Chapter 2 : Design of the Scheme and enabling provisions

We analysed the objectives and intentions as brought out in the Scheme vis-à-vis the rules, clarifications and instructions issued by the Board to operationalise the Scheme. This analysis revealed that some of these enabling provisions/clarifications were contradictory to the objectives of the Scheme as discussed in subsequent paragraphs:-

2.1 Provisions to verify correctness of declarations

2.1.1 Verification of truthfulness of declaration made

As seen from the Finance Minister's budget speech for 2013-14, the Scheme envisaged that the tax defaulters will make a **truthful declaration** of service tax dues for which they would get a one time amnesty from payment of interest and penalty and immunity from prosecution.

In pursuance of this objective Section 107(1) of the Scheme, required declaration to be made in such form and manner as may be prescribed. Rule 4 of STVCE Rules prescribes form VCES-1 for filing declaration of tax dues and enclosures to VCES-1 as ***calculation sheet and any other records.*** The STVCE Rules, however, did not specify clearly the basic documents to be enclosed to VCES-1 in support of tax liability declared and it was left to the discretion of the declarant.

Board clarified vide letter dated 11 December 2013 that "the DA may cause arithmetical check as regards the correctness of computation of tax dues, the Scheme does not envisage investigation by the DA into the veracity of declaration." The basic provisions of the Scheme were thus negated by Board's clarification quoted ibid.

Verification of correctness of tax liability declared was, therefore, not done and verification was restricted to mere check of arithmetic accuracy.

We observed in 173 cases in 28 Commissionerates, involving tax dues of ₹ 23.13 crore, that the benefit of the Scheme was extended to the declarants, whose declarations had various discrepancies such as

- differences between calculation sheets and declarations made,
- grant of exemptions/abatements/deductions claimed under various notifications but had not furnished the required documents in support of exemption/abatement claims made by them,
- acceptance of amounts which did not fall under the definition of tax dues,

- wrong adoption of service tax rates.

When we pointed this out (between October 2015 and January 2016), the Ministry (May 2016) accepted the observation in 45 cases. The Ministry further stated (June 2016) that declarant was required to aver to the truthfulness of the declaration made and that the Scheme provided to reopen a declaration by the applicant only if found to be substantially false. They stated that it was not a Scheme for assessees to come forward and invite the departmental action against them and the circulars issued by the Board were in furtherance of the objectives of the Scheme. They further stated that only in a few cases commented upon by audit, substantially false information was given by the assessees on which due action was initiated by the respective Commissionerates and that the scheme had been largely successful otherwise.

The cases pointed out by audit here were those instances in which though the Scheme envisaged grant of immunity for truthful declarations, the same was granted by the department ***without verifying even basic facts which were apparent on the face of the declaration***. The number of cases pointed out by Audit being 'few' is not the point at issue, but of the department not carrying out even basic verification.

A few illustrative cases of non-verification of basic facts apparent on face of the declaration are given below:-

(a) Wrong claim of abatement/exemption

- An assessee in Mumbai-VII ST Commissionerate, declared (December 2013) tax dues of ₹ 85.43 lakh towards Works Contract service for the period April 2010 to December 2012. The declarant had incorrectly claimed abatement at 75 per cent amounting to ₹ 24.04 crore instead of admissible 60 per cent amounting to ₹ 19.23 crore. It resulted in excess claim of ₹ 4.81 crore, leading to short declaration of tax dues of ₹ 52.50 lakh.

  When we pointed this out (December 2015), the Ministry stated (May 2016) that the assessee paid service tax at the prevalent rate for the period i.e.10.30 per cent and there was no short payment of service tax. But the Ministry did not respond to our observation regarding excess availment of abatement.

- An assessee in Chennai-I ST Commissionerate, declared (December 2013) tax dues of ₹ 65.17 lakh for the period October 2007 to December 2012. VCES-3 was issued on 24 March 2015. The assessee deducted ₹ 10.70 crore towards exempted service, from the taxable

value. The correctness of such substantial amount of exemption claimed was not verified by the Department before issuing discharge certificate (VCES-3).

When we pointed this out (January 2016), the Ministry stated (May 2016) that VCES Scheme did not envisage investigation by the DA.

