



1st October, 2019

Shri J. P. Gupta (IAS)

Hon. Chief Commissioner of State Tax,
Gujarat State,
Ahmedabad.

Respected Sir,

Sub.: Representation regarding Amnesty Scheme 2019 declared by
the Government of Gujarat

We most respectfully submit as under:

1. At the outset we wholeheartedly welcome you sir on your assuming charge as Hon. Chief Commissioner of State Tax of the State of Gujarat. We had a very memorable experience when you were earlier appointed as a Special Commissioner of Commercial Tax and we are confident that we will continue to have a very meaningful and fruitful association ahead. We are sure that problems of trade and industries will be resolved under your dynamic leadership coupled with positive approach.
2. The Gujarat State Goods and Services Tax Act, 2017 was introduced in our State w.e.f. 1/7/17. The Government of Gujarat has by a resolution dated 11/9/19 declared an Amnesty Scheme 2019 with a view to immediately and effectively end the impending litigations under the then existing laws relating to sales and purchases of goods. We wholeheartedly welcome this scheme. At the same time we would like to point out certain issues which require necessary corrective action in order to achieve the avowed object of floating this scheme. We earnestly request your goodself to consider our following representation and do the needful in the matter:

Durgesh V. Buch
President

Natubhai Patel
Sr. Vice President

Bhargav Thakkar
Vice President

Sanjeev Chhajer
Secretary

Dilip M. Padhya
Secretary (R)

Pathik S. Patwari
Treasurer

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- (i) This scheme in para 12 of the resolution provides that any amount paid before the introduction of the Amnesty Scheme shall be adjusted first towards interest, then towards penalty and remaining if any towards tax as per the provisions of section 30(6) of the Gujarat Value Added Tax Act, 2003. In our respectful submission such a condition puts dealers who have paid some amount to a disadvantageous position as compared to those who have not paid any amount at all. Such discrimination on the face of it is unjust and improper.

We would like to point out that in the case of **Safal Developers and Another v/s State of Gujarat 99 VST 461 (Guj.)** Hon. Court has observed in para 13 on page 471 to the effect that if it is decided that those dealers who had made payment prior to the implementation of the Amnesty Scheme are denied the benefit and those who had not made any payment are granted benefit then it would be clearly violative of the Constitutional provisions as envisaged in Article 14 of the Constitution.

Attention is also invited to the following decisions wherein it has been held that if any amount is paid towards pre-deposit for admission of appeal then for the purpose of Amnesty Scheme such payment cannot be treated as a payment towards interest on the basis of the provisions similar to section 30(6) of the Vat Act:

- (a) Raichur Power Corp. Ltd. v/s State of Karnataka 55 GSTR 107 (Kar.)
- (b) State of Karnataka and Others v/s WS Retail Services Pvt. Ltd. 61 GSTR 102 (Kar.)

Thus apart from being a discriminatory provision the condition is to the benefit of total tax defaulter as against those who had made some payment before the implementation of the Scheme. We are sure that you will appreciate that a dynamic Government of Gujarat will never take such a decision which apart from being discriminatory



is contrary to decided cases. We are clearly of the opinion that if any payment made prior to the introduction of the Amnesty Scheme is treated towards tax then more dealers will take benefit of the scheme and make it more successful. We therefore earnestly request you to reconsider the decision and declare that any part payment made before the introduction of the Amnesty Scheme will be treated as towards tax and accordingly benefit under the Scheme will be given to all the dealers who desire to take its benefit.

(ii) In para 11 of the resolution it is provided that except in case of appeals, in respect of any other order partial benefit under the scheme will not be admissible. Also, in para 9 it is provided that even in respect of appeal the dealer will have to withdraw the appeal issue wise and in respect of the same issue there cannot be partial withdrawal. Firstly, with respect we do not understand the logic for such differential treatment between cases where appeal is filed and those where appeal is not filed. Also, even in appeals the requirement to withdraw the appeal fully qua issue is also not practical if following instances are taken in to consideration:

(a) Appeal filed for disallowance of exemption or benefit of concessional rate of tax for non-receipt of statutory declarations like H, C, F etc. If dealers have obtained some forms and some are outstanding, as per the scheme the dealer is prohibited from taking benefit for exemption or concession in rate of tax as the case may be based on declarations received which is unfair and not proper. We may point out that non-receipt of statutory declaration/s is an issue which is faced by many dealers for no fault on their part and therefore to deny them partial benefit even when forms are partly received is not apposite.

