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[Training Material for Departmental Use]

E-BOOK



INDIRECT TAX
DISPUTE RESOLUTION
SCHEME, 2016

Note:

1. In this E-book, attempts have been made to explain about *Indirect Tax Dispute Resolution Scheme, 2016*. It is expected that it will help departmental officers in their day to day work.
2. Though all efforts have been made to make this document error free, but it is possible that some errors might have crept into the document. If you notice any errors, the same may be brought to the notice to the NACEN, RTI, Kanpur on the Email addresses: rtinacenkanpur@yahoo.co.in or goyalcp@hotmail.com (Email address of ADG, RTI, NACEN, Kanpur). This may not be a perfect E-book. If you have any suggestion to improve this book, you are requested to forward the same to us.
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Sd/-

(C. P. Goyal)
Additional Director General
[NACEN, RTI, Kanpur](#)

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1. Introduction

- 1.1** This Scheme has been introduced in the Finance Act, 2016 *vide* sections 212 to 218 of the Finance Act, 2016. This scheme has come into force with effect from 1.6.2016.
- 1.2** This Scheme provides for settlement of the disputes pending before the Commissioner (Appeal) as on the 01.03.2016, on payment of tax dues along with interest and twenty-five per cent. of the penalty imposed by the order under Appeal.

2. Salient Features of the Scheme.

- (a) **Name of the Scheme** **Indirect Tax Dispute Resolution Scheme, 2016**
- (b) **Period for applicability of Scheme:** **1.06.2016 to 31.12.2016**
- (c) **Nature of Dispute covered under the Scheme:** 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 1.3.2016.
- Note:** The term “Act” means the Customs Act, 1962; Central Excise Act, 1944 and Finance Act, 1994
- (d) **Dispute excluded from the ambit of Scheme** If—
- (a) the impugned order is in respect of **search and seizure proceeding**; or
 - (b) **prosecution** for any offence punishable under the Act has been **instituted before the 1.6.2016**; or
 - (c) the impugned order is in respect of **narcotic drugs or other prohibited goods**; or
 - (d) impugned order is in respect of any **offence punishable under the Indian Penal Code, the NDPS Act, 1985 or the Prevention of Corruption Act, 1988**; or
 - (e) any detention order has been **passed under the COFEPOSA Act, 1974**.

Indirect Tax Dispute Resolution Scheme, 2016

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|--|--|
| (e) Designated Authority for the Scheme | Each Commissionerate is required to designate an officer not below the rank of assistant Commissioner as designated authority for the purpose of this scheme. |
| (f) Pre-requisite for availing benefit of scheme | Deposit of duty, interest and penalty equal to 25% of penalty imposed under the order appealed against. |
| (g) Benefits accruing to the Declarants | <ul style="list-style-type: none">• Early final settlement of dispute pending before Commissioner (appeals)• Immunity from all other proceeding under the Act in relation to dispute under consideration. For example, immunity from prosecution |
| (h) Format for filing declaration under the Scheme | Form-I and to be filed in Duplicate [Refer: Rule 3 of the said Rules]. |
| (i) Limitations of the Scheme. | <ul style="list-style-type: none">• Scheme can be availed in respect of appeal filed before 01.03.2016 and pending before Commissioner (appeals).• Scheme is available only for limited period from 01.06.2016 to 31.12.2016.• If order appealed against pertains to certain specified matters, then this scheme cannot be availed of. |

3. Procedure for availing the Scheme:

The procedure for availing the benefit of Scheme can be summarized in the following 5-Steps procedure explained below:-

- Step 1** Filing of declaration before the designated authority (in Form-I) in Duplicate.
- Step 2** Acknowledgement (in Form-2) by Designated Authority within 7 days of receipt of declaration
- Step 3** Deposit or payment of tax due +applicable interest+ penalty equivalent to twenty-five per cent. of the penalty imposed in the impugned order by the Declarant- within 15 days of the receipt of acknowledgement.
- Step 4** Intimation of details of payment of dues along with the proof thereof (in Form-3) by the Declarant to the Designated Authority within 7 days of making such payment.
- Step 5** Issuance of an order of discharge of dues (in Form-4) by the Designated Authority within 15 days of receipt of proof of payment.