(b) Wrongful inclusion of tax dues

An assessee in Bengaluru ST Commissionerate, declared (December 2013) tax dues of ₹ 13.54 lakh for the period October 2007 to March 2011. On verification of the payment details furnished by the declarant along with the declaration, it was seen that entire amount of ₹ 13.54 lakh had been discharged during January/February 2013 itself and no amount was pending as on 1 March 2013. As the tax dues declared under VCES is defined as an amount due for the VCES period but not paid as on 1 March 2013, the declarant did not qualify for the Scheme. Department was required to initiate action for recovery of interest and penalty as service tax pertaining to period October 2007 to March 2011 was paid in January/February 2013 with inordinate delay. However, no details of initiation of action taken were forthcoming from the records.

When we pointed this out (December 2015), the Ministry agreed with audit observation and stated that the assessee was not traceable.

(c) Incorrect adoption of Service Tax Rate

An assessee in Rajkot Commissionerate, declared (October 2013) tax dues of ₹ 1.22 crore for the period from October 2008 to March 2012. The assessee, while calculating the tax liability for the year 2008-09, calculated service tax at the rate of 10.30 per cent instead of 12.36 per cent. The incorrect adoption of Service Tax rate resulted in short payment of service tax of ₹ 12.49 lakh. The department issued VCES-3 (February 2015) to the declarant without verifying the correctness of the tax payment.

When we pointed this out (October 2015), the Ministry stated (May 2016) that VCES Scheme did not envisage investigation by the DA. The reply implied that basic checks like application of correct tax rates were not exercised while processing VCES application.

2.1.2 Non-stipulation of timeline for furnishing payment details

No time limit was stipulated for submission of payment particulars by the declarants to the department for taking timely action for recovery of defaulted dues.

We noticed delay, ranging between 1 and 644 days, in submission of payment particulars by the declarants to the department in 1,852 cases in 22 Commissionerates.

We noticed from the selected VCES files in 98 cases Belagavi (21) and Bengaluru ST (77), no details were kept on record indicating the payment of service tax dues declared under VCES, either paid in full or in part and hence the discharge certificates in VCES-3 had not been issued. It is further noticed in Bengaluru-ST Commissionerate department had addressed letters to 17 declarants, calling for the payment particulars from the declarants along with proof of payment. This was indicative of the fact that the department was not in a position to ascertain whether these declarants had paid the tax dues within the due dates to become eligible under the Scheme, even after a lapse of more than one year.

In the absence of mechanism to distinctly identify payments made under VCES, the department is totally dependent on assessees' response regarding their payment.

When we pointed this out (between October 2015 and January 2016), the Ministry, while admitting (June 2016) that non-stipulation of such time limit certainly caused delay in closure of the VCES cases, stated that fixation of a rigid time limit would have lead to disputes in cases where payment was made but the details submitted beyond the stipulated date. In such cases it would have been incorrect to deny substantive benefits owing to a procedural lapse. Further it stated the deposits made by the declarants were ascertained from assessee-wise details available on the NSDL site.

Audit finds Ministry's contention about time schedules leading to denial of substantial benefits misplaced. Fixation of time limit for submission of challans by declarants would not lead to denial of the benefits to the declarants since on the receipt of the same, the department was to issue VCES-3 to the declarants. Further, the NSDL site contained the regular as well as VCES related tax payment details with no facility to differentiate between the two.

2.2 Provisions regarding eligibility for the Scheme

We correlated the conditions prescribed in the Scheme to declare a person ineligible with the related clarifications/instructions issued by the Board and we noticed that the clarifications/instruction issued by the Board diluted the conditions prescribed in the Scheme as discussed in subsequent paragraphs.

2.2.1 Extension of benefits to declarants against whom inquiry, investigation or audit was initiated prior to 1 March 2013

Section 106(2)(a)(iii) stipulates that where a declaration has been made by a person against whom inquiry, investigation or audit has been initiated and the same is pending as on 1 March 2013, then, the DA shall, by an order, and for reasons to be recorded in writing, reject such declaration. Board clarified (August 2013) that the provisions of Section 106(2)(a)(iii) shall be attracted only in such cases where accounts, documents or other evidences are requisitioned by the authorised officer from the declarant under the authority of statutory provisions (viz. section 14 of Central Excise Act, 1944 Section 72 of Finance Act, 1994 and Rule 5A of Service Tax Rules, 1994) and the inquiry so initiated against the declarant is pending as on 1 March 2013. No other communication from the department would attract the provisions of section 106(2)(a)(iii) and thus would not lead to rejection of the declaration.

