

## Report of the Comptroller and Auditor General of India



लोकहितार्थ सत्यनिष्ठा  
Dedicated to Truth in Public Interest

## Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS) 2019

Union Government  
Department of Revenue  
(Indirect Taxes – Goods and Services Tax,  
Central Excise and Service Tax)  
Report No. 14 of 2022



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Laid on the table of Lok Sabha and Rajya Sabha on .....



## Table of contents

<b>Sl. No.</b>	<b>Contents</b>	<b>Page</b>
<b>1</b>	<b>Preface</b>	<b>i</b>
<b>2</b>	<b>Executive Summary</b>	<b>iii - v</b>
<b>3</b>	<b>Chapter 1 : Introduction</b>	<b>1</b>
<b>4</b>	<b>Chapter-2 : Audit Approach</b>	<b>7</b>
<b>5</b>	<b>Chapter-3 : Audit Findings</b>	<b>11</b>
<b>6</b>	<b>Chapter-4 : Monitoring and Review</b>	<b>67</b>
<b>7</b>	<b>Appendix-I</b>	<b>71</b>



## **Preface**

This Report has been prepared for submission to the President of India under Article 151 of the Constitution of India.

The Report contains significant results of the performance audit on the “Sabka Vishwas (Legacy Dispute Resolution) Scheme (SVLDRS) 2019” and covers the verification of declarations by the Designated Committees of the Central Board of Indirect Taxes and Customs (CBIC) from September 2019 to October 2020.

The instances mentioned in this Report are those which came to notice in the course of test audit conducted during the period from November 2020 to September 2021.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

Audit wishes to acknowledge the cooperation received from the Department of Revenue, CBIC and its field formations at each stage of the audit process.



## Executive Summary

This Performance Audit was conducted in 52 selected Commissionerates to study whether the implementation process of the Sabka Vishwas Legacy Dispute Resolution Scheme (SVLDRS) (the 'Scheme') was adequate and complete; settlement of cases and realization of tax dues was as per law; internal control mechanisms were adequate and the learnings from the accepted audit recommendations in respect of the earlier VCES Scheme were followed in this 'Scheme'.

The key aim of the 'Scheme' was to unload the baggage relating to the legacy cases viz. Central Excise and Service Tax that have been subsumed under GST. This Performance Audit revealed certain deficiencies mainly related to inadequacies in designing the online system/following legal provisions/CBIC instructions, disposal of disputed cases and keeping the tax evaders in the tax net, as summarised below:

- a) CBIC instructions regarding timely availability of updated records to the Designated Committees were not adhered to in 15 Commissionerates.

**(Paragraph 3.4.2)**

- b) There were instances of the SVLDRS Portal accepting deficient declarations, generating incorrect data and failure to restrict entry of invalid data in conformity with the provisions of the 'Scheme'

**(Paragraphs 3.5.1 to 3.5.6)**

- c) Irregular relief of ₹ 109.81 crore in 28 declarations was extended to declarants who sought relief with respect to ineligible goods.

**(Paragraph 3.7.1)**

- d) The Designated Committees irregularly processed 21 declarations, involving tax dues of ₹ 7.01 crore under the 'Voluntary Disclosure' category, though the declarants were subjected to enquiry/investigation/audit and filed returns.

**(Paragraph 3.7.4)**

- e) The Designated Committees rejected 14 eligible declarations, also resulting in probable loss of revenue of ₹ 8.72 crore.

**(Paragraph 3.8)**

- f) Irregular processing of 17 declarations under the 'Litigation' category instead of 'Arrears' resulted in excess relief amounting to ₹ 5.1 crore to the declarants.

**(Paragraph 3.9.2.1)**

- g) Incorrect consideration of tax dues in ten declarations resulted in excess relief of ₹ 1.31 crore.

**(Paragraph 3.9.3.1)**

- h) In 65 declarations involving tax dues of ₹ 90.51 crore, evidence of pre-deposits/deposits had not been verified properly, after due linking with the concerned cases.

**(Paragraph 3.10)**

- i) In 625 cases discharge certificates were issued covering the GST period i.e. on or after 1 July 2017. This indicated incorrect issue of discharge certificates as this was beyond the scope of the 'Scheme'.

**(Paragraph 3.12.3.7)**

- j) The SVLDRS portal accepted multiple declarations in 208 cases involving tax dues of ₹ 273.53 crore, which resulted in processing of certain cases multiple times.

**(Paragraph 3.13.2)**

- k) There were inconsistencies in treating similar issues with regard to adjustment of penalty/late fee/ interest as pre-deposits.

**(Paragraph 3.14.1)**

- l) There was no systemic mechanism for verification of a risk based sample of the 'Voluntary Disclosure' cases; also, there was lack of adequate follow-up action to recover ₹ 54.22 crore in 264 unpaid 'Voluntary Disclosures'.

**(Paragraphs 4.1 and 4.2)**

### **Recommendations**

- 1) The Department may take effective steps to pursue, in a time bound manner those cases which were rejected under the 'Scheme' as well as the 28,825 cases for which Discharge Certificates could not be issued, especially due to non-payment of the estimated payable amount. In particular, 'Voluntary Disclosure' cases where liability was not discharged should be vigorously pursued to protect the interest of the revenue. Arrears are confirmed demand and have no expiry date and it is possible that many of the declarants might have migrated to the GST regime as assesseees, and therefore recovery actions are pursuable.

**(Paragraphs 3.1 and 4.2)**

- 2) The Department may take effective steps to reconcile the incorrectly adjusted pre-deposits in the cases pointed out by the Audit.

**(Paragraph 3.10)**

- 3) 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 used SVLDRS challans to prevent them from being reused in future.

**(Paragraph 3.11)**

- 4) The Department may rectify technical glitches in the SVLDRS Portal to ensure that

- (a) Discrepancy in the already issued discharge certificates are corrected and the assessee notified.

- (b) Discharge Certificates which could not be issued, despite the assessee having fulfilled all requisites and made payments in time, are now issued and the assessee notified.
- (c) The Department should also correct Discharge Certificates where the registration number in the discharge certificates does not match with the registration number mentioned in the SCN/OIO, and notify the assessee.

**(Paragraph 3.12.3.5 to Paragraph 3.12.3.8 and Paragraph 3.6.2)**

- 5) The Department should ensure that all legal cases, where applications for withdrawal have been made by the assessee and these applications settled successfully under the 'Scheme', are removed from the pendency list of various legal forums. The list of such pending cases should be maintained to ensure their complete withdrawal.

**(Paragraphs 3.12.3.4 and 4.3)**



## Chapter 1: Introduction

### 1.1 Salient features of Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (the 'Scheme')

Central Excise (except goods mentioned in Schedule IV of Central Excise tariff) and Service Taxes got subsumed in Goods and Services Tax (GST) as on 1 July 2017. As of 31 March 2019, there was a huge amount of tax dues blocked in litigation and arrears. To settle the huge number of litigation cases and to let businesses make a new beginning, the Union Budget of 2019 proposed the introduction of a dispute<sup>1</sup> resolution-cum-amnesty<sup>2</sup> scheme called the "Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019" ('Scheme') for resolution and settlement of legacy<sup>3</sup> cases. The 'Scheme' was introduced through the Finance (No. 2) Act, 2019, which was notified by CBIC (Central Board of Indirect Taxes and Custom) to come into force from 1 September 2019. The 'Scheme' was operational until 15 January 2020 for filing declarations, except for Jammu and Kashmir and the Union Territory of Ladakh, for which the last date of filing declarations was 31 December 2020.

The 'Scheme' was fully automated right from the submission of declarations by the taxpayers to communication of final decision of the Department. The 'Scheme' allowed relief varying from 40 to 70 per cent of the tax dues and full relief from payment of interest and penalty under four categories i.e. *Litigation*<sup>4</sup>, *Arrears*<sup>5</sup>, *Investigation*<sup>6</sup>/*Enquiry*<sup>7</sup>/*Audit*<sup>8</sup> and *Voluntary Disclosure*<sup>9</sup>.

In the SVLDRS Portal<sup>10</sup> of CBIC, Management Information Reports (MIS Reports) pertaining to the declarations were maintained in various forms i.e. SVLDRS-1<sup>11</sup>,

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<sup>1</sup> The dispute resolution component was aimed at liquidating the legacy cases locked up in litigation at various levels i.e. Department, Customs Excise and Service Tax Appellate Tribunal (CESTAT) and High Courts/Supreme Court

<sup>2</sup> Amnesty component gave an opportunity to those taxpayers who have failed to correctly discharge their tax liability to pay the tax dues

<sup>3</sup> Cases related to Central Excise and Service Tax

<sup>4</sup> Cases under litigation/adjudication/appeal filed/pending against the order

<sup>5</sup> Any amount recoverable from the assessee due to confirmation of demands in favour of the Department

<sup>6</sup> Any investigation carried out under the indirect tax enactment

<sup>7</sup> Any enquiry carried out under the indirect tax enactment

<sup>8</sup> Any scrutiny, verification and checks carried out under the indirect tax enactment, other than an inquiry or investigation

<sup>9</sup> Cases where taxpayers voluntarily disclosed their tax liability in respect of Central Excise and Service Tax dues and no relief of tax dues was admissible

<sup>10</sup> <https://myappstore.cbic.gov.in/logon/LogonPoint/tmindx.html>

<sup>11</sup> This report contained information such as Application Receipt No. (ARN) & date, Registration No., Name of the taxpayer, Jurisdiction, Category/sub-category, Period involved, Total duty, Payable amount, Amount given by taxpayer, Status of the declaration etc.

SVLDRS Life Cycle<sup>12</sup> and SVLDRS payment<sup>13</sup> etc. Analysis of pan India SVLDRS-1 MIS report as on 3 March 2021, revealed that a total of 1,89,648 declarations were received by the Department against the total number of legacy cases pending in different categories; out of the total declarations received, 29,167 declarations were rejected.

## 1.2 Legal provisions

### 1.2.1 The 'Scheme'

The 'Scheme' is covered in Chapter V of the Finance (No. 2) Act, 2019 under Sections 120 to 135. The gist of major provisions of the 'Scheme' is as under:

#### Section 121: Definitions of the terms used for the purpose of the 'Scheme'

- "declarant" means a person who is eligible to make a declaration and files such declaration under Section 125;
- "amount payable" means the final amount payable by the declarant as determined by the Designated Committee
- "discharge certificate" means the certificate issued by the Designated Committee under Section 129

#### Section 123: Tax dues

For the purposes of the 'Scheme', "tax dues" means-

- (a) Disputed amount of a single appeal arising out of an order pending as on 30 June 2019 and in the case of more than one appeal arising out of an order, then the which is being disputed by the declarant in his appeal and the amount of duty being disputed in the departmental appeal.
- (b) Amount of a Show Cause Notice<sup>14</sup> (SCN) on or before the 30 June 2019
- (c) Amount pending under an enquiry or investigation or audit
- (d) where the amount has been voluntarily disclosed by the declarant, then the total amount of duty stated in the declaration and
- (e) where an amount in arrears relating to the declarant is due, the amount in arrears.

#### Section 124: Tax relief available

Tax relief available under various categories is shown in **Table-I**.

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<sup>12</sup> Apart from information available in the SVLDRS Form-1, this Form showed information such as status of various statements issued by the Department, date of payment etc.

<sup>13</sup> Payment details are available in this Form

<sup>14</sup> Notice issued under Section 11A of Central Excise Act 1944 and Section 73 of the Finance Act 1994 by the Department related to recovery of duties/tax not levied or not paid or short-levied or short-paid or erroneously refunded

Table-I

Sl. No.	Category of Application	Particulars	Tax dues of ₹ 50 lakhs or less	Tax dues of more than ₹ 50 lakhs	Penalty/Interest/Late fee
1	2	3	4	5	
1	Litigation	SCN/ one or more appeal pending as on 30 June 2019	70 per cent	50 per cent	Full waiver
2	Arrears	Tax dues relatable to an amount in arrears	60 per cent	40 per cent	Full waiver
3	Investigation, Enquiry or Audit	Tax dues relatable to Enquiry/Investigation/ Audit and amount quantified on or before 30 June 2019	70 per cent	50 per cent	Full waiver
4	Voluntary Disclosure	Tax liability disclosed voluntarily	Nil		Full waiver

### Section 126: Composition and functions of the Designated Committee

The Designated Committees constituted in each Commissionerate shall verify the correctness of particulars furnished in the declaration (Form SVLDRS-1) from 1 September 2019 to 31 May 2020 and for taxpayers in the Union Territory of Jammu and Kashmir and Union Territory of Ladakh till 31 January 2021.

### Section 130: Restrictions of the 'Scheme'

The amount to be paid under the 'Scheme' shall not be (i) paid through input tax credit account, (ii) refundable under any circumstances and (iii) taken as input tax credit. Moreover, if pre-deposit exceeds payment due, refund would not be available.

#### 1.2.2 The 'Scheme' Rules

The Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules (SVLDRS Rules), 2019 were notified (21 August 2019) prescribing the form and manner of declaration and its acknowledgement, constitution of Designated Committees, verification of declaration and issue of statements in the prescribed form, payment of tax dues and issuing of discharge certificate. The gist of major provisions of the SVLDRS Rules, 2019 is as under:

#### Rule 3: Form of declarations

(1) The declaration under Section 125 shall be made electronically at <https://cbic-gst.gov.in> in Form SVLDRS-1 by the declarant.

#### Rule 4: Auto acknowledgement of the declarations

On receipt of declaration, an auto acknowledgement bearing a unique reference number shall be generated by the System.

**Rule 6: Verification by Designated Committees**

The declaration made under Section 125, except when it relates to a case of voluntary disclosure of an amount of duty, shall be verified by the Designated Committee based on the particulars furnished by the declarant as well as the records available with the Department.

**Rule 7: Form and manner of making the payment**

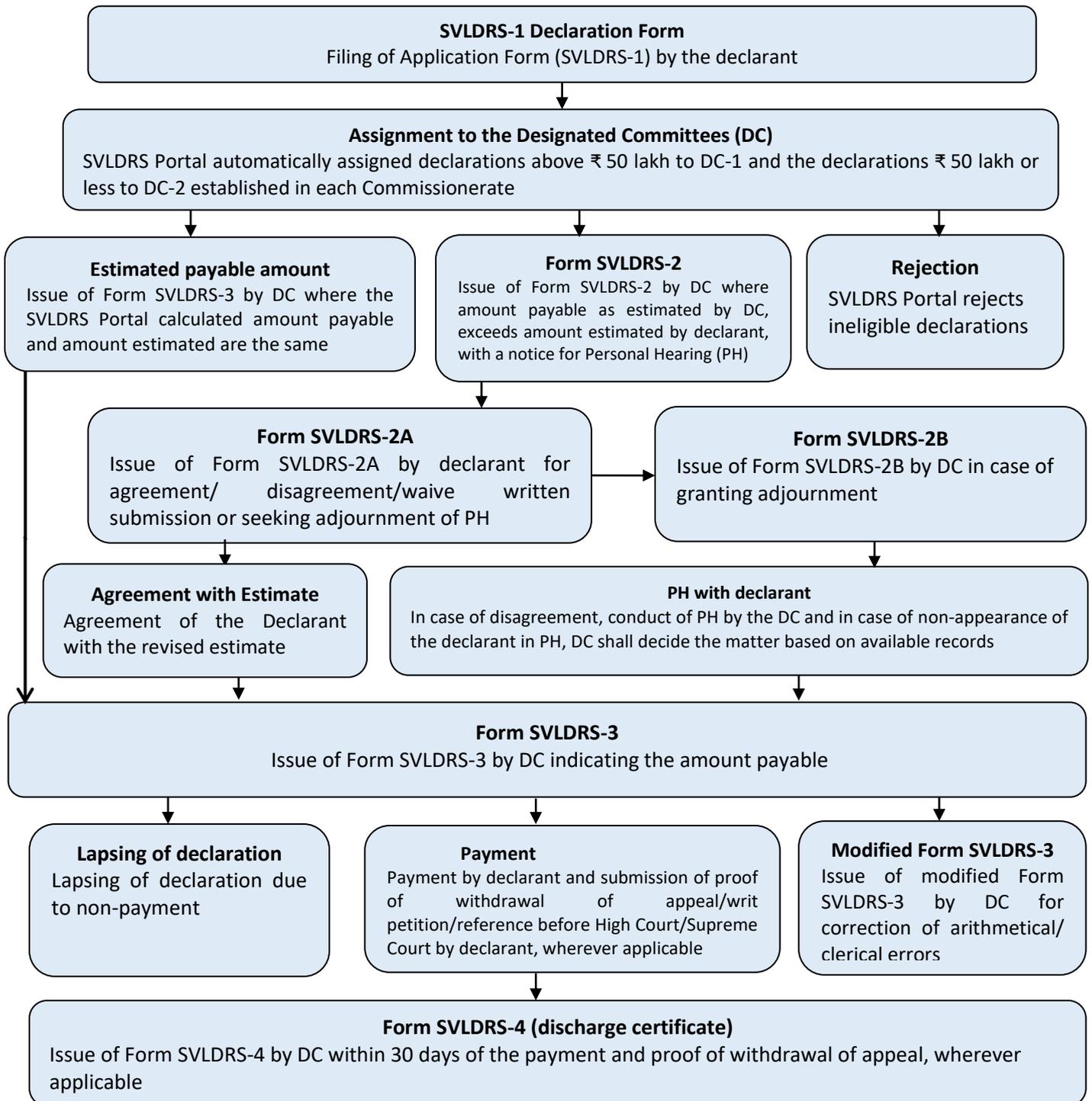
Every declarant shall pay electronically the amount, as indicated in Form SVLDRS-3 issued by the Designated Committee, on or before 30 June 2020 from the date of its issue.

**1.3 The 'Scheme' procedures/ processes**

CBIC issued clarifications in relation to this 'Scheme' through various Circulars/Instructions/Advisories during the period from August 2019 to November 2020.

The process envisaged in the provisions is depicted in **Chart 1**.

**Chart 1**



**Important Conditions-**

- After issue of discharge certificate, no matter shall be reopened in any proceedings for the period covered by such declaration.
- Any amount paid under this 'Scheme' shall not be paid through the input tax credit account/ refundable under any circumstances/taken as input tax credit.

- If particulars of voluntary disclosures are found to be false within a period of one year of issue of the discharge certificate, proceedings under the applicable indirect tax enactment shall be instituted.

#### **1.4 SVLDRS Portal**

The 'Scheme' was fully automated with a dedicated SVLDRS Portal (cbic-gst.gov.in) for online filing of declaration and communication of final decision. DG (Systems) issued a user manual for the online facility being provided to implement this 'Scheme'. This was done with the objectives of ensuring transparency, speed and accountability in the decision making.

In order to develop an integrated SVLDRS application, the M/s Wipro Ltd. submitted SRS<sup>15</sup> and workflow document of the 'Scheme' on 23 July 2019 and final SRS was approved on 14 August 2019, after various SRS versions submitted by the vendor. The production deployment of application was agreed as 31 August 2019 and the actual deployment was completed on 30 October 2019 after a delay of 60 days.

This requirement was approved by the Competent Authority as additional work (being not part of the original contract for the CBIC ACES-GST IT application) in the form of Change Requests to be done by the vendor. The DG (Systems) incurred a total amount of ₹ 1.13 crore on the development of the integrated SVLDRS application.

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<sup>15</sup> Software Requirements Specifications

## Chapter 2: Audit Approach

### 2.1 Why we chose this topic

The 'Scheme' was a 'dispute resolution-cum-amnesty scheme' for legacy cases of Central Excise and Service Tax under which the Department had received 1.89 lakh declarations involving a total amount of ₹ 90,387.03 crore, which is inclusive of disputed duty/tax amount of ₹ 59,193.13 crore, penalty of ₹ 28,880.08 crore, late fee of ₹ 318.26 crore and voluntary disclosure of ₹ 1,995.56 crore. The 'Scheme' allowed granting of 40-70 *per cent* relief on disputed duty/tax amount and 100 *per cent* relief on penalty/late fee. In such a scenario, it was felt that an independent assessment of the implementation of this 'Scheme' through a Performance Audit was necessary.

### 2.2 Audit Objectives

The Performance Audit was conducted with a view to assess whether:

- i) The overall process designed for implementation of the 'Scheme' was adequate and complete;
- ii) The Department ensured settlement of cases and realization of tax dues as per law;
- iii) The internal control mechanisms were adequate to attain the objective of the 'Scheme'; and
- iv) The Department implemented the learnings from the previously administered Voluntary Compliance Encouragement Scheme, 2013, (VCES), including implementation of accepted audit recommendations on the subject.

### 2.3 Audit Scope and coverage

Audit downloaded the 'All India detailed Report on SVLDRS Form-1' available on the SVLDRS Portal under GST application from CBIC website <https://myappstore.cbic.gov.in>. In the 'detailed Report on SVLDRS Form-1', Audit found a total of 1,89,648 declarations filed under the 'Scheme'. Out of the 1,89,648 declarations in 107 Commissionerates, Audit selected 20,063 declarations (10.57 *per cent*) in 52 Commissionerates (50 *per cent*) (**Appendix-I**) through stratified random sampling, for detailed examination in this Performance Audit. Category-wise details of population vis-à-vis audit sample are shown in **Table-II**.