4. Summary of the Legal Provisions at a Glance

4.1 The legal provisions applicable to the Scheme are given in the Table-I below:-

Table-I

Sr. No.	Section/Rules/ Notification/Instructions	Subject in brief
1.	Chapter XI of the Finance Act, 2016 [Section from 212 to 218 of the Finance Act, 2016]	It lays down legal provision for Indirect Tax Dispute Resolution Scheme, 2016
2.	Notification No. 29/2016-CE (NT), dated 31.05.2016	It provides Indirect Tax Dispute Resolution Scheme Rules, 2016.
3.	Instruction No. 1080/6/ DLA/ IDRS/2016, dated 01.06.2016	It guides the field formation as how to implement the Scheme.
4.	Forms and Formats	Several forms have been notified by the Government vide notification No. 29/2016-CE (NT), dated 31.05.2016
	Form -1	It is a form prescribed for making declaration under the Scheme.
	Form-2	It is the form in which the designated authority is required to give the acknowledgement about the receipt of declaration by him.
	Form- 3	It is the form filed by the Declarant giving the details of the amount deposited by him as required under the scheme.
	Form- 4	It is the form in which the designated authority is required to pass an order of discharge of dues in respect of the case.

5. Text of the legal Provisions relating to the Scheme

5.1 Text of Sections from 212 to 218 of the Finance Act, 2016

Short title, application and commencement

212. (1) This Scheme may be called the Indirect Tax Dispute Resolution Scheme, 2016.
 (2) It shall be applicable to the declarations made up to the 31st day of December, 2016.
 (3) It shall come into force on the 1st day of June, 2016.

Definitions

213. (1) In this Scheme, unless the context otherwise requires,—

(a) “Act” means the Customs Act, 1962 or the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994, as the case may be;

(b) “Assistant Commissioner” means the Assistant Commissioner of Customs or the Assistant Commissioner of Central Excise or the Assistant Commissioner of Service Tax, as the case may be;

(c) “Commissioner” means the Commissioner of Customs or the Commissioner of Central Excise or the Commissioner of Service Tax, as the case may be;

(d) “declarant” means any person who makes a declaration under sub-section (1) of section 214;

(e) “designated authority” means an officer not below the rank of Assistant Commissioner who is authorised to act as Assistant Commissioner by the Commissioner for the purposes of this Scheme;

(f) “impugned order” means any order which is under challenge before the Commissioner (Appeals);

(g) “indirect tax dispute” means 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 the 1st day of March, 2016;

(h) “prescribed” means prescribed by rules made under this Scheme;

(i) “tax” includes duty or tax levied under the Act.

(2) Words and expressions used herein and not defined but defined in the Act or the rules made thereunder shall have the meanings respectively assigned to them in the Act or the rules made thereunder.

Procedure for making declaration

214. (1) Subject to the provisions of this Scheme, a person may make a declaration to the designated authority on or before the 31st day of December, 2016 in such form and manner as may be prescribed.

(2) The designated authority shall acknowledge the declaration in such form and manner as may be prescribed.

(3) The declarant shall pay tax due alongwith the interest thereon at the rate as provided in the Act and penalty equivalent to twenty-five per cent. of the penalty imposed in the impugned order, within fifteen days of the receipt of acknowledgement under sub-section (2) and intimate the designated authority within seven days of making such payment giving the details of payment made along with the proof thereof.

(4) On receipt of the proof of payment of tax, interest and penalty under sub-section (3), the designated authority shall, within fifteen days of the receipt of such proof, pass an order of discharge of dues referred to in sub-section (3) in such form as may be prescribed.

Scheme not to apply in certain cases.

215. The provisions of this Scheme shall not apply, if—

- (a) the impugned order is in respect of search and seizure proceeding; or
- (b) prosecution for any offence punishable under the Act has been instituted before the 1st day of June, 2016; or
- (c) the impugned order is in respect of narcotic drugs or other prohibited goods; or
- (d) impugned order is in respect of any offence punishable under the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act, 1988; or
- (e) any detention order has been passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.

