

## J.B. NAGAR CPE STUDY CIRCLE

**Subject** : Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

**Day & Date** : Sunday, 10<sup>th</sup> November, 2019

**Venue** : Hotel Kohinoor, J.B Nagar, Andheri(E),Mumbai

**Presented by** : **CA Naresh Sheth**

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Sabka Vishwas  
(Legacy Dispute  
Resolution)  
Scheme, 2019

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## Preamble

- Legacy litigation under Excise and Service tax is a great concern for nation as a whole
- 1.50 lakhs cases involving disputed tax dues of INR 3.75 lakhs crores are pending at various forums
- Tax payers are burdened with huge litigations mostly arising out of frivolous demands
- Judiciary and tax administration is clogged with enormous pendency of the cases
- On introduction of GST, some states introduced Amnesty / Dispute Resolution Scheme for VAT litigations
- Finance (No.2) Act, 2019 ['the Act'] introduced one-time scheme for:
  - Resolution and faster settlement of Central Excise and Service Tax dispute legacy cases
  - Providing an opportunity for voluntary disclosure

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## Preamble

- The Scheme offers an opportunity to taxpayers to close never-ending costly litigation by:
  - Availing substantial **tax relief ranging from 40% to 70%** of disputed tax dues/ arrears
  - Complete **waiver of interest, penalty and prosecution**
  - Closure of further proceedings in respect of such disputes
- Government's sincerity is apparent from **Circular No. 1071/4/2019-CX.8 dated 27.08.2019**:
  - Action plan is chalked out at Para 11 of above referred Circular
  - All officers and staff of CBIC to partner with trade & industry to make the scheme a grand success
  - Administrative machinery to fully focus on helping taxpayers in smooth implementation of the Scheme
  - An intensive out-reach programme for creating awareness among trade & industry through polite emails, phone calls, letter and SMS

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## Scope of Presentation

- Analysis of relevant provisions, Rules, Circulars and FAQs with reference to:
  - Cases eligible for scheme
  - Relief under the scheme
  - Amount payable under the scheme
  - Procedure under the scheme
  - Related issues
- Approach to assess viability of the scheme
- Way forward for assesses and consultants

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## Legal framework

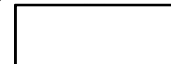
- Chapter V (Section 120 to 135) of Finance (No. 2) Act, 2019 ['the Act'] enacting the Scheme
- Notification No. 04/2019 Central Excise-NT dated 21.08.2019
  - Notifying effective date of the scheme
- Notification No. 05/2019 Central Excise-NT dated 21.08.2019
  - Notifying Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 ['the Rules']
- Circular No. 1071/4/2019- CX.8 dated 27.08.2019 [referred to as 'Circular-I' in presentation]
- Circular No. 1072/05/2019-CX.8 dated 25.09.2019 [referred to as 'Circular-II' in presentation]
- Circular No. 1073/06/2019.CX.8 dated 29.10.2019 [referred to as 'Circular-III' in presentation]
- 60 FAQs released by CBIC on 30.08.2019 replacing old 43 FAQs dated 8.08.2019.

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## Scheme – Effective period



- The scheme came into force w.e.f. **01.09.2019**

- N/No. 04/2019 CE-NT dated 21.08.2019

- Last date for making declaration under the scheme is **31.12.2019**

- N/No. 05/2019 CE-NT dated 21.08.2019

- Rule 3(1) provides that the declaration in Form SVLDRS-1 to be filed on or before 31.12.2019

## Taxes / Duties / Cesses covered under the Scheme

**Section  
122 of  
the Act**

- The Scheme does not apply to following Tax disputes :
  - **State tax such as VAT, Entry tax, Octroi, Luxury tax, entertainment tax, etc.**
  - **Goods and Services Tax**
  - **Custom Duty**
- The scheme mainly covers tax disputes relating to:
  - **Excise duty and Cesses**
  - **Service tax and Cesses**
- The scheme also covers tax disputes under following Acts:

<b>1</b>	the Agricultural Produce Cess Act,1940;	<b>6</b>	the Rubber Act, 1947;
<b>2</b>	the Coffee Act, 1942;	<b>7</b>	the Salt Cess Act, 1953;
<b>3</b>	the Mica Mines Labour Welfare Fund Act, 1946;	<b>8</b>	the Agricultural and Processed Food Products Export Cess Act, 1985
<b>4</b>	the Spices Cess Act, 1986;	<b>9</b>	the Sugar (Special Excise Duty) Act, 1959;
<b>5</b>	the Sugar Cess Act, 1982;	<b>10</b>	the Jute Manufacturers Cess Act, 1983;

## Taxes / duties / cess covered under the Scheme [Cond...]

**Section  
122 of  
the Act**

<b>11</b>	the Bidi Workers Welfare Cess Act, 1976;	<b>19</b>	the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978;
<b>12</b>	the Produce Cess Act, 1966;	<b>20</b>	the Tobacco Cess Act, 1975;
<b>13</b>	the Finance Act, 2004 – Education Cess	<b>21</b>	the Textiles Committee Act, 1963;
<b>14</b>	the Finance Act, 2007 – Secondary and Higher Education Cess	<b>22</b>	the Oil Industry (Development) Act, 1974;
<b>15</b>	the Finance Act, 2015 – Swachh Bharat Cess	<b>23</b>	the Mineral Products (Additional Duties of Excise and Customs) Act, 1958;
<b>16</b>	the Finance Act, 2016 – Krishi Kalyan Cess	<b>24</b>	the Limestone and Dolomite Mines Labour Welfare Fund Act, 1972;
<b>17</b>	the Medicinal and Toilet Preparations (Excise Duties) Act, 1955;	<b>25</b>	the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
<b>18</b>	the Coal Mines (Conservation and Development) Act, 1974;	<b>26</b>	the Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976;

