

Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019- 'A Beginning' to Close Old Litigations or Start New Ones ?

September 01, 2019, Central Board of Indirect Taxes and Customs (CBIC) with a catchphrase “*One Stop Solution For Tax Dispute Redressal*” launched the “**Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019**” for assesses having Central Excise and Service Tax Disputes.

The Scheme introduced with certain benefits and exclusions covered cases w.r.t

- ✓ A show cause notice (SCN) or appeals arising out of a SCN pending as on June 30, 2019
- ✓ An amount in arrears
- ✓ An enquiry, investigation or audit for amount being quantified on or before June 30, 2019
- ✓ A voluntary disclosure

This Scheme was applicable to The Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or Chapter V of the Finance Act, 1994 and the rules made thereunder as well as other enactments specified in [FAQs](#) and [Notification No. 06/2019 Central Excise \(N.T.\)](#)

Along with providing relief to taxpayers in payment of disputed tax amounts ranging from 70% (of the tax amount) to 40%, the scheme also provided for full waiver of interest and penalty and was closed on [June 30, 2020](#). Whereas for the eligible taxpayers from [Union Territory \(UT\) of Jammu & Kashmir and UT of Ladakh](#), it was extended to December 31, 2020.

Launched with a tagline “*Make a New Beginning*” and grab the golden opportunity to unload the baggage of blocked litigations and have a quick closure, the scheme in certain instances got entangled itself in list of litigations!

BENEFITS UNDER THE SCHEME

➤ Total waiver of interest & penalty

➤ Immunity from prosecution

Cases pending in Litigation, Appeal, Enquiry, Investigation and Audit:

(a) Duty less than ₹ 50 Lakh : Pay only 30% of the duty

(b) Duty more than ₹ 50 Lakh : Pay only 50% of the duty

In case of tax arrears:

(a) Duty less than ₹ 50 Lakh : Pay only 40% of the duty

(b) Duty more than ₹ 50 Lakh : Pay only 60% of the duty

If you voluntarily disclose any past dues then simply pay the due amount only



Acknowledging the influence of the Scheme and its litigations, **Taxsutra's Editorial Team** is delighted to bring to you an insightful compilation, which chronicles the judicial actions taken so far on the said scheme along with the administrative circulars/ notifications/ FAQs issued so far.

Once the scheme was launched, CBIC issued a list of clarifications and FAQs for taxpayers to understand the various concepts under the scheme:

Circulars/ Orders issued
Circular No. 1072/05/2019-CX dated September 25, 2019
Circular No. 1073/06/2019-CX dated October 29, 2019
Circular No. 1074/07/2019-CX dated December 12, 2019
Order no. 1/2020- SVLDRS, 2019 dated November 13, 2020 and Circular no. 1075/01/2020 dated November 14, 2020
Amendment to Circular No. 1071/4/2019-CX.8 dated May 29, 2020
FAQs
FAQs on SVLDRS
FAQs updated upto December 24, 2019

www.taxsutra.com

www.lawstreetindia.com

www.idt.taxsutra.com

www.database.taxsutra.com

www.atoll.taxsutra.com


www.greentick.taxsutra.com

SVLDR Scheme though was announced with the objective of reducing litigation and disputes, it had to face disappointment from a few Taxpayers when their declarations were rejected/not accepted by the Designated Committee which were assigned to handle such declarations. Consequently the taxpayers landed up in Tribunal and High Courts for their appeals against the authorities. Let's take a look at the rulings in favour of Assessee as well as those in favour of Authorities.



