

CHAPTER IX
APPEAL AND REVISION

79. Appeal – (1) Subject to such rules as may be made by State Government under this Act any dealer objecting to an order of assessment or penalty or both passed by the prescribed authority against him, or a person objecting to an order of penalty passed against him other than an order under Section 46, may Appeal to the Joint Commissioner or the Deputy Commissioner specially authorised in this behalf.

(2) And where an order of assessment or penalty against a dealer has been passed under this Act by an authority other than the prescribed one as a consequence of the proceeding having been transferred by the prescribed authority under sub-Section 3 of Section 4, the dealer may Appeal in the prescribed manner to the authority next above the officer passing that order, not being an authority below the rank of a Joint Commissioner.

(3) No Appeal under sub-Section (1) or (2) shall be admitted unless the dealer objecting to an order of assessment has paid twenty per centum of the tax assessed, or full amount of admitted tax whichever is greater.

(4) Every appeal under this Section shall be filed within thirty days of the receipt of the notice of demand but where the appellate authority is satisfied that the appellant had sufficient reason for not preferring Appeal within time, it may condone the delay.

(5) The appellate authority, while disposing of an appeal against an order, other than an order under Section 46, may –

(a) (i) confirm, annul, reduce, enhance or otherwise modify such order; or

(ii) set aside the order directing the authority to make fresh order, after further enquiry on such points as may be directed; and

(b) in other cases pass such order as it may, for reasons to be recorded in writing, deem fit.

(6) No order under this Section shall be passed without giving reasonable opportunity of hearing to the appellant, as also the authority whose order has been appealed against.

80. Revision- (1) Subject to such rules as may be made by the State Government an order passed on an Appeal under sub-Section 1 or 2 of Section 79 may, on application, be revised by the Tribunal.

(2) Subject as aforesaid any order passed under this Act or the rules made thereunder, other than an order passed by the Commissioner under sub-Section 3 of Section 4 or an order against which an appeal has been provided in Section 79 may, on application be revised -

(a) by the Joint Commissioner, especially empowered in this behalf, if the said order has been passed by an authority not above the rank of Deputy Commissioner; and

(b) by the Tribunal, if the said order has been passed by the Joint Commissioner or Commissioner.

(3) Every application for revision under this Section shall be filed within ninety days of the (communication) of the order before the Commissioner, which is sought to be revised, but where the authority to whom the application lies is satisfied that the applicant had sufficient cause for not applying within time, it may condone the delay.

(4) The Commissioner may, on his own motion, call for and examine the records of any proceeding in which any order has been passed by any other authority appointed under Section 4, for the purpose of satisfying himself as to the legality or propriety of such order and may, after examining the record and making or causing to be made such inquiry as he may deem necessary, pass such order as he thinks proper.

(5) No order under this Section shall be passed without giving the appellant as also the authority whose order is sought to be revised or their representative, a reasonable opportunity of being heard.

81. Review- Subject to such rules as may be made by the State Government under this Act any authority appointed under Section 4 or the Tribunal may review any order passed by it, if such review is, in the opinion of the said authority or Tribunal, as the case may be, necessary on account of a mistake which is apparent from the record;

Provided that no such review, if it has the effect of enhancing the tax or penalty or both, or of reducing a refund shall be made unless the said authority or the Tribunal, as the case may be, has given the dealer, or the person concerned, a reasonable opportunity of being heard.

82. Statement of cases to High Court. – (1) Within ninety days from the passing by the Tribunal of any order under Section 79 or 80, the dealer or the person in respect of whom the order has been passed or the Commissioner may, by application in writing, together with a fee of one thousand rupees, where such application is made by the dealer, require the Tribunal to refer to the High Court any question of law arising out of such order.

(2) If, for the reasons to be recorded in writing, the Tribunal refuses to make such reference, the applicant may, within forty five days of such order, either-

(a) withdraw his application (and if the applicant who does so, is a dealer or a person the fee paid by him shall be refunded), or

(b) apply to the High Court against such refusal.

(3) If upon the receipt of an application under clause (b) of sub-Section (2) the High Court is not satisfied that such refusal was justified, it may require the Tribunal to state a case and refer it to the High Court and on receipt of such requisition the Tribunal shall state and refer the case accordingly.

(4) If the High Court is not satisfied that the statements in a case referred under this Section are sufficient to enable it to determine the question raised thereby, it may refer the case back to the Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Tribunal a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Tribunal shall, where necessary, amend its order in conformity with such judgment.

(6) Where a reference is made to the High Court under this Section, the cost including the disposal of the fee referred to in sub-Section (1) shall be in the discretion of the Court.

(7) The payment of the amount of tax including penalty, if any, due in accordance with the order of the Tribunal in respect of which an application has been made under this Section shall not be stayed pending the disposal of such application or any reference made in consequence thereof.

(8) The Tribunal or the High Court may admit an application under this Section after the expiry of the period of limitation provided in this Section, if it is satisfied that the applicant had sufficient cause for not presenting the application within that period.

83. Burden of Proof:- Where any dealer claims -

(a) that any receipt or dispatch of goods by him is, otherwise than by way of purchase or sale of such goods by him;

(b) that any purchase or sale of goods by him is not liable to tax, by reason of such purchase or sale being outside the State or in the course of inter-State trade and commerce or in the course of the import of the goods into, or the export of the goods out of, the territory of India;

(c) that any purchase or sale of goods effected by him, is exempt from tax or liable to tax at a particular rate;

(d) that any purchase or sale of goods effected by him is not taxable because of return of such goods;

(e) that he is entitled to any deduction from gross turnover or any deduction of Input Tax, from the tax calculated on the sale of goods;

(f) that any Purchase, Sale, Import or Export of goods made by him is not the part of his gross turnover.

(g) that any particular sum has been paid by him as Tax, Interest or Penalty under this Act;

(h) that any goods, books of account and document discovered at his business premises, or at any other place or in any goods carrier or other vehicle, over which he has control at the time of such discovery, do not relate to his business; or

(i) that he is eligible to Input Tax Credit under sub-Section (4) of Section 18 of the Act;

- (j) that he is not eligible to pay Purchase Tax under Section 10 of the Act;
- (k) that any relief under this Act or the rules made thereunder is admissible to him.

The burden of so proving shall be on him.