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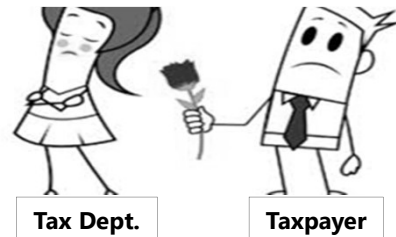
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## Persons/matters not eligible for the Scheme

**Section  
125 of  
the Act**

### ➤ Scheme does not apply to persons who have:

- Filed an appeal before the appellate forum **and final hearing** is done on or before the **30.06.2019**
- Received SCN **and final hearing** is done on or before the **30.06.2019**
- Been convicted for the matter for which he intends to file a declaration
- Received SCN for an erroneous refund / refund
- Been subjected to an enquiry / investigation / audit where amount of duty **not quantified** on or before **30.06.2019**



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## Persons/matters not eligible for the Scheme [Cond...]

**Section  
125 of  
the Act**

- Made voluntary disclosure in following cases:
  - After being subjected to any enquiry / investigation / audit; or
  - Having filed a return where duty payable is disclosed, but not paid it
- Filed an application in the Settlement Commission for settlement of a case
- Matter related to excisable goods covered in the IV Schedule to the Central Excise Act, 1944
  - Tobacco and manufactured tobacco substitutes
  - Petroleum products
- Table No. 8 of Form SVLDRS-1 captures eligibility conditions. System automatically blocks the person/matter not eligible for Scheme.
- **In short, scheme applies to all persons/cases except stated above**

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## Eligibility- Broad Categories

**Section  
125 of  
the Act**

CATEGORIES	PARTICULARS
Litigation	<ul style="list-style-type: none"> <li>• Where tax dues are related to or linked to:                             <ul style="list-style-type: none"> <li>▪ SCN pending as on <b>30.06.2019</b></li> <li>▪ Appeal arising out of SCN pending as on <b>30.06.2019</b></li> <li>▪ Where tax dues are linked to an enquiry, investigation or audit and the <b>amount quantified on or before 30.06.2019</b></li> </ul> </li> </ul>
Amount in Arrears	<ul style="list-style-type: none"> <li>• Where tax dues are relatable to:                             <ul style="list-style-type: none"> <li>▪ Non-filing of appeal against an order / an order in appeal before expiry of time for filing appeal; or</li> <li>▪ An order in appeal relating to the declarant attaining finality; or</li> <li>▪ Unpaid tax liability disclosed in a return filed on or before 30.06.2019</li> </ul> </li> </ul>
Voluntary Disclosure	Except non-eligibility specified in Sec 125

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## Eligibility – Relevant definitions

Section  
121 of  
the Act

➤ **“audit”** means any:

- scrutiny
- verification
- checks

carried out under the indirect tax enactment (other than an enquiry or investigation) and will **commence when a written intimation** from the central excise officer regarding conducting of audit is received

➤ **“enquiry or investigation”**, under any of the indirect tax enactment, shall include the following actions, namely-

- Search of premises
- Issuance of summons
- Requiring the production of accounts, documents or other evidence
- Recording of statements

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## Eligibility – Clarifications through Circulars

Section  
125 of  
the Act

➤ Whether tax payer can avail benefit of scheme in respect matters transferred to call book?

- **Para 6 of the Circular I**- Scheme is wide enough to cover call book cases

➤ Whether Section 125 makes **a person** or **a case** ineligible to apply under the Scheme?

- **Para 10(b) of the Circular I** - Exception for eligibility u/s 125 is for 'the case' and not 'the person'. Therefore, if a person is not eligible to go for Scheme in respect of a case, such ineligibility will not impact his eligibility for opting the Scheme in respect of any other case

➤ In case of appeals, where final hearing is concluded but the order is awaited as on 30.06.2019. However, such hearing in matter is rescheduled even after the final hearing due to new bench, change in officer or any other reason. Whether the appellant is eligible to go for Scheme?

- **Para 10(e) of the Circular I**- This restriction will apply to only those cases, where the appellate forum has heard the matter finally as on 30.06.2019

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## Eligibility – Clarifications through Circulars

**Section  
125 of  
the Act**

- If a person filed application with Settlement Commission for settlement of a case under Service tax. However, proceedings before the Commission is abated due to rejection of the application or any other reason. Whether one can apply under the scheme?
  - **Para 10(f) of the Circular I** - All cases which are outside the purview of the Settlement Commission shall be covered under the scheme
  - Further, any pending appeals, reference or writ petition filed against order of Settlement Commission are also eligible under the scheme
  - An arrears emerging out of order of Settlement Commission are also eligible under the scheme
- Whether requiring production of documents like profit and loss account or balance sheet etc by the department make the assessee ineligible for voluntary disclosure under the scheme?
  - Definition of enquiry or investigation includes requiring the production of accounts, documents or other evidence. Section 125(1)(f)(i) prohibits person to avail the benefit of the Scheme if such proceedings are initiated
  - **Para 2(vi) of Circular II** clarifies that Designated Committee may take a view on case to case basis.