<u>Rulings In Favour of Assessee:</u>			
Sr. No.	Headline	TS Citation	Summary
1	Designated-Committee to consider SVLDRS declaration afresh keeping in mind 'scheme objective', quashes rejection	[TS-939-HC-2020(BOM)-NT]	Bombay HC quashes rejection of SVLDRS declaration finding that calculation error at the time of filing the declaration could have been explained to DC if the assessee was given an opportunity of hearing; Pointing out that SVLDRS Act & Rules provide for rectification of errors in Sec 128 and 129, directs DC for fresh consideration.
2	Non-mention of 'penalty amount' in SVLDRS-01 a 'curable'/'inadvertent' mistake, allows correction	[TS-327-HC-2020(GAUH)-NT]	Gauhati HC holds Petitioner's claim for the benefit of SVLDRS shall not be rejected for petitioner's 'inadvertent mistake' of non-mentioning the penalty amount while submitting the Form SVLDRS-1; Holds that, mistake under consideration " <i>cannot be said to be a mistake by which the petitioner claimed an undue benefit</i> ".
3	Delhi HC directs fresh consideration of SVLDRS declaration for waiver of interest & penalty	[TS-431-HC-2020(DEL)-NT]	Delhi HC quashes communications rejecting declarations filed by Petitioner, for waiver of interest and penalty; Observes Petitioner's contention that it had rightly declared tax dues as 'nil' in accordance with the CBIC Circular; Directs fresh order to be passed after giving an opportunity of hearing to petitioner.
4	Hearing opportunity to be given before passing adverse order under 'Sabka Vishwas' scheme	[TS-186-HC-2020(DEL)-NT]	Delhi HC sets-aside communications to assessee rejecting SVLDRS application, holds that an opportunity of hearing should have been given to the assessee before passing any adverse order.
5	Directs consideration of matter under SVLDRS involving a case of confiscation & redemption fine	[TS-1193-HC-2019(GUJ)-NT]	Gujarat HC stays order of DC rejecting application on ground that confiscation and redemption fine are not covered under SVLDRS; Clarifies that such cases are not excluded from benefit u/s 125 and thus there was no

			intention to exclude such cases; Holds that the matter requires further consideration.
6	Dept. letter intimating 'outstanding-dues' constitutes 'written-communication' quantifying amount, DC to accept SVLDRS-application	[TS-1043-HC-2020(BOM)-NT]	Bombay HC sets-aside DC's order rejecting application on the ground of being ineligible since investigation was going on and duty amount was pending for quantification; Infers that "word "quantified" has been defined as a written communication of amount of duty payable under the indirect tax enactment"; Places reliance upon FAQs & CBIC clarification which prescribes that such written communication would include a letter intimating duty demand or duty liability.
7	Quashes order rejecting FORM SVLDRS-01, stresses on widened scope of expression "quantified"	[TS-644-HC-2020(DEL)-NT]	Delhi HC quashes rejection of declaration filed by assessee considering that the duty liability stood admitted in an oral statement by the assessee before June 30, 2019 and consequently stood quantified prior to the cut-off date in accordance with the beneficial CBIC circulars.
8	Accrued substantive-right of tax-relief not deniable on technical-ground of Form-SVLDRS filing-error	[TS-1007-HC-2020(KAR)-NT]	Karnataka HC allows assessee's writ seeking direction to Designated Committee to issue revised Form SVLDRS-3 and Discharge Certificate; Observes that Assessee satisfies all the SVLDRS conditions and was entitled to avail the tax relief, and an accrued substantive right by way of tax relief couldn't be denied on the technical ground that there was an error in filing details in Form SVLDRS as 'Nil' especially when there was an onus on the Department to verify the records.
9	Directs Revenue to consider Petitioner's representation on miscalculation of duty-amount in FORM SVLDRS-03	[TS-578-HC-2020(DEL)-NT]	Delhi HC directs Revenue to reconsider the Petitioner's representation pertaining to rectification of tax payable amount reflected in FORM SVLDRS -03 which failed to consider the benefit of the pre-deposit amount.
10	Liberal interpretation to be given to SVLDRS, directs Designated-Committee to pass a reasoned-order	[TS-605-HC-2020(DEL)-NT]	Delhi HC sets aside order passed by Designated Committee rejecting declaration under SVLDRS, considers that Petitioner had admitted its liability to pay service tax, and the Revenue should have given an opportunity of hearing to the Petitioner before rejecting the declaration under the Scheme.
11	'Fairness' to be applied in interpreting SVLDR Scheme, allows adjustment of deposit	[TS-593-HC-2020(MAD)-NT]	Madras HC upholds the demand computation of Petitioner for remittance under SVLDRS, finds an overlap between the periods covered under SCN1 & SCN2, and a dual demand of service tax being raised; States the

