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**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
(CENTRAL BOARD OF EXCISE
AND CUSTOMS)
KAR VIVAD SAMADHAN SCHEME, 1998**

ESTIMATES COMMITTEE

1999-2000

THIRTEENTH LOK SABHA

THIRD REPORT

ESTIMATES COMMITTEE (1999-2000)

(THIRTEENTH LOK SABHA)

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
(CENTRAL BOARD OF EXCISE AND CUSTOMS)

[Action taken by Government on the Recommendations contained in the First Report of Estimates Committee (Twelfth Lok Sabha) on the Ministry of Finance (Department of Revenue) (Central Board of Excise and Customs)—Kar Vivad Samadhan Scheme, 1998]



Presented to Lok Sabha on 26 April, 2000

LOK SABHA SECRETARIAT
NEW DELHI

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CONTENTS

	PAGE
COMPOSITION OF THE ESTIMATES COMMITTEE	(iii)
INTRODUCTION	(v)
CHAPTER I Report	1
CHAPTER II Recommendations/Observations which have been accepted by Government.....	5
CHAPTER III Recommendation/Observation which the Com- mittee do not desire to pursue in view of Government's replies	8
CHAPTER IV Recommendation/Observation in respect of which reply of Government has not been accepted by the Committee	9
CHAPTER V Recommendation/Observation in respect of which final reply of Government is still awaited	10
APPENDICES	
I Minutes of sitting of the Estimates Committee (1999-2000)	11
II Analysis of the action taken by Government on the recommendations contained in the First Report of the Estimates Committee (Twelfth Lok Sabha).....	13

**COMPOSITION OF THE ESTIMATES COMMITTEE
(1999-2000)**

Prof. Ummareddy Venkateswarlu — *Chairman*

MEMBERS

2. Shri S. Bangarappa
3. Shri Girdhari Lal Bhargava
4. Shri Lal Muni Chaubey
5. Shri Ram Tahal Chaudhary
6. Shri Ajay Singh Chautala
7. Shri A.B.A. Ghani Khan Choudhury
8. Shrimati Sheela Gautam
9. Shri Anant G. Geete
10. Shri Shankar Prasad Jaiswal
11. Shri Vinod Khanna
12. Shri Suresh Kodikunnil
13. Shri N.N. Krishnadas
14. Dr. C. Krishnan
15. Dr. Ram Krishna Kusmaria
16. Shri P.R. Kyndiah
17. Shri Samik Lahiri
18. Shri Sanat Kumar Mandal
19. Shri Manjay Lal
20. Shri Shyam Bihari Mishra
21. Shri Nagmani
22. Shri Jitendra Prasada
23. Shri Rasa Singh Rawat
24. Shri Abdul Rashid Shaheen
25. Shri Maheshwar Singh
26. Shri Rampal Singh
27. Shri Lal Bihari Tiwari
28. Shri Shankersinh Vaghela
29. Dr. S. Venugopalachari
30. Shri A.K.S. Vijayan

SECRETARIAT

1. Dr. A.K. Pandey — *Additional Secretary*
2. Shri John Joseph — *Joint Secretary*
3. Shri K.L. Narang — *Director*
4. Shri Cyril John — *Under Secretary*

INTRODUCTION

1. the Chairman of the Estimates Committee, having been authorised by the Committee to submit the Report on their behalf, present this Third Report on action taken by Government on the recommendations contained in the First Report of Estimates Committee (Twelfth Lok Sabha) on the Ministry of Finance (Department of Revenue—Central Board of Excise and Customs)—Kar Vivad Samadhan Scheme, 1998.

2. The First Report (Twelfth Lok Sabha) was presented to Lok Sabha on 9th December, 1998. The Government furnished their replies indicating action taken on the recommendations contained in that Report on 9th March, 2000. The Draft Report was considered and adopted by the Estimates Committee (1999-2000) at their sitting held on 13th April, 2000.