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## Eligibility – Clarifications through Circulars

**Section  
125 of  
the Act**

- Cases under an enquiry, investigation or audit where the duty demand has been quantified on or before the **30th day of June, 2019** are eligible under the Scheme. What does the term 'Quantified' mean?
  - Section 2(r) defines "quantified" as a written communication of the amount of duty payable under the indirect tax enactment
  - **Para 10(g) of the Circular I** - Written communication will include
    - a letter intimating duty demand or
    - duty liability admitted by the person during enquiry, investigation or audit or
    - audit report etc.
- If a "SCN" or "appeal" relates to multiple matters, whether assessee can avail benefit of scheme in respect of selected matter or he has to file declaration for all matters under dispute?
  - **Para 10(h) of the Circular I** - Declarant has to file declaration for all the matters covered under the SCN

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## Eligibility – Clarifications through Circulars

- Section 123 (c) entitles person to apply for scheme where audit is **pending** and amount of duty is quantified on or before 30.06.2019. Whether receipt of Final audit report ('FAR') mean that audit is no longer pending and hence person is not entitled to scheme?
  - Para No. 2(i) of Circular III clarifies that audit will be treated as completed only when audit culminates into SCN. The assessee is entitled to Scheme even if FAR is issued on or before 30.06.2019
- Whether one can go for scheme in respect of SCN relating to demand for interest ?
  - Para No. 2(v) of Circular II clarifies that such cases are covered under the Scheme.
- Whether in case the taxpayer has paid full tax dues on filing of return on or before 30.06.2019 without paying interest on delayed payment. Can he apply for Scheme in respect of unpaid interest?
  - Para 2(iii) of Circular III permits to do so.
- Whether declaration can be filed where adjudication order received on 15.06.2019 and no appeal is filed till 14.09.2019 (i.e due date for filing the appeal)?
  - Para 2(viii) of Circular II clarifies that such dues becomes "amount in arrears" and can be declared in the scheme under said category.

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## Eligibility – Clarifications through Circulars

- Whether the declaration can be filed in following cases where adjudication order received on **15.06.2019** and due date for filing the appeal is **14.09.2019**:
  - Appeal is filed within prescribed time i.e on **10.09.2019**
    - Para No. 2(vi) of Circular III clarifies that if taxpayer withdraws appeal and furnishes an undertaking to the department (which is binding on the declarant), he can file a declaration under "amount in arrear" category
- Whether one can go for scheme in respect of adjudication order received on 7.11.2019 can file a declaration?
  - Para No. 2(vii) of Circular II clarifies that in such cases the taxpayer can go for the scheme under "amount in arrears" category provided he gives in writing that he will not file an appeal against such order.

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## Eligibility - Clarifications through FAQs

- If a SCN covers multiple issues, whether the person can file an application under the Scheme for only few issues covered in the SCN? (FAQ no. 4)
  - No. A person cannot opt to avail benefit of the Scheme in respect of selected matters. He must file a declaration in respect of all the matters concerning duty/tax liability covered under the SCN
- Can taxpayer opt for the benefit under the Scheme in case of periodical notices without opting for it in respect of the main notice? (FAQ no. 44)
  - Yes
- Whether one can go for scheme when amount quantified under an enquiry, investigation or audit on or before 30.06.2019 gets modified subsequently due to any reason? (FAQ no. 59)
  - Only such cases of enquiry, investigation or audit are covered under the Scheme where the duty/tax demand has been worked out on or before 30.06.2019 but SCN has not been issued

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## Eligibility - Clarifications through FAQs

- Whether one can go for 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?
  - A taxpayer will be eligible to file a declaration under the scheme if he withdraws the appeal and furnishes an undertaking to the department in terms of Para 2(viii) of Circular III
- I had made an application to the Settlement Commission for settlement of my case. However these proceedings abated due to rejection of the application by the Settlement Commission or other reason/s and the case went back to the adjudicating authority for further action. Can I avail the benefit of the Scheme with respect to this case? (FAQ no. 49)
  - Yes. A declaration under the Scheme can be made for a case which is no longer with the Settlement Commission if other conditions of the Scheme are satisfied

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## Eligibility – Issues

- Eligibility in respect of SCN issued on **29.06.2019** but received by Assessee on **05.07.2019**
- Where a tax payer, who has filed a return declaring certain tax as payable but has not paid it, will he be eligible under the scheme in the following circumstances:
  - Tax return of April to September 2016 is filed on or before 30.06.2019
  - Tax return for October to March 2017 is filed on or after 01.07.2019
- SCN received by tax payer on or after 15.07.2019. Whether the scheme is available if the SCN was pursuant to:
  - EA - 2000 audit completed on or before 30.06.2019
  - Pre-SCN consultation done on or before 30.06.2019
  - Investigation or anti-evasion proceedings on or before 30.06.2019
  - Periodical SCN wherein requisite information furnished to department before 30.06.2019

## Eligibility – Issues

- Declarant can apply for scheme in respect of pending SCN or appeal which are not finally heard till 30.06.2019. The term "FINAL HEARING" is not defined under the Scheme or relevant Indirect tax enactment. Moreover, there is no procedure of intimating tax payer about conclusion of hearing. What is the best method to ensure the eligibility on this criteria?
  - In many cases SCNs are heard but no order is passed or the department has kept it pending for some information to be filed
  - In case declarant has not appeared for consecutive three hearings, what would be considered as date of final hearing?
  - Where the Tribunal has reserved its orders in respect of hearings that took place before 30.6.2019?
- Whether a declarant whose appeal is disposed of by way of remand by CESTAT on or before 30.06.2019 is entitled to Scheme?

