

## CHAPTER – V

### RETURNS, ASSESSMENT, RECOVERY AND REFUND OF TAX

- 29. Periodical returns and payment of tax :** (1) Every registered dealer and every dealer liable to pay tax shall furnish a correct and complete tax return in such form for such period, by such dates and to such authority, as may be prescribed;
- Provided that different periods may be prescribed for different classes of dealers for the purpose of filing tax return.
- (2) Every registered dealer and every dealer liable to pay tax shall furnish, in addition to the tax return, if any, furnished under sub-section (1), a correct and complete annual return in the prescribed form within such time as may be prescribed.
  - (3) If the Prescribed Authority has reason to believe that the turnover of sales or the turnover of purchases of any dealer has exceeded the taxable limit as specified in sub-section (6) of section 7, so as to render him liable to pay tax under this Act for any year or part thereof, he may, by notice served in the prescribed manner, require such dealer to furnish tax return under sub-section (1) and an annual return under sub-section (2) as if he were a registered dealer.
  - (4) If any dealer having furnished a tax return or an annual return under this section, discovers any omission or any other error in the return so filed, he may without prejudice to the charge of any interest, furnish revised tax return or revised annual return, as the case may be, in the prescribed manner and within the prescribed time.
  - (5) Every dealer required to file return under this section shall pay the full amount of tax, interest and any other sum payable by him according to such return or the differential tax payable according to the revised return furnished, if any, and shall furnish along with the return or revised return, as the case may be, a receipt showing full payment of such amount into the Government account.
  - (6) Every return under this section shall be signed and verified-
    - (a) in case of an individual, by the individual himself, and where the individual is absent by some person duly authorized by him in this behalf;
    - (b) in the case of a Hindu Undivided family, by the Karta;
    - (c) in the case of a company or local authority, by the principal officer or Chief Executive or authorized signatory thereof;
    - (d) in the case of a firm, by any partner thereof not being a minor or by a manager;
    - (e) in the case of any other association, by the person competent to act on behalf of the association.
- Explanation,-* For this purpose of clause (c), the expression "principal officer" shall have the meaning assigned to it under clause (35) of section 2 of the Income Tax Act, 1961. (Central Act 43 of 1961)
- 30. Return defaults:** (1) If any dealer fails to pay the amount of tax due within the time prescribed for its payment, under section 29, such dealer shall, in addition

to the tax, be liable to pay simple interest, at the rate of one and half percent, per month on the amount of tax not so paid or on any less amount thereof remaining unpaid during such period, for the period commencing on the day following the date of expiry of the due date to the date of payment or the date of assessment, whichever is earlier. If any dealer fails to pay interest along with return or revised return in accordance with the provision of this sub-section, such interest shall be levied by the Prescribed Authority.

- (2) For the purpose of calculating interest,
  - (a) 'month' shall mean thirty days,
  - (b) where the period of default is in respect of a period of less than one month, the interest shall be computed proportionately.

- (3) If any dealer without sufficient cause, fails to pay the amount of tax due and interest along with return or revised return in accordance with the provisions of subsection (1), the Prescribed Authority may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to the tax and the interest payable by him, by way of penalty a sum not exceeding two percent per month of the tax so payable from the first day of the month following the month in which it had become due to the date of its payment or to the date of order of assessment, whichever is earlier.
- (4) If any dealer, without any sufficient cause,-
- (a) fails to furnish a tax return as required under subsection (1) or an annual return under sub-section (2) of section 29, by the prescribed date; or
  - (b) fails to comply with the requirements of the notice issued under sub-section (3) of section 29; or
  - (c) being required to furnish revised return, fails to furnish the same by the date prescribed under subsection (4) of section 29, or
  - (d) having paid the tax payable according to a return in time, fails to furnish such return in time or fails to furnish along with the return proof of payment made in accordance with sub-section (5) of section 29.
- the Prescribed Authority may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to any tax, interest and penalty under sub-section (3) payable or paid by him, a penalty of a sum of rupees one hundred per day of default subject to a maximum of rupees ten thousand.
- (5) The penalties specified under this section may be imposed by the Prescribed Authority notwithstanding the fact that the assessment proceedings have not been initiated against the dealer.
- (6) For the purpose of this Act, any return signed by a person who is not authorised under sub-section (6) of section 29 shall be treated as if no return has been filed.
- 31. Collection of tax only by registered dealers:** (1) No person other than,-
- (a) a registered dealer, or
  - (b) a person required to deduct any amount by way of tax under the provisions of this Act, shall collect any amount by way of tax under this Act. No collection of tax shall be made by the person specified in clauses (a) and (b) above except in accordance with the provisions of this Act and the rules made hereunder and beyond the rate specified.

(2) Omitted

**Amendment:** In section 31, sub-section (2) has been omitted by Assam Act No. XXXVI of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/pt/38 Dtd. 9<sup>th</sup> September, 2005.

