

Amnesty Scheme For Customs and Foreign Trade Laws - Need of Hour To Reduce Litigation

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Reduction of tax litigations is an important focus area of the Government, as has been specifically mentioned during budget speeches in the past. The Government has also sought to reduce tax litigations by way of periodically introducing various amnesty schemes under different tax legislations, allowing the taxpayers to settle the pending litigation/ dispute on payment of pending demands/taxes, subject to certain relaxations. Such schemes, apart from offering relief of a certain percentage of tax dues, usually also provided for waiver of interest and penalty as well in a time-bound manner.

In the recent past, the Government introduced the 'Sabka Vishwas Legacy Dispute Resolution Scheme (SVLDRS)' to resolve pending litigation disputes under the erstwhile Central Excise and Service Tax law so that taxpayers could focus on compliance with the GST regime. This scheme provided relief from payment of disputed tax in the range of 40-70%, along with the waiver of interest and penalty. The scheme proved to be a great success in reducing the quantum of pending litigation, as almost 1,90,000 declarations were filed by taxpayers involving tax dues of about Rs.90,000 crores. Encouraged by the success of SVLDRS, the Government again introduced the 'Vivad Se Vishwas scheme' to settle direct tax disputes locked up in various appellate forums. The said scheme provided for the settlement of the dispute on payment of 100 per cent of the disputed tax and 25 per cent of the disputed penalty or interest or fee, which was also welcomed by the industry wholeheartedly and resulted in a substantial reduction of pending litigation under the direct tax.

It is essential to note that the industry is still waiting for a similar Amnesty scheme to close the long pending litigations/disputes under Customs laws and Foreign Trade Policy / The Foreign Trade (Development and Regulation) Act. In this regard, the reference can be made to the report of the Comptroller and Auditor General of India (CAG) of India on Customs and Foreign Trade Policy for the year ended 2018, wherein it was highlighted that over the years, recurring cases of non-fulfilment of prescribed export obligations by authorisation holders of export promotion schemes like Advance Authorization, EPCG and other schemes have increased. The report also highlighted that export obligations had not been fulfilled for approx. 3000 authorisation(s) involving revenue implication of more than Rs.4,205 crores availed as exemptions and other tax benefits by the authorisation holder. The CAG report for the year ended 2020 again highlighted non-fulfilment of export obligation on EPCG licenses for some of the Commissionerates. It also needs to be appreciated that these reports refer to the pre-Covid situation, and COVID-19 pandemic induced lockdowns had made the situation even worse for exports,

which resulted in a substantial increase in these matters where exporters are struggling with notices on account of non-fulfilment of export obligations under various export promotion schemes. Beside this, there are numerous disputes pending before the department on other customs matters like HSN disputes, valuation of goods, etc.

The Government is aware that the pandemic had a negative effect on different sectors in India, and the exports focussed manufacturing industry was significantly affected due to the global supply chain coming to a standstill during the pandemic, apart from the various issues being faced by shipping industry. Since the Indian export industry suffered a decline due to the economic downturn in much of the world, the Government has extended the export obligation period for many export incentives by the period impacted by Covid-19, but this relaxation is also not sufficient to provide relief to the industry.

The industry is now hoping for an amnesty scheme to regularise export obligation default cases under the export promotion schemes, especially giving relief to license holders who were not able to fulfil the export obligation on account of adverse COVID-19 impact on export orders. The introduction of the amnesty scheme will help the businesses to get rid of their past baggage of export obligations and move ahead with a clean slate and will also help the businesses facing longstanding disputes on various other Customs matters, apart from helping the Government by immediate realisation of tax revenue due to early resolution of the pending disputes.

From the experience of successful Amnesty schemes under different tax legislations, it's a well-known fact that these schemes enabled the clearance of the backlog of prolonged litigation matters. The time is now ripe for the Hon'ble Finance Minister to bring an Amnesty scheme for the closure of pending disputes under Customs and Foreign Trade Laws during the upcoming Budget and further supporting the export focussed businesses by enabling a fresh start, clear of historical baggage of litigations and export obligations.