## Eligibility – Issues

- In a case where appeal is pending before the Commissioner (Appeals) as on 30.6.2019 but subsequently in September 2019 the hearing takes place and the demand is confirmed, under which category the declaration has to be filed:
  - Litigation Category: **or**
  - Amount in arrears Category
- EA-2000 audit is started in April 2019. Audit team has sent letter intimating audit observations in May 2019 stating the amount of revenue escaping the tax. Whether declarant can go for scheme?
- Voluntary disclosure **after** inquiry, investigation or audit is not eligible for scheme under section 125(1)(f)(i) of the Act. The term **“after”** should be interpreted to mean “after commencement of enquiry/ investigation/ audit” or “after completion of enquiry/ investigation/ audit”

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## Eligibility – Issues

- Whether appellant can go for scheme where he withdraws the appeal in September 2019 in case where appeal already heard by appellate authority before 30.06.2019 so as to contend that tax was in arrears as on 30.06.2019 in cases where order has not been passed?
- An unregistered person collected service tax on invoices citing bogus service tax registration number. He has not deposited such amount collected as representing service tax. On being caught by department, he gets a SCN which is pending as on 30.06.2019. Whether such a person can take benefit under the scheme?
- A registered person has charged Rs.50 lakhs on various invoices raised by him in June 2019. Due to liquidity crunch he has declared liability of Rs.20 lakhs only in his return and have discharged tax to that extent. Whether he can go for the scheme for balance 30 lakhs?
- Whether declarant can withdraw his petition filed with settlement commission to qualify for the scheme?

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## Eligibility – Issues

- Under section 121(c)(iii) amount in arrears means duty recoverable on account of an order in appeal attaining finality. What is the meaning of the term “attaining finality”?
- Scrutiny is initiated based on discrepancy between revenue as per Income tax returns / 26AS and Service tax returns. The first communication is received on or before 30.06.2019 showing difference in revenue and requesting to pay differential tax. Whether a declarant can go for the scheme to pay differential tax in such case?
- Where there are 4 SCNs which are disposed of by the Commissioner (Appeals) by a common order and the matter is in appeal before the Tribunal as on 30.6.2019 whether demands in respect of one of the SCN covered under the order can be offered for resolution under the scheme?
- In case of EA-2000 audit, when can it be said that liability is quantified? Whether one has to treat final audit report, draft audit report or any communication of tax payable as quantification of liability?

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## Eligibility – Issues

- There is no formal process of intimating probable liability to taxpayer in inquiry or investigation process. How declarant can prove that his liability was quantified on or before 30.06.2019?
- Whether the scheme permits voluntary payment of tax dues on undisclosed revenue? If so whether this declaration is confidential and would have no effect on VAT or Income Tax?
- In anti-evasion and investigation proceedings wherein the department has recorded the statements on or before 30.06.2019 asking explanations on revenue escaping the tax. There are three possible answers by taxpayer:
  - He accepts the liability
  - He denies the liability
  - He asks for time to give comment to the question

Whether declarant can go for scheme in such case?

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## Meaning of "Tax Dues"

**Section  
123 of  
the Act**

Sr. No.	Particulars	Tax dues
1	Where a single appeal arising out of an order is pending as on 30.06.2019 before the <b>appellate forum</b> i.e. Commissioner (Appeals), Tribunal, High Court or Supreme Court  - where final hearing not done till 30.06.2019	Disputed duty / tax
2	Where more than one appeal arising out of an order:  • One by the declarant; and  • Departmental appeal  are pending as on the 30.06.2019 before the <b>appellate forum</b>  - where final hearing not done till 30.06.2019	Sum of duty / tax disputed by Declarant and Department

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## Meaning of "Tax Dues" [Cond...]

**Section  
123 of  
the Act**

Sr. No.	Particulars	Tax dues
3	Where a SCN has been received on or before 30.06.2019  - where final hearing not done till 30.06.2019	Duty / tax payable as per SCN
4	Where <b>an enquiry / investigation / audit</b> is pending and amount of duty is <b>quantified</b> on or before 30.06.2019	Disputed duty / tax as quantified
5	Where the amount has been <b>voluntarily</b> disclosed by declarant	Total amount of duty / tax declared
6	<ul style="list-style-type: none"> <li>• Where tax dues are relatable to amount in arrears:                             <ul style="list-style-type: none"> <li>▪ Non-filing of appeal against an order / an order in appeal before expiry of time for filing appeal; or</li> <li>▪ An order in appeal relating to the declarant attaining finality; or</li> <li>▪ Unpaid tax liability disclosed in a return filed on or before 30.06.2019</li> </ul> </li> </ul>	Amount in arrears

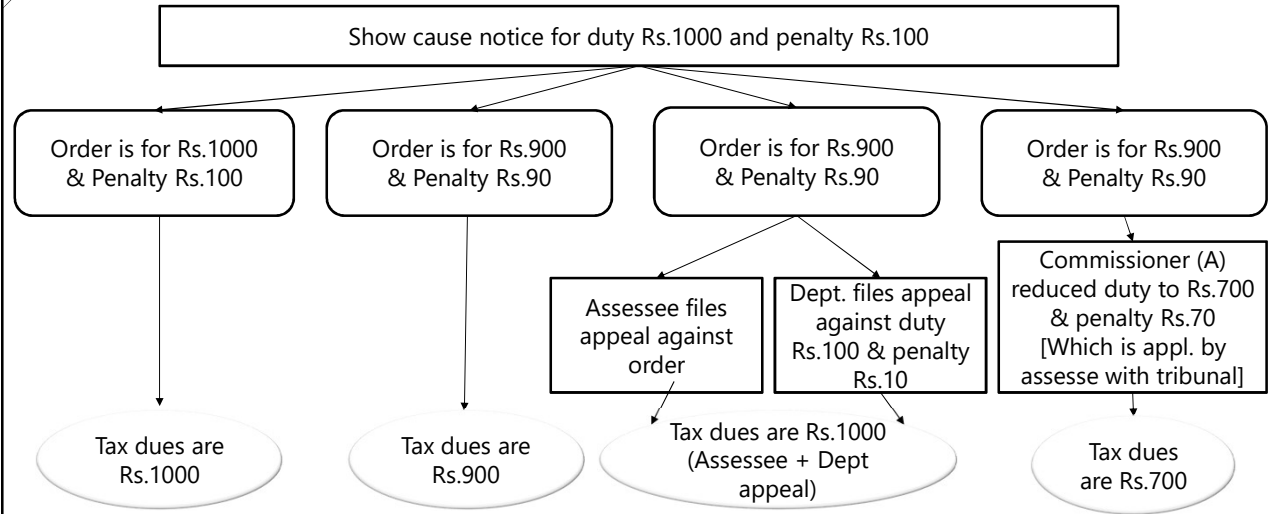
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## Examples of "Tax Dues"