Immunity from other proceedings under Act.

216. (1) Notwithstanding anything contained in any provision of the Act, upon the passing of an order under sub-section (4) of section 214, the 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.

(2) A declaration made under sub-section (1) of section 214 shall become conclusive upon the issuance of an order under sub-section (4) of section 214 and 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.

217. (1) Any amount paid in pursuance of a declaration made under sub-section (1) of section 214 shall not be refunded.

(2) Any order passed under sub-section (4) of section 214 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.

Power to make rules.

218. (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 and the manner in which a declaration may be made under sub-section (1) of section 214;
- (b) the form and the manner of acknowledging the declaration under sub-section (2) of section 214;
- (c) the form and the manner of issuing an order of discharge under sub-section (4) of section 214;
- (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) 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 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.

5.2 Text of Indirect Tax Dispute Resolution Scheme Rules, 2016

[As notified by the Government vide Notification No. 29/2016-CE (NT), dated 31.05.2016]

Notification No 29/2016-CE(NT), dated 31.05.2016

G.S.R. (E). - In exercise of the power conferred by sub-sections (1) and (2) of section 218 of the Finance Act, 2016, (28 of 2016), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.-

(1) These rules may be called the Indirect Tax Dispute Resolution Scheme Rules, 2016.

(2) They shall come into force on the 1st day of June, 2016.

2. Definitions. –

In these rules, unless the context otherwise requires, -

- (a) "Form" means the Form annexed to these rules;
- (b) "Scheme" means the Indirect Tax Dispute Resolution Scheme, 2016, specified under Chapter XI of the Finance Act, 2016 (28 of 2016) ;
- (c) "section" means section of the Finance Act, 2016 (28 of 2016) ;
- (d) words and expressions used in these rules and not defined in these rules but defined in the Scheme under Chapter XI of the Finance Act, 2016 (28 of 2016), shall have the meanings respectively assigned to them in that Scheme.

3. Form of declaration under sub section (1) of section 214 and manner of verification of such declaration in respect the amount payable.-

- (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) The declaration under sub section (1) of section 214 shall be verified in the manner indicated therein and shall be signed by the person making such declaration or by any person competent to act on his behalf.
- (3) The declaration under sub-rule (1) shall be furnished in duplicate to the designated authority.
- (4) The designated authority, on receipt of declaration, shall issue a dated acknowledgement thereof in Form 2 as per sub section (1) of section 214 within seven days of the receipt of declaration.
- (5) Copy of the declaration made under sub-rule (1) and the acknowledgement issued by the designated authority under sub-rule (4) shall be furnished within fifteen days of the receipt of acknowledgement by the declarant to the concerned Commissioner (Appeals) before whom the appeal in respect of which the declaration has been made is pending.
- (6) 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 sixty days from the date of receipt of information under sub-rule (5).

4. Form of reporting deposits made by declarant under sub-section (3) of section 214.-

Indirect Tax Dispute Resolution Scheme, 2016

- (1) Declarant shall, within fifteen days of the receipt of acknowledgement under sub-rule (4) of rule 3, deposit the amounts.
- (2) Declarant shall, within seven days of making the deposit, intimate the designated authority about the deposit made under subsection (3) of section 214 in Form 3.

5. Form of order under sub-section (4) of section 214.

- (1) The designated authority shall, within fifteen days of receipt of the information about the deposit made under sub-section (3) of section 214, in Form 3, issue the order of discharge of dues in respect of the declaration made under sub-section (1) of section 214 in Form 4.
- (2) The declarant shall intimate the concerned Commissioner (Appeals) along with the copy of the order of discharge of dues issued by the designated authority under sub-rule (1) before the expiry of the period of sixty days specified in sub-rule (6) to rule 3.
- (3) 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 under sub-rule (2).