Section 106(2)(b) stipulated that where a declaration was made by a person against whom an audit had been initiated and the same was pending as on 1 March 2013, such a declaration was liable for rejection.

Board's clarification[7] (August 2013) that the date of the visit of auditors to the unit of the taxpayer would be taken as the date of initiation of audit diluted the provisions of Section 106(2).

We noticed that in 12 cases in eight Commissionerates, involving declared dues of ₹ 4.43 crore though action had been initiated against the declarants in terms of Section 106(2)(iii) much before 1 March 2013, they were extended the immunity benefits under VCES, in view of Board's clarification dated 8 August 2013 which resulted in loss of revenue to Government by way of interest and penalty.

When we pointed this out (between October 2015 and January 2016), the Ministry stated (June 2016) that the clarifications aimed at giving effect to the object and purpose of the Scheme by excluding simple letter / general query seeking the information or a unit earmarked but not audited from the ambit of "initiation of audit or investigation".

Audit is of the view that the clarification of the Board resulted in extension of VCES benefits even to cases where audit or inquiry were based on valid information or proper analysis and were not merely simple letters seeking general information. Thus the provisions of the Scheme were defeated.

[7] At Sl. Nos. 1 and 19 of Board's circular No.170/5/2013-ST dated 8 August 2013

Ministry further replied (June 2016) that specific decisions on VCES applications were taken by the DA after considering the prevailing conditions and thus the inquiry in the cases pointed out by audit could not be considered as specific or of roving nature. They also stated that success of VCES to collect revenue without litigation should be considered the mainstay of this scheme instead of procedural detailing.

Ministry contention could not be accepted as field formations, while responding (May 2016) to specific cases pointed out by audit, replied that they followed Board instruction regarding cut-off date in dealing with VCES application. Further VCES objective was to encourage service providers to file returns and not meant for litigation management.

A few illustrative cases are given below:-

2.2.1.1 An assessee in Belagavi Commissionerate, declared (September 2013) tax dues of ₹ 1.56 crore under the category of 'Minimum Take Or Pay charges' (MTOP), for the period from July 2012 to December 2012.

In this connection, it was seen in audit that the Jurisdictional Range Officer had made correspondence with the declarant regarding service tax liability on MTOP charges way back in September 2012 itself, followed by periodical correspondence and hence had proposed for rejection of the declaration. However, the DA dropped the proposal for rejection of the declaration, holding that mere correspondence with the declarant would not attract the provisions of Section 106(2)(a)(iii), in the light of the Board's clarification cited supra. Subsequently, acknowledgment in VCES-2 was issued to the declarant on 24 December 2013.

When we pointed this out (October 2015), the Ministry stated (May 2016) that after careful examination of all the facts and documents, the rejection proceeding were dropped by DA.

The reply of the Ministry could not be accepted as service tax on MTOP charges was not disclosed by declarant voluntarily and calling for specific information by the Range Officer could not be termed "mere correspondence".

2.2.1.2 An assessee in Chennai-I ST Commissionerate, declared (December 2013) tax dues of ₹ 1.03 crore in respect of renting of immovable property service for the period from 2008-09 to 2012-13. Survey, Intelligence and Research Cell (SIR Cell) initiated (December 2012) enquiry against him for non-payment of service tax on the same service by calling for details/documents such as audited financials records from 2007-08 to 2011-12, trial balance from April 2012 to September 2012 and details of other commercial properties owned, rented by him etc., and also issued a

reminder (January 2013). Thus the enquiry by way of calling for information from against the declarant was pending as on 1 March 2013. However, VCES-3 was issued to the assesse (July 2014).

When we pointed this out (January 2016), the Ministry stated (May 2016) that as per Board's circular dated 25 November 2013, the DA/Commissioner could decide depending on the facts and circumstances of each case as to whether the inquiry was of roving nature or the provisions of Section 106(2) was attracted in such cases. Since there was no specific instruction from the Commissioner for making this declarant ineligible under VCES, the declared amount was accepted and discharge certificate was issued.