3. The Report has been divided into the following Chapters:—

- I. Report;
- II. Recommendations/Observations which have been accepted by Government;
- III. Recommendations/Observations which the Committee do not desire to pursue in view of Government's replies;
- IV. Recommendations/Observations in respect of which replies of Government have not been accepted by the Committee; and
- V. Recommendations/Observations in respect of which final replies of Government are still awaited.

4. An analysis of action taken by Government on the recommendations contained in the First Report of Estimates Committee (12th Lok Sabha) is given in Appendix II. It would be observed there from that out of 8 observations/recommendations made in the Report, 5 recommendations *i.e.* 62.5% have been accepted by Government and the Committee do not desire to pursue one recommendation *i.e.* 12.5%, in view of Government's replies. Reply of Government in respect of one recommendation *i.e.* 12.5% has not been accepted by the Committee. Final replies of Government in respect of one recommendation *i.e.* 12.5%, *is still awaited.*

NEW DELHI;
April 25, 2000

Vaisakha 5, 1922(S)

UMMAREDDY VENKATESWARLU,
Chairman,
Committee on Estimates.

CHAPTER—I

REPORT

1.1 This Report of the Committee deals with action taken by Government on the recommendations contained in their First Report (Twelfth Lok Sabha) on the Ministry of Finance (Deptt. of Revenue—Central Board of Excise and Customs) Kar Vivad Samadhan Scheme, 1998.

1.2 The Committee's First Report (Twelfth Lok Sabha) was presented to Lok Sabha on 9th December, 1998. It contained 8 observations/recommendations. The Ministry of Finance (Department of Revenue—Central Board of Excise and Customs) *Vide* their communication dated 9th March, 2000, have furnished action taken replies on 4 observations/recommendations contained in para 41, 43, 44 and 45 of their Report. 3 observations are statements of facts. No action taken reply has been furnished by the Ministry on the recommendation contained in Para 40 of the Report.

1.3 Replies to the observations and recommendations contained in the Report have broadly been categorised as under:

(i) Recommendations/observations which have been accepted by Government:

Sl. Nos.1,2,5,6 and 8.

(Total 5, Chapter-II)

(ii) Recommendation/observation which the Committee do not desire to pursue in view of Government's reply:

Sl.No.4.

(Total 1, Chapter-III)

(iii) Recommendation/observation in respect of which Government's reply has not been accepted by the Committee:

Sl.No.7.

(Total 1, Chapter-IV)

(iv) Recommendation/Observation in respect of which final reply of Government is still awaited:

Sl.No.3(Para No.40)

(Total 1, Chapter-V)

1.4 The Committee now deal with action taken by Government on some of the recommendations.

Deferment of action for prosecution

Recommendation (Sl.No.7, para 44)

1.5 Keeping in view the intended objectives of quick and voluntary settlement of tax disputes by eligible assesses and to leave no room for discretion under the Scheme being misused, the Committee recommended as under:—

“It has been provided in the Scheme that the benefits for making declaration will not be available in a case where prosecution for any offense punishable under any provisions of any Indirect Tax enactment has been instituted on or before the date of filing the declarations. If a decision has been taken on the file to prosecute a certain assessee, but a case has not been filed in the court, then the assessee would be eligible for benefits under the Samadhan Scheme. The Scheme has become effective from 1st September, 1998 and will be in operation till the end of December, 1998. Even during this period the assessee would be eligible to make declaration under the Scheme until such time the formal complaint to prosecute him is filed in the court. The basic intention in introduction of their Scheme is two-fold. One is to minimize the litigation/dispute and the other is to collect more revenue from disputed tax arrears. According to the Ministry, most of the assesseees are expected to make their declarations at the last moment of the Scheme. In this provision of the scheme, discretion vests with the authorities to file prosecution against the assessee. In view of the Committee, it is possible that the authorities designated for implementation of the Scheme may misuse this provision of the Scheme and frustrate the very purpose of its introduction. The Committee, therefore, recommend that this provision of the Scheme, as it exists now, may be modified to eliminate the discretion which has danger of misuse and the assesseees otherwise eligible under the Scheme who come forward should be made eligible to make use of the Scheme.”

