

KAR VIVAD SAMADHAN SCHEME, 1998

CONTENTS

CHAPTER 1 :- INTRODUCTION

1. Introduction
2. Object of the Scheme
3. A birds eye view of the Scheme
4. Provisions of the Scheme at a glance
5. Commencement of the Scheme
6. Definitions of undefined terms

CHAPTER 2 :-TAX ARREAR IN RESPECT OF WHICH THE SCHEME APPLIES

1. Scope of Tax arrear in respect of which the Scheme applies
2. Tax arrear under Direct Tax Enactment
3. Tax arrear in case of Indirect Tax Enactment
4. Tax arrears has to be outstanding as on 31-3-1998
5. Payment of taxes after 31-3-1998 and its set off against Tax arrear
6. Deposits after 31-3-1998 under Indirect Tax Enactment

CHAPTER 3 :- WHO CAN TAKE BENEFIT OF NEW SCHEME

1. Who can take benefit of New Scheme
2. Who cannot make declaration
3. Tax arrear under any Direct Tax Enactment in respect of which a declaration cannot be made
4. Tax arrear in respect of Indirect Tax Enactment in respect of which a declaration cannot be made
5. Certain circumstances under which a declaration under the Scheme cannot be made
6. Bar against certain persons

CHAPTER 4 :- DETERMINATION OF AMOUNT PAYABLE UNDER THE SCHEME IN RESPECT \ \ \ \ \OF TAX ARREAR

1. Determination of Amount Payable under the Scheme is respect of Tax arrear
2. Determination of Amount Payable qua Tax arrear under Direct Tax Enactment
3. Disputed tax
4. Disputed amount
5. Determination of Amount payable qua Tax arrears under Indirect

Tax Enactment

CHAPTER 5 :-RATE AT WHICH AMOUNT IS PAYABLE UNDER THE SCHEME

1. Rate at which amount is payable under the scheme
2. Rates prescribed
3. Additional tax, whether constitutes disputed tax for determining Disputed amount
4. TDS, interest and other penalties
5. Amount payable under Indirect tax enactment

CHAPTER 6 :- DECLARATION FOR SETTLEMENT

1. Settlement of tax payable
2. Who can make declaration
3. When to file declaration
4. With whom the declarations to be filed
5. Separate/Composite declaration
6. Can there be multiple declarations
7. Whether all Tax arrear required to be declared
8. Whether declaration possible only in respect of a part of a Tax arrear of an assessment year/a show-cause notice
9. Form of declaration
10. Signature

CHAPTER 7 :-PROCEDURE UPON FILING OF DECLARATION AND PAYMENT \ \OF AMOUNT PAYABLE

1. Procedure and other matters upon declaration
2. Order by designated authority
- 2A. False declaration
3. Consequences of void declarations
4. Payment of Amount Payable
5. Certificate by Designated authority
6. Order to be conclusive
7. Withdrawal of appeal, etc
8. Effects of non-payment or short payment of Amount Payable
9. Refund of Amount paid under the Scheme
10. Position in case of a firm and a partner under the old scheme of assessment