- (3) Any amount collected by any person in contravention of the provisions of sub-section (1) or any amount collected by any person by way of tax or in any other manner not payable under any provisions of this Act shall be liable to forfeiture to the Government.
- (4) If the Prescribed Authority in the course of any proceedings under this Act or otherwise has reason to believe that any person has become liable to forfeiture of any sum under sub-section (3), he shall serve on such person a notice in the prescribed form requiring him on a date and at a place specified in the notice to attend and show cause as to why the said amount should not be forfeited to the Government and on receipt of the reply, if any, there to, the Prescribed Authority thereupon shall hold an enquiry and shall make such order including an order of forfeiture as he thinks fit.
- (5) Where the Prescribed Authority has reason to believe that any person has willfully contravened the provision of sub-section (1), the Prescribed Authority may by an order in writing, impose upon such person a penalty of an amount not less than the

- amount of tax so collected and not exceeding twice the amount of tax so collected by him in contravention of the provision of sub-section (1).
- (6) The sum forfeited under sub-section (4) and the amount of penalty imposed under sub-section (5) shall be paid by the person or the dealer making the unauthorised collection into the Government account by such date as may specified in a notice issued by the Prescribed Authority for this purpose, being a date not later than thirty days from the date of service of the notice.
  - (7) Any sum forfeited or penalty imposed under this section which remains unpaid after the date specified in the notice for payment, shall be recoverable as an arrear of land revenue.
  - (8) Where any order of forfeiture is made, the Prescribed Authority shall publish or cause to be published a notice thereof for the information of the persons concerned giving such details and in such manner as may be prescribed.
  - (9) On the publication of the notice under sub-section (8), a refund of any such sum or any part thereof may be claimed from the Government by the person from whom it was unauthorized realised by way of tax, provided such tax was not passed on by him in any form or manner to some other person and if such tax was passed on to some other person, the claim for refund can be made by such other person only.
  - (10) An application for such claim shall be made in writing in the prescribed form to the Prescribed Authority, within one year from the date of the order of the forfeiture.
  - (11) On receipt of an application under sub-section (10), the Prescribed Authority shall hold such enquiry as he deems fit, and if the Prescribed Authority is satisfied that the claim is valid and admissible and that the amount so claimed to be refunded was actually paid into the Government account or recovered, and no set off or refund in respect of that amount was granted, he shall refund the sum or any part thereof, which is found due to the person concerned.
  - (12) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any sum collected by a person in contravention of sub-section (1) is forfeited to the Government under sub-section (4) and is paid by him or is recovered from him, such payment or recovery shall discharge him of the liability to refund the sum to the person from whom it was so collected.
  - (13) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

**31A. Presumption that the incidence of the tax has been passed on to the buyer:** Every dealer who has paid the tax on sale of any taxable goods under this Act, shall, unless the contrary is proved by him, deemed to have passed on the full incidence of such tax to the buyer of such goods.

**Amendment:** Section 31A has been inserted by Assam Act No. XXXVI of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/pt/38 Dtd. 9<sup>th</sup> September, 2005.

**31B. Consumer Welfare Fund:** (1) There shall be established by the Government a fund, to be called the Assam Consumer Welfare Fund.

(2) There shall be credited to the fund in such manner as may be prescribed,

- (a) an amount of rupees one lakh, to be initially paid by the Government by way of grant for the purpose of the fund; and
- (b) all amount forfeited under sub-section (4) of section 31 and all penalty paid pursuant to sub-section (5) of the said section except any amount refunded under the said section after deducting therefrom the expenses of collection and recovery as determined by the Government.

(3) The moneys credited to the fund shall be utilized by the Government for the welfare of the consumers in accordance with such rules and the accounts and other relevant records in relation to the fund shall be maintained in such manner as may be prescribed.

**Amendment:** After section 31A, a new section 31B 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 29<sup>th</sup> March, 2007.

