

Chapter 1 : Introduction

1.1 Background

In Budget 2013 Speech, the Finance Minister disclosed that while there were nearly 17,00,000 registered assesseees under service tax, only about 7,00,000 filed returns. He, therefore, proposed to introduce “Voluntary Compliance Encouragement Scheme, 2013” (VCES) in order to motivate the registered assesseees, who had stopped filing returns, to file returns and pay the tax dues. As per VCES, a defaulter may avail of the Scheme on condition that he files a truthful declaration of service tax dues since 1 October 2007 and makes the payment in one or two installments before prescribed dates. The Finance Bill, 2013 further mentioned that “to encourage voluntary compliance and broaden the tax base, it is proposed to provide one time amnesty by way of (i) waiver of interest and penalty; and (ii) immunity from prosecution, to the stop filers, non-filers or non-registrants or service providers (who have not disclosed true liability in the returns filed by them during the period from October 2007 to December 2012) who pay the tax dues”. Accordingly, the Finance Act, 2013 introduced the VCES.

The Scheme was effective from 10 May 2013 and was open up to 31 December 2013. The Scheme could be availed only by those to whom no show cause notice (SCN) or notice of audit or summons were issued prior to 1 March 2013. As per Scheme, if the assessee makes declaration and pays at least 50 per cent of the service tax dues before 31 December 2013 and balance before 30 June 2014, they get immunity from interest and penalty. If declarant does not pay the balance 50 per cent tax or part of unpaid tax dues by 30 June 2014, he was given an option to pay the same with interest by 31 December 2014. If declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues along with interest¹thereon shall be recovered under the provisions of Finance Act, 1994 and Finance Act, 2013.

1.2 Legal Provisions

1.2.1 VCE Scheme

The Scheme is covered in Chapter VI of the Finance Act, 2013 under Sections 104 to 114. The gist of major provisions of the Scheme are as under: -

¹ 15 per cent if value of taxable services is less than ₹ 60 lakh and 18 per cent if the value is ₹ 60 lakh or more.

❖ **Section 105 : Definitions**

- “Chapter” means chapter V of Finance Act, 1994
- “declarant” means any person who makes a declaration under sub-section (1) of section 107;
- “Designated Authority (DA)” means an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of this Scheme;
- “tax dues” means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from 1 October 2007 and ending on 31 December 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on 1 March 2013.

❖ **Section 106 (1) : Person who may make declaration of tax dues**

- Any person may declare his tax dues if no notice or an order of determination has been issued or made on the same under section 72² or section 73³ or section 73A⁴ of the Chapter V of Finance Act, 1994 before 1 March 2013.
 - Provided if a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period.
 - Provided if any person has furnished return⁵ and disclosed his true liability, but has not paid the same or any part thereof, he cannot make declaration for the period covered by the said return.

❖ **Section 106 (2) : Circumstances in which the DA shall reject such declaration, duly recording reasons**

- a) If an inquiry or investigation in respect of a service tax not levied or not paid or short levied or short paid has been initiated by any of the following ways and such inquiry, investigation or audit is pending as on 1 March 2013:-
 - i) search of premises under section 82 of the Chapter; or
 - ii) issuance of summons under section 14 of the Central Excise Act, 1944, as made applicable to the Chapter under section 83 thereof; or

² Section 72 deals with the assessment of value of taxable service

³ Section 73 is regarding recovery of service tax not levied or paid or short levied or short paid or erroneously refunded

⁴ Section 73 A deals with remittance of service tax

⁵ Under section 70 of chapter V of Finance Act, 1994 - prescribed for furnishing of returns.

iii) requiring production of accounts, documents or other evidence under the Chapter or the rules made thereunder;
or

b) an audit has been initiated.

❖ **Section 107 : Procedure for making declaration and payment of tax dues**

(1) Subject to the provisions of this Scheme, a person may make a declaration to the DA on or before 31 December 2013 in prescribed form and manner.

(2) The DA shall acknowledge the declaration in prescribed form and manner.

(3) The declarant shall pay at least 50 per cent of the declared tax dues on or before 31 December 2013 and submit proof of such payment to the DA.

(4) The balance remaining unpaid after 31 December 2013 shall be paid by the declarant on or before 30 June 2014.

Provided in case of failure to pay the balance in full or part, he shall pay the same on or before 31 December 2014 along with interest as prescribed for the period of delay starting from the 1 July 2014.

(5) Notwithstanding anything contained in sub-section (3) and sub-section (4), any service tax which becomes due or payable by the declarant for the month of January 2013 and subsequent months shall be paid by him in normal course as per chapter V of Finance Act, 1994.

(6) The declarant shall furnish to the DA details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him.

