

How govt's new AI-based system can help cos save non-compliance costs, time

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More than Rs.5,000 crore worth dues have been declared so far under the government's 'Sabka Vishwas Scheme', which is for settling pending disputes of service tax and central excise. The Central Board of Indirect Taxes and Customs (CBIC) has asked its principal chief commissioners to be more proactive in persuading eligible taxpayers to take benefit of 'Sabka Vishwas Scheme'.

Finance Minister Nirmala Sitharaman had unveiled the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 with the objective of settling pending disputes of Service Tax and Central Excise in the budget. A mid-term review reveals that a total amount of Rs.5,472 crore inclusive of pre-deposit amount of Rs.4,225 crore has already been declared under the scheme, sources said.

Efforts are being made to maximise declarations by December 31, 2019 when the scheme ends. Senior CBIC officials are confident the scheme is likely to gain further momentum in the coming days as taxpayers would not forego this opportunity.

It may be noted that while launching the scheme, it was seen that a total Rs.3.6 lakh crore is locked up in 1.83 lakh cases at various quasi-judicial, appellate and judicial forums under Service Tax and Central Excise put together. The CBIC has made it clear that the performance of the field formations would be adjudged in terms of their outreach and ability to persuade the taxpayers to avail the scheme.

The Principal Chief Commissioners or Chief Commissioners of CGST, who have the information of eligible taxpayers readily available with them, have been asked to proactively contact these taxpayers numbering about 1.8 lakh, sources said. This includes cases under investigation, adjudication as well as arrears of confirmed demand. These cases invariably drag on for years, burdening the taxpayers especially those in the MSME sector.

The introduction of GST which has subsumed these legacy taxes has given an opportunity to the government and also to taxpayers to settle these cases. Official sources said that under this scheme relief is to the tune of 70 per cent of the duty involved if it is Rs.50 lakh or less and that of 50 per cent if it is more than Rs.50 lakh.

Making Corporate India Comply

This is for cases pending in adjudication or appeal or in investigation and audit in latter cases, the duty involved must be quantified and communicated or admitted by the taxpayer in a statement on or before June 30, 2019. In cases of outstanding arrears of revenue, the relief is 60 per cent of the duty amount if it is Rs.50 lakh or less and 40 per cent if it is more than Rs.50 lakh, officials said.

In all cases, there is full waiver of interest and penalty and exemption from prosecution. There are, however, some exclusions such as if the person is convicted in the same case, officials added. Recently, the Ministry of Corporate Affairs (MCA) unveiled on its website an artificial intelligence-based Compliance Monitoring System (CMS). This will enable real-time monitoring of non-compliance of certain technical provisions in the Companies Act, 2013.

The CMS has started generating e-show cause to companies and directors for non-compliance related to holding their annual general meetings and lapses in the filing of secretarial audit reports. It allows e-adjudication of certain lapses and paying penalties online, doing away with the need to visit an MCA office or go through a legal process. Experts explain how companies can help make the CMS better to save themselves non-compliance costs, time, and resources.

How is the just-launched CMS different from the earlier practice of tackling lapses in compliance?

Currently, all forms and documents are electronically filed with the MCA. The returns filed give it visibility on technical compliances and whether they are within the due date.

Before the launch of the CMS, MCA offices (i.e. registrar of companies) issued notices by speed post or registered post to non-complying companies or individual directors. However, the MCA has now introduced the provision for online adjudication of offences.

The MCA CMS portal will identify non-compliances and send show-cause notices to non-compliant companies/directors digitally. "This system will reduce physical visits to the RoC/MCA as defaulting companies and directors will now be required to submit a reply to show-cause notices on the MCA CMS portal," says Vishwas Panjiar, partner, Nangia Andersen.

What are the types of lapses that will come under the ambit of the CMS?

The system will largely cover non-compliances that are in nature technical lapses. So far, several companies have received e-show cause from the CMS on non-compliance of holding their annual general meetings or certain lapses in the filing of secretarial audit reports, says Dhaval Gusani of DVG & Associates, a corporate law consultancy firm.

However, going forward its ambit will include default in filing declaration before commencement of business, failure to comply with the provisions for intimating change in the share capital of the company, non-filing of annual return within prescribed time, gaps in information regarding appointment of directors, director exceeding the number of directorships, among others, points out company secretary Gaurav Pingle.

What are the key dos and don'ts that companies/ individuals should know while using the CMS?

Experts say the recipients of e-show-cause notices are given 15 days to respond. "As there is a limit of 500 words and one should be judicious and precise while replying to the show-cause notice. A reply, once submitted, cannot be altered," says Panjiar.

The CMS is subject to logging on the portal through the CMS Reference Number as mentioned in the show-cause notice. It is further subject to OTP verification through e-mail. One is allowed to attach two PDF files (not exceeding 50 MB).

"After the order of the ROC, the complainant has the option to appeal to the regional director. The adjudication process is online," says Pingle.

Experts say that through the CMS, the government is trying to ensure strict compliance of the provisions of the Companies Act. Pingle highlights the need for sensitising promoters, directors, and managements about the importance of timely compliances.

After the launch of the AI-based portal, every company has to file necessary documents with the registrar of companies to avoid notices and penalty. "Filing of e-forms is not sufficient; filing it timely after due compliance is a must," says Gusani.