

Circular No. 102 /5/2008-ST

F.No. 137/96/2008-CX.4
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi dated the June 4th, 2008

To,
Chief Commissioners of Central Excise & Customs (All)
Chief Commissioners of Central Excise (All)
Director General of Service Tax
Director General of Central Excise Intelligence
Commissioners of Service Tax (All)
Commissioner (DPPR)
webmaster@cbec.gov. in

Sir/Madam,**Sub: Guidelines in respect of the Dispute Resolution Scheme, 2008-reg.**

The Dispute Resolution Scheme, 2008 has been notified vide Chapter VI of the Finance Act, 1994. This compounding scheme has been notified as a one time measure for quick resolution of disputes (a) involving small service tax amounts upto Rs 25000; and (b) involving non-recovery of penalty or interest. However, cases involving non-payment of service tax after having collected the same from client/customer are not included in the Scheme.

Salient feature of the Scheme: The salient features of this Scheme are as follows:

- (i) The Scheme covers all such cases where tax arrears, including interest and penalty, were payable or leviable under the Finance Act, 1994, but not paid prior to 1.3.2008 and where a Show Cause Notice/order has been issued on or before 1.3.2008.
- (ii) This Scheme would be in operation from 1.7.2008 to 30.9.2008. The benefit, concession or immunity under the Scheme would only be available in respect of the case in respect of which declaration is made under the Scheme within this period;
- (iii) The Scheme shall not apply to (a) any show cause notice or order issued under section 73A of the Finance Act, 1994, i.e., cases involving non-payment of service tax after having collected the same from client/customer; and (b) any case where tax arrears includes service tax amount of more than Rs 25,000;
- (iv) The order passed under the Scheme would be conclusive and would not be subjected to any appeal. Any pending appeal in the matter shall stand withdrawn. In such cases where the declarant has pursued a petition in a court of law, he shall withdraw such petition for availing benefit of this Scheme in respect of such matter;
- (v) The amount paid under the Scheme would not be refundable under any circumstances;
- (vi) The Central Government shall have power to make rules to implement this Scheme as well as for removal of difficulties for implementation of this Scheme.

3. **Procedure to be followed:** The Dispute Resolution Scheme Rules, 2008 have been issued vide notification No. 28/2008-ST, dated 4.6.2008. These rules prescribe the manner of declaration to be made under the Scheme by the person (declarant) opting for it. These rules read with the provisions of Chapter VI of the Finance Act, 2008, provide the procedure to be followed for operating the Scheme, which is as follows:

- (1) The Commissioner of Central Excise shall, for the purposes of this Scheme notify, by way of an officer order, an officer not below the rank of Assistant Commissioner of Central Excise as the designated officer.
- (2) The declarant, opting for the Scheme, shall make a declaration before the designated officer in Form 1 (as prescribed under rule 3 of the aforesaid Rules).
- (3) The designated officer shall get the declaration verified. Upon verification of declaration, the designated officer shall, within fifteen days, issue an order (as prescribed under section 96 (1) of Chapter VI of the Finance Act, 2008), indicating the amount to be paid by the declarant for resolution of dispute under the Scheme. The manner of calculation of tax arrears and the amount payable under the Scheme has been discussed in the subsequent paragraph along with illustrations. The format for issuance of order under section 96 (1) is annexed herewith to ensure uniform practice. Accordingly, the designated officer shall issue the order in the specified format.

- (4) The declarant shall, within thirty days pay the sum determined by the designated authority, vide order as mentioned above, and intimate the fact of such payment along with an evidence of payment of amount. In addition, the declarant shall also produce the evidence of withdrawal of case pending, if any, in a High Court or the Supreme Court, in the matter being resolved under the Scheme.
- (5) On receipt of information regarding payment of sum determined by the designated authority and evidence of withdrawal of case pending in the matter, if any, before a High Court or the Supreme Court, the designated authority shall issue a certificate in Form 2 (as prescribed under rule 5 of the aforesaid Rules), certifying full and final settlement of tax arrears in the case in respect of which declarant had opted for this Scheme.