Table-II

Category	Number of declarations			Number of declarations selected for audit examination		
	Tax dues more than ₹ 50 lakh	Tax dues ₹ 50 lakh or less	Total	Tax dues more than ₹ 50 lakh	Tax dues ₹ 50 lakh or less	Total
1	2	3	4 (2+3)	5	6	7 (5+6)
Litigation	8,743	51,383	60,126	4,244	5,840	10,084
Arrears	1,865	64,908	66,773	843	4,362	5,205
Investigation, Enquiry or Audit	1,521	8,193	9,714	772	1,014	1,786
Voluntary Disclosure	510	23,358	23,868	269	1,203	1,472
Rejected	2,687	26,480	29,167	668	848	1,516
<b>Total</b>	<b>15,326</b>	<b>1,74,322</b>	<b>1,89,648</b>	<b>6,796</b>	<b>13,267</b>	<b>20,063</b>

Source: All India detailed Report on SVLDRS Form-1

## 2.4 Audit Methodology

This Performance Audit was conducted between November 2020 and September 2021, involving examination of the sampled declarations verified by the Designated Committees during the period from September 2019 to October 2020. We discussed the audit objectives and scope of this Performance Audit in an entry conference with the Ministry on 6 November 2020. The draft Performance Audit Report was issued to the Ministry on 24 December 2021. The exit conference with the Ministry was held on 12 March 2022. The Ministry furnished its replies to the draft report on 16 March 2022. We acknowledge the co-operation extended by the CBIC and its subordinate formations, in providing the necessary records for the conduct of this Performance Audit.

## 2.5 Non Production of Records

During this Performance Audit, 461 files (2.30 per cent) in respect of six Commissionerates<sup>16</sup>, involving tax dues of ₹ 1,500.71 crore had not been produced to Audit for scrutiny despite repeated reminders, as indicated in **Table-III**.

Table-III

Total Commissionerate	Total declarations	Selected Commissionerate	Selected Declarations	Statements produced but files not produced	Statements partially provided	Neither file nor statements produced
107	1,89,648	52	20,063	42	244	175

<sup>16</sup> Kolkata North, Kolkata South, Lucknow, Chandigarh, Ludhiana and Faridabad

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the non-production in 43 cases. In respect of 315 cases, the Ministry stated that as the 'Scheme' was online, there was no requirement of creating a physical file. In respect of 13 cases, it stated that the records were available on SVLDRS Portal. The reply is not acceptable as in the absence of the files, Audit could not verify the particulars mentioned in the declaration. The Ministry's reply in respect of the remaining 90 cases where statements were not produced was awaited (March 2022).



## Chapter 3: Audit Findings

### 3.1 Statistical Analysis

From the SVLDRS-1 All India MIS Report, we observed the Government received 1,89,648<sup>17</sup> applications out of which 29,167 applications were rejected and the remaining 1,60,481 application were accepted. Out of these 1,60,481 accepted applications, 28,825 dispute cases could not attain finality (cases where discharge certificates were not issued). In the remaining 1,31,656 cases, discharge certificates were issued against ₹ 42,353 crore (tax dues). Government realized ₹ 9,492 crore (as per detailed SVLDRS Form 1 MIS Report), adjusted pre-deposits amounting to ₹ 18,139 crore of tax dues received prior to launch of the 'Scheme' and had forgone the remaining ₹ 14,696 crore tax dues to fully resolve these disputes. The details are given in **Table-IV**.

The CBIC circular no. 1071/4/2019-CX.8 dated 27 August 2019 stated that the 'Scheme' was designed to unload the baggage relating to the legacy taxes viz. Central Excise/Service Tax, that have been subsumed under GST, and allow business to make a new beginning and focus on GST.

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<sup>17</sup> Litigation-60,126, Arrears-66,773, Investigation-9,714, Voluntary Disclosure-23,868, Rejected-29,167

Table-IV  
(₹ in crore)

Category	Total Cases (Total Money Value)	Cases Rejected (Rejected Money Value )	Processed cases (Processed cases Money Value)	Cases which could not attain finality (Cases could not attain finality Money Value)	Discharge Certificate issued (Discharge Certificate issued tax dues)	Payment (as per SVLDRS 1)	Pre- deposit	Revenue Forgone
1	2	3	4	5	6	7	8	9
<b>Litigation</b>	70,107 (42,720)	9,981 (5,368)	60,126 (37,352)	8,634 (5,732)	51,492 (31,620)	6,167	14,186	11,267
<b>Arrears</b>	78,764 (8,936)	11,991 (1,330)	66,773 (7,606)	12,025 (1,970)	54,748 (5,636)	1,741	1,512	2,383
<b>Investigation</b>	13,390 (7,537)	3,676 (2,460)	9,714 (5,077)	1,681 (1,005)	8,033 (4,073)	586	2,441	1,046
<b>Voluntary Disclosure</b>	27,387 (1,996)	3,519 (313)	23,868 (1,683)	6,485 (658)	17,383 (1,024)	998	0	0
<b>Total</b>	<b>1,89,648 (61,189)</b>	<b>29,167 (9,471)</b>	<b>1,60,481 (51,718)</b>	<b>28,825 (9,365)</b>	<b>1,31,656 (42,353)</b>	<b>9,492</b>	<b>18,139</b>	<b>14,696</b>

Source: All India detailed Report on SVLDRS Form-1

From the all India Monthly Performance Report (MPR), we attempted to find out the achievement under three categories i.e. 'Litigation', 'Arrears' and 'Investigation, Enquiry or Audit' by comparing the total number of legacy cases in these three categories in all India Monthly Performance Report (MPR) as on 31 March 2019 and declarations filed under these categories. The details are given in **Table-V**.

**Table-V**

(₹ in crore)

Target and achievement of the 'Scheme'						
Category	Pending legacy cases as on 31 March 2019 as per MPR		Total No. of declarations filed under SVLDRS			
	No.	Amount	No.	Amount including Penalty/late fee	Amount of pre-deposit	Total Amount involved under SVLDRS
1	2	3	4	5	6	7(5+6)
Litigation	1,18,575	3,76,207	70,107	66,843	14,186	81,029
Arrears	66,036	49,353	78,764	14,011	1,512	15,523
Investigation, Enquiry or Audit	1,260	35,870	13,390	7,537	2,441	9,978
<b>Total</b>	<b>2,05,871</b>	<b>4,61,430</b>	<b>1,62,261</b>	<b>88,391</b>	<b>18,139</b>	<b>1,06,530</b>

Source: All India Monthly Performance Report and Detailed Report on SVLDRS Form-1

From the table above, we found that as on 31 March 2019, out of the total 2,05,871 cases, involving disputed amount totaling ₹ 4,61,430 crore pending at the beginning of the 'Scheme', in 1,62,261 cases, involving disputed amount totaling ₹ 1,06,530 crore (including late fee/penalty), the declarants had applied for the 'Scheme'.

Thus, 21.18 per cent (in terms of cases) and 76.91 per cent (in terms of amount) remained out of the 'Scheme'.

The Category wise realization of tax dues is described below in **Table VI**.

Category	No. of declarations received	No. of declarations Rejected	No. of cases not attaining finality due to non-fulfilment of obligation by the tax payer	No. of cases settled	Manner of settlement of tax dues
1	2	3	4	5	6
<b>Litigation</b>	70,107	9,981	8,634	51,492	Total: ₹ 31,620 crore Pre-deposit adjusted: ₹ 14,186 crore Realized: ₹ 6,167 crore Foregone: ₹ 11,267 crore
<b>Arrears</b>	78,764	11,991	12,025	54,748	Total: ₹ 5,636 crore Pre-deposit adjusted: ₹ 1,512 crore Realized: ₹ 1,741 crore Foregone: ₹ 2,383 crore
<b>Investigation/ Enquiry/Audit</b>	13,390	3,676	1,681	8,033	Total: ₹ 4,073 crore Pre-deposit adjusted: ₹ 2,441 crore Realized: ₹ 586 crore Foregone: ₹ 1,046 crore
<b>Voluntary Disclosure</b>	27,387	3,519	6,485	17,383	Total: ₹ 1,024 crore Pre-deposit adjusted: NIL Realized: ₹ 998 crore Foregone: Applicable interest and Penalty
<b>TOTAL</b>	<b>1,89,648</b>	<b>29,167</b>	<b>28,825</b>	<b>1,31,656</b>	

Source: All India detailed Report on SVLDRS Form-1

Further, Audit noted that there was a total of 10,004 non-processed Voluntary declarations in which ₹ 971 crore tax dues were disclosed but not paid by the tax payers, the Department needs to initiate recovery proceedings as these cases are not yet covered under litigation process to recover the tax dues.

When we pointed (December 2021) this out, the Ministry replied (March 2022) that the main objectives of the 'Scheme' were to liquidate the past disputes of legacy taxes that were subsumed under the Goods and Services Tax (dispute resolution) and to bring on board the non-compliant tax payers/tax evaders within the tax net (amnesty). The goal of the 'Scheme' was to free a large segment of the taxpayers from the legacy taxes so that they as well as Officers can concentrate on GST law. Further to attract small tax payers, attractive relief was offered.

The Ministry accepted that though the revenue involved was only 13 per cent of the pending revenue, 78.81 per cent of pending litigation cases as on 31 March, 2019 have opted for the 'Scheme' which fulfilled one of the basic objectives of the 'Scheme'.

### 3.2 Summary of deficiencies noticed in Audit

The extent of deficiencies noted during the Performance Audit on the 'Scheme' against the total cases and the samples selected for detailed Audit is shown in **Table-VII**.

**Table-VII** (₹ in crore)

Nature of findings	Reference of the Para	Audit Universe	Audit Sample	Deficiencies noticed in sampled cases	
		Cases	Cases	Cases	Tax Dues
Gaps in action taken on VCES	3.3	27,387	1,454	14	2.42
Findings relating to setting up DCs	3.4.1 to 3.4.3	107 Comm.	52 Comm.	33 Comm.	-----
Deficiencies identified through All India data analysis	3.5.1 to 3.5.6	1,89,648	-----	97,727	34,212.2 6
Deficiencies at different stages of the process					
a) Processing of ineligible cases	3.7.1 to 3.9.3, 3.10	1,89,648	19,603	212	368.03
b) Rejection of eligible cases					
c) Incorrect processing and incorrect assessment					
Deficiencies in statements/ Discharge Certificates	3.12.1 to 3.12.3	1,89,648	19,603	5,698	5,255.57
Inconsistency in treating similar issues	3.14.1	1,65,780	18,147	44	370.48

### 3.3 Gaps in action taken on Voluntary Compliance Encouragement Scheme, 2013 (VCES)

As per the recommendation of the C&AG vide Report No. 16 for the year ended March 2016 on VCES, accepted by the Ministry, an extensive drive to bring evaders into the tax net through departmental investigation and vigilance wings was to be initiated, so as to send a strong message to the defaulters who did not come clean despite the Scheme, to have an effective deterrent effect and also to boost the morale of regular tax payers.

Out of the total of 23,868 'Voluntary Disclosure' declarations, we checked 1,454 declarations and observed that in 14 cases under five Commissionerates<sup>18</sup>, involving tax dues of ₹ 2.42 crore, the same persons, who had availed the benefit under the VCES, had also applied, for the 'Scheme', under the 'Voluntary Disclosure' category. As such, these taxpayers once again received benefits under the 'Scheme', towards interest/penalty/late fee on taxes not paid in time.

When we pointed (December 2021) this out, the Ministry replied (March 2022) that the objection is not directly related to provisions of the 'Scheme'. It is about the Department's alleged failure to keep VCES tax evaders under tax net. There is no policy issue involved in this as the responsibility to keep such evaders under tax net was with the jurisdictional formations. However, it was not desirable to keep such tax evaders

<sup>18</sup> Guwahati, Ludhiana, Bengaluru East, Bengaluru West and Bengaluru South

outside the 'Scheme' also; the Ministry mentioned that the entire tax dues declared by the assessee has been considered without extending any tax relief under the 'Scheme'.

The fact, however, remained that in certain cases, the Department failed to keep the VCES tax evaders within the tax net which led to availing of relief of interest/penalty/late fee in both the Schemes although VCES was one time amnesty offered to the tax payers.

### **3.4 Findings relating to setting up the Designated Committees**

In order to make the 'Scheme' a success, CBIC circular no. 1071/4/2019-CX.8 dated 27 August 2019 envisaged taking various actions on priority, included carrying out intensive out-reach programme to create awareness among the trade and eligible taxpayers, formation of two Designated Committees for verification of declarations (SVLDRS-1), arrangement of proper training for the members of the Designated Committees and timely availability of updated and complete records of eligible taxpayers with the Designated Committees before commencement of the 'Scheme'.

We attempted to ascertain the extent to which these actions were taken to create an appropriate set up and found some deficiencies on the part of the Department, as discussed below:

#### **3.4.1 Training for the Designated Committees not conducted in certain Commissionerates**

As per the CBIC circular no. 1071/4/2019-CX.8 dated 27 August 2019, it was the responsibility of the Zonal Principal Chief Commissioners/Chief Commissioners and Principal Director General/ Director General, DGGI (in the case of DGGI, Delhi) to ensure that the members of the Designated Committees are properly trained and well versed with the 'Scheme' and the software application. Accordingly, proper training for members of the Designated Committees was to be carried out at NACIN<sup>19</sup>.

Out of the total 107 Commissionerates, we selected 52 Commissionerates and sought (November 2020-April 2021) the information regarding conducting training at NACIN from the selected 52 Commissionerates and found that, in 42 Commissionerates the training was organized; however, in eight (15.38 per cent) Commissionerates<sup>20</sup>, no such training, for the members of the Designated Committees, had been carried out at DG (NACIN).

When we pointed (December 2021) this out, the Ministry replied (March 2022) that in four Commissionerates<sup>21</sup> the members of the SVLDRS committee were well versed

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<sup>19</sup> National Academy of Customs, Indirect Taxes and Narcotics

<sup>20</sup> Dibrugarh, Palghar, Ahmedabad North, Gandhinagar, Indore, Kochi, Lucknow and Jamshedpur

<sup>21</sup> Ahmedabad North, Kochi, Lucknow and Jamshedpur

with the 'Scheme' and internal discussions were taken up to ensure clear understanding of each and every provision of the 'Scheme'.

The Ministry further stated that a detailed User Manual was uploaded on the website of CBIC for easy access. FAQs to ward off any doubts were also issued by the Department in this regard. Regular Circulars, guidelines were issued to help navigate the dealing officers on the right track of implementing the 'Scheme' correctly, in letter and spirit. The purpose of the training therefore was completely met by the steps stated.

The fact remained the training which was to be organized by DG (NACIN) was not conducted in certain Commissionerates and information regarding conducting training at DG (NACIN) from Rangareddy and Chandigarh Commissionerates was still awaited (March 2022).

#### **3.4.2 Updated and complete records not made available in timely manner to the Designated Committees in certain Commissionerates**

As per CBIC circular no. 1071/4/2019-CX.8 dated 27 August 2019, updated and complete records, of the cases eligible under the 'Scheme', were to be made available to the Designated Committees, by 31 August 2019.

Out of the total 107 Commissionerates, we selected 52 Commissionerates and sought (November 2020-April 2021) the information regarding availability of updated and complete records with the Designated Committees and found that in 37 Commissionerates updated and completed records were made available to the Designated Committees. However, in 15 (28.84 *per cent*) Commissionerates<sup>22</sup>, updated and complete records were not made available in time to the Designated Committees.

When we pointed (December 2021) this out, the Ministry with respect to 11 Commissionerates<sup>23</sup> contested (March 2022) that updated and complete records of all the eligible cases under the 'Scheme' were made available to the Designated Committees by calling verification reports from the respective Divisions/Sections and the Designated Committees after scrutinizing/verifying these reports/records, processed the declarations. Our contention is that the updated and complete records were not made available to the Designated Committees by 31 August 2019 though they were readily available with the field formations.

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<sup>22</sup> Kolkata North, Kolkata South, Guwahati, Imphal, Guntur, Ludhiana, Panchkula, Faridabad, Jaipur, Jodhpur, Delhi North, Delhi East, Indore, Raipur and Kochi

<sup>23</sup> Jodhpur, Jamshedpur, Kolkata South, Kolkata North, Guntur, Bengaluru South, Kochi, Jaipur, Rangareddy, Bengaluru East and Delhi East

### 3.4.3 Checklists for verification of declaration not defined in certain Commissionerates

As per the recommendation of the Comptroller and Auditor General of India (C&AG) vide Report No. 16 for the year ended March 2016 on VCES, accepted by the Ministry, checklists were to be defined for verifying the declaration filed by the declarants.

We sought the above information from 52 Commissionerates and found that in nineteen Commissionerates<sup>24</sup> (36.52 per cent), checklists were not defined and in 33 Commissionerates checklists were defined.

When we pointed (December 2021) this out, the Ministry replied (March 2022) that in order to achieve uniformity among the different Designated Committees, a comprehensive and detailed application form SVLDRS-1 was notified, which encompasses the details required to be verified for processing the declarations. Accordingly, no separate checklist was considered necessary.

The reply is not acceptable as in 33 Commissionerates, individual checklists were defined for verifying the truthfulness of declaration filed by the declarants. Further, Form SVLDRS-1 was not a checklist; it was merely a declaration filed by the declarants.

### 3.5 Deficiencies identified through All India MIS report analysis

We noticed that the detailed MIS Reports of the 'Scheme' were generated from the all-in-one (AIO) SVLDRS Portal of CBIC in four formats as detailed below-

- **SVLDRS Form-1 MIS Report:** This MIS Report contained information such as ARN and date, registration number, name of taxpayer, jurisdiction, category/sub category, period involved, total duty, payable amount, amount given by taxpayer, status<sup>25</sup> of the declaration etc.
- **SVLDRS Life Cycle MIS Report:** Apart from information available in the SVLDRS Form-1 MIS Report, this report showed information such as status<sup>26</sup> of various statements issued by the Department, date of payment etc.
- **SVLDRS Payment MIS Report:** This report contain ARN, registration no, taxpayer name, taxpayer type, jurisdiction, category, SVLDRS-3 number, challan number, date of payment and amount of payment made.
- **SVLDRS Payment-Account Head-wise MIS Report:** This report contains category-wise and accounting head-wise SVLDRS 1, SVLDRS-3 and payment information.

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<sup>24</sup> Kanpur, Noida, Guntur, Visakhapatnam, Haldia, Chennai North, Chennai South, Chennai Outer, Coimbatore, Kozhikode, Lucknow, Chandigarh, Panchkula, Mumbai Central, Mumbai East, Guwahati, Dibrugarh, Kochi and Gandhinagar

<sup>25</sup> Rejected, Issuance of SVLDRS-1, 2, 3 and 4, Agreement/Disagreement with Personal Hearing etc.

<sup>26</sup> Date and Time

We analysed the above MIS Reports and found instances of incorrect generation of data and non-validation/restriction of data in conformity with the provisions of the 'Scheme', as detailed below:

### **3.5.1 Generation of incorrect data in issue of discharge certificates**

Section 127 of the Finance (No. 2) Act, 2019 stipulates that discharge certificate can be issued when the tax payer had paid the payable sum shown in SVLDRS-3. Thus, the 'Amount paid' should not be 'nil', where there was a payable amount and discharge certificate was issued.

However, analysis of all India "SVLDRS Form-1 MIS Report", which contained 1,89,648 declarations, revealed that in 76,801 declarations (40.5 per cent), data showed the amount paid as 'nil', whereas a total sum of ₹ 9,274.17 crore was shown as payable against which discharge certificates were issued. Hence, data in the MIS Report showed issue of discharge certificates though it appears that the payable amount<sup>27</sup> was not paid by the declarants.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation by stating that any discrepancy shown in the detailed MIS report on SVLDRS-1 as obtained from the System is purely a SVLDRS Portal error and in no case, had a discharge certificate been issued without payment as per SVLDRS-3 made and linked with the System of SVLDRS.

### **3.5.2 Allowance of same ARN in detailed SVLDRS Form-1 MIS report**

As per Rule 4 of the SVLDRS Rules, 2019, on receipt of declaration, an auto acknowledgement bearing a unique ARN was to be generated.

However, the all India "Detailed SVLDRS Form-1 MIS report" showed that out of the total of 1,89,648 cases, in 40 cases involving tax dues of ₹ 58.61 crore, the SVLDRS Portal had generated duplicate ARNs and in three cases involving tax dues of ₹ 7.89 crore, the SVLDRS Portal had generated triplicate ARNs.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) that in 14 cases the detailed SVLDRS Form-1 report showed duplicate ARNs due to technical error in the SVLDRS Portal. However, the cases were processed for single declaration only and accordingly discharge certificate was issued. In nine cases, the Ministry stated that no duplicate ARNs were generated but did not state the reason for showing duplicate ARNs in the "Detailed SVLDRS Form-1 MIS report". The Ministry's reply in respect of the remaining 20 cases was awaited (March 2022).

