

CHAPTER – X
OFFENCES AND PENALTIES

- 85. Offences and Prosecution:** (1) Whoever,-
- (a) being liable to pay tax under this Act, carries on business as a dealer without getting himself registered under section 21; or
 - (b) not being a registered dealer, falsely represents, while making any sale or purchase of goods, that he is a registered dealer under this Act, or
 - (c) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration, or
 - (d) carries on or continues to carry on business as a dealer without furnishing the security demanded under section 25 of this Act; or
 - (e) fails to deposit the tax due before furnishing the return in accordance with the provisions of this Act; or
 - (f) fails to pay without reasonable cause the amount of any demand under the provisions of this Act, or
 - (g) fails to submit, without reasonable cause, return of his turnover under the provisions of this Act; or
 - (h) submits a false return of turnover under this Act or furnishes a false statement; or
 - (i) fails or neglects to issue sale invoice or bill or cash memo; or
 - (o) issues a false sale invoice or bill or cash memo without sale of goods shown in such sale invoice or bill or cash memo or issues a false transport memo or challan or transfer invoice without despatch or delivery of goods shown in such transport memo or challan or transfer invoice; or
 - (k) receives a false purchase invoice or bill or cash memo from a dealer without purchase of goods shown in such purchase invoice or bill or cash memo or receives a transport memo or challan or transfer invoice without receipt of goods shown in such transport memo or challan or transfer invoice; or
 - (l) is found to have availed wrong credit of input tax in a fraudulent manner; or
 - (m) fails to keep true and proper accounts or records of sales or purchases or to produce such accounts before the taxing authority or to preserve such accounts or records in accordance with provisions of this Act; or
 - (n) knowingly prepares or produces incorrect accounts, registers or documents or knowingly furnishes incorrect information, or
 - (o) refuses to permit or prevents or obstructs, in any manner, any competent authority under this Act, to enter, survey, inspect and search the business place or any other place where any goods or accounts, registers or other documents are believed to have been kept or refuses to display material in a computer or in a computer floppy or refuses to allow copies or print out of the material in a computer or its floppy to be taken in accordance with the provisions of this Act, or
 - (p) prevents or obstructs, in any manner, any officer to seize the goods or the accounts, registers or other documents; or
 - (q) prevents or obstructs an officer empowered under this Act from performing any of the functions under this Act or the rules made thereunder; or
 - (r) makes a false verification or declaration on an application for registration or in connection with any other proceedings under this Act; or
 - (s) willfully evades or attempts to evade tax leviable under this Act or willfully attempts, in any manner whatsoever, to evade payment of any tax, penalty or interest or all of them under this Act; or
 - (t) tempers with any seal put under sub-section (7) of Section 74; or
 - (u) produces a false proof of deposit of any amount of tax or fee, or penalty or any other sum due under this Act; or
 - (v) demands or charges on the sale or purchase of any goods any amount of tax in contravention of provisions of this Act, or

- (w) refuses or neglect to furnish any information which may be in his knowledge or possession and which he has been required to furnish for the purpose of this Act, or furnishes information which is false in any materials particular or refuses or fails to comply with any requirement made of him under the provisions of this Act; or
- (x) uses or furnishes a prescribed form of declaration or certificate which has not been obtained by him or his authorised agent from the Prescribed Authority in the prescribed manner, or is found to have in his possession any statutory form which has not been obtained in accordance with the provisions of this Act or which has not been furnished to him under the provision of this Act or the rules thereunder by any other dealer, or after obtaining the statutory form from the Prescribed Authority uses it in a manner not authorised by this Act or the rules thereunder, or
- (y) fails to stop the goods vehicle or carrier transporting the goods of which he is the driver or otherwise in charge, for being inspected in accordance with the provisions of this Act, or prevents or obstructs the inspection of the goods or the goods vehicle or the carrier transporting the goods, by the officer in-charge of a check-post or any other officer empowered in this behalf by the Commissioner, or
- (z) imports into or exports from the State, any goods showing incorrect or fictitious names or addresses of consignor or consignee incorrect details about the goods or incorrect particulars in vouchers, way bills or goods receipts or documents accompanying the goods, while such goods are in transit; or
- (za) closer or leaves the place of business or being a driver or person-in-charge of a goods vehicle carrying goods leaves the goods vehicle with a view a preventing inspection under this Act or the rules made thereunder, or
- (zb) fails to obtain authorisation for transit of goods through the State as provided under section 76 and also fails to prove that the goods are meant for delivery outside the State; or
- (zc) having obtained authorisation for transit of goods through the State and having taken responsibility to carry goods outside the State, fails to prove that the same has been carried outside the State; or
- (zd) imports or transports or abets import or transport of any taxable goods by road but fails to disclose the particulars of such goods as provided under section 75 of this Act before the officer-in-charge of a check post or before an officer empowered by the Commissioner, or
- (ze) being a transporter fails to get himself registered under section 28, or fails to maintain the records or submit the statements or returns as required under the provisions of this Act; or
- (zf) fails to deduct tax at source as required under section 47; or
- (zg) willfully acts in contravention of any provisions of this Act or the rules made thereunder, for the contravention of which no express provision for punishment is made by this Act.

shall, without prejudice to his liability under any other law for the time being in force and in addition to recovery of tax or any other dues payable by him under this Act, on conviction be punishable with simple imprisonment for a period which shall not be less than six months but which may extend to three years and shall also be liable to pay a fine of an amount not less than the tax or other amount due and not exceeding fifty thousand rupees.

