

# The Indirect Tax Dispute Resolution Scheme, 2016

**Chapter XI** of Finance Bill, 2016 ('Bill' for short) deals with the Indirect Tax Dispute Resolution, Scheme, 2016 which shall come into force with effect from 01.06.2016. This scheme is applicable to the declarations made up to 31.12.2016.

The 'indirect tax dispute' is defined under clause 210 (g) as a dispute in respect of any of the provisions of the Act which is pending before the Commissioner (Appeals) as an appeal against the impugned order as on 01.03.2016. This scheme will not be applicable to the appeals pending before Tribunal or High Court.

## Applicability

The scheme is applicable only to the disputes relating to Customs Act, 1962, or Central Excise Act, 1944 or Chapter V of Finance Act, 1994

## Non application

**Clause 212** of the Bill provides that the provisions of this scheme shall not apply, if-

- \* The impugned order is in respect of search and seizure proceeding; or
- \* Prosecution for any offence punishable under the Act has been instituted before 01.06.2016; or
- \* The impugned order is in respect of narcotic drugs or other prohibited goods; or
- \* The impugned order is in respect of offences punishable under the Indian Penal Code, the Narcotic and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act; or
- \* Any detention order has been passed under the Conservation of Foreign Exchange and Prevention and smuggling Act, 1974.

## Declaration

**Clause 211** provides for the procedure for making declaration. According to this clause a person may make a declaration to the designated authority (an officer not below the rank of Assistant Commissioner who is authorized to act as Assistant Commissioner by the Commissioner for the purposes of this scheme) on or before 31.12.2016 in such form and manner as may be prescribed.

On receipt of the declaration the designated authority shall acknowledge the receipt of the declaration in the prescribed form. The declarant shall pay tax due along with interest at the specified rate and penalty equivalent to 25% of the penalty imposed in the impugned order within 15 days of the receipt of the acknowledgement. The payment details should be intimated within seven days to the designated authority along with the proof for making payment.

On receipt of the payment details with proof from the declarant, the designated authority shall pass an order of discharge of dues within 15 days from the date of receipt of such proof.

## Immunity

**Clause 213** of the Bill gives immunity to the declarant from other proceedings under the respect Act. Clause 213 (1) provides that notwithstanding anything contained in any provision of the Act, upon the passing of an order by the designated authority, an 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.

**Clause 213(2)** provides that a declaration made by the declarant shall become conclusive upon the issuance of an order and no matter relating to the impugned order shall be reopened thereafter in any proceedings under the Act before any authority or court.

## Consequences

**Clause 214** of the Bill provides that any amount paid in pursuance of the declaration shall not be refunded to the declarant. Any order passed by the designated authority shall not be deemed to be an order on merits and has no binding effect. The explanation to this clause declares 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 Clause 213.

## Powers of Central Government

**Clause 215** gives powers to the Central Government to make rules. Clause 215 (1) provides that the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this scheme in respect of the following matters-

- \* The form and the manner in which a declaration may be made under Clause 211(1);
- \* The form and the manner of acknowledging the declaration under Clause 211(2);
- \* The form and manner of issuing an order of discharge under Clause 211 (4);
- \* Any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

**Clause 215(3)** provides that every rule made under this scheme shall 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 30 days which may be comprised in one session or in two 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 this rule.

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