**Section  
123 of  
the Act**



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## Relief when tax dues are $\leq$ Rs.50 lakhs

**Section  
124 of  
the Act**

Case	Relief	Settlement amount
<ul style="list-style-type: none"> <li>Where tax dues are related to a SCN pending as on the 30.06.2019</li> <li>Appeal arising out of SCN pending as on the 30.06.2019</li> <li>Where tax dues are linked to an enquiry, investigation or audit and the amount quantified on or before 30.06.2019</li> </ul>	70% of tax dues + full waiver of Interest, Penalty and late fees	30% of tax dues
<ul style="list-style-type: none"> <li>Where tax dues are relatable to <b>amount in arrears:</b> <ul style="list-style-type: none"> <li>Non-filing of appeal against an order / an order in appeal before expiry of time for filing appeal; or</li> <li>An order in appeal relating to the declarant attaining finality; or</li> <li>Unpaid tax liability disclosed in a return filed on or before 30.06.2019</li> </ul> </li> </ul>	60% of tax dues + full waiver of Interest, Penalty and late fees	40% of tax dues

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## Relief when tax dues are > Rs.50 lakhs

**Section  
124 of  
the Act**

Case	Relief	Settlement amount
<ul style="list-style-type: none"> <li>• Where tax dues are related to a SCN pending as on the 30.06.2019</li> <li>• Appeal arising out of SCN pending as on the 30.06.2019</li> <li>• Where tax dues are linked to an enquiry, investigation or audit and the amount quantified on or before 30.06.2019</li> </ul>	50% of tax dues  + full waiver of Interest, Penalty and late fees	50% of tax dues
<ul style="list-style-type: none"> <li>• Where tax dues are relatable to <b>amount in arrears:</b> <ul style="list-style-type: none"> <li>▪ Non-filing of appeal against an order / an order in appeal before expiry of time for filing appeal; or</li> <li>▪ An order in appeal relating to the declarant attaining finality; or</li> <li>▪ Unpaid tax liability disclosed in a return filed on or before 30.06.2019</li> </ul> </li> </ul>	40% of tax dues  + full waiver of Interest, Penalty and late fees	60% of tax dues

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## Relief irrespective of amount of tax dues

**Section  
124 of  
the Act**

Situation	Relief	Settlement amount
Where tax dues are related to a SCN for late fee or penalty only and amount of tax (as stated in SCN) has been paid or is NIL	Full waiver of late fee or penalty	Nil
Where tax dues are payable on account of a voluntary disclosure by the declarant (i.e. disclosure in declaration)	Full waiver of Interest / Penalty	100% of Tax dues

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## Relief for Amounts in Arrears Category

Particulars	Case-I	Case-II	Case-III
Confirmed or accepted tax/duty demand	1,00,00,000	1,00,00,000	40,00,000
Less: taxes/ duty paid before declaration	40,00,000	80,00,000	30,00,000
<b>Tax Dues</b>	<b>60,00,000</b>	<b>20,00,000</b>	<b>10,00,000</b>
Less: Relief under Scheme	24,00,000(40%)	12,00,000(60%)	6,00,000(60%)
<b>Tax payable under Scheme</b>	<b>36,00,000</b>	<b>8,00,000</b>	<b>4,00,000</b>

**Para No. 2(iv) of Circular II clarifies that tax dues under “ amounts in arrears” category is to be calculated in the above manner**

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## Relief under Scheme – Clarifications through Circular

**Section  
124 of  
the Act**

- In respect of penalty/late fee matters u/s 124(1)(b) which specifically covers SCN for late fee or penalty, whether one can apply under the Scheme for appellate proceedings?
  - **Para 10(d) of the Circular I**- The provisions apply to any show cause notice for penalty/late fee, irrespective of the fact that it is under adjudication or appeal
- In case of SCN demanding duty/tax from the Main Taxpayer and proposing penal action to the Co-noticees, can the benefit of Scheme be availed by the Co-noticees if the Main Taxpayer does not avail the Scheme?
  - **Para 10(i) of the Circular I** - Co-noticees can not avail the Scheme till the duty demand is not settled by Main Taxpayer
  - Once Main Taxpayer discharge duty demand (Whether under this scheme or otherwise), the Co-noticees can apply under the Scheme

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## Relief under Scheme - Clarifications through FAQs

- There is an apparent contradiction between the provisions of section 125(1)(f)(ii) and section 124(1)(c)(iii). Can you elaborate? (FAQ no. 13)
  - Section 125(1)(f)(ii) provides that a person having filed a return but has not deposited the duty/tax cannot make a voluntary disclosure
  - Section 124(1)(c)(iii) is a sub-set of the 'arrears' category and declaration can only be filed under the arrears category
  - As such, there is no contradiction between the two provisions

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## Relief under Scheme – Issues

- In case of two SCNs issued for two period in respect of same matter. One SCN is for Rs. 40 lakhs and Other is for Rs. 35 lakhs. For considering tax relief, should it be treated as tax dues more than Rs. 50 lakhs or otherwise?

