

CHAPTER - II

TAX AUTHORITIES AND APPELLATE TRIBUNAL

3. Taxing authorities. : (1) The Government may, for carrying out the purposes of this Act, appoint a person to be the Commissioner and as many other officers as mentioned in sub-section (2) to assist him as it thinks fit.
- (2) There shall be the following taxing authorities in various capacities to assist the Commissioner:
- (a) Additional Commissioner of Taxes;
 - (b) Joint Commissioner of Taxes;
 - (c) Deputy Commissioner of Taxes;
 - (d) Assistant Commissioner of Taxes;
 - (e) Superintendent of Taxes;
 - (f) Inspector of Taxes;
 - (g) any other person appointed as such by the Government.

Amendment: In section 3, in sub-section (2) between the words “authorities” and “to”, the words “in various capacities” has been inserted 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.

- (3) The Commissioner shall perform his functions in respect of the whole of the State of Assam and the other officers shall perform their functions in respect of such area or areas or of such dealers or classes of dealers or of such cases or classes of cases as the Government may, by notification in the Official Gazette, direct;

Amendment: In sub-section (3), for the word “Commissioner”, occurring after the word “classes of cases as the” and before the word “may”, the word “Government” has been substituted by Assam Act No. XXXVI of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/pt/38 Dtd. 9th September, 2005.

Provided that the Commissioner may, by notification in the Official Gazette, entrust all the cases of dealers dealing in a particular commodity in any area to any officer and such officer shall perform his functions in respect of such dealers.

- (4) The Government may authorize an officer not below the rank of the Deputy Commissioner of Taxes to exercise the power and perform the functions of the Appellate Authority under section 79 of this Act.
- (5) The Commissioner shall have superintendence over all officers and persons employed in the execution of this Act and he may.-
- (a) make and issue general rules and specify forms for regulating the practice and proceedings of such officers and persons;
 - (b) issue such orders, instructions and directions to such officers and persons as it may deem fit, for the proper administration of this Act.
- (6) All officers and persons employed for the execution of this Act shall observe and follow the orders, instructions and directions of the officers superior to them.

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Authority in the exercise of his appellate functions.

Amendment: The word “Deputy Commissioner of Taxes (Appeals)” has been substituted by “Appellate Authority” by Assam Act No. XXXVI of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/pt/38 Dtd. 9th September, 2005.

- (7) The Commissioner may by an order in writing, transfer any case or matter relating to any dealer from himself to any other officer and he may likewise transfer any case or matters from any officer appointed under sub-section (2) to assist him to any other officer so appointed or to himself, whether such other officer has jurisdiction over the area to which the case or matter relates or not, provided he is otherwise competent to deal with such case or matter in exercise or performance of the powers or duties referred to in subsection (3).

Where any case is transferred to an authority, such authority may deal with the case either de novo or from the stage at which it was transferred.

- (8) Whenever in respect of any proceedings under this Act the Commissioner or any person appointed under sub-section (2) to assist him, ceases to exercise jurisdiction and is succeeded by another person who has and exercises jurisdiction, the person so succeeding may continue the proceedings from the stage at which the proceedings was left by his predecessor.

Provided that the dealer concerned may demand that before the proceedings is so continued, the previous proceedings or any part thereof be reopened or that before any other of assessment is passed against him, he be reheard.

- (9) Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by notification in the Official Gazette, delegate any of his powers under this Act and the rules framed there under to any officer and any such officer shall thereupon exercise the said powers.
- (10) No person shall be entitled to call in question in any proceedings, the jurisdiction of any tax authority appointed under this section, after the expiry of thirty days from the date of receipt by that person of any notice issued by such tax authority under this Act. Any objection as to the jurisdiction of any such tax authority may be raised within the period aforesaid by submitting a memorandum to the authority concerned who shall refer the question to the Commissioner. The Commissioner shall, after giving the person raising the objection a reasonable opportunity of being heard, make an order determining the question of jurisdiction and his decision in this behalf shall be final.

