

On Why Service Tax 'VDIS' is unlikely to succeed – Mar 7, 2013



MARCH 07, 2013

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THE FM has come out with, what is known as, the Service Tax Voluntary Compliance Scheme, 2013, in the Budget, with the main objective to encourage voluntary compliance by the service tax assesses. In Para 182 of his Budget Speech, the FM makes a mention of the fact that, out of about 17,00,000 registered assesses under service tax, only about 7,00,000 assesseees are filing returns. The FM also laments that "many have simply stopped filing returns" and also makes a further statement that "we cannot go after each of them". In terms of this para, he is also hoping to entice a large number of assesses to return to the tax fold. He is, of course, also hoping to collect a reasonable sum of money.

Given this background, let's take a look at some of the salient features of this Scheme which is to become operational after getting the Presidential assent and after the Rules prescribing the procedure to be followed are notified.

I have given my comments alongside .

this scheme covers the service tax payable for the period 1-10-2007 to 31-12-2012, which is outstanding, i.e. not been paid, as of 1-3-2013.

Comment: Excellent

this scheme does not cover assesseees who have filed the ST-3 returns for the above period and have disclosed their true liability but have not paid the service tax dues, either fully or partly.

Comment: I see no reason why these assesseees should not be covered under this scheme. Having filed the ST-3 returns and having disclosed the service tax dues, the Department, in any case, would not be able to invoke the larger period of limitation. I find it rather amusing that, the Government is willing to pardon totally dishonest assesseees who have not even filed returns and is not willing to be kind to 'partly dishonest assesseees' who have indeed filed returns but have not paid the taxes, fully or partly.

a declaration made under this scheme, by a person against whom an inquiry or investigation has been initiated by way of search, summons proceedings or where notices have been issued for production of accounts, books, etc., or where, audit proceedings have been initiated and where these proceedings are pending as of 1-3-2013, shall be rejected. In other words, these cases would not qualify under the scheme.

Comments: I am not able to understand as to why these assesseees should be denied the benefit of the scheme. How is the Government assuming that, assesseees who have been issued notices for production of accounts, etc. or against whom, search operations have been conducted are to be presumed guilty. The very fact of coming out with this kind of a scheme is proof of the ground level reality that, the Department is not

able to complete these proceedings and recover the monies that are due to the Government. I feel that these assesseees should also be allowed the benefit of this scheme.

Further.... take the case of an assessee, on whom, these proceedings have been initiated. Is it not possible that, the Department might still not be able to find transactions on which service tax has been evaded. What is the harm if the assessee comes forward to discharge service tax on these transactions? After all...would it not be good for the Department to collect tax from these assesseees under this scheme, which it otherwise cannot, despite initiating investigation proceedings, etc.

where the Commissioner has reasons to believe that the declaration made under this scheme is substantially false, show cause notice can be issued to the assessee asking for payment of the tax dues not paid or short paid

Comments: This is, perhaps, the most negative part of the scheme. On the one hand, the Government is admitting to the fact that it is not able to pursue the Ten lakhs odd service tax assesseees who are not filing returns. On the other hand, it is not prepared to believe the assesseees, who come forward to pay the taxes, voluntarily, under this scheme. The very fear that the Department can reject the declaration made and can initiate adjudication proceedings is enough for most assesseees to get scared and not to opt for the benefit of this scheme. It does seem that what are the circumstances when the figures submitted by the assesseees opting under the scheme can be treated as 'substantially false' would be a matter of subjectivity and can lead to a lot of harassment, in the hands of the Departmental officers.

If the conduct of the Department is any indication this one provision could get misused to the detriment of the assesseees opting under the scheme.

The efforts of the FM, in bringing this scheme with the aim to 'entice' the 10,00,000 odd assesseees to come into the tax net are indeed laudable. After all, Advocates like me would get more business, when the tax base increases.

But, the scheme, in its present form, seems to suffer from serious infirmities and is very unlikely to achieve its objectives.

Before concluding ...

Tax payers in the semi-urban and rural areas are largely unaware of the service tax provisions. If this scheme could be made simpler, whereby, the statement filed by any assessee who is in default in terms of non-payment of service tax could be accepted at the face value, many assesseees might want to opt for this scheme. It also goes without saying that the CBEC should publicise the scheme as much as possible by carrying advertisements in the newspapers and the television. The Government might still gain a lot since the future service tax collections from the defaulting assesseees are assured apart from whatever the Government can collect under this scheme.