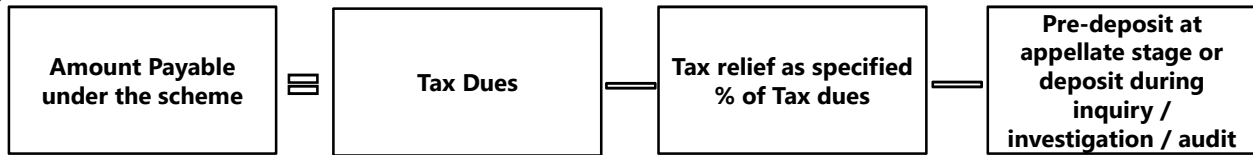
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## Amount payable under Scheme

Section  
127, 129  
& 130 of  
the Act



- If **Pre-deposit / deposit amount** exceeds the **Tax dues (net of relief)**, the difference amount will **not** be refunded
- Amount payable under the scheme is to be paid in cash only
- Amount cannot be paid from CENVAT or ITC balance
- Amount paid cannot be availed as ITC by:
  - Declarant; or
  - Recipient of goods or services
- Amount paid under the scheme is non-refundable

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## Amount payable – Clarifications

Section  
130 of  
the Act

### Circular:

- **Para 10(c) of the Circular I** - If tax have been paid by utilising the input credit and the matter is under dispute, the tax already paid through input credit shall be adjusted by the Designated Committee at the time of determination of the final amount payable under the Scheme

### FAQ:

- I have already paid duty/tax by utilising the input credit, and the matter is under dispute. Will this duty/tax already paid through input credit be adjusted against my duty/tax liability calculated under the Scheme? (FAQ no. 52)
  - Yes. In such cases, duty/tax already paid through input credit shall be adjusted by the Designated Committee at the time of determination of final amount payable under the Scheme

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## Amount payable – Issues

- Section 124(2) allows deduction of tax paid during enquiry, audit as or pre-deposit. Further Circular No 1071/4/2019-CX.8 also clarifies that tax paid through input credit shall be adjusted. What would be the position in respect of following:
  - Tax paid through CENVAT but not appropriated in SCN/Order
  - Above tax paid in Cash but not considered while issuing SCN/Order
  - Tax paid through CENVAT after issue of SCN but before passing of Order and hence appropriation not done
  - Above tax paid in Cash after issue of SCN but before passing of Order and hence appropriation not done
  - Tax paid after adjudication of SCN (OIO) or Order in Appeal (OIA) which is further contested
- Whether amount paid under protest will be regarded as other deposit adjustable against amount payable?

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## Amount payable – Issues

- The input credit cannot be used for payment of LDRS tax. However tax already paid by utilising the input credit during enquiry/investigation/audit would be considered as eligible. Would this not be considered as discriminatory especially to a case where an assessee considers his income not liable for service tax and has a good amount of credit if tax payable on output in case liability arises?
- Whether tax recovered by department directly from assessee or through Garnishee provisions (not yet appropriated through returns or adjudication order) can be regarded as 'pre-deposit or other deposit' while calculating Amount payable?
- How to quantify the pending dues when Tribunal order (passed before 30/6/2019) does not quantify the relief in its order?
- Whether amount paid as interest or penalty for the period/matter covered under declaration can be deducted while working out amount payable under the scheme?