The reply of the Ministry was not acceptable since the enquiry in this case was very specific and thus made the declarant ineligible for VCES.

2.2.1.3 An assessee in Guntur Commissionerate, declared (December 2013) tax dues of ₹ 5.92 lakh under VCES. We noticed that internal audit of the assessee unit was conducted (March 2013), for which an audit intimation letter was sent to the assessee well before 1 March 2013 and audit observations involving tax effect of ₹ 17.17 lakh were also issued. However, VCES-3 was issued (May 2014).

When we pointed this out (December 2015), the Ministry stated (May 2016) that as per Board's circular dated 8 August 2013 the date of visit of auditors to the unit of the tax payer would be taken as the date of initiation of audit.

As pointed out already the clarification resulted in extension of benefit even to cases where audit or enquiry were based on valid information or proper analysis as the audit did lead to raising of audit observations with tax effect.

2.2.2 Extension of benefits to declarants against whom SCNs were issued prior to October 2007

Section 106(1) stipulates that, any person may declare his tax dues in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of the Chapter has been issued or made before 1 March 2013. It further "Provided that where a notice or an order of determination has been issued to a person in respect of any period on any issue, no declaration shall be made of his tax dues on the same issue for any subsequent period".

Board clarified[8] (August 2013) that as relevant period for VCES is October 2007 to December 2012, issuance of a SCN or order of determination for any period prior to October 2007, on an issue, would not make a person

[8] Vide point (5) of Board Circular No.170/5/2013-ST dated 8 August 2013

ineligible. Thus the Board's clarification is contradictory to the intention of the Finance Act, 2013.

We noticed in 20 cases, in 10 Commissionerates involving tax dues of ₹ 16.32 crore, though the department had issued SCNs, covering the period prior to the period of declarations, the declarants were allowed to avail the benefit of VCES, in view of the contrary clarification of the Board.

When we pointed this out (between October 2015 and January 2016), the Ministry (June 2016) quoted definition of tax dues and that section 106(1) deals with a person who may declare his tax dues. They further stated that both the provisos of Section 106 (1) should be read with the main clause and then it would imply that notices issued for the period prior to 1 October 2007 would not make the declaration ineligible for VCES.

Audit's appreciation of the provision is that the tax dues were defined only to limit the period relating to which unpaid taxes can be declared under VCES and therefore is unable to accept the department's stance about the definition having a bearing on pending notices or inquiry detailed in section 106(1).

A few illustrative cases are given below:-

2.2.2.1 An assessee in Belagavi Commissionerate, declared (December 2013) tax dues of ₹ 6.38 crore towards banking and other financial services, for the period April 2012 to June 2012 and paid the entire dues declared on 28 December 2013. Accordingly, VCES-3 was issued (August 2014) to the declarant.

We noticed that DGCEI, Mumbai had registered an offence case against the declarant on the same issue for the period from August 2006 to June 2007 and the demand was also confirmed.

When we pointed this out (October 2015), the Ministry stated (June 2016) that as per Board's circular dated 8 August 2013 the declarant was eligible to make declaration under the Scheme if SCN was issued for any period prior to October 2007.

The reply of the Ministry is not acceptable as Board's clarification is contradictory to the section 106(1) of the Finance Act, 2013.

2.2.2.2 An assessee in Kochi Commissionerate, declared (December 2013) tax due of ₹ 1.80 crore towards works contract service, for the period April 2012 to December 2012. We noticed that two SCNs had been issued for the previous period, one in January 2012, for the period October 2007 to September 2010 and another in April 2012, for the period October 2010 to

September 2011 for non/short payment of service tax under works contract service.

When we pointed this out (November 2015), the Ministry initially stated (May 2016) that though the SCNs were issued under works contract service but the issue was for availing ineligible exemption for different projects. Later Ministry (June 2016) took a stand that section talked about ineligibility under the scheme for declaration made for the same issue and not for the same category of service.

The reply of the Ministry was not tenable since VCES Scheme did not allow different treatment of projects falling under the same service i.e., works contract service. Further, the issue is also same in this case i.e., availing of ineligible exemption.