- (2) Whoever aids or abets or induces any person in commission of any act specified in sub-section (1) shall, on conviction, be punished with simple imprisonment which shall not be less than three months but which may extend to three years with fine not exceeding fifty thousand rupees.
- (3) Whoever commits any of the acts specified in sub-sections (1) and sub-section (2) and the offence is a continuing one under any of the provisions of these sub-section, shall on conviction, be punished with daily fine not less than rupees one hundred during the period of the continuance of the offence, in addition to the punishments provided under this section.

- (4) Notwithstanding anything contained in sub-section (1) and subsection (2), no person shall be proceeded against under these sub-sections for the acts referred to therein if the total amount of tax evaded or attempted to be evaded is less than rupees two hundred during the period of a year.
- (5) Where a dealer is accused of an offence specified in subsections (1) or sub-section (2), the person deemed to be the manager of the business of such dealer shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.
- (6) In any prosecution for an offence under this section, which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state, but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation- Culpable mental state includes intention, motive or knowledge of fact or belief in, or reason to believe a fact and a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

86. Offences by companies and Hindu Undivided Family: (1) Where an offence under this Act or the rules made thereunder has been committed by an company, every person who at the time when the offence was committed, was in-charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that, nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. *Explanation,-* For the purpose of this section,-

(a) 'company' means a body corporate, and includes a firm or other association of individuals, and

(b) 'director' in relation of a firm means a partner in the firm.

- (3) Where an offence under this Act has been committed by a Hindu Undivided Family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render the karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Provided further that, where an offence under this Act has been committed by a Hindu Undivided Family and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any adult member of the Hindu Undivided Family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

87. Cognizance of offences . (1) No Court shall take cognizance of any offence under this Act or the rules made thereunder except with the previous sanction of the Commissioner and no Court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences punishable under this Act or the rules made thereunder shall be cognizable and bailable.

- 88. Investigation of offences.** (1) Subject to conditions if any, as may be prescribed, the Commissioner may authorise either generally or in respect of a particular case or class of cases any officer subordinate to him to investigate all or any of the offences punishable under this Act.
- (2) Every officer so authorised shall, in the conduct of such investigation, exercise the power conferred by the Code of Criminal Procedure, 1973 upon an officer-in-charge of a police station for the investigation of a cognizable offence.
- 89. Compounding offences.** (1) The Commissioner may, either before or after the institution of proceedings of prosecution for any offence punishable under section 85 or under any rules made under this Act, accept from any person charged with such offence, by way of composition-
- (a) where the offence consists of the failure to pay or the evasion of, any tax recoverable under the provisions of this Act, in addition to the tax so recoverable, a sum of money not exceeding double the amount of tax recoverable :
- Provided that the Commissioner shall not accept any sum by way of composition which is less than twenty-five percent of the amount of tax recoverable :
- (b) in any other case, a sum of money not exceeding fifty thousand rupees subject to a minimum of rupees two thousand, in addition to the tax recoverable.
- (2) The Commissioner shall not compound an offence under this section and pass an order for payment of the composition money unless the person concerned admits in writing that he has committed the offence.
- (3) Where the Commissioner compounds an offence under this section, the order-
- (a) shall be in writing and specify the offence committed the sum of money to be paid, the due date for the payment, and date by which the proof of such payment is to be produced,
- (b) shall be served on the person who committed the offence, and
- (c) shall be final and not subject to any appeal.
- (4) On payment of the full composition money, no further proceedings shall be taken against the accused person in respect of the same offence and any proceedings, if already taken, shall not be further proceeded with.
- 90. Penalties.** Whosoever contravenes or fails to comply with, any of the provisions of this Act or the rules made thereunder or any order or direction made or given under this Act or the rules thereunder, the Commissioner shall, if no other penalty is provided under this Act for contravention or failure, impose on him a penalty of an amount not exceeding twice the amount of tax involved or tax evaded or sought to be evaded where it is practicable to quantify such amount or an amount not exceeding fifty thousand rupees in any other case, subject to a minimum of two thousand rupees and where such contravention or failure is a continuing one, a further penalty of one hundred rupees for every day during the period of continuance of the contravention or failure :
- Provided that no penalty under this section shall be imposed unless the person concerned is given a reasonable opportunity of being heard.

Amendment: In section 90 the words “Commissioner” has been inserted after the words and punctuation mark “rules under,” and the words “impose on him” has been substituted for the words “be liable to impose of” by Assam Act No. X of 2007, published in the Assam Gazette vide Notification No. LGL.6/2003/Pt./106 Dtd. the 29th March, 2007.