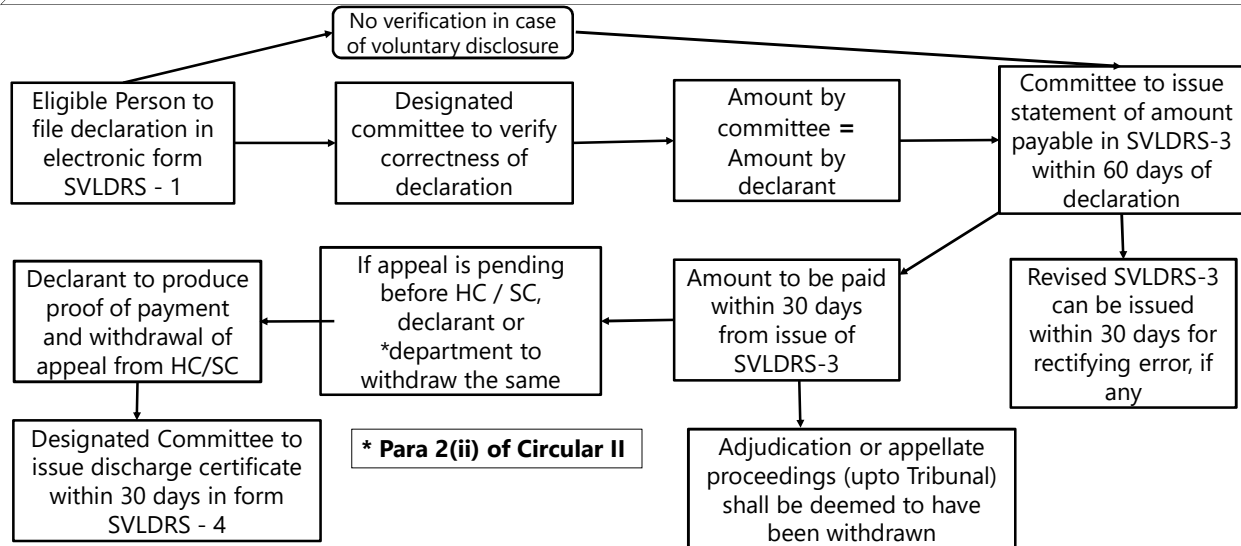
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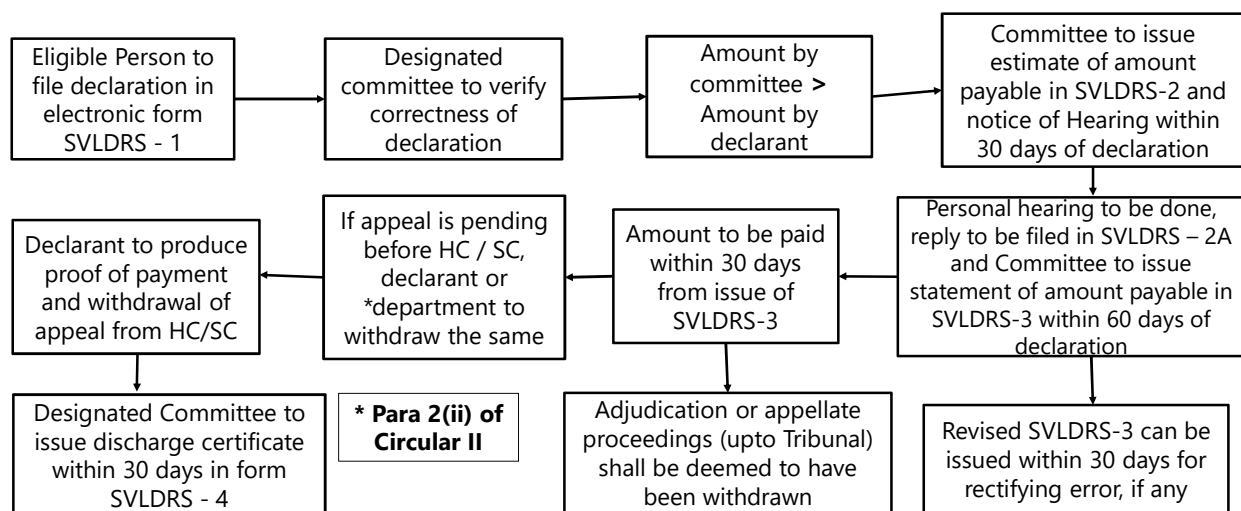
## Procedure where amount declared = amount estimated by Designated Committee

**Section 127 of the Act**



## Procedure where amount estimated by Designated Committee > Amount declared

**Section 127 of the Act**



## Procedure – Clarification through Circulars

- Whether separate declaration need to be filed for each return filed on or before 30.06.2019 but duty not paid (tax dues related to “amount in arrears”)?
  - Para 2(iv) of Circular III clarified that for administrative convenience a person can file a single declaration for more than one such return also. However, for the purpose of application of tax relief each such return will be considered individually, even though a single Discharge certificate shall be issued.
- Voluntary disclosure under the Scheme is permissible when taxpayer is not subjected to enquiry, audit or investigation. Whether designated committee is duty bound to verify above referred eligibility criteria?
  - Para 2(ii) of Circular III clarifies that such declaration maybe accepted without recourse to determination of eligibility as scheme provides for ample safeguard for taking suitable action in case of false declaration of any material particulars.

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## Procedure – Issue

- What are the consequences, if declarant fails to pay the amount payable within 30 days of SVLDRS-3 issued by designated committee?
  - FAQ no. 58 states that such declaration will be treated as lapsed
  - Para 10(j) of Circular I dated 27.08.2019 clarifies that in such case, declaration will be treated as lapsed
  - The Act or Rules does not provide for this eventuality
- What will be the consequences in case declarant who has made voluntary disclosure and failed to pay tax within 30 days ?
- If appellant has voluntarily disclosed revenue escaped in normal period of limitation, whether department can invoke extended period of limitation in such cases and accordingly can invoke section 129(2)(c) of the Act and annul the discharge certificate?

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## Procedure - Issues

- Whether designated committee has power to reject the declaration upfront?  
If a declaration is rejected upfront by the designated committee whether there is any remedy?
- In case where estimation made by Designated Committee exceeds amount declared by the declarant, whether amount payable estimated by Designated Committee be challenged in any forum?
- In the above scenario if the amount stated to be payable by the designated committee is not acceptable to the declarant, can he forego the declaration and continue disputing the matter before the respective authorities?

## Discharge Certificate

**Section  
127 of  
the Act**

- Discharge Certificate shall be **conclusive as to matter and time period** covered in declaration
- Declarant will **not liable to following** in respect of matter and time period covered in the declaration:
  - To pay any further duty, interest and penalty
  - To be prosecuted
- Matter and time period covered by declaration **shall not be reopened** in any other proceeding
- It shall not preclude issuance of SCN:
  - For same matter for subsequent period; or
  - For different matter for same period; or
  - Any material information found to be false in case of Voluntary disclosure (deemed that declaration was never made)

## Effect of discharge certificate

**Section  
129 of  
the Act**

- No further payment of Tax or duty in respect of matter and period covered under declaration
- Complete waiver of:
  - Interest,
  - Penalty
- Closure of all proceedings related to matter and period covered under declaration
- No prosecution in respect of matter and period covered under declaration
- No reopening in respect of matter and period covered under declaration
- Nothing specified about late fees waiver
- In case of Voluntary disclosure, **declaration will become null and proceedings will be instituted within one year from issue of discharge certificate** if material particular in declaration is found to be false