- 32. Rounding off of the amount of tax, interest or penalty :** (1) For the purpose of calculation of tax, the taxable turnover, and where different portion of taxable turnover are liable to be taxed at different rates, each such portion, shall be rounded, off to the nearest multiple of ten rupees, and, for this purpose, where such amount contains a part of ten rupees, then, if such part is five rupees or more, it shall be increased to ten rupees and, if such part is less than five rupees, it shall be ignored.
- (2) The amount of tax, interest, penalty or any other sum payable by a dealer under the provisions of this Act or any sum refundable to any dealer shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee, then, if such part is fifty paise or more, it shall be increased to one rupee and, if such part is less than fifty paise, it shall be ignored.
- 33. Scrutiny of returns:** (1) Every return in relation to any period furnished by a registered dealer or a dealer to whom notice has been issued by the Prescribed Authority under section 29 shall be subject to scrutiny by the Prescribed Authority to verify the correctness of calculation, application of correct rate of tax and interest and input tax credit claimed therein, and full payment of tax and interest payable by the dealer during such period.
- (2) If any mistake is detected as a result of such scrutiny made as per the provisions of sub-section (1), the Prescribed Authority shall serve a notice in the prescribed form on the dealer to cure the defects and to make payment of the extra amount of tax along with the interest as per the provisions of this Act, if it is so payable, by a date specified in the said notice. The dealer shall correct the defects and submit a new correct and complete return within the period specified in the notice with the evidence of payment of the extra amount of tax and interest. The dealer shall be deemed to have submitted a correct and complete return by the date prescribed only if he furnishes the duly corrected return within the period specified in the notice with the evidence of such payment of tax and interest.
- 34. Provisional assessment:** (1) Where a dealer fails to furnish a tax return before the due date or if the tax return furnished by him appears to the Prescribed Authority to be incorrect and incomplete or if the dealer fails to furnish a correct and complete return with evidence of payment of tax and interest, if any, under sub-section (2) of section 33, the Prescribed Authority shall proceed to assess the dealer provisionally for the period of default to the best of his judgment recording the reason for such assessment and proceed to demand and collect the tax and interest accordingly.
- Provided that no provisional assessment under this sub-section shall be made unless the dealer has been given a reasonable opportunity of being heard.
- (2) The provisional assessment under sub-section (1). Shall be made on the basis of past returns or past records and where no such returns or records are available, on the basis of information received or collected by the Prescribed Authority and the Prescribed Authority shall direct the dealer to pay the amount of tax assessed in such manner and by such date as may be prescribed.
- (3) If the dealer furnishes return along with evidence showing full payment of tax, interest and penalty, if any, on or before the date of payment specified under sub-section (2), the provisional assessment made under subsection (1) shall stand revoked to the extent of the tax demanded, interest levied and penalty imposed, on the date on which such return is filed by the dealer.
- (4) Nothing contained in this section shall prevent the Prescribed Authority from making an audit assessment under section 36 or best judgment assessment under section 37 and any tax, interest or penalty paid against provisional assessment shall

be adjusted against tax, interest and penalty payable on such assessment under those sections.

**35. Self assessment:** (1) the amount of tax due from a dealer liable to pay tax may be assessed separately for each year during which he is so liable;

Provided that, the Commissioner may, subject to such conditions if any, as may be prescribed, assess the tax due from any dealer during a part of a year and the other provisions of this section shall be construed accordingly.

(2) If a dealer has filed all the tax returns and the annual return or revised returns in the prescribed manner and within the prescribed time and has paid the tax payable according to such returns or revised returns and also interest payable if any, the returns or revised returns so filed shall be accepted and his assessment shall be deemed to have been made for the purpose of subsection (1) subject to adjustment of any arithmetical error apparent on the face of the said return;

Provided that the assessment under this sub-section of every such registered dealer who is required to furnish audit report under section 62 shall be deemed to have been made if such dealer has furnished the audit report along with the annual return.

**36. Audit assessment:** (1) Where,-

(a) a registered dealer is selected for audit assessment by the Prescribed Authority on the basis of any criteria or on random basis; or

(b) the Prescribed Authority is not satisfied with the correctness of any return filed under section 29; or bone fides of any claim of exemption, deduction, concession, input tax credit or genuineness of any declaration, evidence furnished by a registered dealer in support thereof; or

(c) the Prescribed Authority has reasons to believe that detailed scrutiny of the case is necessary; or

(d) a provisional assessment under section 34 has been made, the Prescribed Authority may, notwithstanding the fact that the dealer may already have been assessed under section 34 or section 35, serve on such dealer in the prescribed manner a notice requiring him to appear on a date and place specified therein, which may be in the business premises or at a place specified in the notice, to either attend and produce or cause to be produced the books of account and all evidence on which the dealer relies in support of his returns including tax invoice, if any, or to produce such evidence as specified in the notice. For this purpose, the Prescribed Authority may also undertake tax audit of stock-in-trade of the dealer.

(2) The dealer shall provide full co-operation and assistance to the Prescribed Authority to conduct the proceedings under this section at his business premises.

(3) If the proceedings under this section are to be conducted at the business premises of the dealer and it is found that the dealer or his authorised representative is not available or is not functioning from such premises, the Prescribed Authority shall assess to the best of his judgment the amount of tax due from him.

(4) If the Prescribed Authority is prevented by the dealer from conducting the proceedings under this section, the Prescribed Authority may demand, a sum not exceeding the amount of tax so assessed, by way of penalty.

(5) The Prescribed Authority shall, after considering all the evidence produced in course of the proceedings or collected by him either-

(a) confirm the self assessment under section 35; or

(b) set aside the self assessment under section 35 and assess the amount of tax due from the dealer, or

(c) assess the amount of tax due from the dealer, if no assessment has been made under section 35;

Provided that if the Prescribed Authority proposes to rely on any evidence collected by him, the dealer shall be afforded a reasonable opportunity of being heard before any adverse inference is drawn.

