

## Finance (No. 2) Act, 1998

### Chapter IV - Kar Vivad Samadhan Scheme, 1998

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- (1) This Scheme may be called the Kar Vivad Samadhan Scheme, 1998.
  - (2) It shall come into force on the 1st day of September, 1998.
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#### Section 87 - Definitions

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

- (a) "declarant" means a person making a declaration under section 88;
- (b) "designated authority" means.-
  - (i) where the tax arrear is under any direct tax enactment, an officer not below the rank of Commissioner of Income-tax and notified by the Chief Commissioner for the purposes of this Scheme;
  - (ii) where the tax arrear payable is under any indirect tax enactment, an officer not below the rank of Commissioner of Customs or the Commissioner of Central Excise and notified by the Chief Commissioner for the purposes of this Scheme;
- (c) "disputed chargeable expenditure", in relation to an assessment year, means the whole or so much of the chargeable expenditure as is relatable to the disputed tax;
- (d) "disputed chargeable interest", in relation to an assessment year, means the whole or so much of the chargeable interest as is relatable to the disputed tax;
- (e) "disputed income", in relation to an assessment year, means the whole or so much of the total income as is relatable to the disputed tax;
- (f) "disputed tax" means the total tax determined and payable, in respect of an assessment year under any direct tax enactment but which remains unpaid as on the date of making the declaration under section 88;
- (g) "disputed wealth", in relation to an assessment year, means the whole or so much of the net wealth as is relatable to the disputed tax;
- (h) "direct tax enactment" means the Wealth-tax Act, 1957 or the Gift-tax Act, 1958 or the Income-tax Act, 1961 or the Interest-tax Act, 1974 or the Expenditure-tax Act, 1987;
- (i) "disputed value of gift", in relation to an assessment year, means the whole or so much of the value of gift as is relatable to the disputed tax;
- (j) "indirect tax enactment" means the Customs Act, 1962 or the Central Excise Act, 1944 or the Customs Tariff Act, 1975 or the Central Excise Tariff Act, 1985 or the relevant Act and includes the rules or regulations made under such enactment;

(k) "person" includes-

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority.
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.
- (viii) assessee as defined in Rule 2 of the Central Excise Rules, 1944,
- (ix) exporter as defined in clause (20) of section 2 of the Customs Act, 1962,
- (x) importer as defined in clause (26) of section 2 of the Customs Act, 1962,
- (xi) any person against whom proceedings have been initiated and are pending under any direct tax enactment or indirect tax enactment;

(l) "relevant Act" means an Act specified in the Schedule to this Scheme;

(m) "tax arrear" means,-

(i) in relation to direct tax enactment, the amount of tax, penalty or interest determined on or before the 31st day of March, 1998 under that enactment in respect of an assessment year as modified in consequence of giving effect to an appellate order but remaining unpaid on the date of declaration;

(ii) in relation to indirect tax enactment,-

(a) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty determined as due or payable under that enactment as on the 31st day of March, 1998 but remaining unpaid as on the date of making a declaration under section 88; or

(b) the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty which constitutes the subject matter of a demand notice or a show-cause notice issued on or before the 31st day of March, 1998 under that enactment but remaining unpaid on the date of making a declaration under section 88,

but does not include any demand relating to erroneous refund and where a show-cause notice is issued to the declarant in respect of seizure of goods and demand of duties, the tax arrear shall not include the duties on such seized goods where such duties on the seized goods have not been quantified.

Explanation.--Where a declarant has already paid either voluntarily or under protest, any amount of duties, cesses, interest, fine or penalty specified in this sub-clause, on or before the date of making a declaration by him under section 88 which includes any deposit made by him pending any appeal or in pursuance of a Court order in relation to such duties, cesses, interest,

fine or penalty, such payment shall not be deemed to be the amount unpaid for the purposes of determining tax arrear under this sub-clause;

(n) all other words and expressions used and not defined in this scheme but defined in any direct tax enactment or indirect tax enactment shall have the meanings respectively assigned to them in those enactments.

