

I/60776/2023

CBIC-6/1/2021-CX-VI Section-CBEC
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Tax & Customs
(CX & ST Wing)

Room No. 263-E, North Block,
New Delhi, dated: 6th February, 2023

INSTRUCTION

To,

1. The Principal Chief Commissioner/ Chief Commissioner of CGST & CE (All),
2. Pr. Director General, Directorate of System and Data Management
3. The Principal Commissioner/ Commissioner of CGST & CE (All),
4. Webmaster.cbic@icegate.gov.in

Madam/ Sir,

Subject: Performance Audit Report No. 14 of 2022 “Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS) 2019” of C&AG of India (Indirect Taxes-GST, Central Excise & Service Tax)-reg.

The Performance Audit Report No. 14 of 2022 “Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS) 2019” of C&AG of India (Indirect Taxes-GST, Central Excise & Service Tax) which was tabled in Parliament on 21.12.2022, has made certain observations about implementation of the Sabka Vishwas Legacy Dispute Resolution Scheme (SVLDRS) (the ‘Scheme’), settlement of cases, realization of tax dues and internal control mechanisms.

2. Briefly, the Audit has, inter-alia, pointed out that some Designated Committees irregularly processed declarations under the ‘Voluntary Disclosure’ category, though the declarants were subjected to enquiry/investigation/audit and filed returns while some eligible declarations were rejected; there was incorrect consideration of tax dues in some cases; inconsistencies in treating similar issues with regard to adjustment of penalty/late fee/ interest as pre-deposits and in some declarations, evidence of pre-deposits /deposits had not been verified properly, after due linking with the concerned cases and there was no systemic mechanism for a risk-based sample verification of the ‘Voluntary Disclosure’ cases. The C&AG’s report is available on its website (<https://cag.gov.in/en>). The jurisdictional authorities are directed to take necessary action in specific cases pointed out by the C&AG in its report.

3. In addition, Audit has also made certain recommendations: -

- i. Protect the interest of the revenue in cases where declarations were filed under ‘Voluntary Disclosure’ category of SVLDRS, but liability was not discharged.
- ii. Create a watch list of non-SVLDRS challans linked to ARN’s to prevent them from being reused in future.
- iii. Remove the cases which are settled under the scheme from the pendency list of legal forums
- iv. Rectify the error in cases where discharge certificate has not been issued due to technical reasons, despite the applicant having fulfilled all requisites and made

I/60776/2023

payments in time.

4. Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (SVLDRS, 2019), notified by the Finance Act (No.2), 2019, was an Amnesty-cum- Dispute Settlement Scheme, which provided one time opportunity to the tax payer to settle the tax dispute and avail tax relief. Four categories of cases - Litigation, Arrears, Investigation/Enquiry/Audit and Voluntary Disclosure were identified/covered in the scheme. The process was fully automated for electronic filling of declarations, communication of amount payable, personal hearing, payment of tax dues and issue of discharge certificate through SVLDRS portal. Designated Committees were appointed in commissionerates who were the appropriate authority for verification of declarations and issue of discharge certificates, based on the particulars furnished by the declarant as well as the records available with the Department. In order to achieve uniformity among the different designated committees and to clarify the issues raised by the field formations as well as trade, the Board has issued circulars and Instructions from time to time, to achieve the objectives of the scheme.

5. In view of the recommendations of the Audit, Board issues the following directions which may be strictly adhered to: -

5.1 Audit in its report has recommended that cases where declarations were filed under 'Voluntary Disclosure' category of SVLDRS, but liability was not discharged by the declarant/taxpayer, should be vigorously pursued to protect the interest of the revenue.

5.1.1 Kind attention is invited to Member (CX& ST)'s DO letter dated 04.02.2022 vide F.No. CBIC-6/1/2021-CX-VI Section-CBEC (copy enclosed) wherein it was directed that in all cases where the declarations were filed under 'voluntary disclosure' category but the declarant did not make payment of their own declared liability during currency of the scheme, appropriate action may be initiated to safeguard interests of revenue. It was also directed that enquiry/action in such cases cannot be limited to amount "declared" under 'voluntary disclosure' category. This was again reiterated vide Board's letter of even no dated 02.08.2022 (copy enclosed). In view of the observations made by the Audit, it is again directed that appropriate action may be taken in all the cases where the declarant has filed declaration under 'voluntary disclosure' category but did not make the payment under the scheme. A list of all such cases has already been circulated to the field formations by the O/o Pr. DG Systems & Data Management. In all other cases also, such as the declarations filed under litigation, investigation, enquiry or audit, or arrears category, where Discharge Certificates could not be issued, especially due to non-payment of the estimated payable amount, or were rejected by the Designated Committees, necessary action to safeguard interests of revenue needs to be taken by the jurisdictional officer.

