

No. 12-33/2019(625)-EXN- 30563-81
Excise & Taxation Department
Himachal Pradesh.

From:

The Commissioner of State Taxes and Excise,
Himachal Pradesh, Shimla-171009.

To

1. The Addl./Jt. Commissioner of State Taxes and Excise,
South Zone-Shimla, NZ-Palampur and CZ-Mandi,
Himachal Pradesh.
2. The Jt. Commissioner of State Taxes and Excise,
Enforcement Zone, South Zone-Parwanoo
NZ-Palampur and CZ-Una, Himachal Pradesh.
3. The Dy. Commissioner of State Taxes and Excise,
Incharge District Shimla, Solan, BBN Baddi, Sirmour,
Hamirpur, Bilaspur, Kullu, Mandi, Kangra, Nurpur,
Chamba and Una, Himachal Pradesh.
4. Asstt. Commissioner of State Taxes and Excise,
Incharge District Kinnaur at Reckong Peo, HP

Shimla:171019

Dated 24/11/2020

Subject: HP (Legacy Cases Resolution) Scheme, 2019- Clarification thereof.

Sir,

Please find enclosed herewith the replies of the queries received from the districts in-charges and other stakeholders.

You are requested to go through the replies/clarifications and implement the Scheme accordingly. This should help you in implementation of the Himachal Pradesh (Legacy Cases Resolution) Scheme, 2019 and it is hoped that you will put in your best efforts to bring in more and more dealers under the Scheme in order to liquidate the pendency of cases/arrears.

Yours faithfully,



Rohan Chand Thakur (IAS)
Commissioner of State Taxes and Excise,
Himachal Pradesh.

	Sr. No.	Queries	Clarification
Sh. Mukesh Sharma Advocate & Tax Consultant	1	1. In the case of a dealer's assessment is finalised and turnover during the assessment year is nil. The dealer has late-filed the nil returns and penalty U/s 16(6) and as per CST Act levied during the assessment. At present penalty amount is standing as an arrear.	In such cases no settlement fee is chargeable.
	2.	2. As per section 16(6) if a dealer fails without sufficient cause to furnish the returns by the prescribed date as required under sub-section (3), the dealer shall be liable to pay by way of penalty, a sum equal to [200] per day till the default continues, but such penalty shall not exceed Rs. 25,000/-.	--do--
	3	3. In case there is no taxable turnover but the penalty imposed u/s 16(6) can the dealer apply for a legacy scheme and what will be the settlement fees as the tax liability is nil.	Yes, without any settlement fee.
M/s Sabacchus Distillery Pvt. Ltd.	4	1. Settlement of any additional demand pending for recovery pertaining to a financial year in respect of which assessment has been made. Are they (M/s Sabacchus Distillery Pvt. Ltd.) for	Kindly refer to Section 2 (1) (p), since the liquor petroleum products are outside the ambit of GST purview.

		the Scheme despite the fact that they have not migrated to GST being in liquor business.	
Una District Taxation Bar Association	5	<p>1. Clarification is urgently needed to be issued in respect of Entry Tax. The dealers have deposited 1/3rd or 1/2 of tax demand and submitted bank guarantees of balance demand by virtue of orders of Hon'ble High Court or the Supreme Court. The clarification may be issued that under which provisions of scheme among following the such cases would fall.</p> <p>a) Section 6(i)- if declarant has filed all periodical returns within stipulated time along with payment of tax due as per such returns with respect to a financial year, settlement fee shall not be charged.</p> <p>b) Section 6 (ii)- if the declarant has not filed the periodical returns within stipulated time, but has made payment of tax due as per such returns. But in the interest of justice the entry tax cases need to be covered under</p>	<p>Where tax payment is late, no such case will be covered under section 6(1)(i). The settlement fee would be chargeable at 10% as per Section 6(1) (ii)</p>
	6		

	7	<p>Section 6(1) (i) and only tax amount may be collected. Suitable clarification may be issued.</p> <p>2. Issue with respect to the modalities of submitting the application form and procedure to be adopted thereafter. Guidelines may be issued to the authorities, not to go into the other detail. It has been pointed out that the authorities are verifying other details like sales and purchase register, ST-XXVI verification, profit or value addition like a regular assessments. Standard protocol be prescribed.</p>	<p>Kindly refer rule 6 of the Scheme Rules, 2020 wherein the detailed procedure has been laid down for the Designated Committee.</p>
	8	<p>3. Facility of online submission of the application may be provided or till functioning of such software, dealer may be allowed to file an application through e-mail.</p>	<p>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. 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</p>