Form 1 [See rule 3(1)]

FORM OF DECLARATION UNDER SUB SECTION (1) OF SECTION 214 OF THE FINANCE ACT, 2016 (28 OF 2016), IN RESPECT OF INDIRECT TAX DISPUTE RESOLUTION SCHEME, 2016

IN DUPLICATE

To,

The Designated Authority

.....

Sir/Madam, I hereby make a declaration under sub section (1) of section 214 of the Finance Act, 2016 (28 of 2016).

1.	Name of the declarant (in block letters)	
2.	Registration Number	

Indirect Tax Dispute Resolution Scheme, 2016

3.	Address (as mentioned in order in original against which appeal has been filed before Commissioner (Appeals))	
4	Telephone number	
5.	Order in original number	
6.	Date of order in original	
7.	Amounts demanded Duty/ Tax	
	Interest	
	Penalty	
8.	Commissioner (Appeals) before whom appeal is pending	
9.	Appeal No.	
10.	Amounts deposited Duty/ Tax	
	Interest	
	Penalty	
11.	Any other information	
VERIFICATION		
	I, (name in block letters) son/ daughter /of Shri solemnly declare that to the best of my knowledge and belief, -	
(a)	the information given in this declaration is correct and complete and amount due and other particulars shown therein are truly stated ;	
(b)	I am not disqualified in any manner from making a declaration under the Scheme with reference to the provisions of section 215 of Finance Act, 2016.	
(c)	I further declare that I am making this declaration in my capacity as [(designation)]	

Indirect Tax Dispute Resolution Scheme, 2016

	(please specify if you are making a declaration on behalf of declarant)] and that I am competent to make this declaration and verify it.		
Place		Signature of person making declaration	
Date		Name of person making declaration	

Instructions for filling the Form 1.

1. This Form should be submitted to the Commissioner of Customs or the Commissioner of Central Excise notified as designated authority under section 87(b)(ii) of the Finance (No. 2) Act, 1998.
2. Use separate Form for each appeal in respect of which declaration is being made.
3. No column shall be left blank. Wherever the entry is not relevant the column shall be filled in as 'Not applicable'.
4. In Row 2, registration number is to be filed only in respect of registered Central Excise and Service Tax Assessee. In respect of all others the row should be shown as "Not applicable".
5. In case of any deposits made in the matter against the amounts demanded please indicate the same in row 10.
6. Any other information relevant to the case may be briefly indicated under row 11.

Form 2
[See rule 2(4)]

FORM OF ACKNOWLEDGEMENT UNDER SUB SECTION (2) OF SECTION 214 OF THE FINANCE ACT, 2016 IN RESPECT OF INDIRECT TAX DISPUTE RESOLUTION SCHEME, 2016

Reference No

To,
.....
.....

Sir/Madam,

Whereas
Mr./Mrs./M/s. (hereinafter referred to as the declarant) has filed a declaration under sub-section (1) of section 214 of the Finance Act, 2016 (28 of 2016);

and the said declaration has been received on in the office of the designated authority.

The designated authority hereby acknowledges the receipt of the declaration made and directs the declarant to pay the amounts due from him along with interest at the rate applicable and penalty equivalent to twenty-five percent of the penalty imposed on him by the order in original No within fifteen days of the receipt of this acknowledgement.

The declarant shall within seven days of making the payment furnish to the designated authority as undersigned the intimation of making the payment in Form 3 along with the proof payment.

Signature of the designated authority

Place Name of the designated authority

Date Official Seal of the designated authority

Form 3 [See rule 4(2)]

FORM OF REPORTING THE PAYMENT UNDER SUB SECTION (3) OF SECTION 214 OF THE FINANCE ACT, 2016 (28 OF 2016) IN RESPECT OF INDIRECT TAX DISPUTE RESOLUTION SCHEME, 2016 [IN DUPLICATE]

To,

The Designated Authority

.....
.....

Sir/Madam,

Please refer to the declaration made by me in Form 1 dated, and the acknowledgement issued by you in Form 2, vide your Reference No dated As required I have deposited the amounts as follows on Amount as per order in original Amount deposited Duty Interest Penalty Copy of the Challan dated for making the payment as above are enclosed.