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## Forms under the Scheme

**the  
Rules**

Sr.	Forms	Purpose of filing of form	Filed / Issued by	Section	Rule
1	SVLDRS – 1	Declaration under the Scheme	Declarant	S. 125	R. 3
2	SVLDRS – 2	Intimation of amount payable, if exceeds the amount declared	Designated Committee	S. 127(2)	R. 6 (3)
3	SVLDRS – 2A	Reply against Form SVLDRS – 2 or adjournment request to DC	Declarant	S. 127(3)	R. 6 (4)
4	SVLDRS – 2B	For granting adjournment to declarant	Designated Committee	S. 127(3) Proviso	R. 6 (5)
5	SVLDRS – 3	Intimation of statement of amount payable	Designated Committee	S. 127(1)/(4)	R. 6(2)
6	SVLDRS – 3	Revision of statement of amount payable in 1 month (arithmetical or clerical error)	Designated Committee	S. 128	R. 6 (6)
7	SVLDRS – 4	Issue of discharge certificate	Designated Committee	S. 127(8)	R. 9

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## Validity of Scheme

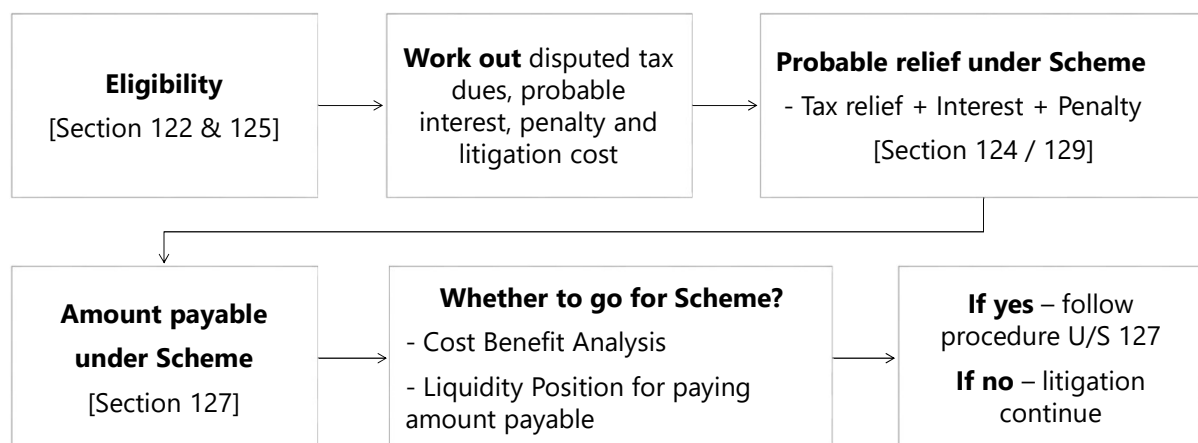
- Whether the scheme can be challenged before the Courts as discriminating against honest and dutiful taxpayers who have paid full tax in normal course? If the Court strikes down the scheme what would be the consequences specifically –
  - Whether department will be able to issue fresh SCNs, launch enquiries, start audits / investigations?
  - In case where appeals are withdrawn, whether said appeals will be reinstated?
  - Whether declarant would get the refund of tax paid under the scheme?
  - Whether declarant would be liable to pay full tax, interest or penalty?
  - Whether all litigations covered under the scheme will restart?

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## Decision making – Flow Chart



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## Way forward – Optimizing benefits of the Scheme

- List out status of inquiries, investigations and audits
- Take stock of all pending litigations from SCN stage to Appeals lying at various forums
- Assess probable outcomes of each case based on merits / demerits of the case and classify it under categories of strong, weak or unpredictable cases
- Assess risk appetite, strength and weakness to pursue litigation and take litigation hassles
- Estimate litigation cost
- Liquidity position
- Work out cost benefit analysis
- Professional support for sound decision making

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## Way forward - Strong case

- Strong case on account of:
  - Favourable retrospective amendment in the Act
  - Subsequent favourable notification / clarification / circular
  - Matters settled by Tribunal / High Court / Supreme Court
  - Demand arisen out of mis-comprehension of facts and arithmetical errors
  - Time-barred demands
  - Frivolous demands
- Not advisable to go for Scheme in such cases **except where**:
  - Stake involved (pre-deposit and amount payable under scheme) is nominal; and
  - Litigation cost and hassles are substantial

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## Way forward – Weak case

- Weak case on account of:
  - Merits; and
  - Facts
- Advisable to go for scheme as not opting for scheme may entail:
  - Full payment of tax
  - Interest, which could probably be equal to or more than tax amount on finality of matter
  - Penalty equivalent to tax amount
  - Substantial litigation cost and hassles
  - Probability of prosecution

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## Way forward - Case where outcome is unpredictable

- Final outcome of litigation in following cases may be unpredictable:
  - Where two interpretations are possible on issue involved
  - Absence of clarification from department on legal position
  - No settled jurisprudence
  - Difference in view between two or more High Courts or Tribunals
  - Issue pending before Hon'ble Supreme Court
- One has to take considered call on such cases:
  - Expert advice as to probable outcome of case
  - Litigation cost involved
  - Cost benefit analysis
  - Risk appetite
  - Liquidity position

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## Words of Caution

- Views expressed in the presentation are the personal views of faculties based on his interpretation of law
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**THANK YOU**

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