- 37. Best judgment assessment :** (1) If any dealer.-
- (a) has not furnished annual return in respect of any period by the prescribed date; or
  - (b) has knowingly furnished incomplete or incorrect annual return or statement for any period; or
  - (c) has failed to comply with the terms of any notice under sub-section (1) or sub-section (3) of section 36; or
  - (d) has not maintained any accounts or has failed to maintain accounts in accordance with the provisions of this Act or has not regularly employed any method of accounting or the method employed is such that in the opinion of the Prescribed Authority assessment cannot properly be made on the basis thereof,  
the Prescribed Authority shall, after issue of a notice to the dealer in the prescribed form and in the prescribed manner, so as to give him a reasonable opportunity of being heard, assess him to the best of his judgment.
- (2) If the Prescribed Authority is satisfied that the dealer, in order to evade or avoid payment of tax.-
- (a) has failed to furnish without reasonable cause, returns in respect of any period by the prescribed date; or
  - (b) has furnished incomplete and incorrect returns for any period; or
  - (c) has availed himself of tax credit to which he is not entitled, or
  - (d) has failed to keep up-to-date account; or
  - (e) has issued false or incorrect tax invoice,  
he may, after giving the dealer a reasonable opportunity of being heard, direct that the dealer shall pay, by way of penalty, a sum not exceeding twice the amount of,-
    - (i) tax assessed in a case falling under clause (a); or
    - (ii) additional tax assessed on account of the cases failing under clause (b), clause (c) clause (d) and clause (e).
- 38. Assessment of dealer who fails to get himself registered :** (1) If the Prescribed Authority upon information which has come into his possession, is satisfied that any dealer who has been liable to pay tax under this Act, in respect of any period, has failed to get himself registered, the Prescribed Authority shall proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer in respect of such period and all subsequent periods and in making such assessment shall give the dealer a reasonable opportunity of being heard.
- (2) The Prescribed Authority may, if he is satisfied that the default was without reasonable cause, direct that the dealer shall pay, by way of penalty, in addition to the amount of tax so assessed, a sum not exceeding the amount of tax assessed or a sum of rupees ten thousand, whichever is more.
- 39. No assessment after five years:** No assessment under the foregoing provisions of this Act, shall be made after the expiry of five years from the end of the year to which the assessment relates; Provided that in case of offence under this Act, for which proceedings for prosecution has been initiated, the limitation as specified in this sub-section shall not apply.
- 40. Turnover escaping assessment :** (1) Where after a dealer is assessed under section 34, 35, 36 or 37 of this Act for any year or part thereof, the Prescribed Authority has reason to believe that the whole or any part of the turnover of the dealer in respect of any period has,-
- (a) escaped assessment; or
  - (b) been under assessed; or
  - (c) been assessed at a rate lower than the rate at which .it is assessable; or
  - (d) been wrongly allowed any deduction there from; or
  - (e) been wrongly allowed any credit therein.

the Prescribed Authority may, after giving the dealer a reasonable opportunity of being heard and after making such enquiries as he considers necessary, proceed to assess to the best of his judgment, the amount of tax due from the dealer in respect of such turnover, and the provisions of this Act shall, so far as may be, apply accordingly.

- (2) No order of assessment and reassessment shall be made under sub-section (1) after the expiry of eight years from the end of the year in respect of which or part of which tax is assessable.

**41. Exclusion of time period for assessment :** In computing the period of limitation specified for assessment or reassessment, as the case may be, the time during which any assessment or reassessment proceedings remained stayed under the order of a competent Court shall be excluded.

**42. Power of reassessment in certain cases :** Where any Court or the Tribunal passes an order in appeal or revision to the effect that any tax assessed under this Act or the Central Sales Tax Act, 1956 should have been assessed under the provision of a law other than that under which it was assessed, then in consequence of such order or to give effect to any finding or direction contained in such order such turnover and part thereof, may be assessed or reassessed, as the case may be, to a tax at any time within five years from the date of such order, notwithstanding any limitation period which would otherwise be applicable to the assessment or reassessment made. (Central Act 74 to 1956)

**43. Payment and recovery of tax, penalty and interest :** (1) Tax shall be paid in the manner hereinafter provided and at such intervals as may be prescribed.

- (2) A dealer furnishing returns under section 29 shall pay into Government account, in such manner and at such interval as may be prescribed the amount of tax due from him for the period covered under the return along with the amount of interest, penalty or any other sum payable by him and shall furnish a receipt showing the payment of such amount into the Government account.

- (3) A dealer furnishing a revised return in accordance with the sub-section (4) of section 29, which shows that a greater amount of tax is due than was paid or payable in accordance with the original return, shall furnish along with the return a receipt showing payment of the differential amount in the manner provided in sub-section (2).

- (4) (a) The amount of tax.-

- (i) due where returns have been filed without full payment of tax due; or  
(ii) assessed under this Act less than the sum already paid in respect of such period together with interest, if any, or

- (b) the amount of penalty imposed under any provision of this Act; or

- (c) any other dues under this Act.

shall be paid by the person or dealer or the person liable therefore into the Government account within thirty days from the date of service of the notice issued by the Prescribed Authority in respect thereof.

Provided that the Prescribed Authority may, in respect of any particular dealer or person, and for reasons, to be recorded in writing, allow him to pay the tax, penalty, interest or the sum forfeited, by installment but grant of installments to pay tax shall be without prejudice to the other provisions of this Act including levy of penalty and interest.