2.2.2.3 An assessee in Kochi Commissionerate, declared (September 2013) tax dues of ₹ 1.43 crore towards erection and commissioning service for the period April 2010 to December 2012. We noticed that Order-in-original was passed in respect of assessee for non-payment of service tax of ₹ 56.46 lakh towards the same service for the period from July 2003 to March 2006.

This was brought to the notice of the department/Ministry (December 2015) and the reply of the department/Ministry was awaited (May 2016).

2.2.2.4 An assessee in Rajkot Commissionerate, declared (December 2013) tax dues of ₹ 28.34 lakh towards construction services other than residential complex, for the period April 2008 to December 2012. VCES-3 was issued (December 2014) to the declarant. We noticed that an SCN had been issued on the same issue, for the period prior to November 2005.

When we pointed this out (October 2015), the Ministry stated (June 2016) that as per Board's circular of August 2013, the assessee was eligible for VCES.

Audit observed that in all the above cases, the department allowed the assessees to take the benefit under VCES though similar issues were noticed by the department for the earlier period. This also indicates that the department's wrong clarification resulted in undoing the intent of the provisions of Section 106 (1) of the Scheme.

2.2.3 Extension of benefits to declarants against whom inquiry, investigation or audit was initiated after 1 March 2013

The Scheme stipulated rejection of those declarations made by persons against whom inquiry, investigation or audit has been initiated and is pending as on 1 March 2013. It appears that neither Board envisaged nor field sought Board's intervention later regarding procedure to be followed in case assessees apply for VCES after initiation of audit inquiry or issue of notice after 1 March 2013 and during the operation of VCES. This resulted in extension of undue benefit to those declarations made subsequent to initiation of audit/investigation, which are not "voluntary".

We noticed that in 300 cases in 23 Commissionerates, involving tax dues of ₹ 109.09 crore, action had been initiated against the declarants by Internal Audit/CERA/Anti-Evasion/Preventive/DGCEI, subsequent to 1 March 2013 but prior to the dates of declaration and these declarants were extended the benefit under VCES, in view of the cut-off date of 1 March 2013 stipulated in the Finance Act, 2013.

A few illustrative cases are given below:-

2.2.3.1 An assessee in Mumbai-VI ST Commissionerate, declared (December 2013) tax dues of ₹ 6.96 crore towards supply of tangible goods for the period 2008-09, 2009-10 and 2012-13 (upto December 2012). On verification we noticed from the verification report received from the jurisdictional division dated 1 January 2014 an investigation had been initiated against the declarant by Anti Evasion, Vishakhapatnam-II Commissionerate on 12 March 2013 and subsequently, the assessee had made declaration under VCES.

When we pointed this out (December 2015), the Ministry stated (May 2016) that this being a policy matter, no action was warranted.

2.2.3.2 An assessee in Chennai-II ST Commissionerate, declared (September 2013) tax dues of ₹ 4.74 crore towards selling of space or time services, for the period June 2010 to March 2012**.** We noticed that Survey, Intelligence and Research (SIR) Cell had called for details like copies of balance sheets for the period from 2009-10 to 2012-13, copies of ST-3 returns filed, from the assessee regarding service tax on 29 August 2013 and 16 September 2013.

When we pointed this out (December 2015), the Ministry stated (May 2016) that there was no bar from filing of declaration in cases where enquiry, investigation or audit was initiated after 1 March 2013.

2.2.3.3 An assessee in Bengaluru ST Commissionerate, declared (June 2013) tax dues of ₹ 1.62 crore towards rent a cab services for period April 2008 to March 2012. The tax declared included the amount of ₹ 1.38 crore with

interest of ₹ 44.07 lakh pointed out by CERA, during the course of audit (May 2013) for the period from April 2008 to March 2012.

When we pointed this out (January 2016), the Ministry stated (May 2016) that since no audit or investigation was initiated before 1 March 2013, there was no restriction for the declarant to declare their tax dues under VCES.

2.2.3.4 An assessee in Kolkata-I ST Commissionerate declared tax dues of ₹ 1.09 crore on 29 November 2013 and ₹ 0.91 crore on 9 December 2013, for period April 2008 to December 2012, under the category of income from operations. VCES-3 was issued (April 2015).