	9	<p>4. Pre deposit of settlement fee on self-estimation basis is creating a lot of problems as in majority cases (government under takings & corporate sector) prior approval is needed and sanction of funds involves a long process. Pre deposit of settlement fee gives rise to two situation:-</p> <p>a) If amount deposited on self-estimation is lesser as per adjudicating authority, entire process of approval needs to be followed once again.</p> <p>b) If amount deposited on self-estimation is more than what is determined by adjudicating authority, there is no mechanism of refund provided under the Scheme.</p>	<p>the district.</p> <p>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 contained 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.</p> <p>If the Designated Committee issues Discharge Certificate in form LCRS 03 the excess amount deposited shall be forfeited.</p>
Dy. CST&E, Bilaspur and Asstt. CST&E (Ghumarwin Circle) Bilaspur	10 11	<p>1. Returns filed in time and tax as per return also deposited in time but the additional demand has accrued due to following points.</p> <p>a) The demand is on account of mismatch in LP-I</p>	Such cases shall be covered under Section 6(1) (iii) of the Scheme.

		<p>and LS-I i.e. the purchaser has shown more purchases in his LP-I whereas, the seller has shown less sales in LS-I, it is proved that the purchases reflected in the LP-I by the purchaser are forged and inflated.</p>	
12		<p>b) Demand accrued due to purchases shown less in LP-I by the purchaser and seller has shown more sales in his LS-I and it is proved that the purchaser has suppressed the purchases.</p>	--do--
13		<p>c) Additional demand has accrued due to sale suppression or purchase suppression due to non account of sale or purchase bills.</p>	-do-
14		<p>d) Additional demand has accrued due to mismatches detected through perusal of VAT XXVI-A declaration and matching with the return version.</p>	-do-
15	2.	Returns filed late and tax deposited as per returns though late. All the above mentioned 4	Kindly refer to Section 6(1)(ii)

		points may also occur in this situation also.	
	16	3. There is provision for non submission of statutory forms in the scheme, if the returns are filed and tax as per return deposited. But what If the additional demand is accrued due to sale or purchase suppression apart from non submission of statutory forms.	In the absence of statutory forms refer to Section 6(2) and in case of suppression of sales and purchases pertaining to local sales then refer to Section 6 (1) (iii).
	17	4. There are cases for 2017-18 in which the dealers have filed returns in time as nil because no sales/purchases have been effected in these months but the closing stock of 2016-17 is carried forward to this year without making any transaction. In these cases the dealers have closed down their business and have not migrated in to GST regime. At the time of assessment for 2017-18 the additional demand has accrued due to Assessing of the closing stock and in these cases ITC carried forward by the dealer from the previous year is rejected in compliance of section 11 (7)(g) of HP VAT Act, 2005. What is done in such cases if these	Refer section 6(1)(iii)

		<p>cases are not assessed yet. The HP (Legacy Cases Resolution) Scheme, 2019 is silent in both such cases.</p> <p>5. Rule no. 7 of HP (Legacy Cases Resolution) Scheme Rules, 2020 speaks of scrutiny within sixty days of issuance of order as per section 12 of the scheme. It is not clear whether any order is also to be issued by the Designated Committee along with the discharge certificate.</p>	<p>Kindly refer section 12 wherein scrutiny will be taken up of Discharged Certificated issued. Discharge Certificate in itself is an order with reference to Section 12 read with rule 7.</p>
	18		
	19	<p>6. There are arrears pertaining to the OLD GST LAW (HP General Sales Tax Act, 1968 which has been repealed on the implementation of HP VAT Act, 2005. The HP (Legacy Cases Resolution) Scheme, 2019 (section 3) talks of subsumed enactment only. What is to be done if the arrear pertains to the years before 2005 i.e. to the GST and CST regime.</p>	<p>Refer to Section 2(p)</p>
VC queries	20	<p>1. Whether the dealers who have not filed their annual returns can be included under the legacy scheme or nor?</p>	<p>Yes, where the tax paid is timely but the returns filed late no penalty. Where the tax deposited late settlement fee shall be 10% of the tax amount irrespective of late filing of returns.</p>

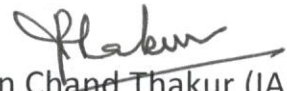
	21	2. Where no orders have been passed how the case has to be dealt with under the scheme?	Refer Section 3 B
	22	3. If wrong claim of ITC has been made, can such dealer be included in the scheme?	Refer Section 9 read with rule 6
	23	4. If GTO has been enhanced due to detection of suppression, can such dealer opt for the scheme?	Yes, the dealer can opt for the scheme as per Section 3-A and settlement fee is to be recovered under Section 6.
	24	5. If sales and purchase suppression has been noticed, can such dealer be included in the scheme?	-do-
	25	6. What shall be the status of closing stocks when business is closed and otherwise.	The dealer has not migrated to GST the closing stock shall be dealt with as per the provisions of the HP VAT Act.
	26	7. If Form-I not submitted by the industrial unit what rate of tax shall be levied and can such unit be included in the scheme.	Such cases shall be covered under provisions of Section 6(2)
Asstt.CST&E, Nurpur Circle	27	1. The dealer has deposited due tax timely and return is filed late then what would be the settlement fee.	No penalty on late filing returns but settlement fee on late deposit of tax.
	28	2. 6(2) (a) states that hundred percent of the tax paid against the turnover of transaction involved in such	The query is not clear. However refer Section 6 (2).