5.2 Audit has brought to the notice of Ministry that in some cases, tax evaders who had opted for Voluntary Compliance Encouragement Scheme, 2013 (VCES) were not retained in tax net, and have again filed declaration in SVLDRS under voluntary disclosure category.

5.2.1 Kind attention is again invited to Member (CX& ST)'s DO letter of even no dated 04.02.2022 wherein it was directed that the tax payers who have availed reliefs provided either under VCES or SVLDRS should be monitored regularly and should be kept in the tax net. The jurisdictional authorities may ensure that regular returns are being filed under GST by the assesseees (if registered), specifically in the cases pointed out by Audit in this regard.

5.3 Audit has pointed out that in some cases, despite the fact that discharge certificates were issued, the status of the respective cases in different legal/appellate forums [CESTAT or Commissioner (Appeals)] is still showing pending.

5.3.1 Kind attention is invited to sub-section (6) of section 127 of the Finance (No. 2) Act, 2019 which provides that where the declarant has filed an appeal or reference or a reply to the

I/60776/2023

SCN against any order or notice giving rise to the tax dues, before the appellate forum, other than the Supreme Court or the High Court, then, such appeal or reference or reply shall be deemed to have been withdrawn. Board has noted that in certain cases, Commissionerates have expressed their inability to update the status of such cases. This position can not be accepted. Commissionerates must coordinate with the Registry or Departments' AR or verify the status of each case pending with the Tribunal from its website. Similarly, the list of cases pending with Commissioner (Appeals) must also be updated. Accordingly, it is directed to identify all such cases, where discharge certificates have been issued but are still showing pending with CESTAT or Commissioner (Appeals), in coordination with the respective legal/appellate forum and update the status of the said cases as withdrawn with respective legal/appellate forums. Further, it may be ensured that Misc. application is filed for withdrawal of departmental appeals in cases where discharge certificates have been issued but are still showing pending with CESTAT or Commissioner (Appeals), and their status is updated.

5.3.2 In respect of cases with Supreme Court or High Court, kind attention is also invited to sub-section (7) of section 127 of the Finance (No. 2) Act, 2019 which provides that where the declarant has filed a writ petition or appeal or reference before any High Court or the Supreme Court against any order in respect of the tax dues, the declarant shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the Court, he shall furnish proof of such withdrawal to the designated committee, along with the proof of payment of the amount indicated in the statement of the designated committee and the designated committee shall accordingly issue a discharge certificate. Kind attention is invited to Para 2(ii) of Circular No. 1072/05/2019-CX dated 25.09.2019, wherein it was directed that in cases of departmental appeals, the department will also file application for withdrawal of appeals, references or writ petitions, pending before Supreme Court or High Court, in cases where discharge certificate is issued. It is directed that in all such cases, the jurisdictional officers may file for withdrawal of departmental appeals in SC or HC, if not done already and may coordinate with the assessee/ declarant regarding appeals filed by them and pending in SC or HC, to expedite processing of such declarations so that discharge certificate is issued in such cases and these may reach a logical conclusion.

5.3.3 In respect of the cases settled under the scheme but still shown as pending at legal forums, the jurisdictional Pr. Chief Commissioner/ Chief Commissioner of the zone may devise a mechanism to monitor such cases and ensure compliance to the Audit observations/ recommendations.

5.4 Audit has recommended that the Department must verify that the non-SVLDRS challans already used for SVLDRS settlement have not been used in the past, and should create a watch list of such challans to prevent them from being reused in future also.

5.4.1 CBIC vide letter dated 23.12.2019 has already directed the O/o Pr. DG Systems & Data Management to ensure that a proper audit trail with adequate safeguards is provided so that facility to link payment made by a taxpayer using non-SVLDRS challans with the Form SVLDRS-3, is not misused by any person in any manner. It was further directed that each such transfer of challans must be properly accounted for and the person carrying out the task must be identifiable and the exercise should be strictly monitored. This was again reiterated by O.M. of even no dated 25.02.2022. In view of the Audit observations, O/o Pr. DG Systems & Data Management is requested to create a watch list of all such non-SVLDRS challans linked with SVLDRS ARN's and prominently be placed on CBIC's website. The field formations are directed to refer to this watch list while carrying out verification of duty/arrears payment through the challans presented by the assessee to prevent them from being used again.

5.5 Audit has also recommended that discharge certificates in certain cases has not been issued due to technical reasons, despite the applicant having fulfilled all requisites and made payments in time.

5.5.1 It is directed that all such cases, where discharge certificate was not issued due to

I/60776/2023

technical reasons, despite the applicant having fulfilled all requisites and made payments in time, may be resolved in coordination with O/o Pr. DG Systems & Data Management.

6. Difficulty experienced, if any, in implementing the Instructions should be brought to the notice of the Board. Hindi Version will follow.

Encl: As above

Signed by Rubal Saroha

Date: 06-02-2023 12:42:34

Reason for Approval

Under Secretary (CX.1)