CHAPTER 8 :- IMMUNITIES

1. Immunities
2. No immunity under any other law
3. Restrictions on benefit, concession or immunity

CHAPTER 9 :- OTHER MATTERS

1. Power of Central Government to issue directions
2. Powers to remove difficulties and frame rules

3. Overall impressions

CHAPTER 10 :- CASE STUDY

1. ILLUSTRATION EXPLAINING CERTAIN SIGNIFICANT PROVISIONS OF THE SCHEME

SCHEDULE 1 :- THE SCHEDULE

KAR VIVAD SAMADHAN SCHEME, 1998

KAR VIVAD SAMADHAN SCHEME, 1998

CHAPTER 1

INTRODUCTION

1. Introduction :-

2. Object of the Scheme :-

3. A birds eye view of the Scheme :-

4. Provisions of the Scheme at a glance :-

5. Commencement of the Scheme :-

6. Definitions of undefined terms :-

CHAPTER 2

TAX ARREAR IN RESPECT OF WHICH THE SCHEME APPLIES

1. Scope of Tax arrear in respect of which the Scheme applies :-

2. Tax arrear under Direct Tax Enactment :-

3. Tax arrear in case of Indirect Tax Enactment :-

4. Tax arrears has to be outstanding as on 31-3-1998 :-

5. Payment of taxes after 31-3-1998 and its set off against Tax arrear :-

6. Deposits after 31-3-1998 under Indirect Tax Enactment :-

CHAPTER 3

WHO CAN TAKE BENEFIT OF NEW SCHEME

1. Who can take benefit of New Scheme :-

2. Who cannot make declaration :-

3. Tax arrear under any Direct Tax Enactment in respect of

which a declaration cannot be made :-

4. Tax arrear in respect of Indirect Tax Enactment in respect of which a declaration cannot be made :-

5. Certain circumstances under which a declaration under the Scheme cannot be made :-

6. Bar against certain persons :-

CHAPTER 4

DETERMINATION OF AMOUNT PAYABLE UNDER THE SCHEME IN RESPECT \ \ \ \
OF TAX ARREAR

1. Determination of Amount Payable under the Scheme in respect of Tax arrear :-

2. Determination of Amount Payable qua Tax arrear under Direct Tax Enactment :-

3. Disputed tax :-

4. Disputed amount :-

5. Determination of Amount payable qua Tax arrears under Indirect Tax Enactment :-

CHAPTER 5

RATE AT WHICH AMOUNT IS PAYABLE UNDER THE SCHEME

1. Rate at which amount is payable under the scheme :-

2. Rates prescribed :-

3. Additional tax, whether constitutes disputed tax for determining Disputed amount :-

4. TDS, interest and other penalties :-

5. Amount payable under Indirect tax enactment :-

CHAPTER 6

DECLARATION FOR SETTLEMENT

1. Settlement of tax payable :-

2. Who can make declaration :-

3. When to file declaration :-

4. With whom the declarations to be filed :-

5. Separate/Composite declaration :-

6. Can there be multiple declarations :-

7. Whether all Tax arrear required to be declared :-

8. Whether declaration possible only in respect of a part of a Tax arrear of an assessment year/a show-cause notice :-

9. Form of declaration :-

10. Signature :-

CHAPTER 7

PROCEDURE UPON FILING OF DECLARATION AND PAYMENT \ \ OF AMOUNT PAYABLE

1. Procedure and other matters upon declaration :-

2. Order by designated authority :-

2A. False declaration :-

3. Consequences of void declarations :-

4. Payment of Amount Payable :-

5. Certificate by Designated authority :-

6. Order to be conclusive :-

7. Withdrawal of appeal, etc :-

8. Effects of non-payment or short payment of Amount Payable :-

9. Refund of Amount paid under the Scheme :-

10. Position in case of a firm and a partner under the old scheme of assessment :-

CHAPTER 8

IMMUNITIES

1. Immunities :-

2. No immunity under any other law :-