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<sup>27</sup> Field audit of test checked cases revealed that payment was received, and this was an SVLDRS Portal error

### **3.5.3 Incorrectly allowing declarations pertaining to the GST period**

As per Section 122 of the Finance (No.2) Act, 2019, the 'Scheme' was applicable to the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994, and the rules made there under. Moreover, as per Section 125 of the Finance (No. 2) Act, 2019, a person can make declarations under the 'Scheme', provided he has not done voluntary disclosure after being subjected to any enquiry or investigation or audit; or, having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it. Thus, voluntary declarations under the 'Scheme' should have a tax period prior to implementation of GST i.e. 1 July 2017 as the legacy period ends on 30 June 2017 and the 'Scheme' related to the cases pertaining to the legacy period only.

However, the all India "SVLDRS Form-1 MIS report" showed that, out of a total of 27,387 voluntary declarations, in 669 declarations (2.44 per cent) involving tax dues of ₹ 56.70 crore, the SVLDRS Portal had accepted voluntary declarations for tax periods on or after 1 July 2017. Thus, the SVLDRS Portal was not in synchronization with the deadline of the legacy period.

When we pointed (December 2021) this out, the Ministry while accepting (March 2022) the observation stated that the SVLDRS Portal was not totally synchronized with the 'Scheme' as SVLDRS Portal was designed in a very short span of time and in spite of the best efforts, some unforeseen technical glitches remained. DG Systems had extended suitable solutions for same from time to time. However, the fact remained that the SVLDRS Portal allowed the declarant to mention the period on or after 1 July, 2017, while the actual period involved was up to 30 June 2017.

### **3.5.4 SVLDRS Portal allowed voluntary declarations with zero payable amount**

In terms of Section 123 (d) of the Finance (No. 2) Act, 2019, where the amount has been voluntarily disclosed by the declarant, the total amount of duty stated in the declaration was to be treated as tax dues in the 'Voluntary Disclosure' category. Thus, tax dues under 'Voluntary Disclosure' category can never contain 'zero' amount.

However, the all India "SVLDRS Form-1 data" showed that, out of 27,387 voluntary declarations, the SVLDRS Portal accepted 2,080 declarations (7.60 per cent) where tax dues were zero out of which 1,519 declarations were rejected, against 504 declarations the Department issued the discharge certificates, and in the remaining 57 processed declarations, the discharge certificates were not issued by the Department. This indicated that necessary checks were not embedded into the SVLDRS Portal to prevent filing and accepting deficient declarations, despite the 'Scheme' being fully automated.

When we pointed (December 2021) this out, the Ministry stated (March 2022) that apart from rejection of such cases, the declarations which were filed under the 'Scheme' for relief against penalty/late fee/interest were required to be filed under

'Arrears' category instead of 'Voluntary Disclosure'. Looking at the nature of the amnesty 'Scheme', the Designated Committee condoned the procedural lapses and processed the said declaration under 'Arrears' category. Further, The declarations with 'Nil' dues had been accepted by the SVLDRS Portal which appears to be not in synchronous with the 'Scheme' despite the 'Scheme' being fully automated. Since the SVLDRS Portal has accepted the nil tax dues in the declarations filed by the applicants, the Department has processed the applications and closed the applications by way of issuance of closure reports as a matter of formality to give a logical conclusion to the applications made by the applicants.

The fact remained that, had the necessary validation checks incorporated in the SVLDRS Portal it could have flagged information/data, not in conformity to the provisions of the 'Scheme' as well as avoid the inconsistencies in stand taken by the different Designated Committees on such similar issues.

### 3.5.5 Incorrect calculation of payable amount in the declarations

Section 124 of the Finance (No. 2) Act, 2019 stipulated the amount of tax relief available under the 'Scheme', in various categories and CBIC circular no. 1071/4/2019-CX.8 dated 27 August 2019 provides for automatic calculation of payable amount i.e. tax dues less tax relief. The quantum of relief available under various categories is shown in **Table VIII**.

**Table-VIII**

Sl. No.	Category of declaration	Tax dues of ₹ 50 lakhs or less	Tax dues of more than ₹ 50 lakhs
		Quantum of relief	
1	Litigation	70 %	50 %
2	Arrears	60 %	40 %
3	Enquiry/Investigation/Audit	70 %	50 %
4	Voluntary Disclosure	Entire interest and penalty on tax dues	

We analysed the all India SVLDRS-1 detailed report (1,89,648 cases) and found that out of 1,60,481 cases (i.e., excluding 29,167 rejected cases), in 17,938 cases (11.18 per cent), involving tax dues of ₹ 10,595.19 crore, the SVLDRS Portal incorrectly calculated the payable amount with respect to the categories and quantum of tax dues. Thus, the automation of relief was not fully aligned to the provisions of the 'Scheme' which led to an anomaly (payable amount) of ₹ 3,796.11 crore i.e. a total amount of ₹ 2,695.42 crore and ₹ 1,100.69 crore were calculated on the higher side and lower side, respectively.

Further, out of 17,383 cases where discharge certificates under the category 'Voluntary Disclosure' have been issued, we observed in 165 cases, involving tax dues (payable amount) of ₹ 32.49 crore, the SVLDRS Portal incorrectly calculated payable

amount of ₹ 5.66 crore, resulting in short calculation of dues amounting to ₹ 26.83 crore.

When we pointed (December 2021) this out, the Ministry contested (March 2022) the audit observation by stating that on verification of records, it was noticed that in many cases, the Declarant had entered wrong details of category, total tax dues involved, pre-deposit etc. in Form SVLDRS-1. During scrutiny of these Declarations and relevant records, these discrepancies were noticed. Accordingly, while processing the declaration in the SVLDRS Portal, it was required to enter correct figures of total tax dues, relief, pre-deposits etc., due to which net payable amount may have been changed. However, discharge certificates were issued after payment and against correct amount.

The reply does not address the Audit observation as Audit had pointed out that the SVLDRS Portal had calculated incorrect payable amount as per the inputs given by the declarants in the SVLDRS 1, and not that the Designated Committee had not verified the payable amount correctly. Further, the Ministry accepted that in five cases where the SVLDRS Portal had incorrectly calculated payable amount of ₹ 0.052 crore, the tax payers paid the entire amount whereas actual payable amount was Nil. Consequently the declarants had discharged liability in excess of the payable amount under the 'Scheme'. We also pointed {Para 3.9.3.3 (II)} out two cases where SVLDRS Portal had calculated excess payable amount of ₹ 0.17 crore which was later paid by the declarants. This showed that in certain cases, the SVLDRS Portal had calculated the incorrect payable amount.

### **3.5.6 Challans exceeded validity period**

The CBIC advisory No. 02 dated 3 April 2020 stipulated that the taxpayers will be able to make payment by creating challan against their SVLDRS-3/rectified SVLDRS-3 tax dues till 30 June 2020 by creating challans from the SVLDRS module and therefore, the SVLDRS Portal generated challans should have validity till 30 June 2020.

However, analysis of all India "SVLDRS Payment data" revealed that in 199 cases (1.40 per cent) out of the total 14,235 cases where payments have been made, the SVLDRS Portal generated payment challans, involving payable amount of ₹ 9.18 crore which had validity period beyond 30 June 2020 (i.e. on 1 July 2020). Thus, the SVLDRS Portal was not fully in synchronization with the provisions of the 'Scheme' and should not have accepted such payments after 30 June 2020.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in 60 cases by stating that it was an SVLDRS Portal System glitch and in 37 cases, the Ministry did not accept the observation by stating that the delay was only one day.

The reply is not acceptable as the above provision clearly stipulated that SVLDRS Portal generated challans should have validity till 30 June 2020. We found that in 34 cases,

discharge certificates were not issued as the payment crossed the due date and in nine cases, issued discharge certificates were cancelled. Consequently, the declarants had approached the Hon'ble High Court. Had the SVLDR Portal been in synchronization with the provisions of the 'Scheme' such court cases could have been avoided. Moreover, all India payment MIS report in all these cases, showed acceptance of payment at 00:00 hour irrespective of the date. This indicated the SVLDRS Portal was not totally synchronized with the 'Scheme'.

## Deficiencies at different stages of the SVLDRS process

### 3.6 General

#### 3.6.1 Deficient allocation to Commissionerates

Form SVLDRS-1, specified under the SVLDRS Rules, 2019, stipulated the selection of the Commissionerates. Further, as per CBIC advisory no. 01/2019 dated 30 August 2019, the declarations were to be automatically assigned to the Designated Committees of the Commissionerates, for verification of the declarations.

Out of total 1,89,648 declarations, we checked 19,601 declarations and observed that three declarations, in Kolkata South and Mumbai Central Commissionerates, involving tax dues of ₹ 17.51 crore, were filed in the incorrect Commissionerates and these applications had been processed and finalized in the incorrect Commissionerates.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation by stating that in respect of two cases, the Designated Committee requested [hqadmin.prime@icegate.gov.in](mailto:hqadmin.prime@icegate.gov.in) to remap the applications to the concerned Commissionerate. However, remapping could not be done and finally cases were processed by this Commissionerate as no alternative option was available. In one case, the Designated Committee had tried to transfer the case through the SVLDRS Portal to the respective jurisdictional Commissionerate; however due to a technical glitch, the case was processed in the Commissionerate.

#### 3.6.2 Lack of proper verification of authenticity of declarants

Rule 6(1) of the SVLDRS Rules, 2019 stipulated that the declaration made under Section 125, shall be verified by the Designated Committee based on the particulars furnished by the declarant as well as the records available with the Department. Thus, the authenticity of the registration number given by the taxpayer in the declaration needs to be verified by the Designated Committee.

Out of the total of 1,89,648 declarations we checked 16,672 declarations<sup>28</sup> and observed that in 11 declarations in Kolkata North and Kolkata South Commissionerates involving tax dues of ₹ 10.89 crore and payable amount of ₹ 4.93 crore, the

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<sup>28</sup> Excluding rejected and voluntary declarations {19,603 (total sample) -1,477-1,454}

authenticity of the registration number of the declarations was not verified properly, as the declarations were processed for different taxpayers. The declaration was filed for one registration number but the SCN/OIOs were issued against a different registration number and the Designated Committee processed the cases against the registration number mentioned in the declarations instead of processing the cases against the registration number for which SCN/OIO was issued. This led to inadmissible allowance of relief to the tune of ₹ 7.31 crore including penalty of ₹ 2.36 crore.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the Audit observations in three cases by stating that the registration part of the SVLDRS form (Form 3 & Form 4) is auto-populated from SVLDRS-1 and no correction could be made by the Designated Committee, but did not accept the observation in eight cases by stating that in two cases, name of the assessee was changed which was certified by the Government of India-Ministry of Corporate Affairs, on 30 November 2011. Reply is not acceptable as SCNs/OIOs were issued to different tax payers (registration numbers) and the declaration was filed with different registration number. In respect of six cases the Ministry stated that 'Scheme' was a PAN based application and the declarants submitting declarations using their PAN; the SVLDRS Portal generated a new registration number based on PAN temporarily.

The reply is not acceptable as on the same issue, the Ministry had accepted the observation in three cases as stated above. Also, the SCNs/OIOs were issued to different tax payers (registration numbers) but declaration was filed with a different registration number.

One case is illustrated below:-

➤ One declarant having registration no. AAACL0486EST001 under Kolkata South Commissionerate had filed (01 October 2019) a declarations vide ARN LD0110190000298 under 'Arrears' category against the OIO no10/COMMR/ST-II/KOL/2019-20 dated 18 June 2019 for arrear amount of ₹ 4.57 crore. We noticed that the OIO and related SCN were issued against registration number AAACL0486EST001. However, the declaration was filed in respect of registration number AAACL0486ELD001 and subsequently the declaration was processed by issuing (26 November 2019) discharge certificate against registration number AAACL0486ELD001. Thus, processing of the declarations against incorrect registration number, resulted in inadmissible allowance of relief to the tune of ₹ 1.83 crore.

When we pointed (December 2021) this out, the Ministry contested (March 2022) that the 'Scheme' was PAN based application and the declarants submitted declarations using their PAN; the SVLDRS Portal generated new registration number based on PAN temporarily.

The reply is not acceptable as the SCN/OIO was issued to a different tax payer (registration number) and declaration was filed with a different registration number.

### 3.7 Extending benefit to ineligible cases

Section 125 of the Finance (No 2) Act, 2019 and Rule 3(2) of SVLDRS Rules, 2019 prescribed the eligibility conditions for applying under the 'Scheme'. However, we found that the Designated Committees processed certain ineligible declarations and extended undue benefit to ineligible declarants. Cases are detailed in subsequent paragraphs.

#### 3.7.1 Extension of benefit to declarants for ineligible goods

As per Section 125(1)(h) of the Finance (No.2) Act, 2019, persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule<sup>29</sup> to the Central Excise Act, 1944 were not eligible to make a declaration under the 'Scheme'. Hence any declaration filed under the 'Scheme', seeking relief on the items which are included in the Fourth Schedule to Central Excise Act, 1944 and excisable, was not eligible to get relief under the 'Scheme'.

Out of the total 1,26,899 declarations under 'Litigation/Arrears' category, we checked 14,924 declarations and found that the Designated Committees had processed 28 declarations, in 11 Commissionerates<sup>30</sup> involving tax dues of ₹ 155.68 crore, where declarations contained the goods<sup>31</sup> which had been mentioned as excisable goods in the Fourth Schedule to Central Excise Act, 1944. This violation resulted in extending of excess relief, amounting to ₹ 109.81 crore including penalty.

When we pointed (December 2021) this out, the Ministry did not accept (March 2022) the observations in 23 cases and stated that Section 125(1) (h) of Finance Act (No.2), 2019 provides that persons seeking to make declaration with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944 shall not be eligible to make a declaration under the 'Scheme'. After amendment of entry 84 of List 1 of the Seventh Schedule to the Constitution of India, Parliament has power to impose Central Excise duty only in respect of goods manufactured or produced in India, viz. Petroleum crude, High Speed Diesel, Motor Spirit, Natural Gas, Aviation Turbine Fuel and Tobacco & tobacco products.

The reply is not acceptable as the Department itself rejected the application filed for seeking the relief towards Superior Kerosene Oil (SKO) on the ground that as per Section 125 (1)(h) of the Finance (No.2) Act, 2019 the product i.e. SKO is set forth in the 4th Schedule of Central Excise Tariff Act, 1944 and, therefore, the application to avail benefits of the 'Scheme' cannot be accepted. The declarant filed (20 November

<sup>29</sup> The Fourth Schedule to the Central Excise Act, 1944 contained the goods which are excisable even after implementation of GST. This Schedule includes items such as Tobacco Products, Petroleum Products etc

<sup>30</sup> Kolkata South, Haldia,, Dibrugarh, Guntur, Vishakhapatnam, Daman, Vadodara-II, Raigadh, Kochi, Belapur and Chennai North

<sup>31</sup> Lubricating Oil, Superior Kerosene Oil, Naptha, Chewing Tobacco, Light Diesel Oil, LPG, Crude Oil

2020) writ petition at Hon'ble Allahabad High Court against the rejection of the declaration. The Union of India as respondent said that SKO is under Fourth Schedule as per the Finance (No.2) Act, 2019.

Further, the Hon'ble Allahabad High Court order dated 8 December 2020 reiterated that all the goods mentioned in Fourth Schedule to the Act, 1944 shall continue to be excisable goods unless the goods are removed from the Schedule by an amendment. Section 174 of the CGST Act has not repealed the Central Excise Act, 1944 with respect to the goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution.

Thus, the benefit of the 'Scheme' was given to ineligible excisable goods mentioned in Fourth Schedule to the Act. The Ministry may take appropriate legal/recovery action for the excess relief given.

One case is illustrated below:-

➤ In Kochi Commissionerate, one declaration was filed (23 December 2019) for tax dues amounting to ₹ 26.31 crore. We noticed that as per SCN issued on 23 September 2005, the declaration was related to Liquefied Petroleum Gas (LPG) and SKO. Though these products were under the Fourth Schedule to the Central Excise Act, 1944, the Designated Committee processed the declaration and the declarant had paid the amount of ₹ 13.16 crore. This resulted in extending of relief of ₹ 13.16 crore towards duty, which should have not been given.

When we pointed (December 2021) this out, the Ministry did not accept (March 2022) the observation and stated that after amendment of entry 84 of List 1 of the Seventh Schedule to the Constitution of India, the Parliament has the power to impose Central Excise duty only in respect of goods manufactured or produced in India, viz. Petroleum crude, High Speed Diesel, Motor Spirit, Natural Gas, Aviation Turbine Fuel and Tobacco & tobacco products.

The reply is not acceptable as LPG and SKO are excisable goods as defined in Section 2(d) read with Section 2(f) and Section 3 (Charging Section) of the Central Excise Act, 1944 but presently no duty is leviable in the absence of rate of duty in the Fourth Schedule to the Act, 1944. Thus, non-mentioning against any excisable goods means as of now no excise duty has been leviable but in future the Department can levy excise duty at appropriate rate as and when required. Further, in one case the Ministry had accepted the observation where the declaration was filed to get relief for SKO under the 'Scheme'.

### 3.7.2 Extension of benefit to cases of SCN for refund

Section 125(1)(d) of the Finance (No. 2) Act, 2019 stated that all persons shall be eligible to make a declaration under this 'Scheme', except those who have been issued a SCN under indirect tax enactment for an erroneous refund.

Out of the total 60,126 declarations under 'Litigation' category, we checked 9,902 declarations and observed that in violation of the above provision, one declaration in Shillong Commissionerate involving tax dues of ₹ 0.37 crore, was processed by the Designated Committee, where the SCN had been issued under indirect tax enactment for an erroneous refund. This resulted in excess relief of ₹ 0.26 crore and undue extension of benefit of the 'Scheme'.

When we pointed (December 2021) this out, the Ministry contested (March 2022) that with a view to foster industrial growth and activity in the North East the Government announced various industrial Incentives such as North East Exemption Scheme. The refund under the exemption scheme is not a typical Central Excise refund as also opined by TRU vide F.No.354/8/98-TRU<sup>32</sup> (Part II) dated 6 October 1999 that it should not be considered as a refund under Section 11B (which governs all refunds under Excise law). The term 'refund' just refers to the mechanism giving effect to the scheme. Under the mechanism, the assessee submit their refund claims with details of duty paid through account current (PLA) etc. and the jurisdictional DC/AC grants the refund on verification of the details.

The reply is not acceptable as a distinction has been made between refund under Section 11B of Central Excise Act, 1944 and the refund allowed under area based exemption, implying that persons who were issued SCNs for erroneous refund/refund related to area based exemption were eligible for the 'Scheme'. However, the provisions under the 'Scheme' did not make any such distinction. It excludes all those tax payers who have been issued a SCN under indirect tax enactment for an erroneous refund or refund from the 'Scheme'. For the purpose of the 'Scheme', refund simply means the amount given back from the Government exchequer and if its granting was erroneous in any manner, then it means it should have remained in the Government exchequer. SCN specifically mentions refund of ineligible credit. There was no exception to exclude a particular type of erroneous refund like area-based exemption under Section 125(1) (d) of the Finance (No. 2) Act, 2019.

### 3.7.3 Extension of benefit where tax dues not quantified on or before 30 June 2019

As per Section 125(1)(e) of the Finance (No. 2) Act, 2019, all persons were eligible to make a declaration under the 'Scheme', except persons who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before 30 June 2019.

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<sup>32</sup> Tax Research Unit

Out of the total 9,714 declarations under 'Investigation, Enquiry or Audit' category, we checked 1,746 declarations and observed that the Designated Committees had processed 12 declarations in eight Commissionerates<sup>33</sup>, involving tax dues of ₹ 14.48 crore, under the 'Investigation, Enquiry or Audit' category, where the declarant had been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit had not been quantified on or before 30 June 2019. This resulted in extension of relief, amounting to ₹ 6.31 crore which should have not been given.

When we pointed (December 2021) this out, the Ministry in two cases accepted (March 2022) the observation and in the remaining eight cases did not accept the observation, by stating that the tax dues were quantified before 30 June 2019.

The reply of the Ministry is not acceptable as the tax dues were quantified after 30 June 2019. Reply of the Ministry in respect of two cases was awaited (March 2022).

One case is illustrated below-

➤ In Faridabad Commissionerate, one declarant filed (19 December 2019) a declaration involving tax dues of ₹ 3.62 crore under 'Investigation, Enquiry or Audit' category. The Designated Committee processed the case and issued (26 December 2019) the discharge certificate.

We noticed that the search was made by the Department on premises of the assessee on 13 September 2018 for tax evasion and the duty was quantified on 17 September 2019. Since the amount of duty involved had not been quantified on or before 30 June 2019 the declarant was not eligible to make declarations under 'Scheme'. This resulted in extension of excess relief of ₹ 1.51 crore.

When we pointed (December 2021) this out, the reply of the Ministry was awaited (March 2022).

#### **3.7.4 Extension of benefit to declarants subjected to Enquiry/Investigation/Audit and filed return**

As per Section 125(1)(f)(i) of the Finance (No. 2) Act, 2019, if the declarant had been subjected to any enquiry or investigation or audit under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994, in respect of goods/services, or both, for which the declaration is being made, and filed a return for the period, then he would be ineligible to proceed further under the 'Voluntary Disclosure' category.