4. **Appellate Tribunal:** (1) The Government shall, by notification with effect from a date specified therein, constitute an Appellate Tribunal to exercise the powers and perform the functions conferred on the Tribunal by or under this Act.
- (2) Pending constitution of the Tribunal and till the date specified in the notification under sub-section (1). the Assam Board of Revenue shall act as Tribunal for the purpose of this Act and on the date aforementioned all proceedings pending before the Assam Board of Revenue, acting as Tribunal shall stand transferred to the Tribunal constituted under sub-section (1).
- (3) The Tribunal shall consist of a Chairperson and as many other members as the Government may, from time to time, think it necessary to perform the functions assigned to the Appellate Tribunal by or under this Act.
- (4) The Chairperson shall be a person who is or has been a Judicial Officer not below the rank of a District Judge and the other members shall possess such qualifications as may be prescribed.
- (5) The Chairperson and the Judicial Members of the Tribunal shall be appointed by the Government in consultation with the Chief Justice of the High Court of the State. Other members shall be appointed by the Government from the serving or retired officers of the Assam Taxation Service who hold or had a post not below the rank of a Joint Commissioner of Taxes.
- (6) The members of the Tribunal shall be so appointed as to make the strength of members from the State Judicial Service and the State Taxation Service, as far as possible, equal.

- (7) The conditions of service and tenure of the members constituting the Tribunal shall be such as may be prescribed.
- (8) No decision or action of the Tribunal shall be called in question merely on the ground of any vacancy in the Tribunal.
- (9) Any vacancy in the office of a member of the Appellate Tribunal shall be filled by the Government.
- (10) The functions of the Appellate Tribunal may be performed-
 - (i) by a Bench consisting of the Chairperson and any other member, or
 - (ii) by a Bench consisting of the Chairperson and two other members, or
 - (iii) by a Bench consisting of two or more members other than the Chairperson,
 - (iv) by a Bench consisting of the Chairperson and all members.
- (11) If any case which comes up before a Bench of which the Chairperson is not a member, involves a question of law, the Bench shall reserve such case for decision of the Bench to be constituted under sub-section (12), of which the Chairperson shall be a member.
- (12) The Bench or Benches of the Appellate Tribunal shall be constituted by the Chairperson in accordance with the provisions of this Act and the rules made thereunder.
- (13) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, but if the members are equally divided, they shall state the point or points on which they differ, and such point or points shall be heard.-
 - (i) when the Chairperson is not a member of that Bench, either by the Chairperson or by the Chairperson and any other member or members as the Chairperson may direct, and
 - (ii) when the Chairperson is a member of the Bench, by any other member or members to whom the case is referred by the Chairperson, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case including those who first heard it.
- (14) Any member who had previously dealt with any case coming up before the Appellate Tribunal in any other capacity or is personally interested in any case coming up before the Appellate Tribunal shall be disqualified to hear that case.
- (15) Where any case is heard by a Bench consisting of two members and the members are divided in their opinion on any point and the other member or members of the Tribunal are disqualified under sub-section (14) to hear the case, the Government may appoint a person qualified to be appointed as a member of the Appellate Tribunal as an additional member of the Tribunal and the point shall be decided in accordance with the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.
- (16) The additional member appointed under sub-section (15) shall cease to hold office on the disposal of the case for which he was appointed.
- (17) The Tribunal shall have, for the purpose of discharging functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely.- (Central Act 5 to 1908)
 - (a) enforcing the attendance of any person and examining him on oath or affirmation;
 - (b) compelling the production of documents and impounding or detaining them,
 - (c) issuing commissions for the examination of witnesses;
 - (d) requiring or accepting proof of facts by affidavits;
 - (e) such other matters as may be prescribed,and any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code, 1860 and for the purpose of section 196 of the Indian Penal Code, 1860. The Tribunal shall also be deemed to be the Civil Court for all the

purposes of section 195 and chapter XXVI of the Code of Criminal Procedure, 1973. (Central Act 45 of 1960)

- (18) The Tribunal shall have a separate establishment consisting of such staff and officers as may be specified by the Government from time to time.
- (19) The Tribunal shall have the power to award costs in any matter decided by it for such amount as it may consider reasonably justified in the facts and circumstances of the case.

