

CHAPTER VI
ASSESSMENT AND PAYMENT OF TAX, INTEREST AND
PENALTIES AND MAKING REFUNDS

30. Assessment of tax, interest or penalty.- No claim may be made by the Commissioner for the payment by a person of an amount of tax, interest or penalty or other amount in the nature of tax, interest or penalty due under this Act except by the making of an assessment for the amount.

31. Self assessment.- (1) Where a return is furnished by a person as required under section 26 or section 27 of this Act which contains the prescribed information and complies with the requirements of this Act and the rules –

- (a) the Commissioner is taken to have made, on the day on which the return is furnished, an assessment of the tax payable of the amount specified in the return;
- (b) the return is deemed to be a notice of the assessment and to be under the hand of the Commissioner; and
- (c) the notice referred to in clause (b) is deemed to have been served on the person on the day on which the Commissioner is deemed to have made the assessment.

(2) No assessment shall arise under sub-section (1) of this section, if the Commissioner has already made an assessment of tax in respect of the same tax period under another section of this Act.

32. Default assessment of tax payable.- (1) If any person –

- (a) has not furnished returns required under this Act by the prescribed date; or
- (b) has furnished incomplete or incorrect returns; or
- (c) has furnished a return which does not comply with the requirements of this Act;
or
- (d) for any other reason the Commissioner is not satisfied with the return furnished by a person;

the Commissioner may for reasons to be recorded in writing assess or re-assess to the best of his judgment the amount of net tax due for a tax period.

(2) Where the Commissioner has made an assessment under this section, the Commissioner shall forthwith serve on that person a notice of assessment of the amount of any additional tax due for that tax period.

(3) Where the Commissioner has made an assessment under this section and further tax is assessed as owed, the amount of further tax assessed is due and payable on the same date as the date on which the net tax for the tax period was due.

Explanation.- A person may, if he disagrees with the notice of assessment, file an objection under section 74 of this Act.

33. Assessment of penalty.- (1) Where the Commissioner has reason to believe that a liability to pay a penalty under this Act has arisen, the Commissioner, after recording the reason in writing, shall make and serve on the person a notice of assessment of the penalty that is due under this Act.

(2) The amount of any penalty assessed under this section is due and payable on the date on which the notice of assessment is served by the Commissioner.

(3) Any assessment made under this section shall be without prejudice to prosecution for any offence under this Act.

Explanation.- A person may, if he disagrees with the notice of assessment, file an objection under section 74 of this Act.

34. Limitation on assessment and re-assessment.- (1) No assessment or re-assessment under section 32 of this Act shall be made by the Commissioner after the expiry of four years from –

(a) the date on which the person furnished a return under section 26 or Sub-section (I) of section 28 of this Act; or

(b) the date on which the Commissioner made an assessment of tax for the tax period,

whichever is the earlier:

Provided that where the Commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.

(2) Notwithstanding sub-section (1) of this section, the Commissioner may make an assessment of tax within one year after the date of any decision of the Appellate Tribunal or court where the assessment is required to be made in consequence of, or to give effect to, the decision of the Appellate Tribunal or court which requires the re-assessment of the person.

35. Collection of assessed tax and penalties.- (1) Subject to sub-sections (2) and (4) of this section, where an amount of tax or penalty has been assessed under sections 32 or 33 of this Act, the Commissioner may not proceed to enforce payment of the amount assessed until two months after the date of service of the notice of assessment.

(2) Where a person has made an objection to an assessment or part of an assessment in the manner provided in section 74 of this Act, the Commissioner may not enforce the payment of any amount in dispute under that assessment until the objection is resolved by the Commissioner.

(3) Nothing in this section shall stay any proceedings by the Commissioner or before a court for the recovery of –

- (a) any amounts due under this Act that are not the subject of a dispute before the Commissioner; or
- (b) any amounts due under this Act where the person has made an appeal to the Appellate Tribunal.

(4) Notwithstanding sub-section (1) of this section, where an amount of tax or penalty has been assessed by the Commissioner and he is satisfied that there is a likelihood that it may not be possible to recover the amount assessed if collection is delayed, the Commissioner may specify a date in the notice of assessment as the date on which collection of the amounts due and payable may commence which is earlier than two months after the date of service of the notice of assessment.

36. Manner of payment of tax, penalties and interest.- Every person liable to pay tax, interest,

penalty or any other amount under this Act shall pay the amount to the Government Treasury of Delhi, the Reserve Bank of India or a branch in Delhi of a bank prescribed under the rules, or at such other place or in such other manner as may be prescribed.

37. Order of application of payments.- Where a person owes to the Commissioner tax, interest, or penalty and the person pays to the Commissioner or the Commissioner recovers some but not all of the amounts owed by the person, the amounts shall be treated as reducing the person's obligations to pay –

- (a) interest, penalty and tax owed under this Act; and
- (b) interest, penalty and tax owed under the Central Sales Tax Act, 1956 (74 of 1956);
in the above order.