(7) On furnishing the details of full payment of declared tax dues and the interest, if any, the DA shall issue an acknowledgement of discharge of such dues to the declarant as prescribed.

❖ **Section 108 : Immunity from penalty, interest and other proceeding**

(1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the declared tax dues and interest as applicable, shall get immunity from penalty, interest or any other proceeding under the Chapter.

(2) Subject to the provisions of section 111, a declaration made under VCES shall become conclusive upon issuance of acknowledgement of discharge and no matter shall be reopened thereafter in any proceedings under the Chapter or before any authority or Court relating to the period covered by such declaration.

❖ **Section 109 : No refund of amount paid under the Scheme**

Any amount paid in pursuance of a declaration made under VCES shall not be refundable under any circumstances.

❖ **Section 110 : Tax dues declared but not paid**

Where the declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues along with interest thereon shall be recovered under the provisions of section 87 of the Chapter.

❖ **Section 111 : Failure to make true declaration**

In case the Commissioner of Central Excise has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve a SCN on the declarant within one year from the date of declaration.

❖ **Section 112 : Removal of doubts**

It was clarified that the benefit, concession or immunity granted on is limited to that specified in section 108.

❖ **Section 113 : Power to remove difficulties**

If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty. But, any such order can be issued only up to two years from the date on which the provisions of this Scheme come into force and shall be laid before each House of Parliament, as soon as may be after it is made.

1.2.2 STVCE Rules

Service Tax Voluntary Compliance Encouragement Rules, 2013 (STVCE Rules) were notified (May 2013) prescribing rules regarding the form and manner of declaration and its acknowledgement, payment of tax dues and of issuing acknowledgement of discharge of tax dues. Gist of Service Tax VCES Rules, 2013 are given below:

❖ **Rule 2(1) Definitions**

- a) "Act" means the Finance Act, 2013;
- b) "Form" means the Forms annexed to these rules;
- c) "Scheme" means the Service Tax Voluntary Compliance Encouragement Scheme, 2013 as specified in the Act;

❖ **Rule 3 Registration**

Any person, who wishes to make a declaration under the Scheme, shall take registration.

❖ **Rule 4 Form of declaration**

The declaration of tax dues under the Scheme shall be made in Form VCES -1.

❖ **Rule 5 Form of acknowledgment of declaration**

The designated authority on receipt of declaration shall issue an acknowledgement thereof, in Form VCES -2, within a period of seven working days.

❖ **Rule 6 Payment of tax dues**

The tax dues payable under the Scheme along with interest, if any, under section 107 of the Act shall be paid to the credit of the Central Government. The Cenvat credit shall not be utilised for payment of tax dues under the Scheme.

