

## THE INDIRECT TAX DISPUTE RESOLUTION SCHEME, 2016 — NO ATTRACTION AT ALL

By

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### *Introduction*

In the Budget, 2016 announced on 29-2-2016; the Finance Minister has proposed The Indirect Tax Dispute Resolution Scheme, 2016. This scheme will come into force as from 1-6-2016. This piece of articulation is about the scheme so proposed by the Finance Minister.

### *Applicability*

This scheme is applicable on the orders which are under challenge before the Commissioner (Appeals) and the appeal is pending as on 1-3-2016.

### *Validity*

This scheme will be applicable to the declarations made up to the 31st day of December, 2016.

### *Cases not covered*

The benefit of this scheme is not available in following cases :-

- (a) the impugned order is in respect of search and seizure proceeding or
- (b) prosecution for any offence punishable under the Act has been instituted before the 1st day of June, 2016; or
- (c) the impugned order is in respect of narcotic drugs or other prohibited goods; or
- (d) impugned order is in respect of any offence punishable under the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act, 1988; or
- (e) any detention order has been passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.

Thus, any order passed in consequence of any of the above reasons will not be considered under this scheme.

### *Procedure*

The procedure prescribed under this scheme is explained as follows :-

- The declaration is to be made to designated authority who is authorized by the Commissioner of Excise, Customs or Service Tax.
- The Designated Authority will acknowledge the declaration so made.
- Tax dues declared are to be paid with interest and penalty equivalent to 25% of penalty imposed in the impugned order within 15 days of the receipt of acknowledgement of declaration.

- Intimation of payment of dues is also to be filed to the Designated Authority within seven days along with proof thereof.
- On receipt of proof of payment, the Designated Authority shall pass the order of discharge of dues within 15 days for concluding the proceeding covered under the declaration.

#### *Reliefs available in this scheme*

Once the Designated Authority passes an order on receipt of intimation of deposition of required dues, the appeal pending before the Commissioner (Appeals) shall stand disposed of and the declarant shall get immunity from all proceedings under the Act, in respect of the indirect tax dispute for which the declaration has been made under this Scheme.

Once the order under this scheme is passed, declaration shall become conclusive and no matter relating to the impugned order shall be reopened thereafter in any proceedings under the Act before any authority or Court.

#### *Analysis of the scheme*

The following is the outlook of authors of this article on the scheme :-

- The dispute resolution scheme seems to be of use only to those who intend to avail benefit of reduced penalty; however, the time period to claim the said benefit has passed. This is because the duty/tax are to be paid, interest and even 25% penalty is to be paid. Further the benefit of reduced penalty is available even in normal course also where the duty, interest and reduced penalty is paid within a specified period. It is worthwhile to mention here that in both Service Tax and Excise Laws, benefit of 15% penalty is available if the duty/tax is paid with interest and reduced penalty within 30 days of communication of show cause notice. Also, benefit of reduced penalty of 25% is available if the dues including the duty/tax along with interest and penalty are paid within 30 days of communication of order.
- The assesses who have pending orders on the recurring issues will not avail the benefit of this scheme as the proposed Section 214(2) prescribes that the order passed under this scheme shall not be deemed to be an order on merits and has no binding effect.
- One of the major drawbacks of this scheme is that any amount paid in pursuance of a declaration shall not be refunded. Thus, if there is any incorrect payment by the declarant due to any reasons is not refundable.
- This scheme seems to be similar to Voluntary Compliance Encouragement Scheme (VCES) announced a couple of years back under Service Tax. However, that scheme had few flaws which have been considered while announcing this recent scheme. One issue that remained a talk of VCES was that whether the order passed under the VCES will have binding effect in respect of similar issues covered by the period covered in that scheme. This scheme has taken care of this drawback of VCES and it has been specifically clarified that any order passed under this scheme shall not be deemed to be an order on merits and has no binding effect.

- There was huge response in respect of VCES and around 40,000 applications were received yielding around 5500 crores due to amenities offered by it in form of waiver from penalty. However, the instant scheme does not appear that appealing to the common manufacturers/service providers.

### *While concluding*

The attractiveness of dispute resolution schemes is based upon the reliefs granted by it. Normally it is in form of waiver from penalty. In the instant scheme, there is no such attractiveness as the benefit of reduced penalty is already available in the Act itself. Thus, the assessee who really wish to close the proceedings will do so in the beginning, i.e., at the time of receipt of show cause notice itself which allows the benefit of reduced penalty of 15%. Even the benefit of reduced penalty of 25% is available if the duty/tax, interest and reduced penalty is paid within 30 days of the receipt of order. Thus, the scheme will attract only a small group of appellants who have taken time in deciding that they don't want to take the litigation further. However, to attract more number of people, complete waiver from penalty should have been granted.

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However, on the issue of utilization of Cenvat credit for payment of Swachh Bharat Cess the recent *Notification No. 2/2016-C.E., dated 3-2-2016* has added a proviso to the Rule 3(4) of Cenvat Credit Rules, 2004 according to which the credit availed under Rule 3(1) *could not* be utilized in payment of Swachh Bharat Cess.