

**Government of Himachal Pradesh
Excise and Taxation Department**

No.EXN-F(10)-7/2019

Dated: Shimla-2

the 21st January, 2020

Notification

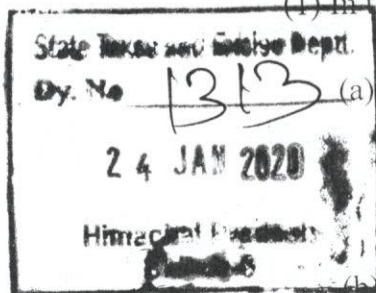
The Governor of Himachal Pradesh is pleased to notify the "Himachal Pradesh (Legacy Cases Resolution) Scheme, 2019" as under:-

1. Short Title and Commencement.- (1) This Scheme shall be called the Himachal Pradesh (Legacy Cases Resolution) Scheme, 2019 (hereinafter referred to as the "Scheme").

(2) It shall come into force on such date as the State Government may, by notification in the Rajpatra (e-gazette), Himachal Pradesh, appoint.

2. Definitions.-

(1) In this scheme, unless there is anything repugnant in the subject or context -



(a) "additional demand" means the amount of tax, penalty and interest as assessed by the assessing authority under the subsumed enactment for a financial year for which declaration under the scheme has been made;

(b) "appellate authority" means the authority specified under section 14 of the scheme;

(c) "appellate forum" means the Supreme Court or the High Court or the State Tax Tribunal or the Financial Commissioner (Appeals) or the Commissioner;

(d) "assessing authority" means an officer defined as such under the

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subsumed enactment;

(e) "assessment order" means an order for determination of tax liability for a financial year under any of the subsumed enactment, passed in relation to assessment proceedings under such subsumed enactment;

(f) "Commissioner" means the Commissioner of State Taxes and Excise;

(g) "declarant" means a person being a dealer, owner, proprietor as defined under a subsumed enactment who has the liability to pay tax under such enactment.

(h) "declaration" means the declaration filed under section 5 of the scheme by the declarant;

(i) "designated committee" means the committee as appointed by the Commissioner;

(j) "discharge certificate" means the certificate issued by the designated committee under section 10 of the scheme;

(k) "person" includes,-

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a registered society;

(v) a limited liability partnership;

(vi) a firm;

(vii) an association of persons or body of individuals, whether incorporated or not;

(viii) the Government;

(ix) a local authority; and

(x) every artificial juridical person, not falling within any of the preceding clauses;

- (l) "pending assessment" means determination of tax liability for a particular financial year required to be determined by the appropriate authority under the subsumed enactment which is pending for determination;
 - (m) "statutory forms" means Form 'C', 'F', 'H', 'E1', 'E2' as defined under the Central Sales Tax Act, 1956 and Form 'D', 'ND' as defined under the Himachal Pradesh Value Added Tax Act, 2005;
 - (n) "settlement fee" means amount calculated as per the provisions of section 6 of the scheme;
 - (o) "settlement" means the process for grant of discharge certificate under the scheme;
 - (p) "subsumed enactment" means any Act repealed under section 173 of the Himachal Pradesh Goods and Services Tax Act, 2017 and section 64 of the Himachal Pradesh Value Added Tax Act, 2005;
- (2) all other words and expressions used in the scheme and not defined herein, shall have the same meaning as assigned to them in the subsumed enactment and in case of any conflict between two or more such meanings in any subsumed enactment, the meaning which is more congruent with the provisions of the scheme shall be adopted.

3. Application of the scheme.- (1) The scheme shall apply to :-

- (a) settlement of any additional demand pending for recovery pertaining to a financial year in respect of which assessment has been made, or
- (b) settlement of pending assessment and settlement of any demand on account of tax, penalty and interest that may accrue as a result of disposal of such pending assessment under a subsumed enactment.

4. Filing and Acknowledgement of Declaration.- (1) In order to avail the scheme a declarant shall be required to file a declaration in the prescribed manner alongwith

the proof of payment of settlement fee within one year of publication of this scheme in the official gazette:

Provided that the government may further extend this date by one year.