(b) Input tax credit might be disallowed for various reasons like mismatch, non-payment of tax by vendor/s,



retrospective cancellation of registration certificate of the vendor, dispute of interpretation etc. In certain cases, some defects might be rectified or resolved subsequently. Yet the condition of the scheme prevents the dealers from taking benefit of such rectification or resolution even though the original disallowance was also not for any fault on its part.

We are clearly of the opinion that dealers should be allowed to take benefit as might be admissible under law. The dealers should be left with a discretion to decide the extent to which they would like to take benefit of the Amnesty Scheme.

- (iii) While declaring the benefit admissible under the Scheme in para 5(2) of the resolution Enforcement cases are put at par with cases in which penalty has been imposed under section 34(7) of the Vat Act. If a reference is made to section 34(7) of the Vat Act there are 5 circumstances under which penalty is attracted under that section. Even though the section clearly contemplates that it will be attracted where the eventualities stated in that section take place with a view to evade or avoid the payment of tax it is our general experience that in any case where even there are dispute of interpretation like admissibility of input tax credit the penalty under this section is invariably imposed in almost all cases. Therefore treating dealers subjected to penalty under section 34(7) at par with enforcement cases is not justified and requires reconsideration.
- (iv) In respect of Entry Tax Act and Motor Spirit Taxation Act under 5(3) of the resolution the remission is given in excess of 20% of penalty imposed under those Acts. While under the Vat Act in case of regular dealers the remission is given of total penalty and interest, granting remission of penalty only in excess of 20% under the Entry Tax Act and the



Motor Spirit Taxation Act is unfair and unjustified. There should be remission of total penalty even under Entry Tax Act and Motor Spirit Taxation Act also.

- (v) Even otherwise, in respect of the Gujarat Tax on Entry of Specified Goods In to Local Areas Act, 2001 the scheme in para 5(3) provides for making payment of 20% of penalty imposed under that Act. If a reference is made to section 17 of the Entry Tax Act it becomes clear that in case of default in complying any provision of that Act, section 17(1) provides for penalty not exceeding twice the amount of Tax. While section 17(2) of the Entry Act provides for imposing penalty in addition to the amount of tax as well as penalty under sub-section 17(1) of a sum equal to eighteen percent per annum for the period a person continues to make default in payment of tax. In our respectful submission though section 17(2) provides for penalty as such it is imposition of interest for the delay in payment of tax. Therefore the provision providing for payment of 20% of penalty under the Entry Tax Act leads to indirectly requiring payment of 20% of penalty as well as 20% interest also. This requires reconsideration. In our respectful submission in any case there should not be any requirement for payment of interest under the Amnesty Scheme.
- (vi) In para 17 of the resolution it is provided that benefit under the Scheme will not be admissible in cases where orders for imposing only penalty have been passed. In our opinion there is no reason for providing for such prohibition. Benefit of the scheme should be extended even to cases where dues are raised by imposing penalty only, may be by providing some partial payment under the Scheme.
- (vii) The Scheme provides for taking benefit qua a particular issue in its entirety. There are many first appeals which are pending either before the learned first appellate authorities

or before the GR Cell. It is very much necessary that those dealers who desire to take benefit of the scheme and therefore files an application before the learned first appellate authority their appeals should be decided on priority basis before the expiry of time limit for taking benefit of the scheme.

- (viii) The scheme requires filing of an application on-line for applying for the scheme. There are certain cases where dealers are not able to file such application like in cases where registration certificate of the dealer is cancelled. Some alternative should be provided to such dealers. Also, in cases where dealers have filed on-line application there should not be any requirement for filing any manual application.
- (ix) There is no requirement in the scheme that a dealer who had once applied for the scheme cannot apply a fresh for the scheme. If some dealer had made a mistake in filing an application, he should be permitted to withdraw such application and if so desired file a fresh application thereafter.
- (x) If any dealer had filed or files an application for rectification of mistake of fact apparent on record in respect of any order passed instructions should be issued for their expeditious disposal so that such dealers if they desire can take benefit of this scheme after due rectification of their orders.
- (xi) The scheme requires the dealers to withdraw the appeal filed by them in case they desire to take benefit of the scheme. In case subsequently their application for taking



benefit of Amnesty Scheme is rejected instructions should be issued for the restoration of the appeal withdrawn by them if the dealer so desires. We may point out that Hon'ble Gujarat High Court has in the case of Gayatri Enterprise vs. State of Gujarat SCA No. 14970 of 2017 decided on 18-08-2017 has held that in such eventualities the appeals which were withdrawn should be restored

(xii) Your goodself should publish in public interest FAQs so as to clarify various aspects of the scheme and bring uniformity in the implementation of the scheme.

Thanking You,
Sincerely,

Durgesh Buch
President