	made under another SCN"		Scheme to be an attempt to close legacy tax disputes and shall follow certain amount of fairness.
12	Sets-aside communication issued in SVLDRS-3 without granting fair 'hearing opportunity' during lock-down period	[TS-547-HC-2020(GUJ)-NT]	<p>Gujarat HC remits the matter back to Designated Committee noting that 'a fair opportunity of hearing' was not provided to the assessee; Explains that despite the expiry of date of payment under Scheme (June 30, 2020 here) some amount is to be deposited for availing benefit, the Department shall accept the payment in view of the fact that litigation was pending before this Court</p> 
13	Enhancement of dues in SVLDRS-3 absent hearing-opportunity "grossly in violation" of natural-justice principle	[TS-814-HC-2020(BOM)-NT]	Bombay HC sets-aside enhancement of dues issued by Revenue, holds it to be in gross violation of principles of natural justice; Notes that payment has been made under protest by the assessee since the last date to make payment to avail of the benefit under the Scheme no response was received from Department pursuant to submission of application by assessee for rectification of mistake and remarks that if DC wanted to increase the payable amount, it should have afforded an opportunity of hearing to the Petitioner.
14	Declaration 'inadvertently' filed under wrong-category a 'rectifiable mistake', allows re-categorization under SVLDRS	[TS-968-HC-2020(DEL)-NT]	Delhi HC directs Revenue to rectify the SVLDRS declaration and consider it as one filed under the "litigation" category instead of "voluntary disclosure" and process it accordingly; Observes that an error committed by assessee, which inevitably leads to an error in the order of the Designated Committee can be rectified by DC u/s 128.
15	Assessee availing benefit under SVLDRS cannot be put in worse-off condition	[TS-961-HC-2020(BOM)-NT]	Bombay HC rules that a declarant who seeks benefit under the scheme cannot be put in a worse off condition than it was before making declaration; Observes that if Assessee had not filed declarations under the scheme it would still have been better off with the total demand adjudicated as against original demand in terms of SCN.
16	Allows correction of 'inadvertent-mistake' in SVLDRS Form, directs Revenue to pass 'reasoned-order'	[TS-750-HC-2020(GAUH)-NT]	Gauhati HC dismisses rejection of SVLDRS application on account of inadvertent mistake by assessee stating the duty payable under a wrong clause; Explains the distinction between incurable and inadvertent mistake and finds that Assessee had not claimed any undue benefit; Thereby allows to make necessary correction.

17	Directs Designated Committee to adjust CENVAT-credit amount, treating same as deposit under SVLDRS	[TS-724-HC-2020(KAR)-NT]	Karnataka HC holds that assessee is entitled to take advantage of CENVAT credit on input services and consider the same as pre-deposit under the SVLDR Scheme.
18	Allows SVLDRS application under 'pending-litigation' category, despite 'defect' noticed in appeal	[TS-956-HC-2020(BOM)-NT]	Bombay HC remands matter back to DC to take fresh decision as to the consequential relief to be granted to Assessee, including refund of the amount paid, treating the declaration as one under the 'pending litigation category' after affording reasonable opportunity of hearing; Hold that, Assessee's appeal pending before CESTAT as on the said date may be in defective form, however, the statute does not say that for being entitled to the relief under the 'pending litigation category', the appeal must be pending as on June 30, 2019 on being admitted by the appellate forum.
19	Discharge certificate under SVLDRS scheme deemed issued upon Designated Authority's failure, disposes appeal	[TS-494-CESTAT-2020-NT]	Delhi CESTAT holds that discharge certificate (Form-4) shall be deemed to be issued to the assessee, considering the facts that assessee has paid the disputed duty amount and the Designated Authority failed to issue FORM SVLDRS -03 within stipulated time.
20	Validates SVLDRS declaration filed under "Investigation, Enquiry or Audit" category, remits matter	[TS-1068-HC-2020(BOM)-NT]	Bombay HC finds assessee eligible to file the declaration under the category of enquiry or investigation or audit as its service tax dues stood quantified before June 30, 2019; Directs DC to consider the declaration as valid and adjudicate it afresh and to grant the consequential relief after giving due opportunity of hearing to the Assessee.
21	Allows SVLDRS-declaration under 'arrears' category after appeal-period expiry, relies on Circular/FAQs	[TS-1040-HC-2020(BOM)-NT]	Bombay HC sets aside rejection order by Designated Committee of Assessee's declaration in Form SVLDRS-1 under 'arrears' category with further sub-category of appeal not filed or appeal having attained finality; Peruses Circulars and FAQs vide which CBIC clarified that cases may still fall under the arrears category once the appellate or adjudication order, is passed and has attained finality or