1.6 In their reply to the recommendation, the Ministry have stated as follows:—

“The recommendation was carefully examined, but it was not considered appropriate to make any change in the related provisions of the Scheme. Even otherwise as per available reports, the prosecutions during the period 1.9.98 to 31.12.98 were launched in very few cases.”

1.7 The basic objective of introduction of Kar Vivad Samadhan Scheme, 1998 was two-fold. One was to minimise litigation and the other was to collect more revenue from disputed tax arrears. The Committee in their earlier Report observed that even when a decision had been taken on the file to prosecute a certain assessee but the case had not been filed in the court, then the assessee would be eligible for benefits to make declaration under the scheme till such time the formal complaint to prosecute him was filed in the court. In their action taken reply the Ministry have informed

that the prosecutions launched during the period 1.9.1998 to 31.12.1998 were very few in number. Thus the Committee's apprehensions have come true.

The main objective of the recommendation of the Committee was to eliminate discretion on the part of department officials which has the danger of being misused and enable the assessee being otherwise eligible to take benefit of the Kar Vivad Samadhan Scheme. It was an easily acceptable and implementable recommendation involving no administrative difficulties and legal hurdles. Still the Ministry chose not to accept it. The Committee take strong exception to the utter disregard shown by the Ministry of Finance (Department of Revenue) in not accepting and implementing the recommendation of the Committee made to achieve the larger objectives of the Scheme of reducing outstanding unpaid tax arrears and litigation.

The Committee desire that in the very few cases where prosecutions were launched may be reviewed to enable such assessee to take benefit of the Scheme. The Ministry should also furnish details of the cases i.e. number of cases where prosecutions were launched, date of launching the prosecutions, amount involved and specific reasons for launching prosecutions.

Review of certain provisions of KVSS

Recommendation (Sl. No. 3, Para No. 40)

1.8 In their earlier report, the Committee recommended as follows:—

“In spite of the salient features of the scheme with the various benefits available under the scheme being given wide publicity and trade interests informed about the scheme through seminars and open houses, the response to the scheme has been lack lustre. According to Field Commissionerates of Customs and Central Excise this is primarily due to certain restrictive provisions made in the Scheme which are preventing a large number of assessee and other persons from opting for the scheme. The Committee desire that in the light of suggestions received from field formations, business/industry groups, associations, interests, etc. the Government may review the provisions of the KVSS Scheme in order to make it more attractive to achieve the intended objectives as also internally projected revenue collection.”

1.9 The Ministry of Finance (Department of Revenue) have not furnished any reply on the above recommendations.

1.10 The Report of the Committee on Kar Vivad Samadhan Scheme, 1998 was presented to Lok Sabha on 9 December, 1998 and was referred to the Ministry of Finance (Department of Revenue) on the same day for taking action on the observations and recommendations contained in the Report. Even after the lapse of more than a year, the Ministry of Finance (Department of Revenue) have not taken care to furnish any reply on the observations/recommendation contained in para 40 of this Report.

The Committee highly deplore the casual approach of the Ministry in ignoring to send any reply on their recommendation. The Committee desire that the concerned officer may be made accountable for this lapse and appropriate action may be taken against him under intimation to the Committee.

Implementation of Recommendations

1.11. The Committee would like to emphasise that they attach the greatest importance to the implementation of the recommendations accepted by the Government. They would, therefore, urge that the Government should keep a close watch so as to ensure expeditious implementation of the recommendations accepted by them. In case where it is not possible to implement the recommendations in letter and spirit for any reason, the matter should be reported to the Committee with reasons for non-implementation.

