

Research Paper



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LIQUIDATION OF ARREAR TAXES – AN ANALYSIS

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ABSTRACT

The objective of the present study is to assess the Scheme for Liquidation of Arrear Tax Dues introduced by the State of Assam under the Assam Taxation (Liquidation of Arrear Dues) Act, 2005. The present study attempts to analyse and uncover the status of administration of tax and its recovery by the Tax Officials. Study is based on secondary data collected from Taxation Department of Assam as well as primary data collected as close participant observer from Tax Officials, subject experts, tax law practitioners and other stake holders. It was found that the collection of substantial arrear revenue was achieved under the Liquidation Scheme only as a result of the recent verdict pronounced by the Supreme Court of India in the case of *Jindal Stainless Ltd. & Anr. vs. State of Haryana & Ors.*, on the constitutional validity of the levy of Entry Tax. Introduction of the liquidation scheme time and again for liquidation of outstanding dues of tax, interest and penalty and huge waiver of interest and penalty extended, reflects the inadequate performance of and non-effectiveness of the recovery proceedings. Waiver of penalty which was imposed on the taxpayers during assessment for contravention of the provisions of the tax statute or for failure to comply with such provisions, have rendered the imposition of penalty and its provisions completely meaningless. Thus, the waiver clause cannot be a regular phenomenon as it will create propensity in the mind of taxpayers to delay and defer the tax in order to get benefit of waiver and the honest taxpayers will be at the brunt of dishonest taxpayer.

KEYWORDS: Arrear Tax, Liquidation of Arrear Dues, Waiver of Arrear Tax Dues

A. INTRODUCTION

The primary objective of tax administration is to ensure flow of revenue collection of the Department on one hand and to make compliance with tax laws, rules and procedures easy and hassle free for the taxpayers. In case this is fulfilled it will withhold the best tenets of tax administration as enunciated by Kautiliya in his book 'Arthashastra'. The actualisation of the aforesaid objective would also make to cherish the dreams of good

governance enshrined in the book 'The Republic' by Plato. Keeping this philosophical instinct at the back of our mind we venture into a research investigation in the area of tax administration especially indirect tax administration in Assam.

Basic objective of a tax administration should be to have a broad base tax umbrella in order to bring horizontal equity among different classes of tax payers in line with best international practices. It should be to



improve the efficiency and equity of tax system by eliminating distortions in the tax structure, introducing moderate level of taxation and expanding the tax base.

The process of implementation of the provisions of tax statute starts with registration of dealers, levy of tax and determining the liability of taxpayers to pay taxes at a particular point and at a given rate. Creation of legal obligation to pay tax is the starting point of tax administration followed by the requirement of registration of dealers, filing of returns and collection of taxes.

Collection mechanism for the taxes levied plays a pivotal role in efficient and timely realisation of taxes. Quick collection of taxes is required so that the taxes levied come directly to the Government exchequer. Under the VAT system taxes are collected on 'pay as and when you levy' basis. Taxes are collected at the time of declaration of statements of accounts of sales or purchases and also by way of demand and recovery after assessments are finalised in certain cases.

In India, there is still scope to improve tax compliance through proper implementation of enforcement strategies, beginning from collection stage with suitable penalty structure. (Shome, 2014)

One of the unfavourable experiences encountered by Tax Officials towards tax administration is related towards the timely realisation and recovery of due taxes. Government of Assam has ventured into a Scheme under which it enacted a law with a view to liquidate the arrear claims for the tax, interest and penalty which are long overdue. On account of non-recovery of the arrear tax, interest and penalty, Government has provided a short of Not many research studies are found on the aspect of Scheme for Liquidation of Arrear Tax Dues in Assam. The present study attempts to analyse and uncover the weakness in administration of tax and its recovery by the Tax Officials. A study on this aspect will enable to highlight areas that require change in administrative mechanism, removal of the shortcomings prevailing in this matter and ensure smooth transition from VAT to ensuing GST system.

B. SCOPE OF THE STUDY

Present study is in particular reference to the aspects of Scheme for Liquidation of Arrear Tax Dues. Study is confined to the State of Assam.