We noticed that a search operation was conducted by the DGCEI, Kolkata Zonal Unit on 29 November 2013, which had resulted in detection of service tax evasion to the tune of ₹ 2.49 crore for the period from 2008-09 to 2012-13. As the date of detection on service tax evasion fell beyond 1 March 2013, the declarant was extended the benefit of immunity under VCES.

When we pointed this out (October 2015), the Ministry stated (May 2016) that as DGCEI initiated search operations after 1 March 2013, the declaration under VCES was in order.

Audit observed in all the above cases, declarations were made after detection by some authority and hence could not be termed voluntary. Due to the cut-off date of 1 March 2013 under Section 106(1) of the Finance Act, 2013, even in such cases which were already in the knowledge of the department, the declarants were allowed the benefit under the Scheme despite the fact that the declarations were not voluntary. Thus the said cut-off date resulted in extending undue benefit to the declarant by way of immunity from interest, penalty and other proceedings. Some of the declarants, as discussed, exercised the VCES option only to escape action under the normal rules regarding their undisclosed tax liability.

When we pointed this out (between October 2015 to January 2016), the Ministry while noting the audit contention stated (June 2016) that the Scheme did not bar the declarants in respect of whom the inquiry, audit or investigations was initiated after 1 March 2013 from availing the benefits under the Scheme and right of the assessees to opt for discharge of the dues under the VCES could not be denied.

Ministry's contention reflected point made by audit regarding shortcoming in the Scheme in respect of cases in which action was initiated by department after 1 March 2013 and perhaps a fit case calling for action under section 113.

Audit observed that the spirit of the Scheme and its purpose were compromised by department's restrictive defining of cut-off date vide the August 2013 circular and a short coming regarding cases initiated post 1 March 2013, which could have been addressed by invoking section 113. Thus the results of regular compliance verification mechanisms of the department post 1 March 2013 also ended up as VCES declarations.

2.3 Mechanism designed to implement provisions of the Scheme

2.3.1 Deficiency in Form VCES-1

Form VCES-1 did not specify status of declarants like Stop-filers, Non-filers, New Registrants or Active filers. Similarly, the information like date of registration and capacity in which declaration made (as service provider or recipient) were also not required to be furnished. For submission of calculation sheet along with VCES-1, it was merely mentioned that the existing format for calculation of tax dues as prescribed in ST-3 return may be used and no standard format was prescribed. In the absence of basic information regarding the declarants, the department was incapable of carrying out the due diligence on the declarations as discussed in the next chapter.

When we pointed this out (April 2016), the Ministry stated (May 2016) that the terms stop files/non-filers/active filers, active registrants were not recognized by Law and hence the same could not be incorporated in the form of VCES-1.They held that the VCES Forms have the virtue of simplicity and had verifiable information which was required for administering this Scheme.

The terms stop files/non-filers/non-registrants or service providers were recognised by the department and found specific mention in the memorandum of Finance Bill, 2013. Further, the necessary information along with other vital parameters like service provider/service recipient, could have been collected in the VCES-1 form, which would have given valuable data to the department for post-Scheme analysis and monitoring.

Ministry further stated (June 2016) that the suggestion of audit was noted for compliance in future.

2.3.2 Lack of distinction between payments made under VCES and regular tax payment

The Scheme does not provide use of distinct challans for payment of tax dues and declarants used the format of challans as specified for regular payment.

On account of not specifying the distinct challans, it would become difficult to verify whether the declarant had made the payment of "tax dues'' under the VCES or challans were towards their regular payment of service tax.

When we pointed this out (April 2016), the Ministry stated (June 2016) that it was not feasible to prescribe separate challans since there was very short time available between the announcement of the Scheme and the enactment of the actual launch of the Scheme. Further, it stated that separate challan for VCES would require the separate accounting head for the collections of difference services. Moreover, the deposits made by the declarants have been ascertained from assessee-wise details available on the NSDL site. Further on analyzing the VCES return and the periodical ST3 return action payment under VCES could be ascertained.

Audit is of the view that since the payments were made through use of an IT platform, a method of identifying VCES challans could have been possible.

A few illustrated cases are given below:-

2.3.2.1 An assessee in Mumbai-II ST Commissionerate, declared (November 2013) tax dues of ₹ 1.25 crore and VCES-3 was issued (September 2015).

