

**Department of Excise & Taxation
Himachal Pradesh, Shimla -09**

Subject:- Responses to the clarification/ suggestions received from BBN Industries Association on Himachal Pradesh (Legacy Case Resolution) Scheme, 2019

Sr. No.	Quarries raised by B.B.N. Industries Association (Regd.)	Response of Department to the quarries.
	Queries for Clarifications	Responses
1	<p>Section 3 of the Scheme determines the scope of applicability of the Scheme: Please clarify the following:</p> <p>i. Whether the declaration is to be filed assessment year wise?</p> <p>ii. Whether the declaration is to be filed for each appeal separately?</p> <p>iii. Whether number of assessment year can be covered under one declaration?</p> <p>iv. whether number of appeals can be covered under one declaration?</p>	<p>(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.</p> <p>(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.</p> <p>(iii & iv) As stated above separate declaration is to be filed year wise / case wise.</p> <p>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.</p>
2	<p>Cut off date under Rule 3:</p> <p>i. what is the last date of submission</p>	<p>(i) As regards the cut off date or submission for declaration, it is true that the section 4 of the</p>

	<p>of declaration form?</p> <p>ii. what is the last date of deposit of settlement fee?</p> <p>iii. what is the cut-off date for issuance of discharge certificate?</p>	<p>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.</p> <p>(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.</p> <p>(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.</p>
3	<p>Pending assessments: Whether the declaration for pending assessment is to be filed by self-computing the demand?</p>	<p>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.</p>
4	<p>Filing and Acknowledgment of Declaration (Section 4 read with Rule 3 of the Scheme): Whether declaration can be filed online?</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. 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</p>

		be taken up with the concerned officer of the district.
5	<p>Rejection of the Declaration: Whether a declaration shall not be rejected only except in a case where the proof of payment of settlement fee is not enclosed with the declaration?</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 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	<p>Typographical error in Rule 3(3): Whether in Rule 3(3), reference to rule 4 should be read as Rule 6?</p>	Yes, the typographical error needs correction. The rule 4 needs to be substituted by rule 6.
7	<p>Pending Appeals: i) Whether section 5(a) pertains to all the pending appeals irrespective of assessment year(s) ii) Whether the same is applicable to pending appeal pertaining to assessment year for which the declaration is being filed? iii) Whether filing of application for withdrawal of appeal is sufficient,</p>	<p>(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</p>

	<p>especially in High Court and Supreme Court, as listing of application and passing of order takes time?</p> <p>iv) Whether writ petitions pending before High Court are also covered under this clause?</p> <p>v) if the declaration filed by the assessee is rejected, whether the appeals withdrawn will be automatically restored?</p>	<p>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.</p> <p>(iv) All sort of litigation regarding particular assessment/pending assessment is covered under this Scheme which need to be withdrawn to claim relief.</p> <p>(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.</p>
8.	<p>Scope of Section 6(1)(i)</p> <p>i) whether disputes with respect to clarifications of goods where assessee has paid tax as per the returns and no statutory forms are required to be produced, are covered under Section 6(1)(i)?</p> <p>ii) Whether cases pertaining to denial of input tax credit where assessee has paid as per the returns and no statutory forms are required to be produced, are cover under Section 6 (1)(i)</p> <p>iii) whether cases pertaining to under-declaration of sales turnover where</p>	<p>(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.</p> <p>(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.</p> <p>(iii) No in this case also the assessee owes tax to the department on account of</p>

	<p>assessee has paid tax as per the returns and no statutory forms are required to be produced, are covered under Section 6(1)(i)?</p> <p>iv) if the clarifications to the query no. i, ii and iii above are in negative, please indicate the correct provision?</p> <p>v) whether 'Settlement of Addition Demand of Value Added Tax' is covered under Section 6 and if yes, under which clause?</p>	<p>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.</p> <p>(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.</p> <p>(v) In this regard kindly refer to section 3 (a) and section 6.</p>
9.	<p>Calculation of Settlement Fee (Section 6 of the Scheme)</p> <p>i) where the periodic returns are filed within stipulated time but payment of tax due as per returns is made post stipulated time/ not made till date/partially made;</p>	<p>All the eventualities quoted by the representationist are clearly addressed under Section 6.</p> <p>(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.</p>

	<p>ii) where the periodic returns are filed late and the payment of tax due as per returns is not made till date/partially made;</p> <p>iii) where the periodic returns are not filed but the payment of tax due is made;</p> <p>iv) Scrutiny of tax arrears as per periodic returns in a case where assessment is pending at the time of filing declaration.</p>	<p>(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.</p> <p>(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.</p>
	Suggestions	
10	Timeline for Issuing Acknowledgment in Form LCRS-2	The suggestions given in the representation have been noted. Suitable directions to the district incharges are being issued by the department.
11.	Constitution of Designated Committee (DC) (Rule-4 of the Scheme)	The suggestions given in the representation have been noted. Suitable directions to the district incharges are being issued by the department.
12.	Mode of Payment of Settlement Fee (Rule 5 (2))	The matter has already been discussed at point no. 4. The field officers are being directed to guide the assessee accordingly.
13.	Typographical error in Section 8 of the Scheme.	The Typographical error which is factual will be corrected.
14.	Verification of declaration and issuance of discharge Certificate (Section 9 read with Rule 6 of the Scheme)	Necessary guidelines/directions will be issued to the districts incharges in this regard.
15.	Opportunity of being heard be awarded before rejection of the Declaration.	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.	Stay on the recovery proceedings under Subsumed enactments.	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.
-----	---	--

Sd/-
**Commissioner of State Tax and Excise,
Himachal Pradesh.**