			appeal period is over and other requirements under the scheme are fulfilled.
22	Amount admitted in tax-returns construable as 'quantified-amount' for purpose of SVLDRS eligibility	[TS-787-HC-2020(KER)-NT]	Kerala HC rules that amount admitted by Petitioner in tax-returns should be taken as 'quantified amount' for testing eligibility for availing benefit under the Scheme; Refers to CBIC circular, explains that Petitioner had declared the service tax dues even before verification proceedings were initiated and the amounts should be taken as "quantified" expresses that, in case of voluntary disclosure, no verification will be carried out and the decision shall be taken only after giving the declarant an opportunity of being heard.
23	'Deposit-adjustment' for 'arrears category' to be made after 'tax-relief calculation' under SVLDRS, holds Madras HC	[TS-1192-HC-2020(MAD)-NT]	Madras HC upholds Petitioner's contention that for 'amount in arrears' category, relief should be calculated after adjustment of tax already deposited or before adjustment of tax already deposited; However denies relief on the ground that the payment made by the Petitioner, which is sought to be deducted, is in nature of 'tax' and not 'deposit' as envisaged u/s 124(2).
24	Demand reduction post cut-off date substitutes earlier quantified amount, construes SVLDRS application within-time	[TS-1138-HC-2020(GUJ)-NT]	Gujarat HC sets aside Revenue's order rejecting Petitioner's application for correction in quantification; Noting that a correction in quantification was made post cut-off date by DGGSTI, states that <i>"If the Department had committed an error and it is corrected subsequently, then such quantification should relate back to the original quantification and it would only be substituting the figures and nothing more"</i> .
25	DC to issue appropriate discharge-certificate considering undisputed duty-deposit recorded in audit-report	[TS-1164-HC-2020(KAR)-NT]	Karnataka HC directs Designated Committee to issue Discharge Certificate after considering tax deposited by assessee though it was not recorded in the SCN; Remarks that, <i>"right to tax relief is a substantial right and until a declarant is ineligible, the benefit of tax relief cannot be refused on technical grounds"</i> .
26	Tax dues finalization by Dept. not necessary for determining eligibility under SVLDRS	[TS-18-HC-2021(BOM)-NT]	Bombay HC holds Revenue unjustified in rejecting the Assessee's declaration on the ground of ineligibility & with a remark that tax dues were not quantified and investigation is still going on as all the documents have not been submitted; Explicates that the only requirement for eligibility is a written communication of amount of duty payable including a letter intimating duty demand admitted by the person concerned during inquiry, investigation or audit.

27	Quashes SVLDRS rejection, follows Thought Blurb; Revenue's 'narrow approach' defeats Scheme objective	[TS-22-HC-2021(BOM)-NT]	Bombay HC sets-aside order rejecting declaration under sub-category of “audit” with a finding that “....too technical or narrow approach.... would defeat the very object of the scheme....”; Finds that the issue of maintainability of declaration on the ground that quantification of the service tax dues for the related period was post 30th June, 2019 is no longer <i>res integra</i> ;
----	---	---	--



<u>Rulings In Favour of Revenue:</u>			
Sr. No.	Headline	TS Citation	Summary
1	No fault in rejection of application under SVLDRS scheme during inquiry pendency	[TS-463-HC-2020(P and H)-NT]	Punjab and Haryana HC upholds Revenue’s actions in refusing to accept petitioner’s application to be covered under the SVLDRS, considering the facts that the case for service tax was being enquired into and its application could not be accepted as the due amount was not been determined
2	Admission of single component of demand not 'tax-due' quantification; upholds SVLDRS declaration rejection	[TS-710-HC-2020(DEL)-NT]	Delhi HC upholds rejection of assessee’s declaration under SVLDRS on account of no quantification of ‘tax dues’; Highlights that “ <i>Settlement under the SVLDRS scheme with respect to the Service Tax due, with continuation of parallel proceeding for the remainder or differential amount by way of adjudication of the SCN, would also not result in resolution of the legacy dispute, which is the predominant aim of the scheme</i> ”