C. OBJECTIVE OF THE STUDY

Objective of the present study is, (a) to assess the Scheme for Liquidation of Arrear Tax Dues introduced by the State of Assam; and (b) to uncover the status of administration of tax and its early recovery.

D. METHODOLOGY FOR STUDY

(i) Nature of research – It is an observational research, based on observation made regarding the provision of the Scheme for Liquidation of Arrear Tax Dues. As a close participant observer the implementation of the Scheme was observed. The observation was further strengthened by conducting interaction with select number of Tax Officials, subject experts, tax law practitioners and other stake holders.

(ii) Source of information – For the purpose of conducting the study the authors based their source of information from both primary and secondary source.

Primary Source - Primary information was gathered by way of conducting personal interview and direct opinion survey conducted among the Officials of the Taxation Department, Govt. of Assam at the Headquarter as well as different Unit Offices. Information was also gathered by opinion survey conducted among subject experts, tax law practitioners and other stake holders.

Secondary Source - Secondary information was collected from the Notifications issued from time to time which introduced the Scheme for Liquidation of Arrear Tax Dues.

(iii) Periodicity of the study – Study cover the period from 2003 to 2017.

E. SCHEME FOR LIQUIDATION OF ARREAR DUES

The State of Assam introduced the Assam Taxation (Liquidation of Arrear Dues) Act, 2005 to provide for liquidation of long outstanding dues relating to tax, penalty and interest under relevant Acts.^[1] This was provided by offering one time incentive in the form of waiver of the balance portion of qualifying arrear dues remaining after payment of the prescribed percentage of the total dues within the stipulated dateline.

The said Scheme for Liquidation of Arrear Dues provides the meaning of "Long outstanding dues of arrear tax, penalty and interest" as, an unpaid amount on account of tax, interest and penalty as per statutory orders passed under the provisions of relevant Acts, as on the date of enforcement of the Scheme, and shall also include further calculable interest on the involved principal amounts upto the date of application to avail of the benefits under the Liquidation Scheme.

The Scheme provides that the an applicant shall be eligible for the benefit of liquidating all outstanding dues in respect of amounts assessed or levied but not

lying in dispute before any statutory authority/forum or the High Court or Supreme Court of India as on the date of application.

In order to extend the benefits of the Liquidation Act towards the tax, interest and penalty which is unpaid during a particular assessment period, the Act has provided for the time period on or before which the statutory orders have levied tax, interest and penalty and which is unpaid on the date of coming into force of the Scheme. Waiver has been provided as per the formula specified in the Schedule attached to the Act.

The scheme was introduced in the year 2005, w.e.f., 19.04.2005 by way of a legislation called the Assam Taxation (Liquidation of Arrear Dues) Act, 2005 and was made valid upto 31.07.2005. Within a period of ten years from the date the liquidation scheme was first introduced, the State of Assam re-introduced the scheme

in the year 2015, w.e.f., 06.02.2015 by way of the Assam Taxation (Liquidation of Arrear Dues) (Amendment) Act, 2014 and was made valid till 31.03.2015. In order to liquidate huge outstanding arrear dues of tax, interest and penalty, the State of Assam had further extended the said liquidation scheme by re-introducing it again in the year 2016, w.e.f. 26.08.2016. This was made effective by way of the Assam Taxation (Liquidation of Arrear Dues) (Amendment) Act, 2016 and is made valid upto 21.03.2017. However, the benefit of waiver under the present liquidation scheme for 2016 has been extended at different rates of waiver. The first dose of waiver under the liquidation Scheme is available upto 31.12.2016 and the second dose of waiver is available after 31.12.2016 till the validity of the liquidation scheme i.e., 21.03.2017.

The waivers extended under the liquidation schemes introduced in the years 2005, 2015 and 2016 are given below in Table No. 1.1.

Table No. 1.1: Eligibility and Waivers extended under Assam Taxation (Liquidation of Arrear Dues) Act.