➤ Out of the total of 23,868 declarations under 'Voluntary Disclosure' category, we checked 1,454 declarations and observed that the Designated Committees had processed 21 declarations (1.44 per cent), in 11 Commissionerates<sup>34</sup>, involving tax dues

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<sup>33</sup> Daman, Faridabad, Ludhiana, Noida, Bengaluru South, Jaipur, Lucknow and Jamshedpur

<sup>34</sup> Kolkata North, Haldia, Gandhinagar, Jodhpur, Chennai South, Ludhiana, Raigad, Kanpur, Noida, Chennai North and Kozhikode

of ₹ 7.01 crore, under the 'Voluntary Disclosure' category, where the declarant had filed the declaration with respect to the goods/services on which the declarants had already been subjected to enquiry or investigation or audit and filed returns. Processing of these declarations resulted in acceptance under the category of 'Voluntary Disclosure' which should have not been accepted, thereby resulted in undue benefit under the 'Scheme'.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in eight cases and did not accept the observation in eight cases by stating that in case of 'Voluntary Disclosure', the applications were to be accepted without recourse to determination of eligibility, as the 'Scheme' provides ample safeguard for taking suitable action in case of false declaration and therefore, the declarations had been accepted as such. The reply is not acceptable as Section 125(1)(f) of Finance (No. 2) Act, 2019 bars a person from making voluntary disclosure after being subjected to an enquiry or investigation. The Ministry's reply in respect of five cases was awaited (March 2022).

Two cases are illustrated below:-

➤ One declarant had filed (19 December 2019) declaration in Haldia Commissionerate under 'Voluntary Disclosure' category declaring duty of ₹ 0.55 crore for the period from 1 April 2017 to 30 June 2017. We found that the taxpayer had been subjected to Audit under the indirect tax enactment in respect of the goods/services or both up to the period June 2017. So, as per the aforesaid provision, the taxpayers would be ineligible to proceed further under the 'Voluntary Disclosure' category. However, the case was processed and discharge certificate was issued.

When we pointed (December 2021) this out, the Ministry stated (March 2022) that a letter has been issued by the Range Superintendent to the concerned tax payer for necessary verification.

➤ Under Chennai South Commissionerate, one declarant had filed (30 December 2019) declaration under 'Voluntary Disclosure' category involving tax dues ₹ 3 crore for the period 01 April to 30 March 2017. The Designated Committee processed the declaration and issued (2 March 2020) discharge certificate. We found that declarant had already filed ST-3 returns for the said period and thus, processing of this declaration was in violation of the said provision.

When we pointed (February 2021) this out, the Department accepted (March 2021) the observation and stated that action would be initiated as per Section 129 of the Finance (No. 2) Act, 2019.

### **3.8 Rejection of eligible declarations**

The 'Scheme' has been aimed at liquidating the legacy cases pending at various legal forums. Therefore, rejections of declarations close the doors of settlement of pending cases under the 'Scheme'. Provisions of the Finance (No. 2) Act, 2019, and Rules/notifications/circulars issued for the 'Scheme', prescribed the criteria for acceptance and rejection of declarations under the 'Scheme'.

Out of total 29,167 'rejected' declarations, we checked 1,477 declarations and observed that 14 eligible declarations (1.08 per cent), in seven Commissionerates<sup>35</sup>, involving tax dues of ₹ 29.51 crore, were rejected on various grounds, also resulting in probable loss of revenue of ₹ 8.72 crore. The details of rejections of declarations are stated in the subsequent paragraphs.

#### **3.8.1 Rejected on matters internal to the Department**

We found that the Designated Committees rejected two declarations in Kolkata North Commissionerate involving tax dues of ₹ 0.40 crore, due to non-modification of (Excise Control Code) ECC number by DG (System) when requested by the Designated Committee and non-receipt of verification report from the concerned Division, which were internal to the Department, wherein the declarants were not at fault. This resulted in probable loss of revenue of ₹ 0.09 crore.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the Audit observation by stating that the declarations were rejected due to non-receipt of verification report and non-modification of ECC number.

#### **3.8.2 Non-verification of declarations as well as non-offering of opportunities for personal hearings to declarants**

As per Rule 6(1) of SVLDRS Rules, 2019, the declaration made under Section 125 of the Finance (No. 2) Act, 2019, except when it relates to a case of voluntary disclosure of an amount of duty, was to be mandatorily verified by the Designated Committee based on the particulars furnished by the declarant as well as the records available with the Department. Further, Rule 6(3) of SVLDRS Rules, 2019, provides opportunity for personal hearing.

We found that two declarations, involving tax dues of ₹ 2.73 crore under Guwahati Commissionerate, were rejected without verifying the particulars records available with the Department as well as without giving opportunity for personal hearings to the declarants. This also resulted in probable loss of revenue of ₹ 0.25 crore.

When we pointed (December 2021) this out, the Ministry stated (March 2022) that the Designated Committee had verified the declarations as per provisions of the 'Scheme' and on finding non-mentioning of penalty amount or wrong declaration of pre-

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<sup>35</sup> Kolkata North, Guwahati, Jaipur, Bengaluru East, Bhubaneswar, Belagavi and G B Nagar

deposit/other deposit amount against the pending litigation matters, rejected the declarations. The reason for rejection was also communicated electronically to the declarants.

The fact, however, remained that the declarations were rejected unilaterally without giving opportunity for personal hearing to the declarants in violation of the above Rule.

One case is illustrated below:-

➤ One declarant filed (30 December 2019) a declaration under 'Litigation' category with tax dues of ₹ 5.87 crore. Audit noticed that the Designated Committee rejected (29 February 2020) the declaration on the ground that the amount of penalty was not mentioned in the declaration and therefore it became an incorrect declaration. Thus, the declaration was rejected unilaterally without giving opportunity for personal hearing to the declarant.

Moreover, we found that another Designated Committee in the same Commissionerate processed one case (ARN LD0412190000488) where declaration was filed without mentioning penalty amount.

### **3.8.3 Rejection of declarations on incorrect grounds**

As per Section 125(1) (e) of Finance (No. 2) Act, 2019, a declarant, who had been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before 30 June 2019, would not be eligible for the 'Scheme'. Further, Rule 6(1) of the SVLDRS Rules, 2019 stipulated that the declaration made under Section 125 of the Finance (No. 2) Act, 2019, except when it relates to a case of voluntary disclosure of an amount of duty, shall be verified by the Designated Committee based on the particulars furnished by the declarant as well as the records available with the Department.

We found that the Designated Committees rejected three declarations involving tax dues of ₹ 20.34 crore, though the tax dues were quantified before 30 June 2019, three declaration involving tax dues of ₹ 0.06 crore were rejected though interest relief was available and one declaration involving tax dues of ₹ 0.35 crore was rejected though no separate declaration was required. Further, three declarations in three Commissionerates involving tax dues of ₹ 1.50 crore were rejected where the Designated Committees did not verify the particulars of the declarations with the records available with the Department and did not revise the category of the declarations. Moreover, one declaration was rejected as the SVLDRS Portal did not allow rectification in the declaration. The details are given in **Table IX**.

Table IX

(₹ in crore)

Rejection on incorrect grounds						
Sl. No	Commissionerate	Category	ARN	Tax dues	probable loss	Ground for rejection
1	Kolkata North	Investigation	LD2812190004500	19.38	5.05	The cases were rejected for the reason that the quantification of the "Demand" was not made on or before 30 June 2019.
2	Bhubaneswar	Investigation	LD1101200001045	0.60	0.1	
3	Bhubaneswar	Arrears	LD1410190000122	0.35	0.14	No separate declaration was required; however the declaration was rejected.
4	Belagavi	Arrears	LD3012190003591	0.06	0.03	The declaration was rejected by stating that no duty/interest demand was pending in this case, even though demand of interest was pending.
5	Belagavi	Litigation	LD2312190004309	0	0	
6	Jaipur	Litigation	LD2912190000775	0	0	Though interest was covered under the 'Scheme', the declaration was rejected.
		<b>Total</b>		<b>20.39</b>	<b>5.32</b>	
Non-revision of category						
7	Bengaluru East	Litigation	LD2712190008143	1.36	0.81	Category not revised by the Designated Committee.
8	G B Nagar	Litigation	LD1911190000452	0.03	0.004	
9	Bhubaneswar	Arrears	LD0611190000003	0.11	0.04	
		<b>Total</b>		<b>1.50</b>	<b>0.9</b>	
Rectification not allowed						
10	Kolkata North	Litigation	LD1112190001696	4.48	2.24	Designated Committee was unable to modify the OIO number in the declaration to process the case and rejected the declaration.

When we pointed (December 2021) this out, regarding quantification of tax dues, the Ministry accepted (March 2022) the observation in one case and in one case reply was awaited (March 2022). Regarding rejection by stating that no duty/interest demand was pending the Ministry replied (March 2022) the declarants could have filed fresh declarations. The reply is not acceptable as the Designated Committee could have changed the particulars of the declarations based on the records available with the Department and by Personal Hearing. In one case where the Ministry did not accept the observation on the ground that the declaration was filed for interest amount only, which was not covered in the ambit of the 'Scheme' and Para 2(v) deals with a situation where a SCN is issued for appropriating the duty already deposited and demanding the applicable interest. In the instant case, SCN was only issued for demand of interest. There was no mention of appropriation of amount deposited.

The reply is not acceptable as SCN for demanding interest can only be issued where the duty amount has been deposited by the assessee as the Department need a duty amount on which interest can be calculated; in other words, without any duty amount interest cannot be calculated.

In one case the Ministry stated (March 2022) that the para No. 2(ii) of CBIC Circular 1072/05/2019-CX dated 25 September 2019 stipulated that separate applications to be filed for separate return period.

The reply is not acceptable, as in terms of CBIC circular 1073 (2) (iv) dated 29 October 2019 no separate declaration was required.

Regarding non-revision of category, in one case the Ministry stated (March 2022) that there were no arrears or tax dues pending as on 30 June 2019 as the appeal had been filed subsequently.

The reply is not acceptable as the appeal period was not over and there was no cut-off date for treating a case as arrears under the 'Scheme'. Also, category could have been changed by the Designated Committee based on particulars furnished by the declarant as well as records available with the Department. In one case, the Ministry replied (March 2022) that it was the liability of the declarant to file declaration under the correct category and not proper for the Designated Committee to change the category of declaration at its own to some other category. The reply is not acceptable, as in one similar case (LD2712190005198) in Kolkata North Commissionerate, the Designated Committee changed the category of the declaration and processed the case.

Regarding non-rectification in the declaration, the Ministry stated (December 2021) that after filing SVLDRS-1, the system had not been designed to accept any amendments/changes in declaration and as such, the Designated Committee, in this case, was unable to modify the OIO number in the declaration to process the case and the case was therefore rejected. The reply is not acceptable as had the declaration been processed, revenue of ₹ 2.24 crore could have been realized; also the opportunity of settlement of a pending legacy case was lost.

### **3.9 Incorrect processing and incorrect calculation of relief**

#### **3.9.1 Non-filing of separate declarations**

As per Rule 3 (2) of SVLDRS Rules, 2019, a separate declaration was to be filed for each case and for the purpose of this Rule, a "case" means – (a) an SCN, or one or more appeal arising out of such notice which is pending as on 30 June 2019. Thus filing of separate declarations for the cases mentioned in a single SCN was not allowed in the 'Scheme'.

Out of total 9,714 declarations under 'Investigation, Enquiry or Audit' category, we checked 1,746 declarations and noticed that one declarant under Noida Commissionerate, had filed (27 December 2019) two declarations involving tax dues of ₹ 0.19 crore against one SCN dated 13 November 2019. The Designated Committee, however, processed the declarations and issued (3 February 2020 and 28 February 2020) the discharge certificates. This processing of a single SCN case against two

declarations was not in conformity to the above Rule which resulted in extending of benefit to the ineligible declarant of ₹ 0.19 crore.

When we pointed (December 2021) this out, the Ministry replied (March 2022) that the separate ARNs filed by the declarant were accepted because it had no bearing on the revenue and they were totally in favour of the spirit of the 'Scheme'. The fact remained that the declarations were processed in violation of the above Rule provision.

### **3.9.2 Improper categorization of cases**

As per Section 125 of the Finance (No. 2) Act, 2019 read with Form SVLDRS-1 under Rule 3 of SVLDRS Rules, 2019 a case relating to appeal not filed or appeal having attained finality was to be considered under 'Arrears' category by the Designated Committees and as per Section 125 of the Finance (No. 2) Act, 2019 read with Form SVLDRS-1 under Rule 3 of SVLDRS Rules, 2019 a case relating to appeal pending as on 30 June 2019 and final hearing not held before 30 June 2019 was to be considered under 'Litigation' category by the Designated Committee.

#### **3.9.2.1 Processing of 'Arrears' cases under 'Litigation/Investigation, Enquiry or Audit' Category**

Out of total 69,840 declarations under 'Litigation/Investigation, Enquiry or Audit' category, we checked 11,648 declarations and observed that 17 declarations in 12 Commissionerates<sup>36</sup> involving tax dues of ₹ 23.33 crore were considered under 'Litigation/Investigation, Enquiry or Audit' category by the Designated Committees, instead of 'Arrears' category though the declarations were related to appeal not filed or appeal having attained finality or the declarants had not filed appeals against the OIO as on 30 June 2019 or the declarant declared dues in ST-3 return but not paid. This led to excess relief of ₹ 5.1 crore as the 'Arrears' cases attract lesser relief comparing to 'Litigation/Investigation, Enquiry or Audit' cases.

When we pointed (December 2021) this out, the Ministry in respect of five cases accepted (March 2022) the observation and in respect of 11 cases did not accept the observation by stating that the declarations had been processed under the correct category.

The reply is not acceptable as declarations had not been processed under the correct category. Reply in respect of one case was awaited. (March 2022).

Two cases are illustrated below-

➤ In Guntur Commissionerate, one declarant filed (30 December 2019) declaration under 'Litigation' category involving tax dues of ₹ 3.03 crore, penalty of

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<sup>36</sup> Bengaluru South, Bhubaneshwar, Guntur, Belagavi, Chennai South, Kochi, Belapur, Goa, Noida, Jamshedpur, Vishakhapatnam and Kozhikode

₹ 4 crore and pre-deposit of ₹ 3.03 crore with 'nil' amount payable amount. The Designated Committee accepted the declaration and issued discharge certificate (11 November 2020). We noticed in this case that the appeal was not pending as on 30 June 2019, as the Department preferred an appeal on 11 July 2019 before Hon'ble High Court against the CESTAT Final Order dated 21 April 2019 and hence, it was ineligible under '*Litigation*' Category.

When we pointed (December 2021) this out, the Ministry stated (March 2022) that the CESTAT order was received on 16 January 2019. The Department has filed an appeal against the order on 11 July 2019. The fact remained that as on 30 June, the appeal was not pending.

➤ In Chennai South Commissionerate, one declaration was filed (31 December 2019) under '*Litigation*' category involving tax dues of ₹ 2.99 crore. We noticed that in the instant case, the SCN was adjudicated in February 2019 and no appeal was filed on or before 30 June 2019, whereas the case had been processed under the '*Litigation*' category instead of '*Arrears*' category although there was no appeal pending as on 30 June 2019. This improper categorisation of case had resulted in excess relief of ₹ 0.80 crore.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation by stating that action would be taken to recover the tax dues.

### **3.9.2.2 Processing of '*Litigation*' cases under '*Arrears*' Category**

Out of the total of 1,26,899 declarations under '*Litigation/Arrears*' categories, we checked 14,924 declarations and observed that 16 declarations in five Commissionerates<sup>37</sup>, involving tax dues of ₹ 2.76 crore, were considered under '*Arrears*' category instead of '*Litigation*' category by the Designated Committees, though the declarations were related to appeals pending as on 30 June 2019, or final hearing not held before 30 June 2019. Thus processing of '*Litigation*' cases under '*Arrears*' category led to short relief of ₹ 0.54 crore as the '*Litigation*' cases attract higher relief comparing to '*Arrears*' cases.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in all 16 cases by stating that the declarations were processed under the category mentioned by the declarants and there was no revenue loss to the exchequer and the applicants have not contested the liability.

The facts remains that the declaration were processed under the incorrect category.

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<sup>37</sup> Noida, Kanpur, Belagavi, Gandhinagar and Daman

### 3.9.3 Incorrect assessment of tax dues

In terms of Section 123 (a) (i) of the Finance (No.2) Act, 2019, 'Tax dues' means "a single<sup>38</sup> appeal arising out of an order is pending as on the 30th day of June 2019 before the appellate forum, the total amount of duty which is being disputed in the said appeal". Also as per Section 123 of the Finance (No.2) Act, 2019 in Arrear cases, relief is calculated after adjusting the pre-deposit amount but in litigation cases, relief is calculated first on the tax dues and there after pre-deposit amount is adjusted.

Thus after passing order if an assessee goes for appeal against the order with the changed/disputed amount, then tax dues under the 'Scheme' would be the changed/disputed amount, and not the amount mentioned in the order. We found that the Designated Committee had not considered the changed/disputed amount shown in the appeal filed against the order. This non-consideration of changed amount led to determination of lesser/higher payable amount in certain cases, as detailed below-

#### 3.9.3.1 Incorrect assessment of tax dues led to determination of lesser payable amount

Out of total 1,26,899 declarations under 'Litigation/Arrears' category, we checked 14,924 declarations and observed that the tax dues, under the 'Litigation/Arrears' category, in respect of ten declarations, in eight Commissionerates<sup>39</sup>, involving tax dues of ₹ 13.61 crore, were assessed incorrectly as the Designated Committees had not considered the tax dues which had arisen out of an order pending as on 30 June 2019 before the appellate forum i.e. appeal was filed with the changed amount not the original amount. We noticed that the Designated Committee had not processed the cases taking in to account the changed appeal amount which led to excess relief of ₹ 1.31 crore.

When we pointed (December 2021) this out, the Ministry in respect of three cases accepted (March 2022) the observations. However the Ministry in respect of six cases had not accepted the observation by stating that the tax dues had been correctly arrived at after adjusting pre-deposit.

The reply is not acceptable as tax dues had not been correctly assessed. The reply in respect of one case was awaited (March 2022).

Two cases are illustrated below:-

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<sup>38</sup> If assessee or the Department goes for the appeal then it's a single appeal if assessee and the Department both go for appeal it's appeal from both side i.e. two appeals for one case.

<sup>39</sup> Kolkata North, Kolkata South, Bengaluru East, Chandigarh, Guntur, Medchal, Mumbai Central and Jaipur

One declarant had filed (October 2019) a declaration in Bengaluru East Commissionerate, under the category of 'Litigation' and sub-category of 'Appeal Pending', with tax dues of ₹ 1.60 crore.

We noticed that the Settlement Commission had confirmed (November 2011) a demand of ₹ 1.60 crore, with applicable interest and penalty of ₹ 0.13 crore payable within 30 days of the order. While the assessee did not pay the dues, the Department initiated (February 2016) coercive measures for recovery and later adjudicated (March 2018) the SCN settled earlier by Settlement Commission, increasing penalty to ₹ 1.60 crore from ₹ 0.13 crore. Aggrieved by the adjudication order, the assessee filed (02 July 2018) appeal before the CESTAT.

The Designated Committee, on receipt of declaration under the 'Scheme', initially correctly rejected (November 2019) the same intimating the assessee to file fresh application under 'Arrears' category on the grounds that orders issued by the Settlement Commission is conclusive and due for recovery. However, when the assessee filed (January 2020) another declaration under the same category with same tax dues, the Designated Committee, after the personal hearing, accepted the declaration and issued (06 March 2020) SVLDRS-3 with payable amount as zero under 'Litigation' category, after adjusting pre-deposit of ₹ 0.9 crore and issued (March 2020) the discharge certificate.

Since the order of Settlement Commission was conclusive and binding on the Department as well as the assessee, the sums payable by the assessee under the Settlement Commission's order should have been treated as arrears. Accepting the declaration and issuing discharge certificate under 'Litigation' category resulted in loss of revenue of ₹ 0.44 crore.

When we pointed (December 2021) this out, the Ministry stated (March 2022) that the subject matter of appeal from the party pending as on 30 June 2019 before the Tribunal arose out of the proceedings of adjudication initiated by the Department consequent to the non-compliance of the assessee with conditions of the Settlement Order passed by the Settlement Commission. The process of settlement had not resulted in recovery of the tax amount in dispute since the party did not comply with the final order and had forfeited the right to settle the case in accordance with order passed by the Settlement Commission. The SCN was later adjudicated and assessee filed (02 July 2018) appeal in CESTAT against the same. Hence as on 30 June 2019, the case was pending before the CESTAT. Therefore, the subject declaration was rightly considered by the Designated Committee.

The reply is not acceptable as Sections 32M of the Central Excise Act, 1944, read with Service Tax (Settlement of Cases) Rules, 2012, stipulates that orders of Settlement Commission are conclusive and cannot be re-opened. As per Section 32N of the Central Excise Act, 1944, sums decided by the Settlement Commission should be

recovered and action under Section 11 Central Excise Act, 1944 can be taken for imposing penalty for default of such sums. Thus, it is evident that the adjudicating authority cannot reopen a case merely because of the default by the assessee in payment of the sums decided by the Commission. In case of default, the defaulted amount should be recovered and adjudication procedure should be initiated only for imposing penalty on such default. Thus the Designated Committee incorrectly treated the declaration under 'Litigation' category.

