

## CLARIFICATION

- 1 (i) kindly refer to rule 3(2) of the HP (Legacy Cases Resolution ) Scheme Rules, 2020 which states that declaration shall be filed for each case. Also kindly go through the Explanation part of the same Rule which talks about the financial year. Further the Forms prescribed under the said Rules mention financial year. Hence, declaration has to be filed year wise / case wise in support of the Assessment.
- (ii) As per Form LCRS-04 prescribed under Rule 8 of the Scheme, the declaration is to be filed for a particular assessment year under appeal.
- (iii&iv) As stated above separate declaration is to be filed year wise / case wise.

However, keeping in view the spirit of the scheme, the declaration can be filed for more than one year. Only requirement is that the declaration along with other accompanying documents should be crystal clear itself as to year wise / case wise computation and depiction of the same in the declaration itself.

2. (i) As regards the cut off date or submission for declaration, it is true that the section 4 of the scheme provides for Settlement Fee to be paid latest within a year but the government subsequently in its instructions has now restricted the date to file such declaration latest by 30.09.2020. It would, therefore, be advisable that the assesses desirous of availing the benefit of the scheme should submit their claims by 30.09.2020.

- (ii) As per the provisions of section 8 read with Rule 5 every declaration has to be accompanied by a proof of payment of settlement fee. Since the last date to file declaration is 30.09.2020, therefore, no specific date has been prescribed for the deposit of settlement fee.
- (iii) Directions are being issued to the field offices by the Commissioner State Taxes and Excise in exercise of his power u/s 17 of the Scheme in this regard.
3. Yes, the declaration for pending assessment can be filed by self-computing the demand. However, the self-computation of the demand by the declarant will be subject to the verification and satisfaction of the Designated Committee as laid down u/s 9 of the scheme.
4. The declarant has to file declaration in an off-line mode. Since various documents in support of the claim are to be filed along with the declaration before the Designated Committee, it will not be practicable to file all these documents in an online mode. The efforts are being made by the department to create an online interface in this regard. However, the payments of Settlement fee can be made through online mode which is presently being done through Cyber Treasury portal by the assesses. Instruction have already been issued to the field offices vide letter dated 15.05.2020. Any query in this regard can be taken up with the concerned officer of the district.
5. As per Rule 3 (3) of the Scheme every declaration shall be accompanied by the Settlement fee along with required documents. Further, sub rule 5 of Rule 3 states that notwithstanding anything contain in these rules, and acknowledgement shall not be issued and declaration shall be rejected if the declaration is not accompanied by

proof of payment of settlement fee, if any. It is, thus, clear from the above that every declaration shall be accompanied by the settlement fee failing which the Designated Committee may reject the declaration and not issue acknowledgement in Form LCRS- 02. However, the final decision on the acceptance and rejection of declaration lies with the Designated Committee who shall decide the cases on the merits.

6. Yes, the typographical error needs correction. The rule 4 needs to be substituted by rule 6.
- 7(i). Since the scheme is related to particular assessment years for which a claim is being preferred, the appeals mentioned herein should confine to the appeals for those years only for which the relief is being claimed. However, as per section 5 of the Scheme it has been clearly mentioned that to claim relief under the Scheme, pending appeals need to be withdraw.
- ii. yes.
- iii. Once application for withdrawal of appeal has been filed, it is sufficient to be construed as withdrawal. Once the application is filed nothing remains in the hands of a assesses and the appeal cannot further be pursued by the appellant. Moreover, once the appellant is desirous of withdrawing the appeal, nothing remains in the hands of the court also and no court can say that it will still hear the appeal.
- iv. All sort of litigation regarding particular assessment/pending assessment is covered under this Scheme which need to be withdrawn to claim relief.

- v. The appeals withdrawn shall not be automatically restored. However, under the Scheme, a fair chance has been provided to the assessee to file appeal as per section 13 read with rule 8 in case of rejection.
- 8 (i). If there is a dispute with regard to the rate of tax and the assessee had paid the entire tax as per his understanding but the department has differences w.r.t. rate of tax, how can he be given the benefit of discharging the entire liability. In such case either he has to discharge liability as per the rate of tax which the department holds. In such case he would be liable for 10% settlement fee on the unpaid amount.
- (ii) As stated in (i) above again there is a dispute of ITC and as such either he forgo the claim and opt for this scheme and resultantly would be liable for payment of tax to the extent to which the ITC has been disallowed. He would also be out of this clause as he would have to pay 10% as settlement fee on the unpaid amount.
- (iii). No in this case also the assessee owes tax to the department on account of underassessment, as such he would be out of this clause and would have to pay 10% as settlement amount on the additional liability he owes on this account.
- (iv). The clause (i) of (1) itself speaks that, 'if the declarant has filed all periodical returns within time along with payment of tax due as per returns with respect to the financial year, settlement fee shall not be charged.' In umpteen number of cases where dispute on account of interest liability under section 19 of the VAT Act had been before the Tribunal, High Court or the Supreme Court, "as per return" has

always construed to be the return which should have shown the correct liability of tax. As such the returns which are not as per the factual position, may be on account of ITC dispute, Rate of tax dispute, under declaration of turnover etc. Etc. The return had never been treated to be the correct return. Hence it is now well settled law. There need not be any specific provision for that.

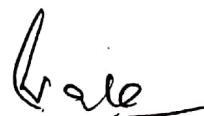
- (v). In this regard kindly refer to section 3 (a) and section 6.
- 9. All the eventualities quoted by the representationist are clearly addressed under Section 6.
- (i). As per provisions of the H.P.VAT Act, before filing the return the assessee is required to deposit the tax due as per return and attach the proof of payment with the return. Hence the case where the tax is paid late but the return is filed amounts to no filing of complete return.
- (ii&iii). Section 6 (1) (ii)(iii) clearly covers this eventuality where the tax is paid but the return is not filed or filed late. The applicant will have to pay settlement fee as per this clause.
- (iv). Where the scrutiny has not been made, the assessee has filed the returns and as such he will be dealt with accordingly by the Designated Committee.

## SUGGESIONS IN THE REPRESENTATION

- 10&11. The suggestions given in the representation have been noted. Suitable directions to the district incharges are being issued by the department.
12. The matter has already been discussed at point no. 4. The field officers are being directed to guide the assessee accordingly.
13. The Typographical error which is factual will be corrected.
14. Necessary guidelines/directions will be issued to the districts incharges in this regard.
15. Section 9 is itself very clear wherein the opportunity has been provided and there is clear directions to the designated committee to grant only one adjournment to defer the hearing. This itself by rule of construction means that the committee will take up the proceedings and grant only one adjournment only. No need to make any further amendment.
16. It is understood that once the application for availing benefits under this scheme is filed there would not be any recovery proceedings with respect to such period to which the recovery belongs. However, administrative instructions are being issued to the field to make the issue clear and uniform practice is adopted throughout the state.

The department is thankful to the B.B.N. Industries Association Jharmajri, Baddi for showing keen interest in the Scheme and giving their valuable suggestions in order to make the Scheme successful which will result in the revenue generation. The Hon'ble Chief

Minister of Himachal Pradesh had made the announcement in his Budgetary speech for the roll out of the Scheme so that all the stakeholders take the benefit of the Scheme and become partner in the development of the state.



**(Dr. Ajay Sharma) IAS**  
**Commissioner of State Taxes & Excise**  
**Himachal Pradesh, Shimla -09**