

Circular No. 169/4/2013 - ST

F. No. B1/19/2013-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
Tax Research Unit

New Delhi, dated the 13th May, 2013

To,
Chief Commissioners of Central Excise and Customs (All),
Director General (Service Tax), Director General (Systems),
Director General (Central Excise Intelligence), Director General (Audit),
Commissioners of Service Tax (All), Commissioners of Central Excise (All),
Commissioners of Central Excise and Customs (All)

Madam/Sir,

Sub: The Service Tax Voluntary Compliance Encouragement Scheme-clarifications regarding.

The Service Tax Voluntary Compliance Encouragement Scheme (VCES) has come into effect upon enactment of the Finance Bill 2013 on the 10th May, 2013. The Service Tax Voluntary Compliance Encouragement Rules, 2013 has been issued to bring into effect the Scheme. Some references have been received seeking clarification as regards the scope and applicability of the Scheme.

2. The issues have been examined and clarifications thereto are as follows:

S. No.	Issues	Clarification
1	Whether a person who has not obtained service tax registration so far can make a declaration under VCES?	Any person who has tax dues to declare can make a declaration in terms of the provisions of VCES. If such person does not already have a service tax registration he will be required to take registration before making such declaration.
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.	Yes. 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.
3	Whether an assessee to whom show cause notice or order of determination has been issued can file declaration in respect of tax dues which are not covered by such SCN or order of determination?	In terms of section 106 (1) of the Finance Act, 2013 and second proviso thereto, the tax dues in respect of which any show cause notice or order of determination under section 72, section 73 or section 73A has been issued or which pertains to the same issue for the subsequent period are excluded from the ambit of the Scheme. Any other tax dues could be declared under the Scheme subject to the other provisions of the Scheme.

4.	<p>What is the scope of section 106 (2)(a)(iii)?</p> <p>Whether a communication from department seeking general information from the declarant would lead to invoking of section 106 (2) (a)(iii) for rejection of declaration under the said section?</p>	<p>Section 106 (2) (a)(iii) of the Finance Act, 2013 provides for rejection of declaration if such declaration is made by a person against whom an inquiry or investigation in respect of service tax not levied or not paid or short-levied or short paid, has been initiated by way of requiring production of accounts, documents or other evidence under the chapter or the rules made thereunder, and such inquiry or investigation is pending as on the 1st day of March, 2013.</p> <p>The relevant provisions, beside section 14 of the Central Excise Act as made applicable to service tax vide section 83 of the Finance Act,1994, under which accounts, documents or other evidences can be requisitioned by the Central Excise Officer for the purposes of inquiry or investigation, are as follows,-</p> <p>(i) Section 72 of the Act envisages requisition of documents and evidences by the Central Excise Officer if any person liable to pay service tax fails to furnish the return or having made a return fails to assess the tax in accordance with the provision of the Chapter or rules made thereunder.</p> <p>(ii) Rule 5A of the Service Tax Rules, 1994 prescribes for requisition of specified documents by an officer authorised by the Commissioner for the purposes specified therein.</p> <p>The provision of section 106 (2)(a)(iii) shall be attracted only in such cases where accounts, documents or other evidences are requisitioned by the authorised officer from the declarant under the authority of any of the above stated statutory provisions and the inquiry so initiated against the declarant is pending as on the 1st day of March, 2013.</p> <p>No other communication from the department would attract the provisions of section 106 (2)(a)(iii) and thus would not lead to rejection of the declaration.</p>
----	--	--

3. Trade Notice/Public Notice may be issued to the field formations and tax payers. Please acknowledge receipt of this Circular. Hindi version follows.

Yours sincerely,

(S. Jayaprahasam)
 Technical Officer, TRU
 Tel: 011-2309 2037