Year	Eligible assessment period and date of assessment	Validity period to avail benefit	Description of arrear outstanding dues	Amount payable for availing Liquidation benefit	Benefit available as waiver
2005	Assessments made on or before 31.03.1999	19.04.2005 to 31.07.2005	(a) Tax, interest and penalty	(a) 100% of arrear tax and 50% of arrear interest	(a) Balance 50% of arrear interest and 100% of arrear penalty waived
			(b) Penalty only	(b) 50% of arrear penalty	(b) Balance 50% of arrear penalty waived
2015	Assessment Period 2008-09 and Assessments made on or before 31.03.2014	06.02.2015 to 31.03.2015	(a) Tax, interest and penalty	(a) 100% of arrear tax and 10% of arrear interest	(a) Balance 90% of arrear interest and 100% of arrear penalty waived
			(b) Interest and Penalty only	(b) 25% of arrear interest	(b) Balance 75% of arrear interest and 100% of arrear penalty waived
			(c) Penalty only	(c) 50% of arrear penalty	(c) Balance 50% of arrear penalty waived
2016	Assessment Period 2014-2015 and Assessments made on or before 31.03.2016 [Assessments made on or before 31.12.2016]*	26.08.2016 to 31.12.2016	(a) Tax, interest and penalty	(a) 100% of arrear tax and 10% of arrear interest	(a) Balance 90% of arrear interest and 100% of arrear penalty waived
			(b) Interest and Penalty only	(b) 25% of arrear interest	(b) Balance 75% of arrear interest and 100% of arrear penalty waived
			(c) Penalty only	(c) 40% of arrear penalty	(c) Balance 60% of arrear penalty waived
		01.01.2017 to 21.03.2017	(a) Tax, interest and penalty	(a) 100% of arrear tax and 25% of arrear interest	(a) Balance 75% of arrear interest and 100% of arrear penalty waived
			(b) Interest and Penalty only	(b) 50% of arrear interest	(b) Balance 50% of arrear interest and 100% of arrear penalty waived
			(c) Penalty only	(c) 50% of arrear penalty	(c) Balance 50% of arrear penalty waived

* Extended vide Assam Taxation (Liquidation of Arrear Dues) (Amendment) Act, 2017.

Source: Assam Taxation (Liquidation of Arrear Dues) Act and other Amendment Acts retrieved from Taxation Department, Govt. of Assam website www.tax.assam.gov.in

F. FINDINGS OF THE STUDY

Liquidation of arrear by way of waiver clause was introduced in 2005 for a small period of four months which was a temporary phenomenon as a kind of impetus for short term, in order to allow the tax defaulters to pay the actual amount of tax with partial waiver of interest and full waiver of penalty. It is further uncovered in course of research enquiry that the waiver scheme is announced by the Finance Department of the State Government and the order has to be executed by the jurisdictional Tax Unit Offices spread across the entire State.

However, the inter-unit information gathering system and final processing location at the Head Quarter Office was found to be not updated by collecting inputs from all Unit Offices in respect of the collection of arrear tax dues under the Scheme for Liquidation of Arrear Tax Dues. As a result the total tax collected after the waiver in 2005 is not available with the Tax Department even in 2017. The only available data that could be furnished by the Statistics Branch of the Taxation Department pertained to the arrear tax collected under the Scheme for Liquidation of Arrear Tax Dues in the year 2015. Consequently with reference to the administration of taxes this is a point the administrators should look into with a long term prospective and enforce better information system so that Finance Ministry of the State Government can take knowledgeable informed decision.

However, with the re-introduction of the Liquidation Scheme in the year 2016, the Commissioner of Taxes, Assam, gave specific directions to the Unit Offices to maintain proper records in respect of cases liquidation, amount of tax, interest and penalty involved and amount realised and liquidated and also to submit detailed report to the Office of the Commissioner of Taxes. As such the data of arrear collection under the Liquidation Scheme could also be gathered from the Office of the Commissioner of Taxes for the period from August, 2016 to March, 2017.

A review of the data for the year 2015 furnished by the Taxation Department, Govt. of Assam, shows that only Rs.12.19 Crores was collected as tax and interest under the Assam Taxation (Liquidation of Arrear Dues) (Amendment) Act, 2014 which had re-introduced the liquidation scheme in the year 2015. Whereas, data for the period August, 2016 to March, 2017 shows that an amount of Rs. 425 Crores was collected as tax and interest under the Assam Taxation (Liquidation of Arrear Dues) (Amendment) Act, 2016.