- (5) Where a dealer fails to make payment of the tax assessed or interest levied or penalty imposed on him or any other amount due from him under this Act within thirty days of the date of service of the notice of demand, the Prescribed Authority may, after giving the dealer a reasonable opportunity of being heard, direct that such dealer shall, in addition to the amount due, pay by way of penalty, a sum not exceeding two percent of such amount of tax, penalty, interest or any other amount due for every month, for the period for which payment has been delayed by him after the date on which such amount was due to be paid.

- (6) The amount that remains unpaid after the due date of payment in pursuance of the notice issued under subsection (4) and sub-section (5) shall be recoverable as arrears of land revenue.
- (7) Where in pursuance of sub-section (6), any proceedings for the recovery as an arrears of land revenue of any tax, penalty, interest or part thereof or any other amount remaining unpaid, has been commenced and the amount of tax penalty, interest or any other amount is subsequently enhanced or reduced as a result of any assessment made or order passed in the appeal revision or rectification under this Act, the Prescribed Authority may, in such manner and within such period as may be prescribed, inform the dealer and the authorities to whom or under whose order the recovery is to be made and thereupon such proceedings may be continued as if the amount of tax, penalty, interest or any other amount as modified, enhanced or reduced, has been substituted for the tax, penalty, interest or any other amount which was to be covered under sub-section (6).
- (8) Where the amount paid falls short of the aggregates of the tax or any other amount due and interest payable, the amount so paid shall first be adjusted towards interest payable and the balance, if any, shall be adjusted towards the tax or any other amount due.

**44. Special mode of recovery :** (1) Notwithstanding anything contained in any law or contract to the contrary, the Prescribed Authority may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last known address, require,-

- (a) any person from whom any amount of money is due, or may become due, to a dealer or person liable on whom notice has been served under subsection (3) of section 29; of
- (b) any person who holds or may subsequently hold money for or on account of such dealer or person liable,  
to pay to the Prescribed Authority, either forthwith upon the money becoming one or being held or within the time specified in the first mentioned notice (but not before the money becomes due or is held as aforesaid) so much of the money as is sufficient to pay the amount due from the dealer or person liable in respect of the arrears of tax, interest, penalty or any other sum due under this Act, or the whole of the money when it is equal to or less than that amount.

*Explanation,-* For the propose of this sub-section, the amount of money due to a dealer or person liable from, or money held for or on account of a dealer or a person liable by, any person, shall be calculated by the Prescribed Authority after deducting there from such claims, if any, lawfully subsisting, as may have fallen due for payment by such dealer or person liable to such person.

- (2) The Prescribed Authority may amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.
- (3) Any person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the dealer or person liable, and the receipt thereof into the Government account, shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount specified in the receipt.
- (4) Any person discharging any liability to the dealer or person liable after receipt of the notice referred to in this section, shall be personally liable to the Prescribed Authority to the extent of the liability discharged or to the extent of the liability of the dealer or person liable for tax, interest, penalty or any other sum due whichever is less.
- (5) Where a person to whom a notice under this section is sent, proves to the satisfaction of the Prescribed Authority that the sum demanded or any part there of is not due to the dealer or person liable or that he does not hold any money for or on account of the dealer or person liable, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Prescribed Authority.



- (6) Any amount of money which the aforesaid person is required to pay to the Prescribed Authority, or for which he is personally liable to the Prescribed Authority under this section shall, if it remains unpaid, be recoverable as an arrear of land revenue.
- (7) The Prescribed Authority may apply to the Court in whose custody there is money belonging to the dealer or person liable for payment to him of the entire amount of such money or if it is more than the tax, interest, penalty or any other sum, if any, due, an amount sufficient to discharge such tax, interest, penalty or any other sum due.

**45. Application of the provisions of the Assam Land and Revenue Regulation, 1886, the Bengal Public Demands Recovery Act, 1913 and the Revenue Recovery Act, 1890 for purpose of recovery of sales tax dues recoverable as arrears of land revenue** :

For the purposes of recovery of any amount recoverable as an arrear of land revenue under this Act, the provisions of the Assam Land and Revenue Regulation 1886, the Bengal Public Demands Recovery Act, 1913 as to recovery of arrears of land revenue shall notwithstanding anything contained in those Acts or in any other enactment, be deemed to be in force throughout the State and the provisions of the Revenue Recovery Act, 1890 shall have effect accordingly.

**46. Special powers of tax authorities for recovery of tax as arrears of land revenue**

: (1) Notwithstanding anything contained in the Bengal Public Demands Recovery Act, 1913 the taxing authority appointed by the Government under sub-section (2) of section 3 of this Act for the purpose of recovery of tax, interest, penalty or any other sum due shall be deemed to be a Certificate-officer appointed under clause (3) of section 3 of the said Act and shall have the same powers as are vested in the Certificate-officer under that Act.