4. **Compounding amount:** The compounding amount under the Scheme is as follows:

- (i) In a case where a pending SCN involves a service tax amount upto Rs 25000/-, with penalty or interest relating there to, amnesty under the Scheme would be available on payment of an amount equal to 50% of the service tax amount involved in the SCN. The penalty and interest would stand waived.
- (ii) Similarly, in the case of a confirmed demand, where service tax arrears amount as on 1.3.2008 is upto Rs 25,000, with unpaid interest or penalty relating there to, amnesty under the Scheme would be available on payment of an amount equal to 50% of the service tax arrears. The penalty and interest would stand waived.
- (iii) In a case where an SCN is pending only for imposition of both, penalty and interest, amnesty under the Scheme would be available on payment of 25 % of the interest payable plus 25% of the 'maximum' prescribed penalty leviable. If maximum penalty leviable exceeds the service tax amount, the penalty amount would be taken as equal to service tax amount for computation of compounding amount under the Scheme. Thus, in such case the compounding amount would be 25% of interest payable plus 25% of the penalty involved (taken as equal to service tax amount, if penalty exceeds service tax amount) in the offence.
- (iv) In a case where a confirmed demand involving only interest or penalty, amnesty would be available on payment of 25% of the unpaid amounts towards interest or penalty. In such cases too, if the penalty imposed is more than the service tax involved, for the purposes of the scheme, the penalty would be taken to be equal to tax amount.

4.1. **Illustrations as regards manner of computation of amount payable:** A few illustrations showing the manner of computation of amount payable under the Scheme are given below:

A. **Cases where Show Cause Notice has been issued but not adjudicated:**

Illustration 1:

The show cause notice involves (i) a demand of service tax of Rs 20,000; (ii) interest at the applicable rate; and (iii) penalty as applicable under various sections of the Finance Act. The service tax amount has not been paid on the date of declaration under the Scheme:

The tax arrears as per section 94 (b) of the Finance Act, 1994:

- (i) Service tax: Rs 20,000
- (ii) Education cess: as applicable (as mentioned in the show cause notice)
- (iii) Interest: as applicable (as mentioned in the show cause notice)=I
- (iv) Penalty: not decided

The compounding amount shall be @ 50% of service tax amount plus education cess payable thereon= Rs 10,000 plus education cess on Rs 10,000.
Penalty and interest shall be waived off.

Illustration 2:

The assessee has already paid the service tax amount of Rs 20,000 along with education cess. However, a show cause notice has been issued demanding (i) interest at the applicable rate; and (ii) penalty as applicable under various sections of the Finance Act, 1994.

The tax arrears as per section 94 (b) of the Finance Act, 1994:

- (i) Service tax: Nil
- (ii) Education cess: Nil
- (iii) Interest: as applicable (as mentioned in the show cause notice)= say Rs 5000
- (iv) Penalty: not decided. However, for the purposes of this Scheme, the maximum penalty that is leviable

as per the show cause notice will be taken as tax arrear subject to the condition that in case the penalty leviable exceeds the service tax amount involved, the maximum penalty leviable shall be taken as equal to service tax. Therefore,

- (a) suppose the maximum penalty leviable is twice the service tax amount i.e., Rs 40,000. The penalty amount shall be taken as Rs 20,000.

The compounding amount shall be @ 25% of Interest +25% of penalty
 $= 0.25 \times 5000 + 0.25 \times 20000 = 1250 + 5000 = \text{Rs } 6,250.$

- (b) Suppose the maximum penalty leviable is Rs 5000 (which is less than the service tax amount). The penalty amount shall be taken as Rs 5000

The compounding amount shall be @ 25% of Interest +25% of penalty
 $= 0.25 \times 5000 + 0.25 \times 5000 = 1250 + 1250 = \text{Rs } 5,000.$

B. Cases where an order has been passed, including the cases where orders have been passed in appeal

Illustration 3:

The order confirms (i) a demand of service tax of Rs 25,000; (ii) interest at the applicable rate; and (iii) penalties of Rs 10000. The service tax amount, interest and penalties have not been paid on the date of declaration under the Scheme:

The tax arrears as per section 94 (b) of the Finance Act, 1994:

- (i) Service tax: Rs 25,000
- (ii) Education cess: as applicable
- (iii) Interest: as applicable = say Rs 2000
- (iv) Penalty: Rs 10000

The compounding amount shall be @ 50% of service tax amount plus education cess payable thereon
 $= \text{Rs } 12,500 \text{ plus education cess on Rs } 12,500.$
 Penalty and interest shall be waived off.