We noticed that the payment of tax dues included two challans vide No.80427 and 80434 dated 4 September 2013 amounting to ₹ 65.92 lakh each. Out of which, ₹ 7.75 lakh were used for payment of tax dues under VCES and balance of ₹ 1.24 crore for regular service tax payments. Thus, from the challan it could not be ensured whether the amount paid by the declarant included VCES payment or entire payment related to regular payment of service tax.

When we pointed this out (December 2015), the Ministry stated (June 2016) that the suggestion of audit was noted for future compliance.

2.3.2.2 An assessee in Jaipur Commissionerate, declared (December 2013) tax dues ₹ 5.81 lakh. Fifty per cent of the dues (₹ 2.90 lakh) was deposited on 30 December 2013 by the declarant. Out of remaining tax dues of ₹ 2.90 lakh, ₹ 1.76 lakh was deposited on 30 June 2014. The balance amount ₹ 1.14 lakh was claimed as paid through a challan dated 7 September 2013 through which a consolidated amount of ₹ 1.80 lakh was paid by the declarant which includes regular as well as VCES payment. Thus, from the challan it could not be ensured whether the amount paid by the declarant included VCES payment or entire payment related to regular payment of service tax.

When we pointed this out (December 2015), the Ministry stated (June 2016) that though distinct challans were not prescribed, concerned Range Officer verified payment particulars from NSDL site.

The reply of the Ministry could not be accepted since the NSDL site contained the details of regular as well as VCES payments with no facility to differentiate between the two.

2.3.2.3 An assessee in Mumbai-VI ST Commissionerate, declared (November 2013) tax dues of ₹ 54.52 lakh towards Construction of Residential Complex, for the period July 2010 to September 2012 and accordingly, VCES-3 was issued (January 2015).

We noticed that a survey was conducted (November 2013) on the premises of the declarant. The declarant had admitted service tax liability of ₹ 14.80 lakh for the period April 2013 to September 2013 and submitted copies of GAR-7 challans dated 19 November 2013 and 22 November 2013 amounting to ₹ 15.00 lakh towards payment of the admitted service tax liability (November 2013). While submitting the proof of payments of the tax dues (June 2014) under VCES, the declarant had produced the same challans amounting to ₹ 15.00 lakh which were submitted towards the payments of the admitted service tax liability during the survey. It resulted the mis utilisation of challan.

When we pointed this out (December 2015), the Ministry stated (June 2016) that the suggestion of the Audit is noted for future compliance.

2.3.2.4 We noticed in eight cases in Kochi Commissionerate, involving total tax dues of ₹ 4.50 crore, same challans contained payments under VCES as well as regular service tax payments of ₹ 34.03 lakh, for post VCES period.

When we pointed this out (between November 2015 and January 2016), the Ministry stated (May 2016) that in all the cases declarants paid the declared tax dues.

Due to non-capturing of information as to whether the payments were against VCES or regular payments, there was scope for fraud by using same challans as evidence for regular payments and VCES payments.

2.3.3 Lack of database

A database is a collection of information that is organised so that it can easily be accessed, managed, and updated. For successful implementation of the Scheme, the Board should have prescribed an appropriate database for capturing of relevant data relating to VCES. Non-prescription of proper database resulted in each Commissionerate devising their own database for creating, updating, retrieving and monitoring of the Scheme regarding

payment of tax dues, incorrect application of rate of tax etc., lack of inter linking of electronic data/information already available in the application of ACES. Due to this, databases/information captured by the field formations were not helpful in proper implementation and monitoring of the Scheme.

In this connection it is pertinent to point out that the First report of the Tax Administration Reforms Commission observed (May 2014) that

"Implementation of VCES Scheme in 2013 is another example where the readiness of IT was not taken into account before the budget announcement. While the Scheme has been a great success in raking in additional revenue, the department has lost the opportunity to get valuable information on the nature of non-compliance. Even though the Scheme benefited the exchequer, the department was deprived of crucial real time information on sectors and regions that were non-compliant. Without the leverage of IT, a large amount of manual input is lying with the department, which is of little use from the perspective of analysis and future course of action."

