



# GN LAW ASSOCIATES

ARTICLES 2013



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**Author: G. Natarajan**

**Question:** I am a service provider. I have not paid service tax to the tune of Rs.10 lakhs during the period from Oct 2007 to December 2012. Out of the said amount, I have paid an amount of Rs.2 lakhs during January 2013. On 28.02.2013, a Voluntary Compliance Encouragement Scheme was introduced in the Budget 2013. Unaware of the details of the same, I have also paid an amount of Rs.3 lakhs during April 2013. I understand that the VCES has become effective from 10<sup>th</sup> May 2013, after the assent of the Hon'ble President of India, to the Finance Bill 2013. I have also paid another 2 lakhs during June 2013. I am yet to file any declaration under the VCES Scheme and I intend to file the same soon. How much of my tax dues can be declared under the scheme and I can get immunity from interest and penalty?

**Answers:**

- (a) Rs.10 lakhs.
- (b) Rs. 8 lakhs.
- (c) Rs.5 lakhs.
- (d) Rs.3 lakhs.
- (e) None of the above.

Though the status of payments made between 01.03.2013 to 10.05.2013 has not at all been clarified specifically in any of the CBEC Circulars, the following clarifications issued vide CBEC's circular No. 174/9/2013 DT. 25.11.2013 is interpreted to conclude that only the amounts paid after 10.05.2013 could be covered under the scheme and the amounts paid between 01.03.2013 and 10.05.2013 would not get the benefits of the scheme.

4	Whether the benefit of the Scheme shall be admissible in respect of any amount covered under the definition of 'taxes dues', as defined in the Scheme, if paid by an assessee after the date of the Scheme coming into effect, (i.e., 10.5.2013), but before a declaration is filed	Yes, benefit of the Scheme would be available if such amount is declared under the Scheme subsequently, along with the remaining tax dues, if any, provided that Cenvat credit has not been utilized for payment of such amount.  Example:  A person has tax dues of Rs 10 lakh. He makes a payment of Rs 2 lakh on 15.5.2013, without making a declaration under VCES. He does not utilize Cenvat credit for paying this amount. Subsequently, he makes declaration under VCES on 1.7.2013. He may declare his tax dues as Rs 10 lakh. Rs 2
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		lakh paid before making the declaration will be considered as payment under VCES.
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But a careful reading of the above clarification would reveal that the same has not at all dealt with the status of payments made between 01.03.2013 to 10.05.2013. It has only dealt with the payments made after 10.05.2013 but before filing the declaration and holds that the same is entitled for the benefits of the scheme. It nowhere says specifically that the payments made between 01.03.2013 and 10.05.2013 are not entitled for the benefits of the scheme.

The term "tax dues" is defined in section 105 (e) of the Finance Act, 2013, as

*"tax dues" means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on the 31st day of December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013.*

As per Section 106 (1) thereof, any person can declare his "tax dues" in accordance with various other provisions of the Act. If that be so, the "tax dues" in the above given example is Rs.8 lakhs, i.e. Rs.10 lakhs minus, Rs.2 lakhs paid in January 2013, which amount remains unpaid as on 01.03.2013. In other words, any amount paid between 01.03.2013. to 10.05.2013 is also entitled to be declared under the scheme. Hence, the answer to the above question should be Rs.8 lakhs.

The above clarification of the CBEC cannot be interpreted to mean that the amounts paid between 01.03.2013 to 10.05.2013 are also not eligible for declaration under VCES.