3. Restrictions on benefit, concession or immunity :-

CHAPTER 9

OTHER MATTERS

1. Power of Central Government to issue directions :-

2. Powers to remove difficulties and frame rules :-

3. Overall impressions :-

CHAPTER 10

CASE STUDY

1. ILLUSTRATION EXPLAINING CERTAIN SIGNIFICANT PROVISIONS OF THE SCHEME :-

SCHEDULE 1

THE SCHEDULE

[section 87(1)] 1. The Agricultural Produce Cess Act, 1940. 2. The Coffee Act, 1942. 3. The Mica Mines Labour Welfare Fund Act, 1946. 4. The Rubber Act, 1947. 5. The Salt Cess Act, 1953. 6. The Medicinal and Toilet Preparations (Excise Duties) Act, 1955. 7. The Additional Duties of Excise (Goods of Special Importance) Act, 1957. 8. The Mineral Products (Additional Duties of Excise and Customs) Act, 1958. 9. The Sugar (Special Excise Duty) Act, 1959. 10. The Textiles Committee Act, 1963. 11. The Produce Cess Act, 1966. 12. The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972. 13. The Coal Mines (Conservation and Development) Act, 1974. 14. The Oil Industry (Development) Act, 1974. 15. The Tobacco Cess Act, 1975. 16. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976. 17. The Beedi Workers Welfare Cess Act, 1976. 18. The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978. 19. The Sugar Cess Act, 1982. 20. The Jute Manufacturers Cess Act, 1983. 21. The Agricultural and Processed Food Products Export Cess Act, 1985. 22. The Spices Cess Act, 1986. 23. The Industries (Development and Regulation) Act, 1951. 24. The Tea Act, 1953. 25. The Sugar Export Promotion Act, 1958. 26. The Sugar (Regulation of Production) Act, 1961. 27. The Marine Products Export Development Authority Act, 1972. 28. Any other enactment imposing the auxiliary duty of customs or the special duty of excise. \ \MEMORANDUM TO FINANCE (NO. 2) BILL, 1998 \ \ EXPLAINING THE PROVISIONS OF \ \ KAR VIVAD SAMADHAN SCHEME Kar Vivad Samadhan Scheme seeks to provide a quick and voluntary settlement of tax dues outstanding as on 31-3-1998, both in various direct tax enactments as well as indirect taxes enactments by offering waiver of a part of the arrear taxes and interest and providing immunity against institution of prosecution and imposition of penalty. The assessee on his part shall seek to withdraw appeals pending before various appellate authorities and Courts. The Scheme comes into force on the first day of September, 1998 and ends on 31st day of December, 1998. It will have following salient features. 2. The scheme is applicable to tax arrears outstanding as on 31-3-1998 under various direct tax enactments and indirect tax enactments. The amount payable by the applicants termed as declarants shall be determined as under:- (a) Direct Taxes (i) The declarant shall be required to pay tax @ 30% (35% in the case of firms and companies) on the amount of income in dispute (in other than search and seizure cases). (ii) Where tax arrears include income-tax, interest payable or penalty levied, the amount payable shall be 30% of the disputed income (35% in the case of firms and companies). (iii) Where tax arrears comprise only interest payable or penalty levied, the amount payable shall be 50% of the tax arrear. (iv) Where tax arrears include the tax, interest or penalty determined in any assessment on the basis of search and seizure proceedings under section 132 or section 132A of Income-tax Act, the amount payable shall be 40% of the disputed income (45% in the case of