❖ **Rule 7 Form of acknowledgement of discharge**

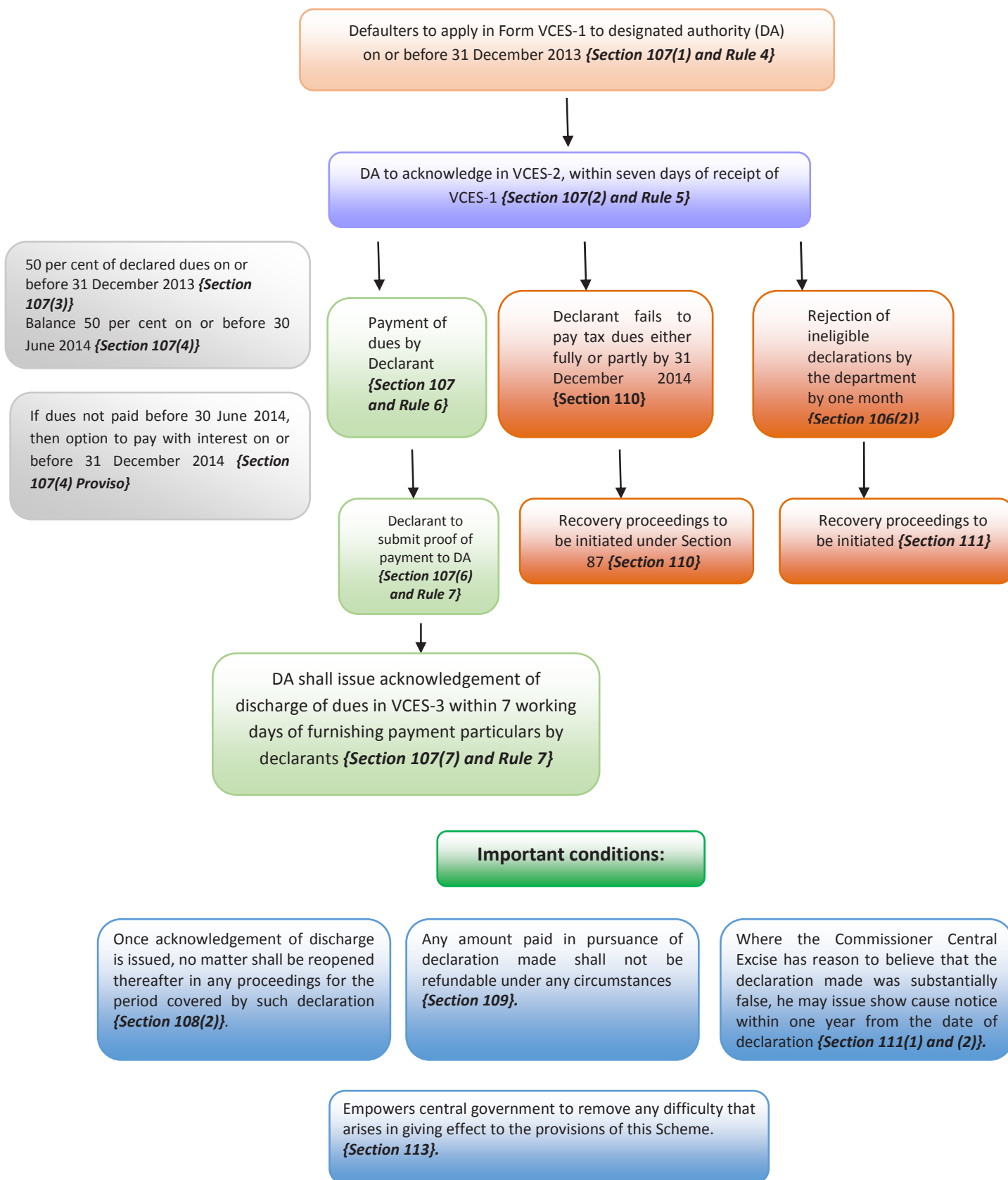
The designated authority shall issue an acknowledgement of discharge in Form VCES – 3 within a period of seven working days from the date of furnishing of details of payment of tax dues in full.

1.2.3 Circulars/Instructions issued by Board

Board issued clarifications in relation to this Scheme through various circulars/instructions dated 13 May 2013, 8 August 2013, 25 November 2013 and 11 December 2013.

The process envisaged in the legal provisions is depicted in flowchart 1.1.

Chart 1.1 : Flow chart on process prescribed for VCES



1.3 Why we chose this topic

This is an amnesty Scheme which was introduced for the first time after introduction of tax on services. As per Budget Speech of the Finance Minister delivered on 28 February 2013, the Scheme was aimed to motivate around 10,00,000 stop/non-filers to file returns and pay tax dues. However, only 66,072 declarations were received involving tax of ₹ 7,750.30 crore under this Scheme. In such a scenario, we felt that an independent assessment of the success of this Scheme was necessary.

1.4 Audit Objectives

The Performance Audit was conducted to study whether the Scheme achieved its intended goals through seeking assurance on whether:

- (i) the mechanism devised by the Department for proper implementation and monitoring of VCES was in accordance with the guidelines of the Scheme;
- (ii) systemic failures that necessitated the VCES had been duly addressed to improve the tax administration; and
- (iii) proper mechanism was devised by the department to monitor compliance by the declarants subsequent to VCES Period.

1.5 Scope of audit and coverage

During the performance audit we selected and covered 35 Commissionerates⁶ out of 145 Commissionerates and in the selected Commissionerates, 14,287 declarations out of 41,404 declarations were examined. The period of examination of this performance audit is from October 2007 to December 2012.

1.6 Acknowledgement

We acknowledge the co-operation extended by Central Board of Excise and Customs (CBEC) and its subordinate formations, in providing the necessary records for the conduct of this audit.

We discussed the audit objectives and scope of the performance audit in an entry conference with CBEC officers on 13 October 2015 and exit conference

⁶ Ahmedabad-III, Ahmedabad-ST, Allahabad, Belagavi, Bengaluru-ST, Bhubaneswar-I, Chandigarh-I, Chennai-I ST, Chennai-II ST, Delhi-I, Delhi-III, Guntur, Gurgaon-ST, Guwahati, Hyderabad-ST, Indore, Jaipur, Jalandhar, Jamshedpur, Kanpur, Kochi, Kolhapur, Kolkata-I ST, Kolkata-II ST, Lucknow, Mumbai-II ST, Mumbai-VI ST, Mumbai-VII ST, Nashik-I, Patna, Pune-ST, Raipur, Rajkot, Salem and Vadodara-I

was held on 25 May 2016. The Ministry furnished the reply in May and June 2016 which were included in the report.