- (2) Any proceeding under sub-section (1) shall be deemed to be a proceeding for recovery of the public demand under the Bengal Public Demands Recovery Act, 1913 and all provisions of the said Act for recovery, attachment, sale and arrest shall mutates mutinied apply.
- (3) The taxing authority appointed by the Government for the purpose of recovery of any amount of tax, interest, penalty or any other sum, shall also be deemed to be a Revenue Officer under the Deputy Commissioner of the district under the Assam Land and Revenue Regulation, 1886 and shall have the same powers as are vested in the Revenue Officer under section 69 of the said Regulation for the purpose of attachment and sale of movable property of the defaulting dealer or the person liable.
- (4) Any proceeding under sub-section (3) shall be deemed to be a proceeding for recovery of arrears of land revenue under the Assam Land and Revenue Regulation, 1886 and all provisions of the said Regulation for recovery, attachment and sale of movable property of the defaulting dealer or the person liable shall mutates mutants apply.
- (5) The Government may, by notification in the Official Gazette, also empower the Commissioner or any person appointed to assist the Commissioner under sub-section

(2) of section 3, not below the rank of Superintendent of Taxes, to exercise the power under the said Acts for the purpose of recovering such amount.

**47. Special provision relating to deduction of tax at source in certain case** : (1) (a)

Every person other than an individual, a Hindu Undivided Family, a firm or a company not under the control of the Government responsible for making any payment or discharging any liability on account of any amount purporting to be the full or part payment of sale price or consideration for the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract shall, at the time of credit to the account of or payment to the dealer (hereinafter referred to as "contractor") of such amount in cash, by cheque, by adjustment or in any other manner, whatsoever, deduct in the prescribed manner, an

amount calculated at the rate of twelve and half paise in the rupee of the taxable turnover of such works contract.

- (b) (i) Where on an application Being made by any contractor in this behalf, the Prescribed Authority is satisfied that any works contract under reference is separable and involves both transfer of property in goods and labour and services, or involves only labour and services and accordingly, justifies deduction of tax on a part of the sum payable in respect of any works contract or, as the case may be, justifies no deduction of tax at all, he shall, after giving the contractor a reasonable opportunity of being heard, grant him such certificate as may be appropriate:

Provided that the Prescribed Authority may reject such application, or on his own motion, cancel or modify such certificate, after giving the contractor a reasonable opportunity of being heard:

Provided further that, nothing in the said certificate shall affect the tax liability of the contractor.

- (ii) Where such certificate is produced by the contractor, before the person responsible for payment, such person shall, unless the certificate is cancelled or modified by the Prescribed Authority, make deduction of tax in accordance with the said certificate. In the event of such certificate being cancelled or modified as provided, such person shall make the deductions accordingly.

- (c) Any person mentioned in clause (a) of this sub-section entering into any contract with any contractor for transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract shall furnish within fifteen days from the date of signing of the central such information as may be prescribed to the Prescribed Authority under whose jurisdiction the contractor's place of business is situated. Failure to do so shall entail a penalty not exceeding five hundred rupees per day of default after affording such person a reasonable opportunity of being heard.

**Amendment:** In clause (c) after the words “any person”, the words “mentioned in clause (a) of this sub-section” has been inserted by Assam Act No. XXXVI of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/pt/38 Dtd. 9<sup>th</sup> September, 2005.

- (2) Every person other than an individual, a Hindu Undivided Family, a firm or a company not under the control of the Government responsible for marking any payment or discharging any liability on account of any amount purporting to be the full or part payment of sale price or consideration for the transfer of the right to use any goods for any purpose, at the time, of credit to the account of or payment to the payee of such amount in cash, by cheque, by adjustment or in any other manner, shall deduct an amount calculated at the rate specified in the Fifth Schedule from such sum towards full satisfaction of the tax payable under this Act on account of total sale price for the transfer of the right to use such goods.
- (3) Every person responsible for paying sale price or consideration or any amount purporting to be the full or part payment of sale price or consideration in respect of any sale or supply of goods liable to tax under this Act to the Government or corporation, board, authority, undertaking or any other body by whatever name called, owned, financed or controlled wholly or substantially by the Government, at the time of credit to the account of or payment to the payee of such amount in cash, by cheque, by adjustment or in any other manner, whatsoever, shall deduct an amount calculated at the rate as may be specified in the Schedule from such sum towards full satisfaction of the tax payable under this Act on account of total sale price of such sale or supply.
- (4) Notwithstanding anything contained in any other Law for the time being in force, every person mentioned in sub-section (1), sub-section (2) and sub-section (3)

responsible for paying sale price in respect of any works contract or lease or sale or supply of goods shall not enter into such transaction unless the contractor, lesser or seller of supplier, as the case may be, produces an authenticated copy of the certificate of registration under this Act or furnishes an undertaking for getting himself registered and any such contractor, lesser or seller or supplier who is not so registered under this Act shall not be paid by the said responsible person any amount in respect of the sale or supply, before he gets himself registered under this Act and submits an authenticated copy of the certificate of registration.