(2) The declaration shall be acknowledged in the prescribed manner:

Provided that an acknowledgment may not be issued, if the declaration is not accompanied by proof of payment of settlement fee and such other circumstances as may be prescribed.

5. Declarants not eligible to file declaration under the Scheme.- Subject to the provisions of section 5 of the scheme, a declarant shall not be eligible to make a declaration under the scheme in the following circumstances:—

- (a) if the declarant has filed an appeal before the appellate forum and such appeal has not been withdrawn on or before the day of submission of declaration under the scheme;
- (b) if criminal proceedings have been initiated against the declarant for any reasons including tax fraud;
- (c) if a notice has been issued to the declarant under subsumed enactment for an erroneous refund or refunds;
- (d) if all the statutory forms required to be produced for applicability of concessional rate of tax under the subsumed enactment have not been produced either at the time of assessment or have not been filed along with the declaration under the scheme and the tax due as per returns has not been paid.

6. Calculation of Settlement Fee.- (1) Where no statutory forms were required to be produced or all the statutory forms required to be produced for applicability of concessional rate of tax under the subsumed enactment have been produced either at the time of assessment or have been filed along with the declaration under the scheme, the settlement fee shall be calculated as follows:-

- (i) if the declarant has filed all periodical returns within stipulated time

alongwith payment of tax due as per such returns with respect to a financial year, settlement fee shall not be charged;

- (ii) if the declarant has not filed the periodical returns within stipulated time, but has made payment of tax due as per such returns with respect to a financial year, the settlement fee shall be calculated @ 10% of tax paid after the due date of filing the return or payment of tax.

Illustration

The status of return filing and payments of the declarant M/s ABC Enterprises is as under:-

| Period of the Return. | Status of filing of the Return. | Amount paid as per return in Rs. | Status of Tax Payment. | Settlement Fee. (in Rs.) |
|-----------------------------|---------------------------------|----------------------------------|------------------------|--------------------------|
| Q1 | Timely | 10,000 | Timely | Nil |
| Q2 | Late | 15,000 | Late | 1,500 |
| Q3 | Late | 18,000 | Late | 1,800 |
| Q4 | Timely | 9,000 | Timely | Nil |
| settlement fee for the year | | | | Rupees: 3,300/- |

The settlement fee for M/s ABC Enterprises will be rupees three thousand three hundred .

- (iii) if the declarant has not filed tax returns with respect to a financial year, settlement fee shall be calculated @ one hundred and ten percent of the tax amount applicable on the taxable turnover in such financial year as per the provisions of subsumed enactment and declared in the declaration under the scheme.

Illustration

The declarant M/s ABC Enterprises has not filed any return for the financial year 2017-18 under the HPVAT Act, 2005. The declarant has disclosed taxable turnover of rupees ten lakh in the declaration. VAT amounting to rupees fifty thousand is payable on this turnover. The settlement fee for the declarant will be rupees fifty five thousand only.

(2) Where all the statutory forms required to be produced for applicability of concessional rate of tax under the subsumed enactment have not been produced either at the time of assessment or have not been filed alongwith the declaration under the scheme and the tax due as per returns has been paid, the settlement fee shall be calculated as under:-

- (a) hundred percent of the tax paid against the turnover of transactions involved in such statutory forms as if the forms were available, which have not been produced either at the time of assessment or have not been filed alongwith the declaration under the scheme, or
- (b) one percent of the value of the turnover of transactions involved in such statutory forms which have not been produced either at the time of assessment or have not been filed alongwith the declaration under the scheme, or
- (c) whichever is higher.

Illustration

The declarant M/s ABC Enterprises had declared inter-state transactions amounting to rupees two crore for the financial year 2017-18 under the CST Act, 1956. Transactions against Form 'C' amounting to rupees one crore and fifty lakh and Transactions against Form 'F' amounting to rupees fifty lakh. The declarant has not been able to produce 'C' forms against transactions amounting to rupees ninety lakh and 'H' forms against transactions amounting to rupees twenty lakh. He was required to pay tax

amounting to rupees ninety thousand on this turnover of rupees ninety lakh against form 'C' on the assumption that these were available with him. The settlement fee for the declarant would be calculated as under:-

Settlement Fee as per clause (a) = Rs. Ninety Thousand \times

✓ Settlement Fee as per clause (b) = 1% of 1.1 Cr. (90 Lakh + 20 Lakh) = Rs. 1.1 Lakh

Since Rs. 1.1 Lakh is higher of the two, therefore the settlement fee for the declarant will be Rs. 1.1 Lakh.

