

DESAI SAKSENA & ASSOCIATES

27th September, 2024

Friday Tax Alert

From:

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PRESS RELEASE:

CBDT Notifies Rules & Forms for Direct Tax Vivad Se Vishwas Scheme, 2024

Hon'ble Finance Minister, in her budget speech, announced the Direct Tax *Vivad Se Vishwas* Scheme, 2024 (referred as DTVSV, 2024) to resolve pending appeals in the case of income tax disputes. **The DTVSV Scheme, 2024 was enacted vide Finance (No. 2) Act, 2024. The said Scheme shall come into force with effect from 1-10-2024.** Further, the Rules and Forms for enabling the Scheme have also been notified vide Notification No. 104/2024 in G.S.R 584(E), dated 20-9-2024.

The Scheme provides for lesser settlement amounts for a 'new appellant' in comparison to an 'old appellant'. The Scheme also provides for lesser settlement amounts for taxpayers who file declarations on or before 31-12-2024 in comparison to those who file thereafter.

Four separate Forms have been notified for the purposes of the Scheme. These are as under:

- (i) **Form-1:** Form for filing declaration and Undertaking by the declarant.
- (ii) **Form-2:** Form for Certificate to be issued by Designated Authority.
- (iii) **Form-3:** Form for Intimation of payment by the declarant.
- (iv) **Form-4:** Order for Full and Final Settlement of tax arrears by Designated Authority.

The Scheme also provides that Form-1 shall be filed separately for each dispute, provided that where the appellant and the income-tax authority, both have filed an appeal in respect of the same order, single Form-1 shall be filed in such a case.

The intimation of payment is to be made in Form-3 and is to be furnished to the Designated Authority along with proof of withdrawal of appeal, objection, application, writ petition, special leave petition, or claim.

Forms 1 and 3 shall be furnished electronically by the declarant. These Forms will be made available on the e-filing portal of the Income Tax Department *i.e.* **www.incometax.gov.in**.

For detailed provisions of the DTVSV Scheme, 2024, section 88 to section 99 of the Finance (No. 2) Act, 2024 may be referred to along with Direct Tax *Vivad Se Vishwas* Rules, 2024.

This is another initiative by the Government towards litigation management.

[Press Release dated 21.09.2024]

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Tax Invoices, E-Way Bill and bank payments cannot prove the actual movement of goods for claiming input tax credit (ITC)

Facts of the case:

- M/s. Anil Rice Mill (Taxpayer) is engaged in the business of trading peanuts, galla and paddy.
- The Taxpayer had received a show cause notice (SCN) under Section 74 of the Central Goods and Services Tax Act, 2017 (CGST Act) alleging that the Taxpayer had claimed the wrong ITC for the months of June to September 2020.
- After considering the response filed by the Taxpayer, the aforesaid SCN was confirmed vide the Order-in-Original. Against this, the Taxpayer filed an appeal before the First Appellate Authority which was rejected.
- Aggrieved by the above, the Taxpayer filed a Writ Petition before the Allahabad High Court.

Contention of the Taxpayer:

- The Taxpayer has claimed ITC after the due purchase of goods through a proper invoice and had made the payment through the banking channel. Merely because the supplier has not reported the said purchases in its returns or has not deposited tax, action cannot be initiated against the Taxpayer.
- Since the Taxpayer had cleared the invoice issued by the supplier on which tax was charged, the benefit of ITC cannot be legally denied to the Taxpayer.
- The ITC under the GST regime is introduced to avoid cascading effect and once the tax charged on the invoice is paid by the Taxpayer through the banking channel, the benefit of the ITC cannot be legally denied.
- The Taxpayer has rightly discharged his liability of tax by paying the same to the supplier and if the supplier has not deposited the tax so charged, the supplier ought to be penalised and not the Taxpayer. The recovery of ITC that is rightly claimed by the Taxpayer would amount to double taxation which is not aligned with the spirit of the GST regime.
- Reliance in this regard was placed on Commissioner of Central Excise Customs and Service Tax Vs. M/s Juhi Alloys [CE Appeal 21 of 2014] and LGW Industries Ltd. and Ors. Vs. Union of India and Ors. [WPA No. 23512 of 2019].

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Observation and ruling of the High Court:

- The scheme of ITC is introduced with an object to avoid the cascading effect of tax and to avoid double taxation. The benefit of concession / ITC under the tax statute can be availed only on the fulfilment of certain conditions or restrictions. In the event of a breach of any of the conditions, no benefit can be conferred to the dealer.
- On perusal of Section 16(2) of the CGST Act, it is clear that a **registered dealer can claim ITC only on fulfilment of certain conditions enumerated therein.**
- Further, on a combined reading of Sections 16(2) and 74 of the CGST Act, **it is evident that in the event of wrong availment of ITC, proceedings can be initiated against the registered person.** However, restrictions have been imposed upon the authorities that without sending a notice to the dealer, no adjudication proceedings can be initiated.
- The Taxpayer has only brought on **record the tax invoices, e-way bills and payment through the banking channel, but no details such as payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof have been provided. Thus, in the absence of these documents, the actual physical movement of goods cannot be established and the genuineness of transportation of goods and the transaction cannot be established.** Further, no proof of filing of Form GSTR-2A has been brought on record and hence, the proceedings have been rightly initiated against the Taxpayer.
- Reliance was placed on the Supreme Court ruling in the *State of Karnataka Vs. M/s. EcomGill Coffee Trading Pvt. Ltd. [Civil Appeal No. 230 of 2023]* wherein it was held that primarily **the burden of proof for claiming ITC is upon the dealer**, i.e., to furnish the details of the selling dealer, vehicle number, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars to prove and establish the actual movement of goods. A similar view was held by the Calcutta High Court in *M/s. Shiv Trading Vs. State of U.P. and Ors. [Writ Tax No. 1421/2022]*.
- In view of the above, the Writ Petition filed by the Taxpayer was set aside and the Impugned Order was upheld.

[Anil Rice Mills Vs. State of U.P & Ors [TS – 527-HC(All)-2024-GST]