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## **Section 88 - Settlement of tax payable**

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Subject to the provisions of this Scheme, where any person makes, on or after the 1st day of September, 1998 but on or before the 31st day of December, 1998, a declaration to the designated authority in accordance with the provisions of section 89 in respect of tax arrear, then, notwithstanding anything contained in any direct tax enactment or indirect tax enactment or any other provision of any law for the time being in force, the amount payable under this Scheme by the declarant shall be determined at the rates specified hereunder, namely :-

(a) where the tax arrear is payable under the Income-tax Act, 1961,-

(i) in the case of a declarant, being a company or a firm, at the rate of thirty-five per cent of the disputed income;

(ii) in the case of a declarant, being a person other than a company or a firm, at the rate of thirty per cent of the disputed income;

(iii) in the case where tax arrear includes income-tax, interest payable or penalty levied, at the rate of thirty-five per cent of the disputed income for the persons referred to in clause (i) or thirty per cent of the disputed income for the persons referred to in clause (ii);

(iv) in the case where tax arrear comprises only interest payable or penalty levied, at the rate of fifty per cent of the tax arrear;

(v) where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search and seizure proceedings under section 132 or section 132A of the Income-tax Act,--

(A) in the case of a declarant, being a company or a firm, at the rate of forty-five per cent of the disputed income;

(B) in the case of a declarant, being a person other than a company or a firm, at the rate of forty per cent of the disputed income;

(b) where the tax arrear is payable under the Wealth-tax Act, 1957,-

(i) at the rate of one per cent of the disputed wealth;

(ii) in the case where tax arrear includes wealth-tax, interest or penalty levied, at the rate of one per cent of the disputed wealth;

(iii) in the case where tax arrear includes only interest payable or penalty levied, at the rate of fifty per cent of the tax arrear;

(iv) where the tax arrear includes the tax, interest or penalty determined in any assessment on the basis of search and seizure proceedings under section 37A or section 37B of the Wealth-tax Act, at the rate of two per cent of the disputed wealth;

- (c) where the tax arrear is payable under the Gift-tax Act, 1958,-
- (i) at the rate of thirty per cent of the disputed value of the gift;
  - (ii) in the case where the tax arrear includes gift-tax, interest payable thereon or penalty levied, at the rate of thirty per cent of the disputed value of the gift;
  - (iii) where the tax arrear includes only the interest payable or the penalty levied, at the rate of fifty per cent of the tax arrear;
- (d) where the tax arrear is payable under the Expenditure-tax Act, 1987,-
- (i) at the rate of ten per cent of the disputed chargeable expenditure;
  - (ii) in the case where the tax arrear includes the disputed expenditure-tax, interest payable thereon and penalty levied, at the rate of ten per cent of the disputed chargeable expenditure;
  - (iii) in the case where the tax arrear comprises only the interest payable or penalty levied, at the rate of fifty per cent of the tax arrear;
- (e) where the tax arrear is payable under the Interest-tax Act, 1974,-
- (i) at the rate of two per cent of the disputed chargeable interest;
  - (ii) in the case where tax arrear includes the interest payable thereon or penalty levied, at the rate of 1[two per cent of the disputed chargeable interest];
  - (iii) in the case where tax arrear comprises only the interest or penalty levied, at the rate of fifty per cent of the tax arrear;
- (f) where the tax arrear is payable under the Indirect tax enactment-
- (i) in a case where the tax arrear comprises fine, penalty or interest but does not include duties (including drawback of duty, credit of duty or any amount representing duty) or cesses, at the rate of fifty per cent of the amount of such fine, penalty or interest, due or payable as on the date of making a declaration under section 88;
  - (ii) in any other case, at the rate of fifty per cent of the amount of duties (including drawback of duty, credit of duty or any amount representing duty) or cesses due or payable on the date of making a declaration under section 88.

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1. Substituted for "two per cent of the tax arrear" by the Finance Act, 2000 w.r.e.f. 01.09.1998.