7. Restriction with regards to settlement fee.- (1) Any amount paid as settlement fee under the scheme,—

- (a) shall not be paid through the input tax credit;
- (b) shall not be refundable under any circumstances;
- (c) shall not, under the subsumed enactment or under any other Act,—
 - (i) be taken as input tax credit, or
 - (ii) entitle any person to take input tax credit, as a recipient, of the taxable goods, with respect to the matter and time period covered in the declaration.

8. Payment of settlement fee.- (1) Where the tax liability has been assessed for the corresponding financial year for which declaration has been made, payment of settlement fee calculated under section 7 of the scheme can be made by adjustment of any amount paid as pre-deposit at any stage of appellate proceedings under the subsumed enactment or deposited voluntarily or as part of recovery proceedings against the additional demand for that financial year :

Provided that if the amount paid as pre-deposit at any stage of appellate proceedings under the subsumed enactment or deposited voluntarily or as part of recovery proceedings against the additional demand for a financial year by the declarant

exceeds the amount of settlement fee, then the declarant shall not be entitled for refund.

Provided further that if the amount paid as pre-deposit at any stage of appellate proceedings under the subsumed enactment or deposited voluntarily or as part of recovery proceedings against the additional demand for a financial year by the declarant is less than the amount of settlement fee, then the declarant shall deposit the balance amount in the government treasury in the relevant head of account of the subsumed enactment.

(2) Where the tax liability for the corresponding financial year for which declaration has been made has not been assessed, payment of settlement fee calculated under section 7 of the scheme shall be deposited in the government treasury in the relevant head of account of the subsumed enactment.

(3) The payment of settlement fee under sub-section (1) & (2) shall be made in the prescribed manner.

9. Verification of declaration and issuance of discharge certificate by designated committee.- The designated committee shall verify the declaration wherein acknowledgment has been issued and may issue discharge certificate or reject such declaration in the prescribed manner:

Provided that the declarant whose declaration has been rejected may request for an opportunity of being heard within such period as may be prescribed. However, only one adjournment may be granted by the designated committee to defer the hearing proceedings on sufficient cause being shown by the declarant.

10. Privileges emanating from discharge certificate.- (1) Every discharge certificate issued under section 10 of the scheme with respect to the amount payable under the scheme shall be conclusive as to the matter and time period stated therein, and—

(a) the declarant shall not be liable to pay any further tax, interest, or penalty with respect to the matter and time period covered in the declaration;

- (b) the declarant shall not be liable to be prosecuted under the subsumed enactment with respect to the matter and time period covered in the declaration;
 - (c) all matters and time period covered by such declaration shall not be reopened in any other proceeding under the subsumed enactment.
- (2) Notwithstanding anything contained in sub-section (1),—
- (a) no person being a party in appeal or revision shall contend that the designated committee has acquiesced in the decision on the disputed issue by issuing the discharge certificate under the scheme;
 - (b) where any material particular furnished in the declaration is subsequently found to be false, within a period of one year of issuance of the discharge certificate, it shall be presumed as if the declaration was never made and proceedings under the applicable subsumed enactment shall be instituted.

11. Rectification of Errors.- The designated committee may modify the discharge certificate within six months of issuance of such certificate 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 suo motu by the designated committee.

12. Scrutiny of cases.- The cases wherein discharge certificate has been issued may be taken up for scrutiny. However, a maximum of three percent of such cases may be taken up for scrutiny in the prescribed manner.

13. Appeals.- (1) The Commissioner may designate one or more officers not below the rank of Joint Commissioner of State Taxes and Excise, as Appellate Authority for the purposes of the scheme.