It has been found that of the total collection figure of Rs.425 Crores, during the period August, 2016 to March, 2017, around Rs.400 Crores alone was paid by Government Sector Oil Companies towards the arrear tax, interest and penalty payable for their Entry Tax liability. It is also found that of the remaining Rs.25 Crores collected, as arrear revenue under the Liquidation Scheme extended during the period August, 2016 to March 2017, major collection have been under the arrears for Entry Tax.

During the course of present research it is uncovered that the boost in collection figure of arrear tax under the Entry Tax has come towards the latter half of the validity period of the Liquidation Scheme which was extended during the period August, 2016 to March 2017. The collection of substantial arrear revenue was achieved as a result of the recent verdict pronounced by the Supreme Court of India in the case of *Jindal Stainless Ltd. & Anr. vs. State of Haryana & Ors.*, on the constitutional validity of the levy of Entry Tax. Statute for levy of Entry Tax by State of Assam unlike other States in India, had been a matter of challenge before the High Court and Supreme Court of India on the ground that same is violative of constitutionally recognised right to free trade, commerce and intercourse and is also discriminatory and non-compensatory in nature. By the recent verdict of the Supreme Court it was held that compensatory tax theory has no juristic basis and that a tax on entry of goods is permissible and is not discriminatory. As a result the major grounds of challenge to the levy of entry tax is rejected by the Supreme Court. Under such situation the taxpayers who had their liabilities towards tax, interest and penalty under the Entry Tax came forward to avail the benefit of the Liquidation Scheme and have paid their taxes by availing the waiver benefit towards interest and penalty.

G. CONCLUSION

The scheme for liquidation of arrear dues has partially succeeded to achieve the objective for which it was originally introduced and re-introduced subsequently thereafter. Introduction of the liquidation scheme time and again for liquidation of outstanding dues of tax, interest and penalty and huge waiver of interest and penalty extended, reflects the inadequate performance of and non-effectiveness of the recovery proceedings. It also marks a question on the need for introduction of waiver clause. This finally leads to foregoing of penalty and interest as a sound revenue for the Government.

The performance of the Tax Administrators and its inability to reduce arrears of revenue by way of a proper and effective recovery mechanism and non-disposal of long pending litigations that is blocking huge revenue has created a situation where the Government exchequer is made to forego its legitimate dues. With the liquidation scheme being introduced for liquidating long outstanding arrear dues, the Government exchequer has to forego the legitimately levied interest and penalty that was imposed on defaulting taxpayers. Waiver of penalty which was imposed on the taxpayers during assessment for contravention of the provisions of the tax statute or for failure to comply with such provisions, have rendered the imposition of penalty and its provisions completely meaningless.

Of course, the Government enjoys the prerogative of deciding the matter considering the financial exigencies and to enhance revenue collection with liquidated resources. However, the waiver clause cannot be a regular phenomenon because if it is a regular feature then it will create propensity in the mind of taxpayers to delay and defer the tax in order to get benefit of waiver. If it so happens the honest taxpayers will be at the brunt of dishonest taxpayer.

In reference to the administration of taxes it is also necessary for the administrators to look into a long term prospective and enforce better information system wherein input and output system is streamlined to make the revenue figures available to the Government to expedite the decision making process and ascertain expected revenue from source and gap therein. This is not only an essential but sufficient condition to tone up tax administration in the State.

END NOTES

[1] The relevant Acts are, the Assam Value Added Tax Act, 2003, the Assam General Sales Tax Act, 1993, the Central Sales Tax Act, 1956, the Assam Amusement and Betting Tax Act, 1939, the Assam Taxation (Hotels and Lodging Houses) Act, 1989, the Assam Taxation (On Specified Lands) Act, 1990, the Assam Agricultural Income tax Act, 1939, the Assam Taxation (On Luxuries) Act, 1997 the Assam Entry Tax Act, 2008, the Assam Professions, Trades, Callings and Employments Taxation Act, 1947, the Assam Electricity Duty Act, 1964 and other repealed sales tax Acts.

END NOTES

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