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## **Section 89 - Particulars to be furnished in declaration**

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A declaration under section 88 shall be made to the designated authority and shall be in such form and shall be verified in such manner as may be prescribed.

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## **Section 90 - Time and manner of payment of tax arrear**

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(1) Within sixty days from the date of receipt of the declaration under section 88, the designated authority shall, by order, determine the amount payable by the declarant in accordance with the

provisions of this Scheme and grant a certificate in such form as may be prescribed to the declarant selling forth therein the particulars of the tax arrear and the sum payable after such determination towards full and final settlement of tax arrears:

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 presumed as if the declaration was never made and all the consequences under the direct tax enactment or Indirect tax enactment under which the proceedings against the declarant are or were pending shall be deemed to have been revived :

Provided further that the designated authority may amend the certificate for reasons to be recorded in writing.

(2) The declarant shall pay the sum determined by the designated authority and intimate the fact of such payment to the designated authority along with proof thereof and the designated authority shall thereupon issue the certificate to the declarant.

(3) very order passed under sub-section (1), determining the sum payable under this Scheme, shall be conclusive as to the matters state therein and no matter covered by such order shall be reopened in any other proceeding under the direct tax enactment or indirect tax enactment or under any other law for the time being in force.

(4) Where the declarant has filed an appeal or reference or a reply to the show cause notice against any order or notice giving rise to the tax arrear before any authority or tribunal or Court, then, notwithstanding anything contained in any other provisions of any law for the time being in force, such appeal or reference or reply shall be deemed to have been withdrawn on the day on which the order referred to in sub-section (2) is passed:

Provided that where the declarant has filed a writ petition or 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).

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## **Section 91 - Immunity from prosecution and imposition of penalty in certain cases**

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The designated authority shall, subject to the conditions provided in section 90, grant immunity from instituting any proceeding for prosecution for any offence under any direct tax enactment or indirect tax enactment, or from the imposition of penalty under any of such enactments, in respect of matters covered in the declaration under section 88.

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## **Section 92 - Appellate authority not to proceed in certain cases**

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No appellate authority shall proceed to decided any issue relating to the disputed chargeable expenditure, disputed chargeable interest, disputed income, disputed wealth, disputed value of gift or tax arrear specified in the declaration and in respect of which an order had been made under section 90 by the designated authority or the payment of the sum determined under that section:

Provided that in case an appeal is filed by a Department of the Central Government in respect of such issue relating to the disputed chargeable expenditure, disputed chargeable interest, disputed income, disputed wealth, disputed value of gift or tax arrear (except where the tax arrear comprises only penalty, fine or interest) the appellate authority shall decide the appeal irrespective of such declaration.

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## **Section 93 - No refund of amount paid under the Scheme**

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Any amount paid in pursuance of a declaration made under section 88 shall not be refundable under any circumstances.

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## **Section 94 - Removal of doubts**

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For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in sub-section (3) of section 90, nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant in any assessment or proceedings other than those in relation to which the declaration has been made.

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## **Section 95 - Scheme not to apply in certain cases**

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The provisions of this Scheme shall not apply--

(i) in respect of tax arrear under any direct tax enactment.--

(a) in a case where prosecution for concealment has been instituted on or before the date of filing of the declaration under section 88 under any direct tax enactment in respect of any assessment year, to any tax arrear in respect of such assessment year under such direct tax enactment or in respect of a person who has been convicted for concealment on or before the date of filing the declaration;

(b) in a case where an order has been passed by the Settlement Commission under sub-section (4) of section 245D of the Income-tax Act or sub-section (4) of section 22D of the Wealth-tax Act, as the case may be, for any assessment year, to any tax arrear in respect of such assessment year under such direct tax enactment;

(c) to a case where no appeal or reference or writ petition is admitted and pending before any appellate authority or the High Court or the Supreme Court on the date of filing of declaration or no application for revision is pending before the Commissioner on the date of filing declaration;