(2) The aggrieved declarant may file an appeal before the appellate authority in the prescribed manner within a period of thirty days of the communication of any order passed against the declarant.

(3) The appellate authority may, if it is satisfied that the appellant was prevented by a sufficient cause from preferring an appeal within the aforesaid prescribed period of

thirty days, it may allow such appeal to be preferred within a further period not exceeding thirty days.

(4) The appellate authority may, after giving the parties an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the discharge certificate or notice appealed against or referred to.

(5) The order referred to in sub-section (4) shall be passed within a period of ninety days from the date of filing of the appeal under sub-section (2).

(6) A certified copy of the order pronounced by the appellate authority under sub-section (4) shall be sent to the appellant and the designated committee after such pronouncement.

Explanation.— For the provisions of this section, the appeal is filed only, when the acknowledgement, indicating the appeal number, is issued.

14. Power of Revision.— (1) The Commissioner may, of his own motion, call and examine the record of any proceedings which are pending before, or have been disposed of by, any authority subordinate to him, for the purpose of satisfying himself as to the correctness, legality or propriety of proceeding for the issuance of discharge certificate under the scheme and, on finding the proceedings or the discharge certificate issued under the scheme prejudicial to the interest of revenue may pass such order in relation thereto as he may think fit:

Provided that the powers under this sub-section shall be exercisable only within a period of one year from the date on which such order was communicated.

(2) The Commissioner may delegate the power under sub-section (1) to any officer not below the rank of Additional Commissioner.

(3) No order shall be passed under this section, which adversely affects any declarant unless such declarant has been given a reasonable opportunity of being heard.

15. Removal of Doubts.— For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in section 11 of the scheme, nothing contained in the

scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any proceedings other than the matter and time period in relation to which the declaration has been made.

16. Power to make procedure.- The State Government may, by notification in the Official Gazette, make procedure for carrying out the provisions of the scheme.

17. Power to issue guidelines, directions, instructions etc.- (1) The Commissioner may, from time to time, issue such orders, instructions and directions to the authorities, as it may deem fit, for the proper administration of the scheme, and such authorities, and all other persons employed in the execution of the scheme shall observe and follow such orders, instructions and directions:

Provided that no such orders, instructions or directions shall be issued so as to require any designated committee to dispose of a particular case in a particular manner.

(2) Without prejudice to the generality of the foregoing power, the Commissioner may, if it considers necessary or expedient so to do, for the purpose of proper and efficient administration of the Scheme, issue, from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by the authorities in the work relating to administration of the Scheme.

18. Removal of Difficulty.- If any difficulty arises in giving effect to the provisions of the scheme, the State Government may, by order, published in the official gazette, make such provisions not inconsistent with the provisions of the scheme, as appear it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which this scheme come into force.

19. Protection to Officers.- (1) No suit, prosecution or other legal proceeding shall lie against the State Government or any officer of the State Government for anything which in good-faith is done, or intended to be done, in pursuance of the scheme or any procedure made thereunder.

(2) No proceeding, other than a suit shall be commenced against the State Government or any officer of the State Government for anything done or purported to have been done in pursuance of the scheme, or any procedure made thereunder, without giving the State Government or such officer a prior notice of not less than one month in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause.

(3) No proceeding shall be commenced against any officer only on the ground of subsequent detection of an error in calculating the amount of settlement fee payable by the declarant, unless there is evidence of misconduct.

By Order


Sanjay Kundu
Principal Secretary (E&T) to the
Government of Himachal Pradesh

Endst. No.EXN-F(10)-7/2019

Dated: Shimla-2 the 21st January, 2020

Copy to the following for information and necessary action:-

- ✓ 1. The Commissioner of State Taxes and Excise, Himachal Pradesh, Shimla-9.
2. The DLR-cum-Deputy Secretary, Law (Legn.) to the Government of Himachal Pradesh, Shimla-2
3. All the Addl./Joint/Deputy/Asstt. Commissioners of State Taxes and Excise, Himachal Pradesh.
4. Guard file/spare copies.


(D.C.Negi)

Spl. Secretary(E&T) to the
Government of Himachal Pradesh
Ph:0177-2624899