Illustration 4:

In the above illustration (illustration 3), the assessee has paid the service tax amount of Rs 25,000 along with education cess. However, (i) interest at the applicable rate; and (ii) penalties have not been paid.

The tax arrears as per section 94 (b) of the Finance Act, 1994:

- (i) Service tax: Nil
- (ii) Education cess: Nil
- (iii) Interest: as applicable (as mentioned in the show cause notice)= say Rs 5000
- (iv) Penalty: Rs 10000.

The compounding amount shall be @ 25% of Interest +25% of penalty
 $= 0.25 \times 5000 + 0.25 \times 10000 = 1250 + 2500 = \text{Rs } 3,750.$

Illustration 5:

The assessee has paid the service tax of Rs 25,000 along with education cess. However, interest and penalties as imposed by an order has not been paid. As per the order interest liability is Rs 10,000 and the penalties imposed are Rs 30,000. The order confirms (i) a demand of service tax of Rs 25,000; (ii) interest at the applicable rate; and (iii) penalties of Rs 30,000. The interest and penalties have not been paid on the date of declaration under the Scheme:

The tax arrears as per section 94 (b) of the Finance Act, 1994:

- (i) Service tax: Nil
- (ii) Education cess: Nil
- (iii) Interest =Rs 10,000
- (iv) Penalty: Rs 25,000 (Note: as the penalty imposed is more than the service tax amount involved in the case, the penalty amount shall be taken as equal to the service tax amount)

The compounding amount shall be @ 25% of Interest +25% of penalty
= $0.25 \times 10,000 + 0.25 \times 25,000 = 2500 + 6250 = \text{Rs } 8750$

Illustration 6:

The order only involves only a demand of interest of say Rs 100,000; and (iii) penalties of Rs 50,000. Service tax and cesses have already been paid.

The tax arrears as per section 94 (b) of the Finance Act, 1994:

- (i) Service tax: Nil
- (ii) Education cess: Nil
- (iii) Interest =Rs 100,000
- (iv) Penalty: Rs 50,000

The compounding amount shall be @ 25% of Interest +25% of penalty
= $0.25 \times 100,000 + 0.25 \times 50,000 = \text{Rs } 25,000 + \text{Rs } 12,500 = \text{Rs } 37,500$

5. As stated above, the Dispute Resolution Scheme Rules, 2008 have been issued vide notification No. 28/2008-ST, dated 4.6.2008.

6. The Commissioner of Central Excise and Service shall notify well in advance, by way of an office order, the designated officer in respect of their jurisdiction.

7. This Scheme envisages culmination of pending litigation by quick resolution of pending disputes which fall within the specified Wide publicity may be given, in the form of trade notices, advertisements, seminars and interaction with the trade associations to make the stakeholders aware of the Scheme. Any difficulty faced in implementing the above provisions may be immediately brought to the notice of the undersigned.

8. Receipt of the Circular may be acknowledged.

9. Hindi version will follow.

Yours faithfully,

(Gautam Bhattacharya)
Commissioner (ST)

Encl: As above

Annexure (Circular No. 102/5/2008-ST)**ORDER****ISSUED UNDER SECTION 96(1) OF THE FINANCE ACT, 2008, IN RESPECT OF THE DISPUTE RESOLUTION SCHEME, 2008**

Whereas Mr./Mrs./M/s. (hereinafter referred to as the declarant) has filed a declaration under section 94 of the Finance Act, 2008;

And whereas the said declaration has been received on _____ in the office of the designated authority.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 96 of the Finance Act, 2008, the designated authority after considering relevant material, hereby determines the following amount payable by the declarant towards the full and final settlement of his/her/their tax arrears covered by the said declaration under the Scheme.

Tax arrears	Amount of tax arrears declared in Form 1 (as prescribed vide the Dispute Resolution Scheme Rules, 2008) (In Rs.)	Amount determined as payable under section 96(1) of the Finance Act, 2008 (In Rs.)	Remarks
(a) Taxes (b) Education cess (Primary) (c) Secondary and higher education cess (d) Interest (e) Penalty			

The declarant is hereby directed to make payment of the sum payable within thirty days from the date of this certificate.

Place :

Date : Name, signature and seal of the Designated Authority