➤ In Kolkata North Commissionerate, one declaration was filed (13 January 2020) under the 'Litigation (Appeal Pending)' category, involving tax dues of ₹ 2.03 crore with pre-deposit of ₹ 1.12 crore. The Designated Committee issued (27 April 2020) discharge certificate with zero payable amount after adjusting the pre-deposit.

We noticed that the Department issued (26 May 2017) SCN for short/non-payment of Service Tax of ₹ 1.46 crore and ₹ 0.83 crore against wrong availment of the Cenvat credit by the assessee. OIO dated 24 January 2018 confirmed the Service Tax demand of ₹ 1.20 crore and dropped the demand of ₹ 0.26 crore. Out of demand of ₹ 1.20 crore of Service Tax ₹ 1.05 crore had been ordered for appropriation. Further, recovery of ₹ 0.83 crore on account of availing of wrong Cenvat credit along with the penalty and interest was also ordered. We found that against the order the taxpayer filed an appeal to CESTAT on 24 May 2018 for the remaining disputed amount of ₹ 0.98 crore with pre-deposit of ₹ 0.07 crore. Thus, as per above definition of tax-dues, in this case, 'tax dues' and 'pre-deposit' would be ₹ 0.98 crore and ₹ 0.07 crore respectively, instead of ₹ 2.03 crore and ₹ 1.12 crore. Thus, incorrect consideration of 'tax dues' and 'pre-deposit' resulted in excess relief of ₹ 0.42 crore<sup>40</sup>.

When we pointed (December 2021) this out, the Ministry did not accept (March 2022) the observation and stated that it is specifically mentioned in the 'Scheme' that any appeal filed needed to be withdrawn for applying for the 'Scheme'. The OIO dated 24 January 2018 confirmed Service Tax demand amounting to ₹ 1.20 crore and further ordered for the recovery of ₹ 0.83 crore which has been accepted by the Designated Committee. Since the taxpayer has already deposited ₹ 1.05 crore which has been ordered for appropriation in the above mentioned order and also deposited an amount of ₹ 0.07 crore as pre-deposit, the total amount deposited stands at ₹ 1.13 crore which is more than the amount required to be paid as per the 'Scheme' and hence the declaration of the taxpayer was accepted and discharge certificate was issued with zero payable amount.

The reply is not acceptable because in the instant case disputed amount is appeal amount of ₹ 0.98 crore not the OIO amount as declarant had accepted the amount appropriated in the OIO and filed the appeal for the balance amount. Section 123 (a) (i)

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<sup>40</sup> ( Appeal amount \*relief) less (pre-deposit) i.e. (₹ 0.98 crore\*0.5) less ₹ 0.07 crore

of the Finance (No. 2) Act, 2019, clearly stipulated that “tax dues” means ‘the total amount of duty which is being disputed in the said appeal arising out of an order which is pending as on 30 June 2019 before the appellate forum’. In this case, the taxpayer filed appeal to CESTAT for ₹ 0.98 crore {(i.e. ₹ 0.15 crore (Service Tax) and ₹ 0.83 crore (Wrongly availed Cenvat Credit)} with pre-deposit ₹ 0.07 crore. Thus, incorrect consideration of ‘tax dues’ and ‘pre-deposit’ resulted in loss of revenue amounting to ₹ 0.42 crore.

### 3.9.3.2 Incorrect assessment of tax dues led to determination of excess payable amount

Out of the total 1,36,613 declarations under ‘*Litigation/Arrears/Investigation*’ category we checked 16,670 declarations and observed that in three Commissionerates<sup>41</sup>, in seven cases the Designated Committees had considered the ‘tax dues’ as the amount arrived at after deducting the amount appropriated in OIO instead of the entire amount mentioned in OIO or OIA (Order in Appeal). This was not in order as per the definition of ‘tax dues’ given in the provision stated above. As a result, the amount determined as payable under the ‘*Scheme*’ was not correctly arrived at. In these seven cases, additional amount of ₹ 0.34 crore was incorrectly determined as payable and paid by the declarants.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in five cases. In one case, the Ministry stated that the Designated Committee processed the declaration as per the category mentioned by the declarant.

The reply is not acceptable as in terms of Rule 6(1) of SVLDRS Rules 2019, the Designated Committee had to modify the category as per the records available with the Department. The Ministry’s reply in respect of one case was awaited (March 2022).

One case is illustrated below:-

➤ One declarant under Dibrugarh Commissionerate had filed (26 December 2019) a declaration under category ‘*Litigation – appeal pending*’, to whom an OIO was issued on 10 August 2012 confirming an amount of ₹ 1.71 crore. In this OIO, payment of ₹ 0.23 crore made by the declarant, was ordered to be appropriated. However, the declarant had gone in appeal in CESTAT against the entire confirmed amount mentioned in the OIO. Therefore, tax dues in this case, should have been ₹ 1.71 crore in place of ₹ 1.48 crore as determined by the Designated Committee, after deducting the appropriated amount. As a result, an extra amount of ₹ 0.12 crore<sup>42</sup> was determined as payable under the ‘*Scheme*’, which was incorrect.

<sup>41</sup> Dibrugarh, Daman and Rangareddy

<sup>42</sup> {Department has calculated (₹ 1.71 crore less appropriated amount ₹ 0.23 crore) i.e. ₹ 1.48 crore\*0.4} - {should have been (₹ 1.71 crore \*0.5)-(less pre-deposit ₹ 0.38 crore)}

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation.

### **3.9.3.3 Incorrect assessment of tax dues under 'Arrears' category**

In terms of the Section 123 (e) of the Finance (No. 2) Act, 2019, "tax dues" means that an amount in arrears, relating to the declarant, is due. Further, Section 124(2) of the Finance (No. 2) Act, 2019, stipulates adjustment of deposit during investigation, while granting relief under the 'Scheme'. Further, point number iv of CBIC circular no. 1072/05/2019-CX dated 25 September 2019 stated that for 'Arrears' cases tax dues are the amount of duty which is outstanding against the declarant. This is the net amount after deducting the dues that he has already paid. Such payment may be in the form of pre-deposits appropriated or paid subsequently by the taxpayer voluntarily against the outstanding amount. Thus, in 'Arrears' cases, relief was to be calculated after adjusting the pre-deposit amount and in 'Litigation' cases, relief was to be calculated first on the tax dues and there after pre-deposit amount was to be adjusted, which was not done by the Designated Committee in certain cases.

Non-consideration of outstanding amount as tax dues in 'Arrears' cases led to extension of excess/ short relief on the tax dues, as detailed below-

#### **(I) Excess Relief extended to the declarants**

Out of total 1,26,899 declarations under 'Litigation/Arrears' category, we checked 14,924 declarations and observed that tax dues involving ₹ 21.13 crore, in ten declarations, in seven Commissionerates<sup>43</sup>, were outstanding against the declarants. However, the Designated Committees did not verify the tax dues properly in violation of the above provision which led to extension of excess relief amounting to ₹ 0.95 crore.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in respect of five cases, did not accept the audit observation in respect of five cases.

One case is illustrated below:-

➤ One declarant had filed (December 2019) declaration in Bengaluru South Commissionerate, under the category of 'Litigation' and sub-category of 'Appeal Pending' with tax dues of ₹ 17.96 crore on the grounds that appeal was pending before the CESTAT. After adjusting the pre-deposit of ₹ 17.48 crore, the Designated Committee processed the case for zero payable amount and issued (February 2020) discharge certificate. On verification of the case, we noticed that the assessee's appeal before the CESTAT was only against the demand of ₹ 0.50 crore towards Cenvat credit utilised and ₹ 0.01 crore towards penalty confirmed by the relevant adjudication order (April 2016) and not against ₹ 17.96 crore demanded in the SCN. Hence, the tax dues

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<sup>43</sup> Kolkata North, Haldia, Guwahati, Kolkata South, Bengaluru South, Bengaluru West and Belagavi

for the purpose of this case was ₹ 0.50 crore and the assessee was liable to pay ₹ 0.22 crore under SVLDRS after adjusting the pre-deposit. Thus, incorrect calculation of tax dues by the Designated Committee resulted in ineligible tax relief of and loss of revenue of ₹ 0.22 crore.

When we pointed (December 2021) this out, the Ministry stated (March 2022) that the Principal Commissioner disallowed (April 2016) the Cenvat credit of ₹ 17.96 crore after adjusting Cenvat credit of ₹ 17.43 crore. However, the assessee had filed under the 'Scheme' for amount of ₹ 17.96 crore as the amount contested before the CESTAT. Further, the declarant accepted that his advocate had indicated wrongly the amount in dispute as ₹ 0.5 crore in the appeal form instead of ₹ 17.96 crore. The Designated Committee arrived at the eligible amount of Cenvat credit of ₹ 17.47 crore, which was the correct amount as per the assessee's contention and accordingly issued SVLDRS-3/4 with zero dues. The appeal filed by the assessee mentioned the appeal amount as ₹ 0.5 crore and the appeal has already been admitted by the CESTAT.

The reply of the Ministry is not acceptable as the claim of the Ministry that this was a mistake by the assessee's advocate is not sustainable.

## **(II) Short Relief extended to the declarant**

Out of the total 1,26,899 declarations under 'Litigation/Arrears' category, we checked 14,924 declarations and observed that the tax dues, in four declarations, in Nagpur-II, Goa, and Jamshedpur Commissionerates involving ₹ 2.26 crore, were outstanding against the declarants. However, the Designated Committees did not verify the tax dues properly in violation of the above provision which led to short relief passed to the taxpayers amounting to ₹ 0.32 crore.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in three cases and did not accept the observation in one case by stating that the Designated Committees had calculated the payable amount correctly after giving tax relief to the net arrears amount as per the Act.

The reply is not acceptable as the applicable relief would be 60 *per cent* instead of 40 *per cent* as the tax dues were less than ₹ 50 lakh under the arrears category.

One case is illustrated below:-

➤ In Goa Commissionerate, one declarant had filed declaration under 'Arrears' category with tax dues of ₹ 0.64 crore and pre-deposit of ₹ 0.30 crore. The SVLDRS Portal incorrectly calculated payable amount of ₹ 0.20 crore {i.e. 60 *per cent* of net amount of ₹ 0.34 crore (₹ 0.64 crore-₹ 0.30 crore)} whereas the correct amount payable should have been ₹ 0.14 crore (i.e. 40 *per cent* of net amount of ₹ 0.34 crore). The Department however did not consider the rectification and demanded an amount payable on the higher side i.e. ₹ 0.20 crore and the same was paid (24 January 2020) by the taxpayer.

When we pointed (December 2021) this out, the Ministry stated (March 2022) that the amount of tax dues is calculated by deducting the amount of pre-deposit made from the total amount of duty. In this case, amount of tax dues is ₹ 0.34 crore (₹ 0.64 crore- ₹ 0.30 crore); applying relief of 40 *per cent* on this amount (₹ 0.14 crore), the net payable amount of ₹ 0.20 crore correctly calculated by SVLDRS Portal.

The reply is not acceptable as even though the SVLDRS Portal had calculated an incorrect payable amount, under SVLDRS Rule 6 (1) the Designated Committee should have verified the relief correctly which was 60 *per cent* instead of 40 *per cent*, as tax dues outstanding were less than ₹ 50 lakh.

### **3.9.3.4 Tax dues under *Investigation/Enquiry/Audit* category not verified properly**

Section 123 (c) of the Finance (No. 2) Act, 2019 stated that where an enquiry or investigation or audit is pending against the declarant, the amount of duty payable under any of the indirect tax enactment which has been quantified on or before 30 June 2019, shall be tax dues under '*Investigation, Enquiry or Audit*' category.

Further, Frequently Asked Questions No. 45 issued by the CBIC stated that with respect to cases under enquiry, investigation or audit, quantified amount means duty/tax liability admitted by the person during enquiry, investigation or audit or audit report etc.

Out of total 9,714 declarations under '*Investigation, Enquiry or Audit*' category, we checked 1,746 declarations and found that in three declarations in Jodhpur, Chennai South and Palghar Commissionerates involving tax dues ₹ 2.06 crore, the Designated Committees had not considered the tax dues admitted by the person during enquiry, investigation or audit in violation of the above provision which led to excess relief of ₹ 1.07 crore.

When we pointed (December 2021) this out the Ministry did not accept (March 2022) the observation in all three cases by stating that the amount was not communicated before 30 June 2019.

The reply is not acceptable as the amount was quantified and communicated before 30 June 2019.

One case is illustrated below-

One declarant had filed (December 2019) a declaration in Chennai South Commissionerate, under category of '*Investigation, Enquiry or Audit*' with a tax due of ₹ 1.52 crore. We noticed that the case was booked by the DGGI, Madurai for the non-payment of Service Tax by the tax payer for the period from 2015-16 to 2017-18 (up to June 2017). The tax payer had admitted (15 February 2019) the tax liability as ₹ 1.52 crore for the period from 2015-16 to 2017-2018 (up to June 2017). Due to the non-acknowledgement of the tax payer's letter dated 15 February 2019 by the Department, the tax liability of ₹ 1.52 crore was not considered by the Department

and the tax due was taken as ₹ 0.61 crore only for the partial period of 2015-16 and not for the entire period of 2015-16 to 2017-18. Though there was no provision for splitting or claiming benefit under the 'Scheme' for the partial tax period mentioned in the investigation initiated by the DGGI, the Department processed the claim for partial period which resulted in short payment of tax dues of ₹ 0.9 crore.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) that the Department issued (13 November 2019) SCN demanding Service Tax of ₹ 4.65 crore. The amount of ₹ 0.91 crore<sup>44</sup>, which was not considered as tax dues by the Designated Committee was covered in the amount of SCN and the SCN was adjudicated vide OIO dated 31 March 2021.

The fact remained that Designated Committee processed the case for partial period and the OIO was issued at the instance of Audit. The amount mentioned in the OIO has not been deposited by the declarant.

### 3.9.3.5 Allowance of excess relief under 'Litigation' category

Category of Application	Particulars	Tax dues of ₹ 50 lakhs or less	Tax dues of more than ₹ 50 lakhs
Litigation	SCN/ one or more appeal pending as on 30 June 2019	70 per cent	50 per cent

As per the Section 124 of the Finance (No. 2) Act, 2019, the relief available under the 'Litigation' category, to a declarant, shall be calculated as follows:—

- (a) where the tax dues are relatable to an SCN or one or more appeals arising out of such notice which is pending as on 30 June 2019, and if the amount of duty is,- (i) rupees fifty lakhs or less, then, seventy *per cent* of the tax dues; (ii) more than rupees fifty lakhs, then, fifty *per cent* of the tax dues and
- (b) where the tax dues are relatable to an SCN for late fee or penalty only, and the amount of duty in the said notice has been paid or is 'nil', then, the entire amount of late fee or penalty.

Out of total 76,487 declarations under 'Litigation/Arrears' category, we checked 14,924 declarations and observed that, in two declarations involving tax dues of ₹ 1.17 crore, under Kolkata South and Gandhinagar Commissionerates, the relief had been wrongly considered by the Designated Committees, in violation of the above provision, resulting in excess allowance of tax relief, amounting to ₹ 0.23 crore.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation and stated that the remaining amount along with interest will be recovered very soon.

<sup>44</sup> (₹ 1.52 crore - ₹ 0.61 crore)

One case is illustrated below:-

➤ One declarant filed (25 November 2019) declaration in Kolkata South Commissionerate under '*Litigation-Appeal Pending*' category declaring ₹ 0.34 crore as the amount in dispute under Appellate forum. Accordingly, the SVLDRS Portal calculated payable amount at ₹ 0.10 crore after providing tax relief at the rate of 70 *per cent* on the total tax due amount. The Designated Committee undertook verification of the correctness of the claim and found that the amount in dispute under appeal was ₹ 0.57 crore instead of ₹ 0.34 crore i.e. greater than ₹ 50 lakh. However, the Designated Committee issued SVLDRS-2 calculating tax relief at the rate of 70 *per cent* instead of at the rate of 50 *per cent* in violation of the above provision, which resulted in providing excess tax relief of ₹ 0.11 crore.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the audit observation and initiated action to recover the outstanding duty of ₹ 0.11 crore.

### **3.10 Improper verification of evidence of pre-deposit/deposit**

Section 124 of the Finance (No. 2) Act, 2019, states that the relief calculated under Sub-section (1) shall be subject to the condition that any amount paid as pre-deposit at any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or Audit, shall be deducted when issuing the statement indicating the amount payable by the declarant.

Out of the total 1,36,613 declarations under '*Litigation/Arrears/Investigation*' category, we checked 16,670 declarations and observed that, in 65 declarations in 23 Commissionerates<sup>45</sup>, involving tax dues of ₹ 90.51 crore, evidence of pre-deposits/deposits had not been verified properly, after due linking with the concerned cases. This resulted in excess adjustment of pre-deposits of ₹ 21.59 crore in 57 cases in 22 Commissionerates and short adjustment of pre-deposit of ₹ 0.17 crore in three cases in Kolkata North, Kolkata South and Daman Commissionerates. Further, in five cases in three Commissionerates<sup>46</sup>, we could not verify the pre-deposit of ₹ 0.52 crore in the absence of supporting documents.

We noticed that pre-deposits were adjusted incorrectly in the '*Scheme*' for-

- Acceptance of pre-deposit challan where the registration number of the assessee was other than the registration number mentioned in the litigated case,
- Adjustment of pre-deposit which was not appropriated in the OIO,

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<sup>45</sup> Kolkata North, Kolkata South, Daman, Ahmedabad South, Ahmedabad North, Vadodara-II, Gandhinagar, Bengaluru South, Bengaluru East, Bengaluru West, Belagavi, Delhi East, Delhi North, Jamshedpur, Lucknow, Mumbai West, Nagpur-II, Belapur, Chennai North, Chandigarh, Ludhiana, Panchkula, and Faridabad

<sup>46</sup> Guntur, Medchal and Rangareddy

- Consideration of incorrect amount of pre-deposits which did not match with the available records,
- Pre-deposit challans not related to the service against which the case was related,
- Declarant agreed in rejection of pre-deposits but later the Designated Committee still allowed it,
- Eligibility of pre-deposit could not be ascertained with the relevant invoice,
- Evidence of payment of pre-deposit missing but accepted in the case,
- Adjustment of pre-deposits without verifying the correctness in the case etc.

When we pointed (December 2021) this out, the Ministry regarding excess adjustment of pre-deposit, in nine cases accepted (March 2022) the observation. In 37 cases the Ministry did not accept the observation by stating that the pre-deposits had been adjusted as per the provisions of the 'Scheme'.

The Reply is not acceptable as the pre-deposits were not verified properly and the Ministry has not followed a consistent stand in similar cases. The reply of the Ministry in remaining 11 cases was awaited (March 2022).

Regarding short adjustment of pre-deposit, the Ministry accepted (March 2022) the observation in all three cases by stating that the same was overlooked by the Designated Committee as the taxpayer had accepted SVLDRS-3 and paid.

Regarding improper verification of evidence of pre-deposit/deposit the in respect of three cases the Ministry responded (March 2022) that the evidence of pre-deposits were properly verified; the fact remained that the proof of pre-deposit was not produced to Audit. The Ministry's reply in respect of two cases was awaited (March 2022).

One case related to excess adjustment of pre-deposits is illustrated below:-

➤ One declarant had filed declaration (January 2020) under Kolkata South Commissionerate under 'Arrears' category declaring tax dues of ₹ 4.98 crore with pre-deposit of ₹ 1.83 crore. The Designated Committee processed the declaration and the declarant deposited (20 March 2020) payable amount of ₹ 1.89 crore accordingly the Designated Committee issued (30 June 2020) the discharge certificate.

We noticed that SCN was issued (22 April 2019) to the declarant towards non-payment of Service Tax of ₹ 5.89 crore and the same was adjudicated vide OIO dated 30 December 2019 at a confirmed demand of ₹ 4.98 crore after dropping the demand of ₹ 0.9 crore from the SCN amount. We found that the Designated Committee adjusted the pre-deposit of ₹ 1.83 crore belonged to the period from March-2014 to September-2018, which was not appropriated in OIO. As the amount already paid is appropriated in the OIO, in the instant case, ₹ 1.83 crore had not been appropriated in the OIO which led to loss of revenue of ₹ 1.06 crore.

When we pointed (December 2021) this out, the Ministry stated (March 2022) that mentioned pre-deposit of ₹ 1.83 crore in the declaration was verified by the Division office and found in order, accordingly the Designated Committee processed the case.

Reply is not acceptable as the reply did not address the issue of adjustment of pre-deposit which was not appropriated in the OIO.