The amount of cost awarded by the Tribunal against a dealer shall be recoverable from him as if it were a tax due from him under this Act and, in case of default by him, such dues shall be recovered as an arrear of land revenue.

- (20) Subject to the previous sanction of the Government, the Tribunal shall, for the purpose of regulating its procedure (including the place or places at which the Tribunal, the Benches or the members thereof shall sit) and for providing the rules of business, make regulations consistent with the provisions of this Act and the rules made there under.

Provided that the regulations so made shall be published in the Official Gazette.

- (21) The Government may appoint an Advocate or a Chartered Accountant as a State Representative. The Commissioner may, subject to the prior approval of the Government, empower an officer not below the rank of a Deputy Commissioner of Taxes to be the State Representative.

In proceedings before the Appellate Tribunal, such State Representative shall be competent,-

- (a) to prepare and sign applications, appeals and other documents;
- (b) to appear, represent and plead,
- (c) to receive notices and other processes; and
- (d) to do all other acts connected with such proceedings on behalf of the Government or any officer appointed under this Act.

- 5. Constitution of Vigilance Cell :** (1) The Commissioner may, by notification in the Official Gazette, constitute a Vigilance Cell with officers appointed to assist him under sub-section (2) of section 3, for discharging the functions specified in sub section (2), and one of the officers constituting the Cell shall be declared the Chief Officer of the Cell;

Provided the Government may, give any direction to the Commissioner in respect of the constitution and functioning of the Vigilance Cell under this section consistent with the provisions of this Act and such direction shall be binding on the Commissioner.

Amendment: The provision has been inserted by Assam Act No. XXXVI of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/pt/38 Dtd. 9th September, 2005.

- (2) The Vigilance Cell, on information or of its own motion or when the Commissioner so directs, shall carry out investigation or hold inquiry into any case of alleged or suspected evasion of tax as well as malpractices connected therewith and send a report thereof to the Commissioner.
- (3) The Vigilance Cell for the purpose of holding investigation or inquiry under sub-section (2) shall exercise all the powers under section 61, 73, 74, 75, 76, 77, 78, 95 and 96 and any other power under this Act as the Commissioner may invest upon it.
- (4) The Commissioner, on receipt of the report under sub-section (2), may require the Vigilance Cell to transfer to any officer appointed to assist him under sub-section (2) of section 3 any accounts, registers or documents relating to the said report, seized by the Vigilance Cell and on such transfer, such accounts, registers or documents shall be retained by such officer and shall be dealt with by him subject to the provisions of section 74.

- (5) The Vigilance Cell, with the prior approval of the Commissioner, may require any officer appointed to assist the Commissioner under sub-section (2) of section 3, to transfer to it any accounts, registers or documents seized by him from any person or persons under section 74 and on transfer, such accounts, registers or documents subject to the provisions of section 74 shall be retained and dealt with by the Vigilance Cell for the purposes specified in sub-section (2) and the subsection (6).
- (6) The Vigilance Cell, after a case has been investigated or inquired into, assess or reassess tax, impose penalty or interest in respect of such case under this Act, provided it is so directed by the Commissioner.
- (7) The Commissioner may assign such other functions to any officer of the Vigilance Cell as he may consider necessary and may also assign any of the functions of the Vigilance Cell to any officer appointed to assist him under sub-section (2) of section 3. as he may consider necessary.
- (8) The Vigilance Cell shall have, for carrying out the purposes of this section, the same powers as are provided under section 97 of this Act.
- (9) The officers of the Vigilance Cell may exercise the powers under this section jointly by all officers, or by some of the officers or individually by any officer of the Cell subject to superintendence and guidance of the Chief Officer of the Cell.
- (10) The Vigilance Cell shall have jurisdiction throughout the State of Assam or in any area as may be specified by the Commissioner.

6. Persons appointed under section 3 and members of the Appellate Tribunal to be public servants: The Commissioner and all officers appointed under section 3 and the Chairperson and members of the Appellate Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860.