any such notice or any communication for Rajkot or Jamnagar offices. Can Rajkot and Jamnagar branch take benefit under VCES for any tax dues relating to those places?

As per the **CBEC Circular (supra)**, two separate service tax registrations are two distinct assesses for the purposes of service tax levy. Therefore, eligibility for availing of the Scheme is to be determined accordingly. The unit that has not been issued a show cause notice shall be eligible to make a declaration under the Scheme.

- 27. 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 'substantially false' declaration ?**

According to CBEC Circular (supra), 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 natural justice.

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".

- 28. Whether upon filing a declaration a declarant realizes that the declaration filed by him was incorrect by mistake? Can he file an amended declaration?**

According to CBEC circular.(supra) - 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.

- 29. 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, As per the CBEC Circular (supra) there is no bar from filing of declaration in such cases.

- 30. 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, as per the CBEC Circular (supra) the declarant can declare the "tax dues" concerning an issue which is not a part of the audit para .

- 31. 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 returns?**

As per the circular issued by the Government, under VCES a declaration can be made only in respect of "tax dues". A case where no tax is pending, 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 files and, in such cases, the assessee may seek relief under rule 7C

- 32. 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 by him outside the VCES, i.e., (amount paid prior to VCES)?**

No, as per the CBEC Circular (supra)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 of the Finance Act, 1994 and paid accordingly.

- 33. 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?**

As per the CBEC Circular (supra) the amount so paid can be adjusted against the liability that is determined by the department.

- 34. 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?**

As per the CBEC Circular (supra), 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.

The admissibility of CENVAT credit on any inputs and input services used for provision of output service in respect of which declaration has been made shall continue to be governed by the provisions of the Cenvat Credit Rules, 2004. In other words, CENVAT Credit can be carried forward if otherwise eligible.

35. 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?

Yes, it has been clarified in the CBEC Circular (supra), that the designated authority, if he has reasons to believe that the declaration is covered by section 106 (2), shall give a notice of intention to reject the declaration within 30 days of the date of filing of the declaration stating the reasons for the intention to reject the declaration. For declarations already filed, the said period of 30 days would apply from the date of this circular.

The declarant shall be given an opportunity to be heard before any order is passed by the designated authority.

**36. In terms of section 106 (2)(b), if a declaration made by a person against whom an audit has been initiated and where such audit is pending, 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,-
(i) initiation of audit; and
(ii) culmination of audit.**

According to the CBEC Circular (supra).

Initiation of audit: 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.

Culmination of audit: The audit process may culminate in any of the following manner.-

(i) Closure of audit file if no discrepancy is found in audit;

(ii) Closure of audit para by the Monitoring Committee Meeting (MCM);

(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;

(iv) Approval of audit para by MCM, and issuance of SCN, if party does not agree to the para so raised.

The audit culminates at a point when the audit paras raised are settled in any manner as stated above.

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.

Disclaimer: The contents of this document are solely for informational purpose. It does not constitute professional advice or a formal recommendation. While due care has been taken in preparing this document, the existence of mistakes and omissions herein is not ruled out. Neither the author nor itatonline.org and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any inaccurate or incomplete information in this document nor for any actions taken in reliance thereon. No part of this document should be distributed or copied (except for personal, non-commercial use) without express written permission of itatonline.org