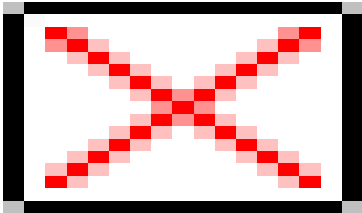


Settlement still a viable option?

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THE Customs and Central Excise Settlement Commission (**'Settlement Commission'**) was constituted under the Central Excise Act, 1944 with the aim of providing alternate dispute resolution mechanism to taxpayers who wanted to resolve tax disputes in the spirit of conciliation rather than litigation.

The impediment in speedy resolution by Settlement Commission was the absence of a definite time frame for disposal of applications. This seems to have caught the attention of Central Government who has now proposed a time bound resolution by the Settlement Commission.

The Finance Bill, 2023 (**'Bill'**)

) proposes to amend Section 127C of the Customs Act, 1961 by inserting sub-section (8A) which prescribes a time limit of 9 months (extendable by 3 months) for passing an order on the application. This time limit shall be reckoned from the last day of the month in which the application under Section 127B is filed by the applicant. Interestingly, the time limit to dispose application was introduced back in 2007 also but was omitted in 2015 ¹. It has now been proposed to be re-introduced by this Bill.

While the proposed amendment providing for time bound disposal of applications may be a welcome step, one cannot ignore that it could produce an incongruous result of shutting the doors of settlement for an applicant, if no order is passed within the stipulated period.

The power of Settlement Commission to waive/reduce penalty and grant immunity from prosecution has been an important guiding factor for an applicant to opt for this route, as opposed to going through the perils of a long-drawn litigation. However, to approach the Settlement Commission, the applicant must make a true and full disclosure of his duty liability. After the proposed amendment comes into effect, one can't help but wonder if this would prove to be a double-edged sword for the applicants. Not only does the adjudicating Authority not have the power to grant immunity from prosecution, but disclosures made before the Settlement Commission may also be used by them to impose usury penalties on the applicants.

In the past, many assesses have challenged similar provisions existing under different statutes ²

. Various Courts have read down the provisions to hold that

proceedings before the Settlement Commission would abate only if it failed to pass an order within the specified period for "**reasons attributable to applicant**

". Such reasons would generally depend on the facts and circumstances of each case and would need to be analysed independently.

In our view, the proposed amendments relating to abatement of proceedings may not only inhibit a **bona fide**

defaulter from approaching the Settlement Commission but also proliferate litigation, much against the spirit of Settlement Commission. Only time will tell whether this proposed amendment can be viewed as a relief or setback to an applicant who genuinely seeks settlement.

[The views expressed are strictly personal.]

1 Omitted w.e.f 14.05.2015 by s. 87 of the Finance Act, 2015 (20 of 2015)

2 Section 245HA of the Income Tax Act, 1961; Section 32(F)6of the Central Excise Act, 1944.

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