Place Signature of person making declaration
.....

Date Name of person making declaration

Form 4 [See rule 5(1)]

FORM OF ORDER OF DISCHARGE OF DUES UNDER SUB-SECTION (4) SECTION 214 OF THE FINANCE ACT, 2016 (28 of 2016).

Reference No

Mr/ Mrs/ M/s (Name and address of the declarant) (hereinafter referred to as declarant) had made a declaration under sub-section (1) of section 214 of the Finance Act, 2016 (28 of 2016) on

and The designated authority by acknowledgement of even number in Form 2 dated acknowledged the said declaration;

The Declarant has intimated as required under sub-section (3) of Section 214, the details of amount deposited by him against the said order in original in Form 3 dated

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 214 read with section 216 of the Finance Act, 2016, the designated authority hereby issues order of discharge of due the said declarant –

(a) certifying the receipt of payment from the declarant towards full and final settlement of the amounts due from the declarant in terms of order in original No dated

(b) granting immunity, from all from all proceedings under the Act, in respect of the indirect tax dispute for which the declaration has been made under this Scheme.

Signature of the designated authority
Place Name of the designated authority
Date Official Seal of the designated authority

Copy To

- (1) The declarant
- (2) Assessing/Adjudicating Officer
- (3) Commissioner of Customs/ Central Excise/ Service Tax
- (4) Concerned appellat authorities

5.3 Text of CBEC Instruction No. 1080/6/ DLA/ IDRS/2016, dated 01.06.2016 issued by the Directorate of Legal Affairs.

CBEC Instruction No. 1080/6/ DLA/ IDRS/2016, dated 01.06.2016

Sub: Indirect Tax Dispute Resolution Scheme, 2016

The Chapter XI of the Finance Act, 2016 (28 of 2016) comprising of section 212 to 218, is in respect of the Indirect Tax Dispute Resolution Scheme, 2016. The said scheme allows the party in appeal before the Commissioner (Appeals) on 1st March 2016, to file a declaration before the Designated Authority for the purpose of availing the benefit of the Scheme.

2. As per clause (e) of sub-section (1) of Section 213 of the Finance Act, 2014**, the “*designated authority*” means 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. As per the said clause (e), every Commissioner is required to authorize an officer not below the rank of Assistant Commissioner to function as Assistant Commissioner, Designated Authority for the purpose of this scheme. Accordingly you may get the Designated Authority, specified in your jurisdiction by the concerned Commissioners at the earliest. The details of Designated Authority so specified must be communicated to Commissioner, Directorate of Legal Affairs.

3. The Indirect Tax Dispute Resolution Scheme Rules, 2016 has been notified by Notification No. 29/2016-CE (NT), dated 31st May, 2016. These rules provides for the forms to be used for making the scheme operational. Following forms have been specified by the said Rules:-

- (a) Form 1, has been prescribed for making declaration under the scheme.
- (b) Form 2, is the form in which the designated authority shall give the acknowledgement about the receipt of declaration by him. Once such a acknowledgment has been given by the designated authority, the proceedings before the Commissioner (Appeals) shall remain suspended for sixty days, and the Commissioner will not proceed any further with the appeal till expiry of said sixty days.
- (c) Form 3, is the form to be filed by the declarant giving the details of the amount deposited by him as required under the Scheme. 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.
- (d) Form 4, is the 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.

4. Commissioner will on receipt of the order in Form 4 from the declarant shall match the same with the copy received directly from the Designated authority and shall remove the appeal from his pendency as being disposed of. Since the Commissioner (Appeals) has not decided on the issues raised in appeal, said disposal of appeal shall have no binding precedent value.
5. You should publicize the scheme in your jurisdiction so as to make it a success.
6. Any further issue which is noticed by you while making the scheme operational in your jurisdiction should be brought to the notice of Board for suitable clarification.

Commissioner (DLA)

****Note from Nacen, Kanpur: [appears to be error, the correct year should be 2016]**