### **3.11 Payment made by using non-SVLDRS Challans**

Rule 7 of the SVLDRS Rules, 2019, states that every declarant shall pay electronically the amount, as indicated in Form SVLDRS-3, issued by the Designated Committees. Further, the Taxpayer User Manual issued by the CBIC specified that if the tax payer agrees with the SVLDRS-3 Form details, then the challan will be created by the taxpayer and he/she will be able to make payment via ICEGATE payment gateway through NEFT/RTGS options. Thus, online payment was required to be made through only SVLDRS challans after issue of SVLDRS-3 statement.

Out of total 1,31,656 declarations where discharge certificates were issued, we checked 12,236 declarations and observed that in 152 cases (1.24 per cent) under 18 Commissionerates<sup>47</sup>, involving tax dues of ₹ 162.05 crore, a total payable amount of ₹ 64.23 crore, as indicated in SVLDRS-3, was paid through non-SVLDRS challans i.e. not through the specific SVLDRS Portal generated challans. This indicated violation of the provision stated above. The payment under the 'Scheme' through conventional challans can be re-used towards pre-deposits, other payments etc., and possibilities of such misuse cannot be ruled out.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in respect of 146 cases and attributed payment through non-SVLDRS challans to technical glitches. The Ministry further stated that payment was made as per instructions from the CBIC after proper linking for acceptance of payment made by taxpayers using the non-prescribed mode. This error was also attributed to lack of knowledge of the declarants. However, the Department linked all the non-SVLDRS Challans with the respective SVLDRS-3 in accordance with the instructions of the DG (Systems) in order to prevent misuse of Challans in the future.

The reply of the Ministry confirmed that the SVLDRS Portal was not configured to accept only the challans generated from SVLDRS-3, nor did it have any built in fool proof mechanism to prevent future misuse of Challans. The Ministry's reply in respect of six cases was awaited (March 2022).

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<sup>47</sup> Kolkata South, Haldia, Noida, Chennai North, Chennai-South, Chennai outer, Coimbatore, Delhi East, Belapur, Mumbai West, Mumbai East, Mumbai Central, Kolhapur, Goa, Nagpur II, Bengaluru West, Ludhiana and Bengaluru East

### 3.12 Deficiencies in statements/ Discharge Certificates

#### 3.12.1 Non issuance of SVLDRS-2

In terms of the Section 127(2) of the Finance (No. 2) Act, 2019, in cases where the amount estimated to be payable by the declarants, as estimated by the Designated Committees, exceeds the amount declared by the declarants, then the Designated Committees shall issue in electronic Form (SVLDRS-2), an estimate of the amount payable by the declarant within thirty days of the date of receipt of declaration.

Out of total 1,36,613 declarations under '*Litigation/Arrears/Investigation, Enquiry or Audit*' category, we checked 16,670 declarations and observed that in five cases, in Haldia Commissionerate, involving payable amount of ₹ 0.71 crore, the Designated Committee revised (increased) the amount as shown in the declarations. However, in these cases, the Designated Committee directly issued SVLDRS-3 instead of issuing SVLDRS-2; in contravention of the provision mentioned above. In these cases, the declarants had not paid the amount as mentioned in SVLDRS-3.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in all cases and stated that it was only a procedural lapse. But the fact remained that lapses on part of the Designated Committee, deprived the declarant of having a personal hearing as per the statutory provisions.

#### 3.12.2 Deficiencies in Form SVLDRS 3

##### 3.12.2.1 Delay in issue of Form SVLDRS-3

As per the CBIC circular no. 1071/4/ 2019-CX-8 dated 27 August 2019, in cases of '*Voluntary Disclosure*', SVLDRS-3 was to be issued within 15 days from the filing of the declaration.

Out of total 23,868 '*Voluntary Disclosure*' declarations, we checked 1,454 declarations and observed that in 501 declarations (34.46 per cent), under 39 Commissionerates<sup>48</sup>, involving tax dues of ₹ 109.01 crore, the time limit of 15 days for issuance of SVLDRS-3 was not adhered to, resulting in delayed issue of SVLDRS-3 ranging from one to 120 with average delay of 20.84<sup>49</sup> days as shown in the **Table-X**. Further as per all India payment data, in 147 cases only payment of ₹ 24.76 crore was realized leaving ₹ 84.89 crore unrealized against 354 declarations where the delay ranges from 01 to 120 days.

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<sup>48</sup> Kolkata North, Kolkata South, Haldia, G.B Nagar, Kanpur, Noida, Lucknow, Bhubaneswar, Guntur, Medchal, Ranga Reddy, Visakhapatnam, Chennai North, Chennai South, Chennai Outer, Coimbatore, Kozhikode, Kochi, Ahmedabad South, Daman, Jaipur, Jodhpur, Delhi East, Indore, Raipur, Chandigarh, Ludhiana, Belapur, Aurangabad, Mumbai West, Mumbai Central, Mumbai East, Kolhapur, Bengaluru South, Bengaluru West, Bengaluru East, Belagavi, Nagpur-II and Palghar

<sup>49</sup> Total days 10,443/Total case 501 = 20.84 days

Table-X

Delay in days	1 to 30 days	31 to 60 days	61 to 90 days	91 to 120 days	Total case
No. of Cases	402	86	7	6	501

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in 489 cases by stating that the delay was mainly due to administrative reasons such as huge volume of work and technical snags. Reply from the Ministry in respect of 12 cases was awaited.

### 3.12.2.2 Delay in rectification of SVLDRS-3

Rule 128 of SVLDRS Rules, 2019 provides that within thirty days of the issue of a statement indicating the amount payable by the declarant, the Designated Committee may modify its order only to correct an arithmetical error or clerical error, which is apparent on the face of record, or such error being pointed out by the declarant or *suomoto*, by the Designated Committee.

Out of the total 1,36,613 declarations under '*Litigation/Arrears/Investigation, Enquiry or Audit*' category, we checked 16,670 declarations and observed that in six declarations under Ludhiana Commissionerate involving tax dues of ₹ 0.92 crore, rectified SVLDRS-3s were issued (17 June to 30 June 2020) at the fag-end/last date<sup>50</sup> of the '*Scheme*' and in one case, rectified SVLDRS-3 was issued (15 July 2020) after the stipulated date of payment, which might have been the reason for non-payment of payable amount by the declarants. Thus, had the Department rectified the Form SVLDRS 3 in time, not only could these cases have been resolved, but revenue of ₹ 0.22 crore could also have been realized.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation by stating that in all these cases, personal hearing was given to the declarants to explain the difference of duty/pre-deposit. The declarants, due to Covid-19 pandemic either remained non responsive or sought more time to file the reply. This resulted in late issuance of rectified SVLDRS-3 in these cases.

### 3.12.2.3 Issuing of SVLDRS-3 with 'nil' payable amount declaration

As per Rule 6 (2) of the SVLDRS Rules, 2019, no statement in Form SVLDRS-3 is to be issued if the amount payable is determined as 'nil'. In all such cases, discharge certificate in SVLDRS-4 was to be issued within thirty days of the filing of declaration. Hence, no estimate was to be issued if the payable amount was 'nil'.

Out of total 53,397 declarations where SVLDRS-4 had been issued with 'nil' payable amount, we checked 5,208 declarations and found that in 383 cases (7.35 *per cent*), in eight Commissionerates<sup>51</sup>, the Designated Committees had issued SVLDRS-4 after

<sup>50</sup> Stipulated date of payment to be made was 30 June 2020

<sup>51</sup> Haldia, Bengaluru West, Bengaluru South, Guwahati, Dibrugarh, Shillong, Indore and Belagavi

issuance of SVLDRS-3 where payable was shown as 'nil'. This indicated violation of the above Rule provision.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in 320 cases by stating that the SVLDRS Portal was not showing the option of issuing SVLDRS-4 directly, due to which Form SVLDRS-3 was issued to the declarants with 'nil' amount payable declarations, and also this was due to a procedural lapse. The Ministry's reply with respect to 63 cases was awaited (March 2022).

#### **3.12.2.4 Non issuance of revised SVLDRS-3**

Rule 6(6) of the SVLDRS Rules 2019 stipulated that after issue of Form SVLDRS-3, the Designated Committee may modify its order only to correct an arithmetical error or clerical error, which is apparent on the face of record, on such error being pointed out by the declarant or *suomoto* by issuing electronically a revised Form SVLDRS-3.

Out of total 66,773 declarations under 'Arrears' category, we checked 5,022 declarations and observed that in Chandigarh Commissionerate, one declarant filed three declarations under 'Arrears' category, declaring tax dues as 'nil' in two declarations and as ₹ 0.007 crore in the third declaration. After the verification report of the Department in respect of pre-deposit declared by the declarant, SVLDRS-3 were issued (28 December 2019, 15 January 2020) in all the cases with amount payable as 'nil' in two cases and ₹ 0.02 crore in the third case. Later on, the SVLDRS-3 Forms in two cases having 'nil' amount were rectified by the Designated Committee and ₹ 0.02 crore was shown payable in each case. The claim of the declarant regarding pre-deposit was rejected.

The declarant thereafter made a representation to re-examine the case as final liability in all three cases was not determined correctly, as during personal hearing (27 December 2019) he had produced copies of all relevant Service Tax paid challans and had uploaded them in response to SVLDRS-2. All the previously denied pre-deposit challans were verified by the Department on 14 February 2020 but due to lapse of time period, revised SVLDRS-3 could not be issued. Thereafter, the declarant filed a writ petition in the Hon'ble Punjab and Haryana High Court for issuing of correct SVLDRS-3 in these cases. Thus, had the Department issued revised Form SVLDRS-3 timely, these declarations could have been finalized and litigation could have been avoided.

When we pointed (December 2021) this out, the Ministry stated (March 2022) that the Commissionerate had issued rectified SVLDRS-3 in two cases after rectifying the tax dues in both cases and in one case rectified SVLDRS-3 was not required.

The reply is not acceptable as verification was evidently deficient and the Designated Committee could not issue revised SVLDRS-3 in time which not only led to non-finalization of cases but also to litigation.

### 3.12.3 Deficiencies in issue of Discharge Certificates

#### 3.12.3.1 Delay in issue of discharge certificate containing 'nil' payable amount

As per Rule 6(2) of the SVLDRS Rules, 2019, no statement in Form SVLDRS-3 was to be issued, if the amount payable was determined as 'nil'. In all such cases, discharge certificate in Form SVLDRS-4 was to be issued within thirty days of the filing of declaration. Hence where the estimate is not issued to the declarant being 'nil' payable amount, the discharge certificate is to be directly issued within 30 days of the filing of declaration.

Out of the total 53,397 discharge certificates containing 'nil' payable amount, we checked 5,308 discharge certificates and found that in 250 cases (4.71 per cent), in 11 Commissionerates<sup>52</sup>, where the payable amounts were determined as 'nil', discharge certificates were not issued within thirty days of the filing of declaration, resulting in delays ranging from one to 328 days, with average delay of 54<sup>53</sup> days. The break-up of delays are shown in **Table-XI**.

Table-XI

Delay in days	1 to 120 days	121 to 240 days	241 to 328 days	Total cases
No. of Cases	204	35	11	250

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in 162 cases by stating that the delay was due to high work load and technical issues such as deposit made by the party not showing in the SVLDRS Portal. Reply from the Ministry in respect of 88 cases was awaited (March 2022).

#### 3.12.3.2 Delay in issue of discharge certificate containing payable amount

As per Section 127 of the Finance (No. 2) Act, 2019, on payment of the amount indicated in the statement (SVLDRS-3) and production of proof of withdrawal of appeal, wherever applicable, a discharge certificate is to be issued by the Designated Committees within thirty days of the said payment and production of proof.

Out of total 78,259 discharge certificates containing payable amount, we checked 7,028 discharge certificates and observed that, in 1,158 declarations (16.48 per cent), in 38 Commissionerates<sup>54</sup>, the Designated Committees had not issued discharge certificates within thirty days of the payment made and production of proof. The

<sup>52</sup> Kolkata North, Kolkata South, Guwahati, Dibrugarh, Shillong, Daman, Ahmedabad North, Delhi East, Delhi North, Bengaluru South and Bengaluru West

<sup>53</sup> Total days 13,668/ total cases 250= 54 days

<sup>54</sup> Kolkata North, Kolkata South, Haldia, Guwahati, Dibrugarh, Imphal, Shillong, G.B.Nagar, Kanpur, Lucknow, Noida, Guntur, Medchal, Visakhapatnam, Chennai North, Chennai Outer, Chennai South, Coimbatore, Kochi, Kozhikode, Gandhinagar, Daman, Vadodara-II, Jaipur, Delhi East, Delhi North, Chandigarh, Ludhiana, Panchkula, Faridabad, Belapur, Aurangabad, Mumbai West, Mumbai East, Palghar, Nagpur II, Raigad and Belagavi.

delays in issue of discharge certificates ranged from one to 423 days, with average delay of 76<sup>55</sup> days. The break-up of delays are shown in **Table-XII**.

**Table-XII**

Delay in days	1 to 120 days	121 to 180 days	181 to 240 days	241 to 365 days	Above 365 days	Total cases
No. of Cases	921	143	69	24	1	1158

When we pointed (December 2021) this out, the Ministry in respect 875 cases accepted (March 2022) the observation by stating that the delay was due to high work load and technical errors/ flaws on the portal side. However, in 43 cases, the Ministry stated that SVLDRS-4 has been issued before 30 June 2020 and therefore there was no actual delay in issuance of the same.

The reply is not acceptable as 30 June 2020 was the last date of payment under the 'Scheme' not the last date of issue of SVLDRS-4 which was to be issued within 30 days. Reply of the Ministry in respect of 240 cases was awaited (March 2022).

### **3.12.3.3 Issuance of discharge certificate against incorrect tax dues**

Discharge certificate for full and final settlement of tax dues under Section 127 of the Finance (No. 2) Act, 2019 read with Rule 9 of the SVLDRS Rules, 2019 prescribed mentioning of the tax dues of the declaration.

The relief was to be given against tax dues, penalty, late fee and interest; therefore, the discharge certificate was to be issued accordingly showing the element of relief and tax dues correctly.

Out of the total 1,31,656 declarations where discharge certificates were issued, we checked 12,236 declarations and found that in one case in Nagpur-II Commissionerate, a declarant had filed (18 October 2019) declaration under 'Audit' category declaring duty amount of ₹ 0.78 crore. The declarant wanted to settle the case towards waiver of interest of ₹ 0.001 crore but in the declaration he declared the amount of ₹ 0.78 crore for settlement of the case. However, the Designated Committee processed the declaration for settlement of interest amount but issued discharge certificate indicating settlement of tax dues of ₹ 0.78 crore instead of interest amount of ₹ 0.001 crore.

This not only resulted into incorrect processing of declaration but also issue of irregular discharge certificate.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation by stating that during the issuance of SVLDRS-4 the pre-deposit amount of ₹ 0.78 crore was automatically prefilled by the SVLDRS Portal and no option was made available to the Designated Committee for making corrections. Further under Section 123 & 124 the Finance (No. 2) Act, 2019 Act which grants waiver of entire interest to

<sup>55</sup> Total days 87,913/total cases 1,158= 75.91 days

the party, no interest was payable by them under the 'Scheme'. There was no revenue loss and this is a procedural mistake.

Moreover, Finance (No. 2) Act, 2019 does not provide for issue of two discharge certificates against the same case.

Out of total 1,31,656 declarations where discharge certificates were issued, we checked 12,236 declarations and found that in three cases, in Jodhpur Commissionerate, involving tax dues of ₹ 0.47 crore, SVLDRS-3 were issued (20 December 2019, 23 November 2019 and 30 December 2019) for payable amount of ₹ 0.17 crore, but the Designated Committee issued (19, 29 and 30 June 2020) discharge certificates for zero amount which resulted in loss of ₹ 0.17 crore to the Government exchequer.

When we pointed (December 2021) this out, the Ministry contended (March 2022) that the three cases pointed out by the audit are the cases wherein the declarant had filed duplicate declarations for a single case. Though two declarations were filed by each declarants, SVLDRS-4 were issued in the cases where payments were made. In case of second declaration SVLDRS-4 were also issued for zero amount to remove the pendency.

Reply is not acceptable because facts as mentioned in the reply indicate that the duplicate discharge certificates were issued against incorrect tax dues against the same case.

#### **3.12.3.4 Issue of discharge certificate without obtaining proof of withdrawal of appeal**

As per Section 127(7) of the Finance (No. 2) Act, 2019, discharge certificates were to be issued after obtaining proof of payment and proof of withdrawal of appeal/writ petition/reference from Supreme Court or High Court, if any.

Out of total 60,126 declarations under 'Litigation' category, we checked 9,902 declarations and found that in 11 cases under six Commissionerates<sup>56</sup>, involving tax dues of ₹ 26.60 crore, the Designated Committees issued discharge certificates without obtaining proof of withdrawal from the above legal forum, in violation of above provision.

When we pointed (December 2021) this out, the Ministry stated (March 2022) that in all cases the discharge certificates were issued prior to receipt of proof of withdrawal of appeal as that declarants had given verbal assurance of withdrawal of appeal, provided undertaking/ letter to withdraw the appeal pending in High Court/Supreme Court which was taken as an evidence for issue of discharge certificate; also, taxpayers were unable to upload the said proof of withdrawal in the SVLDRS Portal. The Ministry

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<sup>56</sup> Kolkata South, Guwahati, Jodhpur, Belapur, Aurangabad and Chennai South

also stated that there was no undue benefit given to the declarants where tax due were 'nil'.

The fact remained that the discharge certificates were issued without obtaining proof of withdrawal of appeal, in violation of the above provision.

One case is illustrated below:-

➤ In Chennai South Commissionerate, three declarants had filed (18 October 2019 - 13 January 2020) declarations for the tax dues of ₹ 15.09 crore under 'Litigation' category. We noticed that the Designated Committees issued discharge certificates without obtaining the proof of withdrawal of appeal from the Hon'ble High Court/ Supreme Court.

When we pointed (December 2021) this out, the Ministry accepted (March 2021) that the declarant had given an undertaking in this regard and the discharge certificate was issued inadvertently.

### **3.12.3.5 Issue of discharge certificate without mentioning 'category' and 'matter involved'**

Discharge certificate for full and final settlement of tax dues under Section 127 of the Finance (No. 2) Act, 2019 read with Rule 9 of the SVLDRS Rules, 2019 prescribed mentioning of category of the declaration and 'matter involved' i.e. taxability of service, reverse charge, classification of service, ineligible Cenvat credit, valuation etc. any SCN/Order containing the subject matter or issue involved in the case. The proforma of the discharge certificate provided for mention of 'subject matter' and 'category' of the case. Thus, discharge certificates should be issued with proper 'category' and 'matter involved'.

Out of the total 1,31,656 declarations where discharge certificates were issued, we checked 12,236 declarations and found that in 2,728<sup>57</sup> declarations (22.40 per cent), in 14 Commissionerates<sup>58</sup> involving tax dues of ₹ 3,172.46 crore, the Designated Committees issued discharge certificates without mentioning the category of the declaration and 'matter involved' in the case.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in 2,158 cases by stating that due to oversight some details may not have been incorporated in the Discharge Certificate and the specific column was assigned in the SVLDRS-4 format to mention the issue involved, but this data field was not mandatory. The primary reason for non-filing the details of issue involved was the shortage of time and at times the issues involved were lengthy in nature. However, the

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<sup>57</sup> 'Matter involved' not mentioned in 1,865 cases (₹ 1,853.12 crore) and 'Category' not mentioned in 863 cases (₹ 1,319.34 crore)

<sup>58</sup> Kolkata North, Daman, Vadodara-II, Ahmedabad North, Ahmedabad South, Jaipur, Jodhpur, Kochi, Kozhikode, Kolkata South, Chennai North, Chennai Outer, Coimbatore and Gandhinagar

fact remained that the discharge certificates were not issued with complete details. Reply of the Ministry in respect of 570 cases was awaited (March 2022).

### **3.12.3.6 Issue of discharge certificates against incorrect category**

Out of the total 1,31,656 declarations where discharge certificates were issued, we checked 12,236 declarations and found that in 15 cases involving tax dues of ₹ 12.72 crore under seven Commissionerates<sup>59</sup>, the Designated Committees issued discharge certificates (SVLDRS-4) mentioning the incorrect category of the declaration.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in 12 cases, by stating that this was a glitch in the SVLDRS Portal and the lapse was technical in nature with no revenue involvement. The Ministry did not accept the observation in respect of two cases by stating the difference is only technical in nature and all the declarations were verified and rectified upon scrutiny, during the stage of issue of SVLDRS-2/3/4, by collecting the dues under the right category for the right amount.

The fact remained that the discharge certificates were issued with incorrect particulars which misrepresented the subject matter. Reply from the Ministry in respect of one case was awaited (March 2022).

### **3.12.3.7 Issue of discharge certificate relating to GST period**

As per the Section 122 of the Finance (No. 2) Act, 2019, the 'Scheme' was applicable to the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994, and the Rules made thereunder. Thus, discharge certificates should not cover the GST period i.e. on or after 1 July 2017.