- (5) Every person referred to in sub-section (1), sub-section (2), and sub-section (3) responsible for paying sale price, shall within the prescribed time apply to the Prescribed Authority for allotment of a sales tax deduction account number. The number shall be quoted in such documents, statements and returns as may be prescribed.
- (6) Any tax deducted under this section shall be paid into the Government account within such time and in such manner accompanied with such documents and statements of account as may be prescribed.
- (7) The person making any deduction of tax under this section and paying it into the Government account shall issue to the payee a certificate of tax deduction and payment in such form and manner and within such time as may be prescribed.
- (8) Any deduction made in accordance with the provisions of this section and credited into the Government account, shall be treated as payment of tax on behalf of the person from whose bills and invoices, the deduction has been made and credit shall be given to him for the amount so deducted on the production of the certificate prescribed in this regard, towards the amount of tax finally assessed or determined as being payable by the concerned person in the assessment for the relevant assessment year and any amount deducted in excess of the tax so assessed or determined shall be refundable in accordance with the provisions of this Act.
- (9) The person responsible for deduction of tax shall within the prescribed time after the end of each year, file a return in the prescribed form to the Prescribed Authority.
- (10) No interest or penalty shall be imposed or no recovery proceedings against the dealer or payee shall be initiated in respect of deduction of tax under this section.
- (11) Where the amount has not been deposited after deduction, such amount and any other sum which may be payable under this section shall be a charge upon all the assets of the person concerned, who made the deduction or who is liable to pay any other amount and shall be recoverable from him as arrears of land revenue :  
Provided that no recovery proceedings shall be drawn up by the Prescribed Authority having jurisdiction over the person concerned without prior approval of the Commissioner.
- (12) If any person as referred to in sub-section (1), sub-section (2) or sub-section (3) fails to make the deduction or after making the deduction fails to deposit the amount so deducted into the Government account, the Prescribed Authority may, after giving such person a reasonable opportunity of being heard, by an order in writing, direct that such person shall pay, by way of penalty, a sum not exceeding twice the amount deductible under this section besides tax deductible but not so deducted and, if deducted, not so deposited into the Government account.
- (13) Without prejudice to the provision of sub-section (12), if any person fails to make the deduction or after deducting fails to deposit the amount so deducted, he shall be liable to pay simple interest at the rate of one and half percent per month on the amount deductible under this section but not so deducted and, if deducted not so deposited, from the date on which such amount was deductible to the date on which such amount is actually deposited into the Government account.

*Explanation:* For the removal of doubt it is hereby declared that for the purposes of this section, the word "Government" shall mean any state Government or the Central Government or the Government of any Union Territory of India.

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

**48. Tax to be first charge on property :** Notwithstanding anything constrained in any contract to the contrary but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any amount payable by a dealer under this Act on account of tax, penalty or interest or any other sum which a person is required to pay under this Act shall be a first charge on the property of the dealer or such person.

**49. Period of limitation for recovery of tax:** Notwithstanding anything contained in any law for the time being in force, no proceedings for recovery of any amount under this Act shall be initiated after the expiry of twelve years from the date of the relevant assessment or from the end of the relevant year, whichever is later:

**Amendment:** The punctuation mark and the words “, whichever is later” has been inserted by Assam Act No. XXXVI of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/pt/38 Dtd. 9<sup>th</sup> September, 2005.

Provided that when an appeal or revision has been filed, the period of limitation shall run from the date on which the amount due is finally determined.

**50. Refund :** (1) Subject to other provisions of this Act and the rules made hereunder, if it is found on the assessment or reassessment, as the case may be, that a dealer has paid tax, interest or penalty in excess of what is due from him, the Prescribed Authority shall, on the claim being made by the dealer in the prescribed manner and within the prescribed time, refund to such dealer the amount of tax, penalty and interest paid in excess by him :

Provided that, such refund shall be made after adjusting the amount of tax or penalty, interest or sum forfeited or ail of them due from, and payable by the dealer on the date of passing of order for such refund.

(2) Where the amount of input tax credit admissible to a registered dealer for a given period exceeds the tax payable by him for the period, he may, subject to such restrictions and conditions as may be prescribed, seek refund of the excess amount, by making an application in the prescribed form and manner, containing the prescribed particulars and accompanied with the prescribed documents to the Prescribed Authority, or adjust the same provisionally with his future liability to tax in the manner prescribed.

Provided that the amount of tax or penalty, interest or sum forfeited or all of them due from, and payable by, the dealer on the date of such adjustment shall first be deducted from such refund before adjustment.

**51. Provisional refund :** (1) If a registered dealer has filed any return as required under this Act and the return shows any amount to be refundable to the dealer or account of sales in course of export out of the territory of India, then the dealer may apply in the manner and form as may be prescribed, to the Prescribed Authority for grant of provisional refund pending audit and investigation to establish the correctness of the claim and consequent assessment, if any.

(2) Subject to the provisions of sub-section (3), the Prescribed Authority may require the dealer to furnish a Bank Guarantee or other security as may be prescribed for an amount equal to the amount of refund and on receipt of such guarantee or other security, the Prescribed Authority shall grant the dealer a provisional refund that may be determined as refundable.