firms and companies). (v) In respect of arrears under Wealth-tax Act, the amount payable shall be 1% of disputed wealth where the tax arrears includes wealth-tax or interest and penalty levied in addition to wealth-tax. Where tax arrear is only interest payable or penalty levied, 50% of such amount is to be paid. Where the tax arrears are determined on the basis of search and seizure proceedings under section 37A or S.37B of the Wealth Tax Act, 1957, the tax payable shall be @ 2% of the disputed wealth. (vi) In respect of tax arrears payable under Gift-tax Act the amount payable shall be 30% of the disputed value of the gift where the tax arrears includes gift-tax or interest payable and penalty levied in addition to gift-tax. Where tax arrears is only interest payable or penalty levied, 50% of such amount shall be paid. (vii) In respect of tax arrears payable under Expenditure-tax Act, the amount payable shall be 10% of the disputed chargeable expenditure where the tax arrears is expenditure-tax or includes interest payable and penalty, in addition where the arrear is only in respect of interest or penalty, only 50% of the arrear shall be payable. (viii) In respect of tax arrears payable under Interest-tax Act, the amount payable shall be @ 2% of the disputed chargeable interest where tax arrear includes interest-tax or interest payable and penalty levied, in addition. If the tax arrears includes only interest or penalty, the amount payable will be 50% of the tax arrear. (b) Indirect taxes Under indirect taxes the amount payable shall be 50% of the tax arrear and including interest payable, fine or penalty levied. 3. A person desiring to avail the scheme is required to file a declaration in the prescribed form before the designated authority notified for this purpose. The designated authority shall pass an order within sixty days of the declaration determining the amount payable in accordance with the provisions of the Scheme and grant a certificate indicating the particulars of tax arrears and the sum payable and intimate the same to the declarant The declarant will pay the sum payable as determined by designated authority within thirty days of the passing of such order. The order passed by the designated authority shall be conclusive and shall not be reopened in any other proceedings or under any law for the time being in force. Where the declarant has filed an appeal or reference before any Authority, Tribunal or Court, notwithstanding anything contained in any other provision of Law for the time being in force, such appeal, reference or reply shall be deemed to have been withdrawn. Where writ petitions have been filed before the High Court or Supreme Court the declarant shall move an application for withdrawing such petitions and furnish the proof of the same along with the intimation. Any amount paid in pursuance of declaration made under the Scheme shall not be refundable under any circumstances. 4. The designated authority shall subject to the conditions provided in the Scheme grant immunity from prosecution or penalty under the relevant Acts in respect of matters covered in the declaration. 5. The Scheme shall not be applicable in respect of tax arrears in following cases: (a) In respect of direct taxes,- (i) in a case where prosecution for concealment has been launched under any direct tax enactment; (ii) in a case where Settlement Commission has passed the order on disputed income; (iii) in a case where no appeal or reference is pending before any appellate authority or Court or revision application before the Commissioner. (b) In respect of indirect tax enactments,- (i) in a case where prosecution has been launched under any indirect tax enactment; (ii) in a case where show-cause notice or notice of demand under Customs Act or the Central Excise Act has not been issued. (c) In respect of a person against whom prosecution for any offence punishable under Ch. 9 and Indian Penal Code, 1860, Narcotics Drugs and Psychotropic Act, 1985, the Terrorist and Disruptive Activities Prevention Act, 1987 or Prevention of Corruption Act, 1988 has been instituted. (d) In

respect of a person against whom an order of detention has been made under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. (e) In respect of a person notified under sub-section (2) of S.3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. 6. Where the declarant has filed an appeal or reference or reply to the show- cause notice against any order or notice giving rise to tax arrear before any authority or Tribunal, such appeal or reference or reply shall be deemed to have been withdrawn. No appellate authority or court shall try in a suit or issue relating to arrear tax specified in the declaration. \ \MEMORANDUM TO FINANCE (NO. 2) BILL, 1998 REGARDING \ \ \ \DELEGATED LEGISLATION Clauses 89 to 101 of the Bill contain provisions in respect of Kar Vivad Samadhan Scheme, 1998 for settlement of certain disputed direct tax arrears and indirect tax arrears. It is proposed to confer powers upon the Chief Commissioner of Income-tax and Chief Commissioner of Central Excise to notify the designated authority not below the rank of Commissioner of Income-tax and Commissioner of Central Excise, for the purposes of the said scheme. It is also proposed to confer powers upon the Central Board of Direct Taxes to prescribe (a) the form in which a declaration may be made under section 91 and the manner in which such declaration be verified; (b) the form of certificates which may be granted under sub-section (1) of section 93; (c) the manner in which the orders may be published under sub-section (2) of section 99 and (d) and any other matter which is to be, or may be, prescribed or in respect of which provision is to be made by rules. \ \ \ \NOTES ON CLAUSES OF THE FINANCE (NO. 2) BILL, 1998 \ \ \ \EXPLAINING THE PROVISIONS OF KAR VIVAD \ \ \ \SAMADHAN SCHEME, 1998 Clause 89 relates to short title and commencement of the Scheme for settlement of certain disputed direct and indirect tax arrears, namely, Kar Vivad Samadhan Scheme. Clause 90 contains definition of certain terms and expressions used in the Scheme. Clause 91 seeks to provide for settlement of certain disputed arrears of taxes in relation to disputed income, disputed wealth, disputed expenditure, disputed chargeable interest, disputed value of gift and tax arrears payable under the direct tax enactments and the indirect tax enactments. Under the Scheme, if any person makes on or after the 1st September, 1998 but on or before 31st December, 1998, a declaration to the designated authority relating to the arrear of tax payable by him, the amount shall be determined as per the rates laid down in that clause. Under the direct tax enactment, the arrears will be payable at the rate of thirty-five per cent in cases of a company or a firm; thirty per cent in case of persons other than a company or a firm. In search and seizure cases, higher rates of tax of forty-five per cent have been provided for a company or a firm and others respectively. Different rates are provided for the disputed cases under Wealth-tax, Expenditure-tax, Interest-tax and Gift- tax. Under the indirect tax enactment, the arrears are payable at fifty per cent thereof. Clause 92 provides that a declaration under the Scheme will be made to the designated authority. This clause further provides that the declaration will be in such form and will be verified in such manner as may be prescribed. Clause 93 provides that the designated authority will pass an order on the declarations received by him within sixty days from the date of receipt of such declaration. The designated authority will also issue a certificate to the person making the declaration setting forth therein the particulars of the sum payable by the declarant as determined. The declarant shall pay the sum so determined by the designated authority and furnish proof of such payment before him. This clause further provides that the matter so determined under this clause will not be open for any dispute in the court of law or before any other forum. The declarant is also required to withdraw