3	Dismisses PIL challenging Circular issued under SVLDRS; Expects "scrupulous" observance of Scheme	[TS-1179-HC-2019(DEL)-NT]	Delhi HC dismisses PIL challenging Circular extending benefit under SVLDRS to cases wherein a SCN has been issued after June 30, 2019; Finding the Circular " <i>not prima facie violative of the scheme or the Finance Act</i> ", directs the Respondent to scrupulously follow the provisions of the scheme and the Finance Act.
4	Upholds SVLDRS declaration rejection for non-quantification of liability before June 30, 2019; Dismisses writ	[TS-1148-HC-2020(KAR)-NT]	Karnataka HC finds no error in rejecting assessee's declaration filed under SVLDRS; Notes that consequent to delayed filing of service tax returns, assessee was issued final reminder demanding short payment 
5	Affirms rejection of SVLDRS declaration under arrears category absent outstanding duty, dismisses writ	[TS-1142-HC-2020(ALL)-NT]	Allahabad HC finds no merit in assessee's petition against Designated Committee's order rejecting declarations filed under SVLDRS; Notes that no enquiry/ investigation or audit is pending against the assessee and has deposited the 6 amount of duty along with his regular returns under the service tax law prior to cut off date filed belatedly and thus no amount of duty was payable under the service tax law.
6	Rejects SVLDRS application for 'Superior Kerosene Oil', cites exclusion of 'excisable-goods' regardless GST-levy	[TS-1069-HC-2020(ALL)-NT]	Allahabad HC rejects SVLDRS application for 'Superior Kerosene Oil' (SKO) for not being excisable goods and GST being charged on "Kerosene PDS"; Clarifies that Sec 125(1)(h) merely makes a person not eligible for declaration w.r.t. excisable goods which are set forth in the Fourth Schedule to the Act, 1944; Concludes SKO as an excisable goods set forth in the Fourth Schedule to the Act, 1944 and petitioner was not eligible to make a declaration under the Scheme for SKO.

A few cases are still pending before the Courts. Here's a list of the same.

Litigation Trackers	
Sr. No	Matter
1	SVLDRS declaration rejection where audit-memo issued on July 2, under Delhi HC scanner [TS-488-HC-2020(DEL)-NT]

2	Allahabad HC hears Panchsheel's challenge to 'arrears' computation in Form SVLDRS 2 & 3 [TS-479-HC-2020(ALL)-NT]
3	P&H HC admits writ challenging rejection of SVLDRS declaration pertaining to multiple SCNs [TS-453-HC-2020(P and H)-NT]
4	Stays Designated-Committee's statement demanding 'entire service-tax' under Sabka Vishwas scheme [TS-183-HC-2020(DEL)-NT]
5	Seeks Revenue's response on whether SVLDRS should cover 'confiscation' matters [TS-128-HC-2020(DEL)-NT]
6	Karnataka HC stays order rejecting SVLDRS declaration filed by JSW Industrial Gases Pvt Ltd, issues notice in writ
7	HC: Directs DC to check status of pending SCN, apprise on the same in next hearing [TS-828-HC-2020(CAL)-NT]
8	HC: Issues notice in writ challenging rejection of SVLDRS declaration pertaining to interest demand on differential duty
9	HC: Issues notice in challenge to rejection of SVLRS declaration filed by Maruti Dealer, tags with similar matters [TS-827-HC-2020(GUJ)-NT]
10	Bombay HC hears challenge to SVLDRS declaration rejection, Petitioner argues 'natural-justice' violation [TS-817-HC-2020(BOM)-NT]

Tailored to free the large number of small taxpayers of their pending disputes with the tax administration, Ministry of Finance through a [Press Release](#) declared that the total number of settlements done under the Scheme as on dated February 05, 2020 are 49,534 and amount involved in these cases is 24,970 crores w.r.t. the total amount of funds that were locked up as on December 31, 2019.

DISCLAIMER:

The information contained in this communication is intended solely for the use of the individual or entity to whom it is addressed and others authorized to receive it. If you are an un-intended recipient, please notify us immediately by responding to this email and then delete it from your system. Any action based on content in this communication shall be at the sole risk, responsibility and liability of the individual taking such action. These updates shall not under any circumstance be construed as any kind of professional advice or opinion and we expressly disclaim any and all liability for any harm, loss or damage, including without limitation, indirect, consequential, special, incidental or punitive damages resulting from or caused due to your reliance and actions/inactions on the basis of this communication.

For information on trial logins and to subscribe, please **email us on** sales@taxsutra.com or **Call on +91 95952 18026** for subscriptions.

www.taxsutra.com

www.lawstreetindia.com

www.idt.taxsutra.com

www.database.taxsutra.com

www.atoll.taxsutra.com

www.greentick.taxsutra.com