(3) the Prescribed Authority may direct the assessment of such dealer in respect of the year containing the period covered by the said return to be taken up as early as practicable and adjust the grant of provisional refund against tax due, if any, as a result of that assessment.

- (4) If, on assessment, the provisional refund granted under subsection (2) is found to be in excess, than the excess shall be recovered as if it were a tax due from the dealer under this Act.
- (5) Interest shall be charged on such excess amount at the rate of one and half percent per month from the dates of grant of provisional refund till the date of recovery of the amount.

**52. Interest :** (1) A registered dealer entitled to refund in pursuance of any order under this Act including assessment or in pursuance of any order by any Court, shall be entitled to receive addition to the refund, simple interest at the rate of nine percent per annum for the period commencing after ninety days of the application claiming refund in pursuance to such order till the date on which the refund is granted.

- (2) The interest shall be calculated on the amount of refund due after deducting therefore any tax, interest, penalty or any other dues under this Act.
- (3) If, as a result of any order passed under this Act, the amount of such refund is enhanced or reduced such interest shall be enhanced or reduced accordingly.
- (4) When a dealer is in default or is deemed to be in default in making the payment in pursuance of any assessment under this Act, he shall be liable to pay simple interest on such amount at the rate of one and half percent per month from the date of such default for so long as he continues to make default in the payment of the said tax.
- (5) Where as a result of any final order the amount of tax (including any penalty) due or in default is wholly reduced, the amount of interest, if any, paid shall be refunded, or if such amount is modified, the interest due shall be calculated accordingly and any excess amount of interest paid shall be refunded.
- (6) Where any amount of tax payable is enhanced by any such order, interest shall be payable on the amount by which the tax is enhanced.
- (7) Where the realisation of any amount remains stayed by the order of any Court or authority and such order is subsequently vacated, interest shall be payable also for any period during which such order remained in operation.
- (8) The interest payable under this Act shall be deemed to be tax due under this Act.

**53. Power to withhold refund in certain cases :** (1) Where an order giving rise to refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending, and the Prescribed Authority is of the opinion that the grant of such refund is likely to adversely affect the revenue and that it may not be possible to recover amount later the Prescribed Authority may withhold the refund till such time as he may determine.

- (2) Where a refund is withheld under sub-section (1) the dealer shall be entitled to interest as provided under sub-section (1) of section 52, if as a result of the appeal or further proceedings or any other proceedings he becomes entitled to the refund.

**54. Exemptions of Certain sales and purchases :** (1) Subject to such conditions as it may impose, the Government may, if it is necessary so to do in the public interest, by notification in the Official Gazette, exempt any sales by way of appropriate Schemes or otherwise, in conformity with the provisions of this Act or purchases made \_\_\_\_\_ to \_\_\_\_\_ or \_\_\_\_\_ by a class of dealers or persons specified in the said notification from payment of the whole or any part of any tax payable under the provisions of these Act and any notification issued under this section may be issued so as to be retrospective to any date not earlier than the date of commencement of the Act and such exemption shall take effect from the date of publication of the notification in the Official Gazette or such other earlier or later date as may be mentioned therein;

Provided that the Government may withdraw such exemption at any times asit may think fit and proper:

**Amendment:** In section 54, in sub-section (1), for the words, punctuation mark and number “1<sup>st</sup> April, 2003, the words “date of commencement of the Act” has been substituted by Assam

Act No. XXXVI of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/pt/38 Dtd. 9<sup>th</sup> September, 2005.

**Amendment:** In section 54, in sub-section (1), in between the words “exempt” and “any sales or purchases” the words “by way of appropriate Schemes or otherwise, in conformity with the provisions of this Act” has been inserted by Assam Act No. XLVII of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/Pt/66 Dtd. 23<sup>rd</sup> December, 2005.

**Amendment:** In section 54, in sub-section (1) the proviso has been inserted by Assam Act No. XLVII of 2005, published in the Assam Gazette vide Notification No.LGL.6/2003/Pt/66 Dtd. 23<sup>rd</sup> December, 2005.

Provided further that when exemption is granted in the form of remission, the dealer shall be entitled to retain the part or whole of tax collected by way of subsidy from the Government subject to maximum permissible monetary limit and/or time limit and other conditions as may be prescribed in the appropriate scheme:

Provided also that the Government may, if it is necessary so to do in the public interest, by notification in the official Gazette, exempt a part of sale price specified in the said notification from payment of tax payable under the provisions of the Act.

**Amendment:** In section 54, in sub-section (1), in the existing proviso, the punctuation mark “.” appearing at the end has been substituted by punctuation mark “:” and thereafter the provisions 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 29<sup>th</sup> March, 2007.

- (2) The sale of goods to any person or international organizations as specified in the Eighth Schedule appended to this Act shall be zero-rated. The persons or International Organizations listed in the said Schedule may apply for refund of VAT paid for goods purchases in the State subject to conditions as may be prescribed.