the appeals pending before any appellate authority or court relating to the tax arrears pending before them. In case it is found that any of the material particulars furnished in the declaration by the declarant is found to be false at any stage, it will be presumed that the declaration has never been made and all consequences under the direct tax enactment or the indirect tax enactment under which the proceedings against the declarant are pending shall be revived. Clause 94 seeks to provide that the designated authority shall, on the declarant fulfilling the conditions provided in section 93, grant the declarant immunity from penalty and prosecution in relation to such matters as are the subject matter of the declaration. Clause 95 seeks to bar further proceedings in respect of tax arrears determined under the Scheme. Clause 96 seeks to provide that in no event the amount of tax paid in pursuance of a declaration made under clause 91 will be refunded. Clause 97 clarifies that, except as otherwise expressly provided, the Scheme should not be construed as conferring any benefit, concession or immunity on the declarant in any assessment or proceedings other than in respect of which the declaration pertains to. Clause 98 seeks to specify the circumstances under which the provisions of the Scheme will not be applicable. The Scheme would not be applicable, inter alia, to those persons against whom prosecution proceedings under Chapter IX or Indian Penal Code, 1860, the Narcotics Drugs and Psychotropic Substances Act, 1985, the Terrorists and Disruptive Activities (Prevention) Act, 1987, the Prevention of Corruption Act, 1988 or where the order of detention has been issued under COFEPOSA or where the prosecution for concealment has been launched under any direct tax enactment or for any offence under indirect tax enactment. The persons who have been proceeded against a Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 are also barred from the Scheme. Clause 99 seeks to empower the Central Government to issue orders, instructions and directions to the various authorities for proper administration of the Scheme. It also empowers the Central Government to issue such orders, instructions or directions to all other persons employed in the execution of the Scheme. The Central Government, however, will not issue any orders, instructions or directions to the designated authority to dispose of any particular case in a particular manner. Clause 100 seeks to empower the Central Government to pass any order not inconsistent with the provisions of this Scheme for removing any difficulty which may arise in giving effect to its provisions. All such orders made by the Central Government shall be required to be laid before Parliament. Clause 101 seeks to empower the Central Government to make rules for carrying out the provisions of the Scheme. All rules made under the Scheme shall be laid before Parliament.