When we pointed this out (April 2016), the Ministry stated (June 2016) that due to short time available between the announcement of the Scheme and its launching it was not possible to integrate and implement the VCES Scheme in the ACES application.

Audit is of the view that a hurried implementation lead to losing opportunity for better monitoring and administration of the Scheme. Interlinking of VCES data base with ACES could have been done afterwards.

2.3.4 Inadequate Review/Monitoring mechanism

A checklist is a type of informational job aid used to reduce failure by compensating for potential limits of human memory and attention. It helps to ensure consistency and completeness in carrying out a task. During the examination of records relating to the Scheme, it is observed that no checklists were prescribed at the Board level. Prescribing of the checklist enables the declarants to furnish complete records/information along with declaration. Similarly, on the departmental front, the DA may not skip the key tasks / basic checks required to be performed if appropriate checklist is available. Non-prescribing of checklist resulted in deficiencies in basic due diligence like verification of details in calculation sheet with the declaration as pointed out in paragraph 2.1.1 and 3.4.6.

We noticed the following deficiencies that in respect of cases scrutinised in selected Commissionerates:

- Incomplete information contained in the case files
- Contents not arranged in proper sequence

- ❖ VCES-1 applications not assigned with declaration numbers and dates
- ❖ Details of cases having been referred to various authorities to ascertain eligibility criteria in terms of Sections 106 (1) and 106(2) not kept on record
- ❖ Proper arrangements not made for processing VCES cases post restructuring of the department (October 2014)

The above deficiencies, in addition to the absence of other mechanisms as discussed in previous paras, indicate that required review/monitoring mechanisms were not in place during the implementation of the Scheme.

When we pointed this out (April 2016), the Ministry stated (May 2016) that the point was noted for further compliance.

2.3.5 Normal safeguards regarding Cenvat credits not built into VCES

As per Rule 9(1) of Cenvat Credit Rules, 2004, the Cenvat credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of the documents prescribed thereunder. Further, as per Rule 9(2) of the said rules, as amended on 1 March 2007, no credit under sub-rule (1) cited supra shall be taken unless all the particulars prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document.

As per proviso below sub-rule (2), if the said document does not contain all the particulars but contains the details of duty or service tax payable, description of the goods or taxable services, assessable value, central excise or service tax registration number as the case may be, and the Deputy Commissioner/Asst. Commissioner is satisfied that the goods or services covered by the said document have been received and accounted in the books of account of the receiver, he may allow the Cenvat credit.

Thus, it follows that Cenvat credit shall be allowed only on fulfillment of the above conditions.

Further, as per the provisions of VCES, 2013, a defaulter may avail of the Scheme on condition that he files a truthful declaration of service tax dues pertaining to the period from 1 October 2007 to 31 December 2012 and makes the payment in one or two installments before prescribed dates. The Board, clarified[9] (January 2014) that the tax paid under VCES would be admissible as Cenvat credit after payment of tax dues in full and receipt of acknowledgement of discharge in VCES-3.

[9] vide circular dated 20 January 2014

VCES has no provisions to ascertain the veracity of the ST liability declared. The Scheme neither specifies nor denies furnishing of valid supporting statutory documents in support of service tax liability declared. Board's clarification that service recipient was eligible to avail Cenvat credit of tax paid under VCES runs contrary to the main rule under Cenvat Credit Rules cited supra which mandates documents for availing Cenvat credit. The safeguards prescribed in Cenvat Credit Rules, 2004, to avail Cenvat credit were not given due consideration while making payments under VCES admissible for Cenvat credit.

The provisions of VCES were meant for those who defaulted in payment of service tax dues and they were extended the benefit of waiver of interest/penalty and immunity from penal provision. The declarants who were allowed the benefit under VCES were also extended the benefit of availing credit of tax dues paid, without insisting for documents to avail the same. This enabled the declarants to avail double benefit of getting immunity for defaulted dues and availing Cenvat Credit in respect of defaulted dues paid under VCES, in view of Board's clarification. Thus Board's clarification proved detrimental to revenue by allowing double benefit by way of credit to defaulters who had already been extended immunity benefit, without calling for any supporting documents in support of tax dues declared.

When we pointed this out (April 2016) the Ministry stated (June 2016) that the point was noted for further compliance.