38. Refunds.- (1) Subject to the other provisions of this section and the rules, the Commissioner shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him.

(2) Before making any refund, the Commissioner shall first apply such excess towards the recovery of any other amount due under this Act, or under the Central Sales Tax Act, 1956 (74 of 1956).

(3) Subject to sub-section (4) of this section, any amount remaining after the application referred to in sub-section (2) of this section shall be at the election of the dealer, either –

- (a) refunded to the person within one month after the date on which the return was furnished or claim was made for the refund; or
- (b) carried forward to the next tax period as a tax credit in that period.

(4) Where the Commissioner has issued a notice to the person under section 58 of this Act advising him that an audit, investigation or inquiry into his business affairs will be undertaken, the amount shall be carried forward to the next tax period as a tax credit in that period

(5) The Commissioner may, as a condition of the payment of a refund, demand security from the person pursuant to the powers conferred in section 25 of this Act.

- (6) Notwithstanding anything contained in this section, where –
- (a) a registered dealer has sold goods to an unregistered person; and
 - (b) the price charged for the goods includes an amount of tax payable under this Act;
 - (c) the dealer is seeking the refund of this amount or to apply this amount under clause (b) of sub-section (3) of this section;

no amount shall be refunded to the dealer or may be applied by the dealer under clause (b) of sub-section (3) of this section unless the Commissioner is satisfied that the dealer has refunded the amount to the purchaser.

- (7) Where –
- (a) a registered dealer has sold goods to another registered dealer; and
 - (b) the price charged for the goods expressly includes an amount of tax payable under this Act,

the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section and the Commissioner may reassess the buyer to deny the amount of the corresponding tax credit claimed by such buyer, whether or not the seller refunds the amount to the buyer.

- (8) Where a registered dealer sells goods and the price charged for the goods is expressed not to include an amount of tax payable under this Act the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section without the seller being required to refund an amount to the purchaser.

39. Power to withhold refund in certain cases.- (1) Where a person is entitled to a refund and any proceeding under this Act, including an audit under section 58 of this Act, is pending against him, and the Commissioner is of the opinion that payment of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may for reasons to be recorded in writing, either obtain a security equal to the amount to be refunded to the person or withhold the refund till such time the proceeding or the audit has been concluded.

- (2) Where a refund is withheld under sub-section (1) of this section, the person shall be

entitled to interest as provided under sub-section (1) of section 42 of this Act if as a result of the appeal or further proceeding, or any other proceeding he becomes entitled to the refund.

40. Collection of tax only by registered dealers.- (1) No person who is not a registered dealer shall collect in respect of any sale of goods by him in Delhi any amount by way of tax under this Act and no registered dealer shall make any such collection except in accordance with this Act and the rules made thereunder and at the rates specified under this Act.

(2) Tax collected by a person who is not a registered dealer shall not be refunded and shall stand forfeited.

41. Refund of tax for embassies, officials, international and public organizations.- (1)

The bodies listed in the Sixth Schedule shall be entitled to claim a refund of tax paid on goods purchased in Delhi, subject to such restrictions and conditions as may be prescribed.

(2) Any person entitled to a refund under sub-section (1) of this section may apply to the Commissioner in the manner and within the time prescribed.

42. Interest.- (1) A person entitled to a refund under this Act, shall be entitled to receive, in addition to the refund, simple interest at the annual rate notified by the Government from time to time, computed on a daily basis from the later of –

- (a) the date that the refund was due to be paid to the person; or
- (b) the date that the overpaid amount was paid by the person,

until the date on which the refund is given.

Provided that the interest shall be calculated on the amount of refund due after deducting therefrom any tax, interest, penalty or any other dues under this Act, or under the Central Sales Tax Act, 1956 (74 of 1956):

Provided further that if the amount of such refund is enhanced or reduced, as the case may be, such interest shall be enhanced or reduced accordingly.

Explanation.- If the delay in granting the refund is attributable to the said person, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which the interest is payable.

(2) When a person is in default in making the payment of any tax, penalty or other amount due under this Act, he shall, in addition to the amount assessed, be liable to pay simple interest on such amount at the annual rate notified by the Government from time to time, computed on a daily basis, from the date of such default for so long as he continues to make default in the payment of the said amount.

(3) Where the amount of tax including any penalty due is wholly reduced, the amount of interest, if any, paid shall be refunded, or if such amount is varied, the interest due shall be calculated accordingly.

(4) Where the collection of any amount is stayed by the order of the Appellate Tribunal or any court or any other authority and the order is subsequently vacated, interest shall be payable for any period during which such order remained in operation.

(5) The interest payable by a person under this Act may be collected as tax due under this Act and shall be due and payable once the obligation to pay interest has arisen.