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"Petty" Disputes Resolution Scheme

Author: G. Natarajan, S. Jaikumar

Chapter VI of the Finance Bill, 2008 proposes to introduce a "Service Tax Disputes Resolution Scheme" to which the title of this article would be a correct heading. Let us see the features of this settlement.

- This scheme shall be operational from 01.07.2008 to 30.09.2008.
- "Tax arrears" to cover service tax, cess, penalty and interest.
- If service tax is also part of such arrears, this scheme is applicable only if such service tax involved is less than Rs.25,000.
- If the arrears is only of interest and penalty, this scheme is applicable without any limit.
- The order / show cause notice has been issued on or before 01.03.2008 and the "tax arrears" remain unpaid as on 01.03.2008.
- Can avail this scheme, at any stage of the proceedings, viz., show cause notice, appeal, etc.
- Upon resolution of the dispute under this scheme, any pending appeal shall be deemed to be withdrawn.
- If any proceedings are pending before any Court, the same shall be withdrawn.

The practical application of this scheme may be understood with reference to various examples.

Example 1. An order has already been passed before 01.03.2008 confirming a service tax demand of Rs.20,000. Interest as appropriate is also demanded. A penalty of Rs.20,000 has been imposed under various sections.

Amount payable under this scheme :

Tax arrears involved = Rs.40,000 plus interest.
50 % of Service Tax amount i.e. 50 % of Rs.20,000 i.e. Rs.10,000

{Reference Section 89 (a) (i)}

Example 2. An order has been passed, in which there is no confirmation of service tax demand. Only penalties and interests have been imposed / demanded, for delayed payment of service tax. The service tax amount involved is Rs.15,000. A total penalty of Rs.10,000 has been imposed and the interest liability works out to Rs.2,000.

Tax arrears involved = Rs.12,000.
Amount payable under this scheme :
25 % of the tax arrears i.e. 25 % of Rs.12,000 = Rs.3,000

{Refer Section 89 (a) (ii)}

Example 3. A show cause notice has been issued before 01.03.2008, demanding service tax of Rs.12,000 along with various penalties and interest.

Tax arrears involved = Rs.12,000 plus interest and penalties.
Amount payable under this scheme
50 % of Rs.12,000 i.e. Rs.6,000

{Refer 89 (b) (i)}

Example 4. A show cause notice has been issued for imposition of penalty under Section 76 (which shall not exclude the service tax amount) and demanding interest of Rs.4000, for the delayed payment of service tax of Rs.16,000. There is no demand of service tax in this case, as the same has been paid.

> Tax arrears = Rs.16,000 (Maximum penalty imposable) + Rs.4,000 (interest)
> i.e. Rs.20,000
> Amount payable under this scheme
> 25 % of Rs.20,000 i.e. Rs.5,000
>
> {Refer Section 89 (b) (ii)}

Example 5. An order has been passed confirming service tax of Rs.17,000 and imposing a total penalty of Rs.35,000 under various section, along with demand of interest of Rs.3,000. The service tax amount has already been paid.

> Tax arrears = Rs.35,000 (Penalty) + Rs.3,000 (Interest) = Rs.38,000.
> Since the penalty amount exceeds the service tax amount, as per the proviso under Section (89) (a) (ii), the service tax amount, i.e. Rs.17,000 shall be considered as the penalty.
> Revised Tax arrears = Rs.17,000 + Rs.3,000 = Rs.20,000
> Amount payable under this scheme
> 25 % of Rs.20,000 i.e. Rs.5,000

Example 6. In an order passed, a service tax demand of Rs.2,00,000 has been confirmed and a penalty of Rs.3,00,000 has been imposed. Interest as applicable has also been demanded. The assessee has already paid service tax of Rs.1,80,000 and only Rs.20,000 remains unpaid. Interest works out to Rs.5,000

> Tax arrears involved = Rs.3,00,000 (Penalty) + Rs.20,000 (Service Tax) + Rs5,000 (Interest) = Rs.3,25,000.
> Even though the service tax confirmed in the order is more than Rs.25,000, in the tax arrears, the service tax component is only Rs.20,000 and hence the present case is eligible for the scheme.
>
> Tax arrears involved = Rs.3,25,000
> Amount payable under this scheme
> 50 % of service tax amount
> 50 % of Rs.20,000 i.e. Rs.10,000

Example 7. In an order passed, a service tax demand of Rs.2,00,000 has been confirmed and a penalty of Rs.3,00,000 has been imposed. Interest as applicable has also been demanded. The assessee has already paid service tax of Rs.2,00,000. Interest works out to Rs.5,000

> Tax arrears = Rs.3,05,000 i.e Rs.3,0000 (Service Tax) + Rs.5,000 (Interest)
> In this case, the penalty imposed (Rs.3,00,000) is more than the service tax amount to which it relates (Rs.2,00,000). Hence, as per the proviso under Section (89) (a) (ii), the service tax amount, i.e. Rs.2,00,000 shall be considered as the penalty.
>
> Revised Tax Arrears = Rs.2,00,000 (penalty) + Rs.5,000 (Interest)
> Amount payable under this scheme
> 25 % of Rs.2,05,000
> i.e. Rs.51,250

Before parting....

If all is well with the above, will it be interesting? So, there is a potential for bombshell here too. The provisio referred to above has been worded as below:

Provided that if the amount of penalty levied / leviable exceeds the service tax amount to which it relates, service tax amount shall be considered to be the amount of penalty.

The above proviso has been interpreted in the above examples, to the effect that wherever the penalty exceeds the service tax amount, such penalty shall be restricted to the service tax amount. This will have effect only under the situations enumerated under clause (ii) of Sections 89 (a) and (b).

But, if it is interpreted otherwise, i.e. wherever the penalty levied / leviable exceeds the service tax amount to which it relates, "the service tax amount" shall be considered as equal to such penalty, it will lead to disastrous results and disturbance of equity. It is better, if it is clarified.