Out of the total 1,89,648 declarations, in 1,31,656 declarations discharge certificates were issued. We checked 12,236 declarations and observed that in 625 cases (5.10 per cent) involving tax dues of ₹ 393.08 crore in 12 Commissionerates<sup>60</sup>, the Designated Committees had issued discharge certificates covering the GST period i.e. on or after 1 July 2017. This indicated incorrect issue of discharge certificates, as this was beyond the scope of the 'Scheme'.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the discrepancy in 479 cases but stated that the SVLDRS-4 are issued, indicating ARN of the assessee and thus, the time period are easily correlated. Incorrect mention of the time period in some cases would not make any difference in view of the fact that the SVLDRS-4 is indicating the ARN of SVLDRS-1 which clearly indicates the time period and the SVLDRS-1 can easily be correlated with the discharge certificate. The fact remained

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<sup>59</sup> Kolkata South, Kolkata North, Guntur, Medchal, Visakhapatnam, Kochi and Belagavi

<sup>60</sup> Kolkata North, Guwahati, Dibrugarh, Imphal, Shillong, Gandhinagar, Daman, Vadodara-II, Ahmedabad North, Ahmedabad South, Jaipur and Jodhpur

that the proper and mandatory mentioning of correct data in the relevant fields of SVLDRS forms could prevent discrepancies which could be exploited in the future.

Further in 114 cases, the Ministry did not accept the discrepancy by stating that all such cases pertained to legacy cases. The time period reflected in the discharge certificates are the date of issuance of OIO; however, the period of demand of duty was before 30 June 2017.

The reply is not acceptable as the discharge certificates were issued relating to the GST period with incorrect particulars, which misrepresented the subject matter. Reply from the Ministry with respect to 32 cases was awaited (March 2022).

### **3.12.3.8 Non-issue of discharge certificate**

Rule 9 of SVLDRS Rules, 2019 provided that the Designated Committee on being satisfied that the declarant has paid in full, the amount as determined by it and indicated in Form SVLDRS-3, and on submission of proof of withdrawal of appeal or writ petition or reference referred to in Rule 8, if any, shall issue electronically in Form SVLDRS-4 a discharge certificate under Sub-section (8) of Section 127 of the Finance (No. 2) Act, 2019 within thirty days of the said payment and submission of the said proof, whichever is later. Provided, that in a case where Form SVLDRS-3 has not been issued by the Designated Committee by virtue of the proviso to Sub-rule (2) of Rule 6, the discharge certificate shall be issued within thirty days of the filing of declaration referred to in sub- Rule (1) of Rule 3.

Out of the total 1,26,899 declarations under '*Litigation/Arrears*' category, we checked 14,924 declarations and found that in Ludhiana, Bengaluru West and Raipur Commissionerates, in ten cases involving tax dues of ₹ 10.33 crore, the Designated Committees had processed the declarations but had not issued discharge certificates in violation of the aforementioned provisions of the '*Scheme*'.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) in three cases the discharge certificates could not be issued due to technical glitches as payment was not visible in the SVLDRS Portal. Reply from the Ministry in respect of seven cases was awaited (March 2022).

Cases from one Commissionerate is illustrated below:-

➤ In Ludhiana Commissionerate, we noticed that in three cases involving tax dues of ₹ 0.85 crore, the Designated Committee had issued SVLDRS-3 with ₹ 0.32 crore amount but did not issue discharge certificate.

When we pointed (December 2021) this out, the Ministry replied (March 2022) that the discharge certificate was not issued in this case due to technical glitches as the challan paid in all the three cases related were not showing in the portal of Designated Committee. However, when the said challan was reflected in the portal, the

Designated Committee issued the discharge certificate in all these cases. However, no documentary evidence in support of its reply was furnished to Audit.

### **3.12.3.9 Rejection of declaration after issuing of discharge certificate**

As per Section 129 of the Finance (No. 2) Act, 2019, every discharge certificate issued under Section 126 with respect to the amount payable under the 'Scheme' shall be conclusive as to the matter and time period stated therein and no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment.

Out of the total 1,31,656 declarations where discharge certificates were issued, we checked 12,236 declarations and observed that in two cases involving tax dues of ₹ 0.41 crore in Goa and Mumbai West Commissionerates, the Designated Committees processed the declarations and issued discharge certificates, and later had rejected them as either ineligible under the 'Scheme' (investigation pending/related to Custom Act), or declaration was filed for selected issues, whereas the SCN covered multiple issues.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in both the cases.

One case is illustrated below:-

One declarant had filed (13 January 2020) a declaration in the 'Investigation' category involving tax dues ₹ 0.35 crore under Mumbai West Commissionerate. The Designated Committee accepted and finalized the declaration. Further, the Joint Commissioner of Audit-III, CGST Mumbai communicated to the Department that the first communication to the assessee was held on 23 December 2019 followed by the final meeting on 30 December 2019. In accordance with guidelines of the 'Scheme', the declarant was ineligible as the quantification of amount was beyond the cut-off date of 30 June 2019. On the basis of the letter dated 23 December 2019, the said application was rejected offline and communicated to the assessee dated 30 July 2020.

The Ministry accepted (March 2022) that the SVLDRS-3 (4 March 2020) and SVLDRS-4 (17 March 2020) were issued inadvertently. No module/utility was available on SVLDRS Portal to amend/rectify in case the Discharge Certificate had been issued inadvertently; therefore the same had to be done offline. After intimation received from the CGST, Audit-III Commissionerate, the Designated Committee rejected (30 July 2020) the SVLDRS-3 and SVLDRS-4 as the applicant was not eligible to avail the benefit of the 'Scheme'.

### **3.13 SVLDRS Portal related findings**

As per provision of the Finance (No.2) Act, 2019 and the SVLDRS Rules, 2019 read with CBIC circular no. 1071/4/2019-CX.8 dated 27 August 2019, the 'Scheme' was to be fully automated for electronically/online filing of declaration and communication of final

decision. This has been done with the objective of ensuring transparency, speed and accountability in the decision making.

We examined compliance of provisions by the SVLDRS Portal while accepting the declarations and issue of statements/discharge certificates and found certain shortcomings/non-compliance to the provisions of the 'Scheme' in various occasions as elaborated in the subsequent paragraphs.

### **3.13.1 Acceptance of deficient/incomplete declarations by the SVLDRS Portal**

Section 125 of the Finance (No. 2) Act, 2019 read with Rule 3 of the SVLDRS Rules, 2019, prescribed a proforma (Form SVLDRS-1) for online filing of declaration under the 'Scheme'. The declarant was required to fill online particulars/information viz. name of the declarant, registration details, eligibility criteria, SCN/OIO details etc. in the declaration. However, Audit observed the following:-

**3.13.1.1** Out of the total 1,89,648 declarations, we checked 19,603 declarations and found in 382 declarations (1.95 per cent), in Kolkata North Commissionerate involving tax dues of ₹ 509.56 crore, various elements of information, as detailed below, were not available in SVLDRS-1:-

- The information "Do you have a Central Excise or Service Tax Registration" and "Central Excise or Service Tax Registration No." was required to be filled in SVLDRS-1 prescribed in SVLDRS Rules, 2019. The said information was, however, not available in the SVLDRS-1 records, as made available to Audit.
- Ten types of information regarding eligibility of the declarant were required to be filled in Part-B under serial number eight of SVLDRS-1 as prescribed in the SVLDRS Rules, 2019. The said information was, however, not available in the SVLDRS-1 records, as made available to Audit.

Hardcopies of the declarations downloaded by the Designated Committee which were produced to Audit also did not contain the aforementioned information.

We further found that the Designated Committee while logging in to the SVLDRS Portal, could only retrieve and download the single sheet SVLDRS-1, which had been furnished to the Audit. The Designated Committee obtained this missing information physically during verification from records available with the Department. Thus, in spite of the fact that the 'Scheme' was fully online, the Designated Committees obtained various elements from the Department to decide the eligibility of the cases. This affected the objective of keeping the 'Scheme' fully online.

When we pointed (December 2021) this out, the Ministry replied (March 2022) that the SVLDRS Portal automatically disallowed persons, who were ineligible from filing a declaration under the 'Scheme'. If there is any error, while rejecting or accepting an application by the Designated Committee it is completely due to fault in the SVLDRS Portal. But even this did not lead to any wrong acceptance of applications, which were

barred by the rules. The incomplete applications only had some technical deficiency, on the grounds of which the Designated Committee thought it fair only to allow genuine applicants keeping the spirit of the 'Scheme' in mind. Thus, the Ministry's reply itself indicated that the SVLDRS Portal accepted deficient declarations in certain cases.

**3.13.1.2** Out of the total 1,89,648 declarations we checked 19,603 declarations and we found that in six declarations under four Commissionerates<sup>61</sup> involving tax dues of ₹ 2.20 crore, the names of the declarants were not found in the SVLDRS Portal generated SVLDRS-1. The SVLDRS Portal should not have accepted such declarations without the name of the declarants.

We also noticed that in Guwahati Commissionerate, one declaration was rejected on the ground that the declarant's name was missing from the declaration. However, the other five declarations in Kolkata South, Haldia, and Dibrugarh Commissionerates were processed. Thus, there was lack of consistency in processing the declarations across the Commissionerates.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in five cases by stating that the error appeared to be technical in nature. Reply from the Ministry in respect of one case was awaited (March 2022).

### **3.13.2 SVLDRS Portal accepted duplicate/multiple declarations for the same cases**

As per Rule 3 of the SVLDRS Rules, 2019, when declarant files an online declaration, the SVLDRS Portal allots a unique ARN against that declaration for reference to the declarant as well as to the Designated Committee and a separate declaration was to be filed for each case.

Out of the total 1,89,648 declarations we checked 19,603 declarations and noticed that in 208 cases (1.06 per cent) in 25 Commissionerates<sup>62</sup>, involving tax dues of ₹ 273.53 crore, multiple declarations were accepted in the same cases (same declarant/tax dues/SCN/OIO) by the SVLDRS Portal and these cases were processed upto the stage of issuance of SVLDRS-3/4. This indicated a possible deficiency in the SVLDRS Portal, because of which the Department had to process the same cases again.

When we pointed (December 2022) this out, the Ministry while accepting (March 2022) the observation stated that as there was no feature for amending/modifying the declaration filed by the taxpayer in case of error committed while filing the declaration, therefore, in cases where the taxpayer had filed wrong details in core field of the declaration, the only remedy was to file another application

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<sup>61</sup> Kolkata South, Haldia, Guwahati and Dibrugarh

<sup>62</sup> Kolkata North, Kolkata South, Haldia, Guwahati, Dibrugarh, Jamshedpur, Bhubaneswar, Guntur, Medchal, Ranga Reddy, Visakhapatnam, Jaipur, Jodhpur, Ahmedabad South, Daman, Vadodara-II, Gandhinagar, Ahmedabad North, Indore, Chandigarh, Panchkula, Ludhiana, Nagpur-II, Chennai Outer and Chennai North

with correct details. Further, it has to be seen in the light of fact that it was a completely online process and while designing the software, the developer does not have the flexibility of amending/modifying the software application now and again. Also even in cases where duplicate/triplicate declarations were filed, there is no loss of Government revenue or any extra benefit to the taxpayer. This duplication was an SVLDRS Portal issue.

Five cases are illustrated below:-

In five cases in Chandigarh Commissionerate involving tax dues of ₹ 0.08 crore, the payable amount was deposited by the declarants twice. We found the reason for duplicate declaration and payment was that from the very beginning, there had been many technical errors/flaws on the SVLDRS Portal side, whereby the SVLDRS Portal would not update the status of payments effected by the declarants against the statements (Form SVLDRS-3) issued by the Designated Committee. Moreover, it was reported by the various declarants that they were unable to generate challans in respect of the declarations or they effected the payments against the respective declarations through Non-SVLDRS challans, which were not reflecting on the portal as payment through proper mode. Further for a few declarations, the respective declarants raised the issue with the DG (Systems); however, as the last date of filing of declaration under the 'Scheme' was approaching and in order to avoid any loss due to these technical errors, the respective declarants filed multiple/duplicate declarations, for seeking relief under the 'Scheme', which were processed after following the due procedure as prescribed under the Finance Act (No.2) of 2019 (as amended).

With regard to payments received twice for the same case (but in duplicate ARNs), the same declarant, against three cases, had applied for refund of the duplicate payments so effected. Due to non-availability of option on the SVLDRS Portal to reject any such declarations where payments have been effected, as such, the matter had been referred to the CBIC for clarification, which was still awaited (March 2022). Refund filed by another such declarant had already been sanctioned vide order dated 4 August 2020. However for the remaining cases, no application for refund has still been received.

When we pointed (December 2021) this out, the Ministry stated (March 2022) that there may be cases where multiple declarations were accepted in the same case by the SVLDRS Portal. However, it may be noted that in the Central Excise and Service Tax, the SCN/OIO/OIA/CESTAT order etc. have been issued manually and there is no pan-India unified system of unique number allocated to each case. Accordingly, it may not be feasible to develop such a functionality in the system/ SVLDRS portal. It is further stated that the requirement of filing another declaration by the same declarant for the same SCN/OIO, arose for rectification of errors by the declarant, to enable them to file a new declaration under the 'Scheme' and liquidate their disputes of legacy taxes, which was one of the objectives of the 'Scheme'.

We accept the observation of the Ministry that there is no means to prevent duplicate declarations but there should be a mechanism of MIS reports to identify duplicate declarations. This would prevent multiple payment and cases of refund.

### **3.13.3 Declarations not assigned to the proper Designated Committees**

Rule 5 of SVLDRS Rules, 2019 and CBIC circular no. 1071/4/2019-CX.8 dated 27 August 2019 prescribed that cases having tax dues of more than ₹ 50 lakh should be verified by a Designated Committee headed by the Principal Commissioner or the Commissioner (Committee-1) and cases having tax dues of ₹ 50 lakh or less should be verified by a Designated Committee headed by the Additional Commissioner or the Joint Commissioner (Committee-2).

Out of total 1,89,648 declarations we checked 19,603 declarations and observed that in three cases under Bhubaneswar, Jodhpur and Bengaluru West Commissionerates involving tax dues of ₹ 5.86 crore, the SVLDRS Portal did not assign the declarations automatically to the proper Designated Committees.

When we pointed (December 2021) this out, the Ministry replied (March 2022) that in two cases SVLDRS Portal automatically transmitted a few declarations to the incorrect Designated Committee due to technical glitches. As the glitch could not be rectified at local level, it was decided to process the declaration by different Designated Committees by ensuring proper relief calculation according to the duty amount. In one case, the payable amount was "Zero"; therefore, the discharge certificate was issued by the lower Committee.

The fact remained that these cases were to be assigned by the SVLDRS Portal on the basis of quantum of tax dues, and not the payable amount.

### **3.13.4 Offline submission of statements due to non-availability of access to SVLDRS Portal**

As per Rule 6(4) of SVLDRS Rules, 2019, if the declarant wants to indicate agreement or disagreement with the estimate referred to in Sub-rule (3) or wants to make written submissions or waive personal hearing or seek an adjournment, he shall have to file electronically Form SVLDRS-2A, indicating the same.

Out of the total 1,36,613 '*Litigation/Arrears/Investigation*' declarations we checked 16,670 declarations and noticed that in Kolkata North Commissionerate, one declarant had filed (30 December 2019) SVLDRS-1 under '*Litigation*' category for duty liability of ₹ 0.36 crore. The Designated Committee had disallowed the pre-deposit amounting to ₹ 0.24 crore and issued (5 March 2020) Form SVLDRS-2. It was observed that the declarant was unable to submit SVLDRS-2A electronically to indicate its disagreement. Though all communications were to be made electronically, the Department had accepted the offline response.

When we pointed (December 2022) this out, the Ministry accepted (March 2022) the Audit observation by stating that the declarant could not access the SVLDRS Portal for issuance of SVLDRS-2A and submitted a manual request for adjournment owing to technical glitch and the same was allowed by the Designated Committee.

The fact, however, remained that the SVLDRS Portal was not 'fully automated' and manual correspondence had been accepted.

### **3.13.5 Offline submission of proof of withdrawal of appeal/writ petition/reference due to non-allowance of the uploading of appeal by the SVLDRS Portal**

As per Rule 6(8) of the SVLDRS Rules, 2019, the proof of withdrawal of appeal or writ petition or reference before a High Court or the Supreme Court, as the case may be, was to be furnished electronically by the declarant.

Out of total 60,126 'Litigation' category declarations we checked 9,902 declarations and found that in 17 cases, in six Commissionerates<sup>63</sup>, involving tax dues of ₹ 7.52 crore, proof of withdrawal of appeal from High Court was not furnished electronically.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in all cases by stating that the SVLDRS Portal did not allow proof of withdrawal to be uploaded electronically; also, the benefit should not be denied because of minor procedural infraction. However, the fact remains that the provisions of the SVLDRS Rules were not complied with.

### **3.13.6 Offline rejection of declarations due to SVLDRS Portal failure**

As per CBIC circular no. 1071/4/2019-CX.8 dated 27 August 2019, the 'Scheme' was to be fully automated for electronically/online filing of declaration and communication of final decision.

Out of the total 29,167 rejected declarations, we checked 1,477 declarations and observed that the Designated Committees had rejected 72 declarations (5.01 per cent), in 16 Commissionerates<sup>64</sup>, involving tax dues of ₹ 167.12 crore offline. This indicated a failure to adhere to the aforementioned provision.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in 42 cases by stating this to be a SVLDRS Portal failure at the time of rejection. However; offline rejection was done after following due procedure prescribed by the CBIC. Reply from the Ministry in respect of 30 cases was awaited (March 2022).

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<sup>63</sup> Kolkata South, Guwahati, Dibrugarh, Visakhapatnam, Chandigarh and Kozhikode

<sup>64</sup> Kolkata South, Dibrugarh, Noida, Guntur, Medchal, Ranga Reddy, Visakhapatnam, Chennai North, Chennai Outer, Chennai South, Kochi, Raigad, Palghar, Mumbai East, Bengaluru West, and Ludhiana

### 3.13.7 Non-generation of challan through rectified SVLDRS-3

As per Rule 7 of the SVLDRS Rules, 2019, online payment was required to be made through only SVLDRS challans after issue of SVLDRS-3 statement. Further, as per Section 128 of the Finance (No. 2) Act, 2019, rectified SVLDRS-3 was to be issued indicating the amount payable by the declarant, only to correct an arithmetical error or clerical error which was apparent on the face of record on such error being pointed out by the declarant or *suomoto*. However, we found that the SVLDRS Portal was not designed to generate SVLDRS challan in case of issue of rectified SVLDRS-3 in one case.

In Gandhinagar Commissionerate, one declaration involving tax dues of ₹ 0.46 crore was filed (27 December 2019) under '*Litigation*' category. However, it was incorrectly processed under '*Arrears*' category and SVLDRS-3 was issued (7 January 2020) for payable amount of ₹ 0.17 crore. When the declarant pointed out the incorrectness of considering of '*Arrears*' category, the Designated Committee issued (5 February 2020) rectified SVLDRS-3 under '*Litigation*' category. However, the declarant informed that there was no option to generate challan through rectified SVLDRS-3 and the Designated Committee as well as '*cbicmitra*' was unable to modify SVLDRS-3 with challan generation. Thus, the assessee could not make the payment which also resulted into probable loss of revenue of ₹ 0.09 crore.

When we pointed (December 2021) this out, the Ministry stated (March 2022) that the assessee could not generate the challan due to shortage of fund as intimated verbally by them, as he was not able to pay amount in respect of two ARNs where SVLDRS-3 have been issued. SVLDRS portal allowed for generation of SVLDRS challan based on rectified SVLDRS-3.

The reply is not acceptable since in this case, the declarant requested (18 February 2020) to resolve the issue to enable him to make the payment under the '*Scheme*' and the Designated Committee as well as '*cbicmitra*' was unable to modify SVLDRS-3 with challan generation.

### 3.13.8 No provision for online personal hearing

As per Rule 6(3) of SVLDRS Rules, 2019 where the amount estimated to be payable by the declarant exceeds the amount declared by the declarant, then, the Designated Committee is to issue electronically, within thirty days of the date of receipt of the declaration under Sub-rule (1) of Rule 3, in Form SVLDRS-2, an estimate of the amount payable by the declarant along with a notice of opportunity for personal hearing.

We found that though the '*Scheme*' was fully automated, personal hearing was kept offline in the provisions. Thus, the concept of complete automation was not fully implemented while framing the provisions of the '*Scheme*'.

The Ministry did not offer any comments (March 2022).

### 3.13.9 Deficiencies in declarations and discharge certificate

In terms of Section 123 (b) of the Finance (No. 2) Act, 2019 where a SCN under any of the indirect tax enactment has been received by the declarant on or before 30 June 2019, then, the amount of duty stated to be payable by the declarant in the said notice, shall be tax dues under the 'Scheme'. Further, Section 124 (1) (b) of the Finance (No. 2) Act, 2019, stipulated that full relief shall be allowed for late fee or penalty. Form SVLDRS-1, prescribed under the SVLDRS Rules, 2019, contains information about late fee and penalty, but Form SVLDRS-4 contains information about tax dues only. As per CBIC circular no. 1071/4/ 2019-CX-8 dated 27 August 2019, full relief was to be given towards interest also.