(ii) in respect of tax arrear under any indirect tax enactment.--

(a) 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 of the declaration under section 88, in respect of any tax arrear in respect of such case under such indirect tax enactment;

(b) in a case where show cause notice or a notice of demand under any indirect tax enactment has not been issued;

(c) in a case where no appeal or reference or writ petition is admitted and pending before any appellate authority or the High Court or the Supreme Court or no application for revision is pending before the Central Government on the date of declaration made under section 88;

(iii) to any person in respect of whom prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Foreign Exchange Regulation Act, 1973, the Narcotic Drugs and Psychotropic Substance Act, 1985, the Terrorist and Disruptive Activities (Prevention) Act, 1987, the Prevention of Corruption Act, 1988, or for the purpose of enforcement of any civil

liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any such enactment;

(iv) to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974;

Provided that--

(a) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or

(b) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9 of the said Act; or

(c) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or

(d) such order of detention has not been set aside by a court of competent jurisdiction;

(v) to any person notified under sub-section (2) of section (sic) of the Special Court (Trial of Offences Relating to Transaction in Securities) Act, 1992.

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## **Section 96 - Power of Central Government to issue directions**

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(1) The Central Government may, from time to time, issue such orders, instructions and directions to the authorities, as it may deem fit, for the proper administration of this Scheme, and such authorities, and all other persons employed in the execution of this Scheme shall observe and follow such orders, instructions and directions of the Central Government:

Provided that no such orders, instructions or directions shall be issued so as to require any designated authority to dispose of a particular case in a particular manner.

(2) Without prejudice to the generality of the foregoing power, the Central Government may, if it considers necessary or expedient so to do, for the purpose of proper and efficient administration of the Scheme and collection of revenue, issue, from time to time, general or special orders in respect of any class of cases, setting forth directions or instructions as to the guideline, principles or procedures to be followed by the authorities in the work relating to administration of the Scheme and collection of revenue and any such order may, if the Central Government is of the opinion that it is necessary in the public interest so to do, be published in the prescribed manner.

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## **Section 97 - Power to remove difficulties**

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(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.

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## **Section 98 - Power to make rules**

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(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 88 and the manner in which such declaration may be verified;

(b) the form of certificate which may be granted under sub-section (1) of section 90;

(c) the manner in which the orders may be published under sub-section (2) of section 96;

(d) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be 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 expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses 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 of anything previously done under that rule.

## **THE SCHEDULE**

[See section 87 (1)]

1. The Agricultural Produce Cess Act, 1940.
2. The Coffee Act, 1942.
3. The Mica Mines Labour Welfare Fund Act, 1946.
4. The Rubber Act, 1947.
5. The Industries (Development and Regulation) Act, 1951.
6. The Salt Cess Act, 1953.
7. The Tea Act, 1953.
8. The Medicinal and Toilet Preparations (Excise Duties) Act, 1955.
9. The additional Duties of Excise (Goods of Special Importance) Act, 1957.

10. The Mineral Products (Additional Duties of Excise and Customs) Act, 1958.
11. The Sugar Export Promotion Act, 1958.
12. Sugar (Special Excise Duty) Act, 1959.
13. The Sugar (Regulation of Production) Act, 1961.
14. The Textiles Committee Act, 1963.
15. The Produce Cess Act, 1966.
16. The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972.
17. The Marine Products Export Development Authority Act, 1972.
18. The Coal Mines (Conservation and Development) Act, 1974.
19. The Oil Industry (Development) Act, 1974.
20. The Tobacco Cess Act, 1975.
21. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976.
22. The Beedi Workers Welfare Cess Act, 1976.
23. The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978.
24. The Sugar Cess Act, 1982.
25. The Jute Manufacturers Cess Act, 1983.
26. The Agricultural and Processed Food Products Export Cess Act, 1985.
27. The Spices Cess Act, 1986.
28. Any other enactment imposing the auxiliary duty of customs or the special duty of excise.