1.12 The Committee desire that reply in respect of the recommendations contained in Chapter-V of the Report may be finalised and final replies of the Government furnished to the Committee expeditiously.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Recommendations (Sl. No. 1, 2 and 5, Para Nos. 38, 39 and 42)

The Committee note that while introducing the Finance Bill, 1998 in Lok Sabha on 1st June, 1998 the Finance Minister announced a special scheme 'Kar Vivad Samadhan Scheme, 1998' as a part of Budget proposals to settle certain categories of disputes involving arrears of taxes (including duties, fines, penalties or interest). It covers both disputes under direct tax enactments as well as indirect tax enactments. The basic aim of the scheme on indirect taxes side is to bring down the pending litigation/disputes between the Department and the assessee in Customs and Central Excise cases as well as to speedily realise the arrears of taxes locked up in various disputes. The 'Kar Vivad Samadhan Scheme, 1998' has come into force on the 1st day of September, 1998. The scheme will be applicable for declarations received during the period of four months *i.e.* from 1st September, 1998 to 31st December, 1998. The persons eligible under this scheme include an individual, a company, a firm and assessee, and importer or exporter, etc. against whom proceedings have been initiated on or before 31.3.1998 under indirect tax enactments which are pending and where tax arrears are in dispute and are not paid up, when the person seeks benefits under the scheme.

The Samadhan Scheme in respect of Indirect Tax provide benefits of payment of only 50% of duty in arrears and in cases not involving duty, payment of only 50% of penalty, fine or interest along with waiver of interest, penalty and impunity from prosecution.

The Committee appreciate that Government have made an incentive offer for quick and voluntary settlement of tax disputes with the objective of reducing outstanding unpaid tax arrears and litigation. The Committee hope that the corporates, companies, industry, trade interests, etc. would avail of this good opportunity given to them and resolve their tax disputes, reduce litigation burden and save a lot of management time.

The Committee note that proviso to Section 92 of the Kar Vivad Samadhan Scheme, 1998 provides that if the assessee files the declaration under the Scheme, the Departmental Appeal would continue. The Committee are informed that the constitutional validity of the KVSS, 1998 was challenged before the High Court of Delhi in a public interest litigation. In its judgement delivered on 17th November, 1998, the Hon'ble

High Court has upheld the provision of the KVSS except proviso to Section 92. The scope of the Scheme has been enlarged to cover the Departmental Appeals as also to cover tax, penalty or interest under disputes in Departmental appeals. The Committee are happy to note that the Government have decided to accept the decision of the Hon'ble High Court of Delhi and not to challenge the decision before the Supreme Court. The Committee hope that this decision would help in achieving the purpose of the Scheme to collect the maximum revenue while minimising the number of litigations.

Reply of the Government

(Reply not furnished as these are statements of facts)

Recommendation (Sl. No. 6, Para No. 43)

The Committee are informed that legally under the existing provisions in the Scheme the Directors or Senior Executives of the companies who have been issued separate show cause notice in individual capacity are considered separate persons though involved in the same case. Assesseees and other persons against whom penalties have been imposed have to file separate individual declarations for settling their penalties. According to the Ministry of Finance no data is readily available regarding number of cases where personal penalties on Director/Senior Executives of the companies have been imposed and the amount involved in such cases. The Committee feel that Government have not done enough background work while formulating legal provisions in the Scheme and its restrictive impact on the response to the Scheme. However, the matter in respect of certain categories is stated to be under examination of the Government. In order to achieve the larger objectives of the Scheme of reducing litigation burden both of the corporates as well as of the Government and to settle tax disputes in an amicable manner so that Government collected additional revenue, the Committee desire that suitable amendment may be carried out in the Scheme for removing the personal penalty clause.

Reply of the Government

This suggestion was duly examined and instead of an amendment, a 'Removal of Difficulties Order' was issued in consultation with the Law Ministry, which, *inter-alia*, provided immunity from civil penalty against co-noticees involved in the same case against a company once the case was settled by the company under the KVSS.

[No., F. Dy. No. 2863/M(AS&J)/98, Dated 9.3.2000]

Recommendation (Sl. No. 8, Para No. 45)

The Committee note that for maximising response to KVSS, 1998 the Department apart from giving it a wide publicity with the help of its Directorates of Publicity and Public Relations as well as Field Commissionerates of Customs and Central Excise all over the country and holding seminars, open houses and social contact programmes, have also written to the Chief Executives of all the Public Sector Undertakings to avail of the provisions of this Scheme that it will be in their interest to settle their disputes under this Scheme. In order to ensure good response to the Scheme, the Committee, however, desire that the Secretary of Ministry of Finance (Department of Revenue) should take up the matter with the Secretaries of the Ministries for impressing upon the Chief Executives of Public Sector Undertakings under their jurisdiction that this was a very good opportunity for them to settle their tax disputes and avail of the benefits under this Scheme.