However, we noticed that no change was made in Form SVLDRS-1, to depict the interest amount. We also noticed that, in Form SVLDRS-4, the amount of relief, towards interest/penalty/late fee, was mentioned against the column 'tax dues', where tax dues was 'nil' and the declaration contained only penalty/interest amount. But the Designated Committees not only issued payment certificates (SVLDRS-3) but also issued discharge certificates against relief towards tax dues, instead of mentioning 'relief towards interest/penalty/late fee'. Since interest/penalty/late fee is different from 'tax dues', issue of statements in favour of tax dues was not in line with the provisions of the 'Scheme'. Thus, the declaration format was deficient where interest amount cannot be shown separately and discharge certificate was deficient where penalty/late fee/interest cannot be separately shown.

Out of the total 1,89,648 declarations filed under the 'Scheme' in 1,31,656 declarations discharge certificates were issued, we checked 12,236 declarations and observed that in 12 cases, in Kolkata North, Kolkata South, Mumbai East Commissionerates, involving interest relief of ₹ 8.36 crore, discharge certificates were issued for tax dues 'nil' and not for the interest amount.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation by stating that full relief shall be given towards interest also but no change was made in Form SVLDRS-1 to depict the interest amount. There was no provision for mentioning interest amount in SVLDRS Forms. This indicated short coming in design of the SVLDRS portal.

### 3.14 Inconsistency in treating similar issues

Keeping in view the legal provisions of the 'Scheme', there needs to be consistency in the stands/decision taken by the Designated Committees, in regard to disposal of similar cases, across all the Commissionerates.

We, however, observed inconsistency in stand/decision taken by the Designated Committees in disposal of similar cases in certain instances leading to excess/less relief passed to the taxpayer, as detailed below:

### 3.14.1 Inconsistency in treating interest amount

Section 124 (2) of the Finance (No. 2) Act, 2019, stipulates provision of relief under the 'Scheme', after adjustment of any amount paid as pre-deposit, at any stage of the appellate proceedings, under the indirect tax enactment, or as deposit during enquiry, investigation or audit.

Out of the total 60,831 declarations where pre-deposits had been adjusted, we checked 10,501 declarations and found that, in five Commissionerates<sup>65</sup>, out of 44 cases, in five cases, interest/penalty amounts of ₹ 0.24 crore had been disallowed as 'pre-deposit', whereas, in the remaining cases, the same<sup>66</sup> had been allowed as 'pre-deposits'. This showed inconsistency in stand taken by the different Designated Committees on similar issue.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation in 24 cases and stated that there was no instruction/clarification available regarding pre-deposit/any other deposit at the time of finalizing the SVLDRS and the decisions have been taken by two different Designated Committees due to varying interpretation of the provisions. Accordingly, the payment of interest had been dealt differently by different Committees.

However, in ten cases the Ministry contested the observation by stating that the members of the two Designated Committees constituted in the Commissionerate were having separate members and each Committee has taken decisions independently. Hence, the decisions taken by the two Designated Committees cannot be compared with each other and differential decisions cannot be claimed as inconsistent with each other.

The reply is not acceptable as the provisions are definite and precise, and hence the two Designated Committees should not take different decision on the same issue. Also, the Department did not refer to the inconsistency in treatment of interest within the Commissionerate or among the various Commissionerates and did not issue any clarification in this regard.

### Conclusion on Chapter 3

The 'Scheme' was introduced for resolution and settlement of legacy cases (Central Excise and Service Taxes). Though no target was fixed for settlement of the legacy cases, we found that substantial tax payers (79 per cent by number and covering 23 per cent of the total disputed amount) submitted applications under the 'Scheme'.

Analysis of all India "SVLDRS Form-1 MIS Report" revealed that in 76,801 cases, the Report incorrectly showed issuance of discharge certificates against the unpaid declarations.

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<sup>65</sup> Kolkata North, Kolkata South, Vishakhapatnam, Kochi and Nagpur-II

<sup>66</sup> ₹ 34.92 crore

The SVLDRS Portal wrongly accepted 669 'Voluntary Disclosures' declarations covering GST period and 2,080 'Voluntary Disclosure' declarations with zero payable amount. In 17,938 cases, the SVLDRS Portal calculated incorrect payable amounts involving tax dues of ₹ 10,595.19 crore. This showed the automation of the 'Scheme' through the SVLDRS Portal was not fully aligned with the provisions of the 'Scheme'.

We also observed deficiencies at different stages of the SVLDRS process in several cases falling within our audit sample, as summarized below.

In 11 cases, verification of authenticity of declarations was not done properly.

We observed instances of undue benefit given to ineligible declarations. In 28 declarations, benefit of ₹ 109.81 crore was given for excise goods falling under the fourth Schedule of Central Excise Act, 1944. There were also instances of ineligible benefit where tax dues were not quantified before the specified date of 30 June 2019.

In 21 declarations, benefit of ₹ 7.01 crore was incorrectly given under the 'Voluntary Disclosure' category to the declarants who were subjected to 'Investigation/Enquiry/Audit' and had also filed returns. We found that 14 eligible cases were rejected on incorrect grounds.

We observed improper categorization of certain cases. 17 declarations involving tax dues of ₹ 23.33 crore under 'Arrears' category were processed under the 'Litigation/Investigation' category and 16 declarations involving tax dues of ₹ 2.76 crore under the 'Litigation' category were processed in the 'Arrears' category leading to incorrect relief under the 'Scheme'.

We noticed that in ten declarations in the 'Litigation' category, tax dues were incorrectly assessed leading to excess relief of ₹ 1.31 crore. In ten declarations, excess relief of ₹ 0.95 crore and in four declarations, short relief of ₹ 0.32 crore was given in the 'Arrears' category due to improper verification of tax dues. Similarly, in three declarations under the 'Investigation/Enquiry/Audit' category and in two declarations under the 'Litigation' category excess relief of ₹ 1.07 crore and ₹ 0.23 crore was given because of improper verification of tax dues.

We observed that evidence of pre-deposits/deposits was not verified properly and linked to the concerned cases, leading to excess adjustment of ₹ 21.59 crore in 57 cases. Further, we found that in 152 cases involving total payable amount of ₹ 64.23 crore, payment were paid through non SVLDRS challans.

We observed delays in issue of SVLDRS-3 and discharge certificates. In 501 cases we found an average delay of 21 days in issue of SVLDRS-3 and in 1,408 cases, we noticed an average delay of 72 days in issue of discharge certificates.

We found that in 11 cases involving tax dues of ₹ 26.60 crore discharge certificates were issued without obtaining proof of withdrawal of appeal from the legal forum; in 2,728 declarations involving tax dues of ₹ 3,172.46 crore, discharge certificates were

issued without mentioning the category of the declarations and matter involved; in 15 declarations, the discharge certificates mentioned an incorrect category; and in 625 declarations involving tax dues of ₹ 393.08 crore, the Designated Committee issued incorrect discharge certificates covering the GST period.

We also found instances of offline submission of statements, offline submission of proof of withdrawal of appeal and offline rejection of applications by Designated Committees, when the 'Scheme' was intended to function in a completely automated manner.

### **Recommendations on Chapter 3**

- 1) The Department may take effective steps to pursue, in a time bound manner those cases which were rejected under the 'Scheme' as well as the 28,825 cases for which Discharge Certificates could not be issued, especially due to non-payment of the estimated payable amount. In particular, 'Voluntary Disclosure' cases where liability was not discharged should be vigorously pursued to protect the interest of the revenue. Arrears are confirmed demand and have no expiry date and it is possible that many of the declarants might have migrated to the GST regime as assessees, and therefore recovery actions are pursuable.

**(Paragraphs 3.1 and 4.2)**

- 2) The Department may take effective steps to reconcile the incorrectly adjusted pre-deposits in the cases pointed out by the Audit.

**(Paragraph 3.10)**

- 3) 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 used SVLDRS challans to prevent them from being reused in future.

**(Paragraph 3.11)**

- 4) The Department may rectify technical glitches in the SVLDRS Portal to ensure that
  - (a) Discrepancy in the already issued discharge certificates are corrected and the assessee notified.
  - (b) Discharge Certificates which could not be issued, despite the assessees having fulfilled all requisites and made payments in time, are now issued and the assessees notified.
  - (c) The Department should also correct Discharge Certificates where the registration number in the discharge certificates does not match with the registration number mentioned in the SCN/OIO, and notify the assessees.

**(Paragraph 3.12.3.5 to Paragraph 3.12.3.8 and Paragraph 3.6.2)**

## Chapter 4: Monitoring and Review

### 4.1 Authenticity of 'Voluntary Disclosures' not verified in 225 cases

Section 129 of the Finance (No. 2) Act, 2019 states that, in a case of 'Voluntary Disclosure', where any material particular furnished in the declaration is subsequently found to be false, within a period of one year of issue of the discharge certificate, it shall be presumed as if the declaration was never made and proceedings, under the applicable indirect tax enactment, shall be instituted.

Out of total 23,868 'Voluntary Disclosure' declarations, we checked 1,454 declarations and found that, in 225 processed cases (14.47 per cent), under 12 Commissionerates<sup>67</sup>, involving tax dues of ₹ 85.55 crore, the Department had not initiated any investigation, for verifying the authenticity of the disclosures, till December 2020.

When we pointed (December 2021) this out, the Ministry stated (March 2022) that in 51 cases under Kolkata North, Chennai South and Kochi Commissionerates, action would be initiated. However, in 20 cases of Guwahati Commissionerate, no action has been initiated, in 18 cases under Kolkata South Commissionerate, the letters had been issued (November 2020) and in 24 cases under G B Nagar Commissionerate, the matter had been forwarded to the Jurisdictional Divisions and no action is required. However, documentary evidence was not furnished in respect of 24 cases.

In 42 cases under Lucknow and Kozikode Commissionerates, Ministry did not accept the observation by stating that if any false particulars come to notice, then action can be initiated. Since no such instance of false declaration had come to notice in these cases, no investigation was warranted.

The reply is not acceptable as the fact remains that the Department has not yet initiated any systemic process to verify at least a sample of the declarations under 'Voluntary Disclosure' category. In the Department, such a review mechanism should have been required to verify the correctness of particulars furnished in a risk based sample of the declarations in compliance with Section 129(2)(c) of the Finance Act, 2019. In 70 cases, reply of the Ministry was awaited (March 2022).

### 4.2 Non-initiation of action against admitted liability in Voluntary declarations

The CBIC circular no. 1071/4/2019-CX.8 dated 27 August 2019 stipulates that, if the declarant does not pay the amount within the stipulated time, due to any reason, the declaration will be treated as lapsed. Further, CBIC Master Circular dated 19 January 2017 stipulates that, under the provisions of the Central Excise Act, 1944, demand can be issued when any duty of Central Excise has not been levied or paid or has been short-levied or short paid or where any duty has been erroneously refunded, for any reason.

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<sup>67</sup> Kolkata South, Kolkata North, Guwahati, G.B. Nagar, Noida, Lucknow, Chennai North, Chennai South, Chennai outer, Kozhikode, Kochi and Indore

The demand of duty may also arise on account of duty collected without the authority of levy or in excess of the levy but not deposited with the Department in terms of Section 11D of the Central Excise Act, 1944. Further, demand of duty from the assesseees can be made by way of issue of a SCN, indicating therein charges of violations of provision of law, requiring the assesseees to explain as to why the duty not levied/not paid or short levied/short paid should not be recovered from the noticee with interest and penalty, if applicable. The same procedure is elaborated under Section 73 of Service Tax Act.

Out of total 23,868 'Voluntary Disclosure' declarations, we checked 1,454 declarations and noticed that, in 264 declarations (18.36 per cent), in 18 Commissionerates<sup>68</sup>, involving tax dues of ₹ 54.22 crore, the Designated Committees processed the cases and issued Form SVLDRS-3, but the declarants did not pay the tax dues within the stipulated period. The Department did not, however, initiate any action under the provisions of the indirect tax enactments for recovering the declared dues from the declarants.

When we pointed (December 2021) this out, the Ministry replied (March 2022) that in 51 cases action has been initiated. Reply in respect of 59 cases was not related to the Audit observation. Reply of the Ministry in respect of 154 cases was awaited (March 2022).

#### **4.3 Cases shown as 'pending' in legal forum even after issue of discharge certificate**

CBIC circular no. 1071/4/2019-CX.8 dated 27 August 2019 states that the 'Scheme' was designed to unload the baggage relating to the legacy taxes viz. Central Excise/Service Tax, that have been subsumed under GST, and allow business to make a new beginning and focus on GST. Further, Section 127 (6) of the Finance (No. 2) Act, 2019 states that where the declarant has filed an appeal or reference or a reply to the 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, notwithstanding anything contained in any other provisions of any law for the time being in force, such appeal or reference or reply shall be deemed to have been withdrawn.

Out of total 60,126 declarations under 'Litigation' category, we checked 9,902 declarations and found that, in 638 cases (6.44 per cent), in 13 Commissionerates<sup>69</sup>, where the appeal was pending at CESTAT, involving tax dues of ₹ 761.35 crore, the CESTAT website was showing (March 2021) the status of the cases as 'pending' despite the fact that the respective declarants, were issued discharge certificates.

When we pointed (December 2021) this out, the Ministry accepted (March 2022) the observation and stated that in 361 cases the issue was communicated to CESTAT for compliance. Reply of the Ministry in respect of 277 cases was awaited (March 2022)

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<sup>68</sup> Kolkata North, Kolkata South, Haldia, Jamshedpur, Noida, Lucknow, Chennai South, Chennai North, Chennai Outer, Kochi, Kozhikode, Chandigarh, Ludhiana, Faridabad, Panchkula, Bengaluru South, Bengaluru East and Belagavi

<sup>69</sup> Kolkata North, Kolkata South, Haldia, Chennai North, Chennai South, Chennai Outer, Coimbatore, Kozhikode, Kochi, Vadodara-II, Ahmedabad South, Jaipur and Belagavi

Moreover, we noticed that out of 58 declarations filed under the 'Appeal pending' category in Kolkata South Commissionerate, in 36 declarations involving tax dues of ₹ 15.51 crore, the Designated Committees issued discharge certificates. Despite this fact, such cases were pending (March 2021) before the Commissioner (Appeal), which shows lack of inter departmental co-ordination.

When we pointed (December 2021) this out, the Ministry stated (March 2022) that the discharge certificate have already been forwarded to the Commissioner (Appeal). The Department is not in a position to comment on reconciliation of cases settled under the 'Scheme' and the disposal of appeals pending at Commissionerate (Appeal). Hence, the question of lack of inter departmental co-ordination does not arise as the necessary information has already been conveyed to Commissionerate (Appeal). The fact remained that the cases remained pending at the Commissionerate (Appeal) even after issue of discharge certificates from the Department. The Department needs to keep track of all such cases to ensure that all these cases are depicted as withdrawn with respective legal/appellate forums.

#### **4.4 Availing of the Scheme by non-traceable tax payers**

As per the Ministry of Finance Letter F.No.13011/3/2004-CUS(AS) dated 12 August 2005 all possible efforts have to be made by the departmental officers to trace the defaulter details of defaulter's property regarding recovery of arrears in Central Excise, Customs and Service tax.

Further, arrears of Central Excise and Service Tax which become irrecoverable can be written off in compliance with the instructions and the procedure prescribed by the CBIC vide circulars no. F.No.290/7/76/CX.9 dated 22 June 1976, F.No. 290/4/85-CX.9 dated 22 March 1985, F.No. 290/20/90-CX.9 dated 21 September 1990 and F.No.946/7/2011-CX dated 1 June 2011. Thus, non-traceable assesseees in earlier/legacy regime are not expected/supposed to avail the benefit under the 'Scheme'.

We found that in two cases in Bengaluru East and Gandhinagar Commissionerates involving tax dues of ₹ 2.89 crore where the Department earlier clarified that the declarants were not traceable, the declarants had availed the benefit of the 'Scheme' under 'Litigation' category and got relief amounting to ₹ 0.62 crore.

When we pointed (December 2021) this out, the Ministry stated that efforts were made to recover the confirmed tax demand. The categorisation of the assessee at the material time was correct. However, under the 'Scheme', there was no restriction imposed on any person liable to pay tax dues to claim the benefit of the 'Scheme' which has been granted correctly.

The fact remains that an assessee, hitherto treated as non-traceable, became traceable for availing of the benefits of the 'Scheme'.

### Conclusion on Chapter 4

We observed that there was no systemic mechanism for verification of a risk based sample of the Voluntary Disclosure cases in some Commissionerates.

We observed that in 264 'Voluntary Disclosure' cases involving tax dues of ₹ 54.22 crore where SVLDRS-3 was issued, the declarants did not pay the tax dues and discharged their liability. The Department also did not initiate action for recovering the declared dues.

### Recommendations on Chapter 4

- 5) The Department should ensure that all legal cases, where applications for withdrawal have been made by the assessee and these applications settled successfully under the 'Scheme', are removed from the pendency list of various legal forums. The list of such pending cases should be maintained to ensure their complete withdrawal.

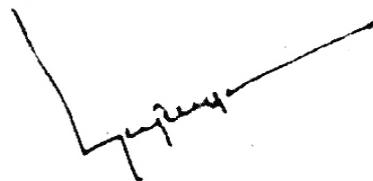
(Paragraphs 3.12.3.4 and 4.3)



New Delhi  
Dated: 27.07.2022

(SIDDHARTHA BONDADE)  
Principal Director (Goods and Services Tax-I)

Countersigned



New Delhi  
Dated: 27.07.2022

(GIRISH CHANDRA MURMU)  
Comptroller and Auditor General of India

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# APPENDICES

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**Appendix-I (Refer para 2.3)**  
**DETAILS OF SAMPLE SELECTION**

Sl. No.	Zone	Commissionerate	Number of Records	Sample selection (Cases selected)	Cases audited
1	AHMEDABAD	GANDHINAGAR	1,146	400	400
2	AHMEDABAD	AHMEDABAD SOUTH	1,408	400	400
3	AHMEDABAD	AHMEDABAD NORTH	1,013	400	400
4	JAIPUR	JODHPUR	2,290	400	400
5	JAIPUR	JAIPUR	4,231	400	400
6	VADODARA	VADODARA II	2,567	400	400
7	VADODARA	DAMAN	1,615	387	387
8	BENGALURU	BENGALURU SOUTH	2,165	400	400
9	BENGALURU	BENGALURU EAST	1,751	400	399
10	BENGALURU	BENGALURU WEST	1,330	400	402
11	BENGALURU	BELAGAVI	2,389	400	400
12	CHANDIGARH	LUDHIANA	3,224	400	310
13	CHANDIGARH	CHANDIGARH	687	400	383
14	PANCHKULA	PANCHKULA	916	400	400
15	PANCHKULA	FARIDABAD	1,238	400	387
16	CHENNAI	COIMBATORE	3,607	400	400
17	CHENNAI	CHENNAI SOUTH	1,690	400	400
18	CHENNAI	CHENNAI NORTH	2,533	400	400
19	CHENNAI	CHENNAI OUTER	1,974	400	400
20	THIRUVANANTHAPUR AM	KOZHIKODE	2,949	400	400
21	THIRUVANANTHAPUR AM	KOCHI	3,940	400	400
22	DELHI	DELHI NORTH	673	400	400
23	DELHI	DELHI EAST	938	400	400
24	BHOPAL	INDORE	947	400	400
25	BHOPAL	RAIPUR	3,059	400	400
26	KOLKATA	KOLKATA SOUTH	3623	400	392
27	KOLKATA	HALDIA	816	400	400
28	KOLKATA	KOLKATA NORTH	1,907	400	382
29	GUWAHATI	DIBRUGARH	554	380	380
30	GUWAHATI	SHILLONG	112	112	112
31	GUWAHATI	IMPHAL	29	29	29
32	GUWAHATI	GUWAHATI	740	400	400
33	LUCKNOW	KANPUR	825	400	400
34	LUCKNOW	LUCKNOW	1,243	400	85
35	MEERUT	GAUTAM BUDDHA NAGAR	415	355	355
36	MEERUT	NOIDA	624	400	400
37	RANCHI	JAMSHEDPUR	2,522	400	400

Sl. No.	Zone	Commissionerate	Number of Records	Sample selection (Cases selected)	Cases audited
38	MUMBAI	PALGHAR	1,013	400	400
39	MUMBAI	RAIGARH	1,589	400	400
40	MUMBAI	BELAPUR	1,736	400	400
41	MUMBAI	MUMBAI CENTRAL	2,332	400	400
42	MUMBAI	MUMBAI EAST	3,091	400	400
43	MUMBAI	MUMBAI WEST	2,516	400	400
44	NAGPUR	AURANGABAD	4,518	400	400
45	NAGPUR	NAGPUR II	860	400	400
46	PUNE	KOLHAPUR	3,056	400	400
47	PUNE	GOA	801	400	400
48	VISAKHAPATNAM-AMARAVATI	VISAKHAPATNAM	5,256	400	400
49	VISAKHAPATNAM-AMARAVATI	GUNTUR	1,695	400	400
50	HYDERABAD	MEDCHAL	1,959	400	400
51	HYDERABAD	RANGAREDDY	1,735	400	400
52	BHUBANESWAR	BHUBANESWAR	2,581	400	400
				<b>20,063</b>	<b>19,603</b>







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