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# The Indirect Tax Dispute Resolution Scheme, 2016 - an attempt to reduce litigation



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Finance Minister, in his tax proposals during Budget, 2016 stressed the need for "Reducing litigation and providing certainty in taxation". Finance Minister had expressed that "Litigation is a scourge for a tax friendly regime and creates an environment of distrust in addition to increasing the compliance cost of the tax payers and administrative cost for the Government. There are about 3 lakh tax cases pending with the 1st Appellate Authority with disputed amount being 5.5 lakh crores. In order to reduce this number, I propose a new Dispute Resolution Scheme (DRS)."

Accordingly, two separate 'Dispute Resolution Schemes, one for Direct Tax and another for Indirect Tax, were introduced vide Chapter X (Clauses 197 to 208) and Chapter XI (clauses 209 to 215), respectively, of the Finance Bill, 2016 and were enacted recently. The provisions relating to Indirect taxes have been enacted Vide Section 212 to Section 218 of The Finance Act, 2016.

What is the main benefit of this Scheme: The said scheme allows the Importers/exporters/ assesses who have pending their appeals at the level of Commissioner (Appeals) as on 01.03.2016, involving a dispute in respect of any of the provisions of the Act i.e. Customs Act, 1962 or Central Excise Act, 1944 or Finance Act, 1994 to file a declaration and get immunity from all proceedings under the respective Acts.

Scheme not to apply in certain cases: The provisions of this Scheme shall not apply, if-

(a) If the pending Order before Commissioner (A) is in

respect of search and seizure proceeding; or

(b) prosecution for any offence punishable has been instituted before 01-06-2016

(c) the Order is in respect of narcotic drugs or other prohibited goods; or

(d) the Order is in respect of any offence punishable under The IPC, NDPS Act 1985 or the Prevention of Corruption Act, 1988;

(e) any detention order has been passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.

**Scheme Applicability:**

- Applicable to the declarations made up to the 31-12-2016

- Came into force from 01-06-2016

**Procedure:**

1. The declaration under sub section (1) of section 214 of the Scheme shall be made in Form 1 in respect of the amount payable under the Scheme.

2. It shall have to be signed by the person making such declaration or by any person competent to act on his behalf in duplicate to the designated authority.

3. An officer not below the rank of Assistant Commissioner would be authorised to act as Assistant commissioner by the Commissioner for the purposes of this Scheme.

4. The designated authority, on receipt of declaration mentioned at 1 above, shall issue a dated acknowledgement thereof in Form 2 within 7 days of the receipt of declaration.

5. Copy of the declaration made and the acknowledgement issued by the designated authority ( mentioned at Sl.No. 4 above) shall be furnished by the declarant within 15 days (of the receipt) to the concerned Commissioner (Appeals) before whom the appeal is pending and on the receipt of the declaration and acknowledgement, Commissioner (Appeals) shall not proceed with the appeal in respect of which the declaration has been made for a period of 60 days from the date of receipt of information

6. Further, within 15 days of the receipt of the

acknowledgement of the Declaration mentioned at 4 above, the declarant has to pay duty or tax due, interest and penalty equivalent to 25% of the penalty imposed by the adjudication order under challenge before the Commissioner (Appeals).

7. Declarant shall, within 7 days of making the deposit, is also required to intimate the designated authority about the deposit made .

8. The designated authority shall, within 15 days of receipt of the information about the deposit made in Form 3, issues the order of discharge of dues in respect of the declaration made .

9. The declarant shall intimate the concerned Commissioner (Appeals) along with the copy of the order of discharge (mentioned at SL.No. 8 above) before the expiry period of the 60 days mentioned at Sl.No. 5 above.

10. On the receipt of the information along with the copy of the order of discharge of dues issued by the designated authority, Commissioner (Appeals) shall remove the appeal from the list of pending appeals with him and intimate the declarant within seven days of the receipt of information mentioned at Sl.No 9 above.

For easy reference, The relevant Forms prescribed are explained under (See table):

(For more details of forms and proforma, readers may please see Notification No 29/2016-CE(NT) Dated 31-05-2016)

**What are the benefits for the trade:**

Immunity from other proceedings under Act: Section 216 of The Finance Act, 2016

✓ Upon the passing of an order by the designated authority, the appeal pending before the Commissioner (Appeals) shall stand disposed of

✓ 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.

✓ No matter relating to the impugned order shall be reopened thereafter in any proceedings under the Act before any authority or court.

**Consequences of order made under scheme: Section 217 of The Finance Act, 2016**

✓ No refund of the amount once paid.

✓ The Order passed by the designated authority shall not be deemed to be an order on merits and has no binding effect.

✓ Explanation.-For the removal of doubts, it is hereby declared that nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant other than the benefit, concession or immunity granted under section 216.

The scheme is intended to reduce the pendency and litigation at the first level in Appellate forum, i.e, at the level of Commissioner (A) in respect of cases covered under Customs, Excise and Service Tax. Though certain clarifications may be required while operating the scheme, government is keen to start and implement the Scheme. I am sure that Board would provide necessary clarifications from time to time in the coming days.

*(The writer is Assistant Commissioner of Customs (Capacity Building & Outreach Programmes), Custom House, Vizag). Please send in your comments/thoughts to jmkishore@gmail.com or info@viscan.in.*

FORM 1	For making declaration under the scheme
FORM 2	Form in which the designated authority shall give the acknowledgement about the receipt of declaration.
FORM 3	Form to be filed by the declarant giving the details of the amounts deposited by him. Declarant has to deposit the sums required to be deposited by him within fortnight of the receipt of the dated acknowledgement and report the details of deposit made within seven days of making the deposit to the designated authority
FORM 4	Form in which the said designated authority shall pass an order of discharge of dues in respect of the case before Commissioner (Appeals) for which the declaration has been made in Form 1.