Reply of the Government

The recommendation was accepted and suitable communication issued.

[No. F. Dy. No. 2863/M(AS&J)/98, Dated 9.3.2000]

CHAPTER III

RECOMMENDATION/OBSERVATION WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF GOVERNMENT'S REPLY

Recommendation (Sl. No. 4, Para No. 41)

One of the suggestions made before the Committee was that cut-off date of 31st March, 1998 for cases covered under the Scheme could be expanded to cover demand notices upto 1st September, 1998 or to cover all cases of which show cause notices were pending at the time of filing the declarations. The Ministry have expressed their constraint to limit the provision of the Scheme on indirect taxes side to show cause/demand notice issued on or before 31st March, 1998 in view of the statutory provision imposed as per definition of the tax arrears in Section 87 of the Finance (No. 2) Act, 1998. The KVSS came into existence on 1st June, 1998 as a part of the Budget proposals. The Committee feel that the Scheme could have been appropriately made applicable to tax arrears in cases of show cause/demand notices issued on or before 31st May, 1998. In case the Government propose to bring certain amendments to KVSS in view of the demands being made by the business chambers, associations, industry groups and trade interests, the Government may also consider amending the present definition of the tax arrears to cover the show cause/demand notices issued after 31st March, 1998.

Reply of the Government

For any such scheme there has to be a cut-off date. It was considered prudent to have a date which was sometime prior to the start of the Scheme. Changing the date as suggested, after the commencement of the Scheme, would have caused administrative difficulties and hence, no amendment for covering cases of show cause notices/demand notices issued on or after 1st April, 1998 was considered.

[No. F. Dy. No. 2863/M(AS&J)/98, Dated 9.3.2000]

CHAPTER IV

RECOMMENDATION/OBSERVATION IN RESPECT OF WHICH REPLY OF GOVERNMENT HAS NOT BEEN ACCEPTED BY THE COMMITTEE

Recommendation (Sl. No. 7, Para No. 44)

It has been provided in the Scheme that the benefits for making declaration will not be available in a case where prosecution for any offence punishable under any provisions of any Indirect Tax enactment has been instituted on or before the date of filing the declarations. If a decision has been taken on the file to prosecute a certain assessee, but a case has not been filed in the court, then the assessee would be eligible for benefits under the Samadhan Scheme. The Scheme has become effective from 1st September, 1998 and will be in operation till the end of December, 1998. Even during this period the assessee would be eligible to make declaration under the Scheme until such time the formal complaint to prosecute him is filed in the court. The basic intention in introduction of their Scheme is two-fold. One is to minimize the litigation and the other is to collect more revenue from disputed tax arrears. According to the Ministry, most of the assessees are expected to make their declarations at the last moment of the Scheme. In this provision of the scheme, discretion vests with the authorities to file prosecution against the assessee. In the view of the Committee, it is possible that the authorities designated for implementation of the Scheme may misuse this provision of the Scheme and frustrate the very purpose of its introduction. The Committee therefore, recommend that this provision of the Scheme, as it exists now, may be modified to eliminate the discretion which has danger of misuse and the assessees otherwise eligible under the Scheme who come forward should be made eligible to make use of the Scheme.

Reply of the Government

The recommendation was carefully examined, but it was not considered appropriate to make any change in the related provisions of the Scheme. Even otherwise, as per available reports, the prosecutions during the period 1.9.98 to 31.12.98 were launched in very few cases.

[No. F. Dy. No. 2863/M(AS&J)/98, Dated 9.3.2000]

APPENDIX I

MINUTES OF SITTING OF THE ESTIMATES COMMITTEE (1999-2000)

Fifth Sitting

The Committee sat on Thursday, the 13th April, 2000 from 1500 to 1520 hours.

