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Finance Act 2008

Chapter VI - Service Tax Dispute Resolution Scheme, 2008

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(1) This Scheme may be called the Service Tax Dispute Resolution Scheme, 2008.

(2) It shall come into force on the 1st day of July, 2008.

Section 92 - Definitions

In this Scheme, unless the context otherwise requires,--

(a) "Chapter" means Chapter V of the Finance Act, 1994(32 of 1994);

(b) "designated authority" means an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of this Scheme;

(c) "person" means any person against whom any tax arrear is pending;

(d) "prescribed" means prescribed by rules made under this Scheme;

(e) "tax arrear" means service tax, cess, interest or penalty due or payable or leviable under the Chapter but not paid as on the 1st day of March, 2008, in respect of which,--

(i) an order has been passed under the Chapter; or

(ii) a demand notice or a show cause notice has been issued on or before the 1st day of March, 2008 under the Chapter;

(f) all other words and expressions used herein and not defined but defined in the Chapter or the rules made thereunder, shall have the meanings respectively assigned to them in the Chapter or the rules made thereunder.

Section 93 - Applicability of Scheme

This Scheme shall not be applicable to a decision, an order of determination, a demand notice or, as the case may be, show cause notice,--

(i) relating to a tax arrear which includes service tax, and such service tax amount is in excess of twenty-five thousand rupees; or

(ii) where such order or notice has been made or issued under section 73A of the Finance Act, 1994(32 of 1994.).

Section 94 - Settlement of tax payment

Subject to the provisions of this Scheme, where any person makes, on or after the 1st day of July, 2008, but on or before the 30th day of September, 2008, a declaration to the designated authority in accordance with the provisions of section 90 in respect of tax arrear, then notwithstanding anything contained in the Chapter, the amount payable under this Scheme by the declarant shall be determined at the rates specified hereunder, namely:--

(a) where the tax arrear has arisen due to determination, assessment or, as the case may be, order of an adjudicating authority,--

(i) such tax arrear includes the amount of service tax not exceeding twenty-five thousand rupees, at the rate of fifty per cent. of service tax amount;

(ii) such tax arrear consists of only interest payable, or penalty levied or both, under the Chapter, at the rate of twenty-five per cent. of such tax arrear:

Provided that, if the amount of penalty levied exceeds the service tax amount to which it relates, service tax amount shall be considered to be the amount of penalty;

(b) where the tax arrear has arisen due to show cause notice or demand notice, as the case may be --

(i) such tax arrear includes the amount of service tax not exceeding twenty-five thousand rupees, at the rate of fifty per cent. of service tax amount;

(ii) such tax arrear consists of only interest payable, or penalty leviable or both, under the Chapter, at the rate of twenty-five per cent. of the maximum penalty leviable and interest payable:

Provided that if the amount of penalty leviable exceeds the service tax amount to which it relates, service tax amount shall be considered to be the amount of penalty.

Section 95 - Particulars to be furnished in declaration

A declaration under section 89 shall be made to the designated authority and shall be in such form and shall be verified in such manner as may be prescribed.

Section 96 - Time and manner of payment of tax arrear

(1) Within fifteen days from the date of receipt of the declaration under section 89, the designated authority shall, by order, determine the amount payable by the declarant in accordance with the provisions of this Scheme:

Provided that where any material particular furnished in the declaration is found to be false, by the designated authority at any stage, it shall be deemed never to have been made and all the

pending proceeding under the Chapter shall be deemed to have been revived.

(2) The declarant shall pay, the sum determined by the designated authority within thirty days of the order by the designated authority under sub-section (1) and intimate the fact of such payment to the designated authority along with proof thereof and the designated authority shall thereupon issue a certificate to the declarant in such form as may be prescribed.

(3) Every order passed under sub-section (1), determining the sum payable under this Scheme, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceeding under the Chapter.

(4) Where the declarant has filed an appeal, reference or a reply to the show cause notice against any order or notice giving rise to the tax arrear before any authority, tribunal or court, then, notwithstanding anything contained in any other provision of the Chapter, such appeal, reference, or reply shall be deemed to have been withdrawn:

Provided that where the declarant has filed a writ petition, appeal or reference before any High Court or the Supreme Court against any order in respect of the tax arrear, the declarant shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the Court, furnish proof of such withdrawal along with the intimation referred to in sub-section (2).

Section 97 - Appellate authority not to proceed in certain cases

No appellate authority shall proceed to decide any issue relating to the tax arrear specified in the declaration and in respect of which an order has been made under section 91 by the designated authority.

Section 98 - No refund of amount paid under the Scheme

Any amount paid in pursuance of a declaration made under section 89 shall not be refundable under any circumstances.

Section 99 - Removal of doubts

For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in sub-section (3) of section 96, nothing contained in this Scheme shall be constructed as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

Section 100 - Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Scheme, the Central Government may, by order, not inconsistent with the provisions of this Scheme, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Scheme come into force.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Section 101 - Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Scheme.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely : -

(a) The form in which a declaration may be made under section 95 and the manner in which such declaration may be verified;

(b) The form of certificate which may be issued under sub-section (2) of section 96;

(c) Any other matter which is to be, or be, prescribed, or in respect of which Provision is to made, by rules.

(3) The Central Government shall cause every rule made under this Scheme to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expire of the session immediately following the session or the successive sessions aforesaid, both House agree making any modification in the rule or both House agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity or anything previously done under that rule.

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