		<p>statutory forms as if the forms were available, which have not been produced either at the time of assessment or have not been filed along with declaration under the scheme.</p> <p>The settlement fee calculated in the example given to this section is with tax paid @1%, if the tax paid on C forms is more than one percent then how the settlement fee will be calculated.</p>	
ACST&E Kinnaur	29	<p>1. Whether 10% legacy fee is applicable or not? As they have submitted FDR/Bank Guarantees as per the directions of Hon'ble Supreme Court of India/High Court.</p>	<p>The query is not clear. However, it is assumed that the query pertains to the Entry Tax Act. As FDR or Bank Guarantee has been pledged in the name of the Department on the orders of the Hon'ble Courts. It is observed that the Hon'ble High Court of HP in the Entry Tax cases have put the condition of depositing of one-third of the tax liability in the government exchequer and two-third to be deposited in the shape of Bank Guarantee. It has been emphasized in the orders of the Hon'ble Court that the Assessee shall get the amount assessed by the Assessing Authority and then accordingly deposit the one-third and two-third amount. This amount is to be deposited within the time period given by the Assessing Authority in the Assessment order. In case where the both the amounts, as the case may be, are deposited beyond the period given to the assessee then provisions of 6(1)(ii) of the</p>

			Scheme are attracted.
	30	2. If yes, whether 10% settlement fee is applicable on unpaid amount or total additional demand created in assessments orders?	-do-
	31	3. Whether court cases should be withdrawn before applying under the scheme or can be applied after payment of settlement fee?	refer to Section 5 (a)
	32	4. Whether FDR.BG can be forfeited or cash should be deposited?	Both options are available for the dealer.
	33	5. What are the main documents required for settlement of the cases under the scheme.	See rule 6 of the Scheme.
ETO Hamirpur	34	1. How to deal with cases where orders have been passed and additional demand (including tax, interest).?	It is clarified that in cases where additional demand has been created and pending for recovery in such situation the settlement fee shall be calculated as follows: a) Where no recovery has been made, settlement fee shall be 110% of tax amount. b) Where partial amount is recovered, 110% of the unrecovered amount of tax. c) Where full amount of tax is recovered, the settlement fee shall be nil
	35	2. in cases of late or non-filing of Annual Return, how to calculate the settlement fee?	No settlement fee shall be charged
	36	3. Can Audit Re-assessment (e.g. excess ITC) cases be	Yes

	37	covered under the scheme. 4. Does the scheme apply to detection cases as well as cases sent by the EIU?	Yes
	38	5. calculation of settlement fee in cases of excess ITC claim.	Yes
ETO Nadaun	39	1. The dealer has been assessed for the years 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 and arrear is due in each of the assessment years. Now the dealer wants to file application under Legacy Resolution Scheme for the years 2016-17 and 2017-18 with pending arrears of the previous assessment years. Can the application be accepted under Legacy Resolution Scheme.	Yes, he can opt for the Scheme for the years 2016-17 and 2017-18. As there is no such restriction in the Scheme.
	40	2. Calculation of settlement fee in case of dealers, who have already been assessed and arrear is due against them.	Refer Section 6
ETO Bhoraj and Sujapur	41	How the cases pertaining to 2017-18, 1st qtr be assessed when the dealers have closing stock both interstate as well as intrastate and have not filed TRAN-1 and there is no record available whether they have accounted for that closing stock as opening stock in GST regime on 01/07/2019.	1. It the dealer who has to give the details to assessing authority regarding Tran 1. If the dealer has migrated to GST Act the closing stock will be carried forward through TRAN-1 under GST Act. Otherwise the closing stock shall be assessed as per the HP VAT Act.
	42	(2) Some of the dealers having interstate purchase stock lying with them as closing stock on 30/06/2017 had opted composition scheme after 01/07/2017. How these cases are to be assessed ?	2. There is no ITC for compensation dealer. It is assumed that closing stock has been carried forward to GST at the time of migration.

Dy. CST&E Distt. Una	43	1. If the additional demand accrued on account of the detection cases during VAT, can it be considered under the LCR?	Yes, such cases can be covered under the LCR Scheme.
	44	2. If there is a mismatch in annual return submitted by the dealer and barrier VAT XXVI data can it be considered under the LCR?	Yes, such cases can be covered under Section 6
	45.	3. if any additional demand accrued on account of audit paras can it be also considered under the LCR?	-do-

Rohan Chand Thakur (IAS)
 Commissioner of State Taxes and Excise,
 Himachal Pradesh.