PRESENT

Shri P.R. Kyndiah—*In the Chair*

MEMBERS

2. Shri Girdhari Lal Bhargava
3. Smt. Sheela Gautam
4. Shri Anant G. Geete
5. Shri Shankar Prasad Jaiswal
6. Shri Vinod Khanna
7. Shri N.N. Krishnadas
8. Shri Manjay Lal
9. Shri Shyam Bihari Mishra
10. Shri Nagmani
11. Shri Jitendra Prasada
12. Shri Rasa Singh Rawat
13. Shri Abdul Rashid Shaheen
14. Shri Maheshwar Singh
15. Shri Lal Bihari Tiwari
16. Shri Shankersinh Vaghela

SECRETARIAT

- | | | |
|---------------------|---|------------------------|
| 1. Shri K.L. Narang | — | <i>Director</i> |
| 2. Shri Cyril John | — | <i>Under Secretary</i> |

2. The Committee in the absence of the Chairman, chose Shri P.R. Kyndiah, MP to act as Chairman for the sitting under Rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

CHAPTER V

RECOMMENDATION/OBSERVATION IN RESPECT OF WHICH FINAL REPLY OF GOVERNMENT IS STILL AWAITED

Recommendation (Sl. No. 3, Para No. 40)

In spite of the salient features of the scheme with the various benefits available under the scheme being given wide publicity and trade interests informed about the scheme through seminars and open houses, the response to the scheme has been lack lustre. According to Field Commissionerates of Customs and Central Excise this is primarily due to certain restrictive provisions made in the Scheme which are preventing a large number of assesseees and other persons from opting for the scheme. The Committee desire that in the light of suggestions received from field formations, business/industry groups, associations, interests, etc. the Government may review the provisions of KVSS Scheme in order to make it more attractive to achieve the intended objectives as also internally projected revenue collection.

Reply of the Government

(Reply of the Government awaited)

NEW DELHI;
April 25, 2000
Vaisakha 5, 1922 (S)

UMMAREDDY VENKATESWARLU,
Chairman,
Committee on Estimates.

3. The Committee then considered the Draft Report on action taken by Government on the recommendations contained in the First Report of Estimates Committee (12th Lok Sabha) on the Ministry of Finance (Department of Revenue—Central Board of Excise and Customs)—‘Kar Vivad Samadhan Scheme, 1998’ and adopted the same with modifications as given in the Annexure.

4. The Committee authorised the Chairman to finalise the Draft Report in the light of modifications as also to make verbal and other consequential changes in the Draft Report arising out of factual verification by the Ministry and present the same to the House.

The Committee then adjourned.

Modifications made by the Estimates Committee in the Draft Report on Action Taken by Government on the Recommendations contained in the First Report (Twelfth Lok Sabha) on the Ministry of Finance (Department of Revenue—Central Board of Excise and Customs)—‘Kar Vivad Samadhan Scheme, 1998’

Para No.	Line	Modifications
1.7	17	<i>For ‘are deeply pained over the utter disregard’ Read ‘take strong exception to the utter disregard’</i>
1.7		<i>At the end Add ‘The Ministry should also furnish details of the cases i.e. number of cases where prosecutions were launched, date of launching the prosecutions, amount involved and specific reasons for launching such prosecutions.’</i>

APPENDIX II

(Vide Introduction to Report)

ANALYSIS OF THE ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE FIRST REPORT OF THE ESTIMATES COMMITTEE (TWELFTH LOK SABHA)

I. Total number of recommendations/observations	8
II. Recommendations/Observations which have been accepted by Government	5
(Sl. Nos. 1, 2, 5, 6 and 8)	62.5
Percentage	
III. Recommendation/Observation which the Committee do not desire to pursue in view of Government's reply	1
(Sl. No. 4)	
Percentage	12.5
IV. Recommendation/Observation in respect of which Government's reply has not been accepted by the Committee	1
(Sl. No. 7)	
Percentage	12.5
V. Recommendation/Observation in respect of which final Reply of Government is still awaited	1
(Sl. No. 3)	
Percentage	12.5