

CHAPTER - VII
LIABILITY IN SPECIAL CASES

63. **Liability in case of transfer of business :** (1) Where the business of a dealer liable to pay tax under this Act is transferred in whole or in part, by sale, bequest, inheritance, gift, lease, licence, or in any other manner what so ever the dealer and the person to whom the business is so transferred shall jointly and severally be liable to pay the tax (including any penalty) due from the dealer under this Act or under the earlier law, up to the time of such transfer, whether such tax (including any penalty) has been assessed before such transfer, but has remained unpaid or is assessed thereafter.
- (2) Where the transferee or the lessee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the sale of goods effected by him with effect from the date of such transfer and shall if he is an existing dealer, apply within the prescribed time for amendment of his certificate of registration.
64. **Liability to pay tax in case of death :** Where a dealer, liable to pay tax under this Act, dies then,-
- (a) if the business carried on by the dealer is continued after his death, by his legal representative or any other person, such legal representative or other person shall be liable to pay tax including any penalty, sum forfeited and interest due from such dealer under this Act or under earlier law, in the like manner and to the same extent as the deceased dealers, and
- (b) if the business carried on by the dealer is discontinued whether before or after his death, his legal representative shall be liable to pay out of the estate of the deceased, in the like manner and to the extent the estate is capable of meeting the charge as the deceased dealer would have been liable to pay if he had not died, the tax including any penalty, sum forfeited and interest due from such dealer under this Act, or under earlier law.
- whether such tax including any penalty, sum forfeited and interest has been assessed before his death but has remained unpaid, or is assessed after his death.
- "Explanation,-* For this purposes of this section "legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908. (Central Act 5 of 1908)
65. **Liability of guardians, Trustees and court wards etc :** (1) Where the business in respect of which tax is payable under this Act is carried on by, or is in the charge of any guardian, trustee or agent of a minor or other incapacitated person on his behalf and for the benefit of such minor or other incapacitated person, the tax (including any penalty) shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be assessed upon and recoverable from any such minor or other incapacitated person, if he were of full age and of sound mind and if he were conducting the business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.
- (2) Where the estate or any portion of the estate of a dealer owning a business in respect of which tax is payable under this Act is under the control of the Court of Wards, the Administrator-General, the Official Trustee or any receiver or manager (including any person what ever be his designation, who in fact manages the business) appointed by or under any order of a Court, the tax (including any penalty) shall be levied upon and be recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in like manner and to the same extent as it would be assessable upon and be recoverable from the dealer if he were conducting the business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.
66. **Liability of partners of firm to pay tax :** (1) Notwithstanding, anything contained in the Indian Partnership Act, 1932 or in any contract to the contrary, where any firm is liable to pay any tax (including any penalty) under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment and accordingly any notice or order under this Act may be served on any person who was a

partner during the relevant time whether or not the firm has been dissolved and all the provisions of this Act shall apply accordingly.

Provided that where any such partner retires from the firm, he shall intimate the date of this retirement to the Prescribed Authority by a notice in that behalf in writing and he shall be liable to pay tax (including any penalty) remaining unpaid at the time of his retirement and any tax (including any penalty) due up to the date of his retirement though un-assessed on that date.

Provided further that if no such intimation is given within fifteen days from the date of retirement, the liability of the partner under the first proviso shall continue until the debate on which such intimation is received by the Prescribed Authority. (2) Where a change has occurred in the constitution of a firm or an association of persons, the partners or members of the firm or association as it existed before and as it exists after its reconstitution, shall, jointly and severally be liable to pay tax (including any penalty) due from such firm or association for any period before its re-constitution.

67. **Liability to tax of a partitioned Hindu Undivided Family and dissolved firm etc :** (1) Where a dealer, liable to pay tax under this Act, is a Hindu Undivided Family and the joint family property is partitioned amongst the various members or group of members, then each member or group of members shall be jointly and severally liable to pay the tax including any penalty, sum forfeited and interest due from the dealer under this Act or under the earlier law, up to the time of the partition, whether such tax including any penalty, sum forfeited and interest has been assessed before partition but has remained unpaid or is assessed after partition.
- (2) Where a dealer liable to pay tax under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay, the tax including any penalty, sum forfeited and interest due from the firm under this Act or under the earlier law, up to the time of dissolution, whether such tax including any penalty, sum forfeited and interest has been assessed before such dissolution but has remained unpaid or is assessed after dissolution.
68. **Certain agents liable to tax for sales on behalf of principal :** (1) Where any person sells or purchases any taxable goods on behalf of his principal then such person and his principal shall both be jointly and severally liable to pay tax on the turnover of such sales or purchases.
- (2) If the principal, on whose behalf a commission agent has sold or purchased any goods, shows to the satisfaction of the Prescribed Authority that tax has been paid by the commission agent on such goods under sub-section (1), the principal shall not be liable to pay tax again in respect of the same transaction.
- (3) Where a manager or an agent of a non-resident dealer sells or purchases any goods on behalf of the non-resident dealer in the State, then the non-resident dealer and the manager or agent residing in the State, shall be jointly and severally liable to pay tax on the turnover of such sales or purchases.
- Provided that, if the non-resident dealer shows to the satisfaction of the Prescribed Authority that the tax payable in respect of any sale or purchase has been paid by the manager or agent residing in the State, then the non-resident dealer shall not be liable to pay tax in respect of the same transaction.
69. **Liability of contractor and sub-contractor to tax :** (1) Where a dealer carries on the business of transfer of property in goods involved in the execution of a works contract (hereinafter referred to as a contractor) through another such dealer (hereinafter referred to as a sub-contractor) directly or otherwise, and the sub-contractor executes such works contract and each or either of them is liable to pay tax under this Act, then notwithstanding anything contained in this Act, the contractor and the sub-contractor shall be jointly and severally liable to pay tax in respect of transfer of property in goods whether as goods or in some other form involved in the execution of such works contract.
- (2) If the contractor proves in the prescribed manner that the tax has been paid by the sub-contractor on the taxable turnover of the goods involved in the execution of the works contract, executed by such sub-contractor, the contractor shall not be liable to pay tax again on the taxable turnover of such goods.
- (3) If the sub-contractor proves in the prescribed manner that the tax has been paid by the contractor on the taxable turnover of goods involved in the execution of the works contract,

executed by such contractor, the sub-contractor shall not be liable to pay tax again on the taxable turnover of such goods.

70.

Liability in case of company in liquidation : (1) Every person,-

- (a) who is a liquidator of any company which is being wound up whether under the orders of a Court or otherwise; or
 - (b) who has been appointed the receiver of any assets of a company (hereinafter referred to as the "liquidator") shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Prescribed Authority.
- (2) The Prescribed Authority shall after making such inquiries or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he received notice of the appointment of the liquidator, the amount which in the opinion of the prescribed Authority would be sufficient to provide for any tax (including any penalty) which is then, or is likely thereafter to become, payable by the company.
 - (3) The liquidator shall not part with any of the assets of the company or the properties in his hand until he has been notified by the Prescribed Authority under sub-section (2) and on being so notified, the liquidator shall set aside an amount equal to the amount notified and, until he so sets aside such amount, he shall not part with any of the assets of the company or the properties in his hand;

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties in compliance with any order of a Court or for the purpose of the payment of the tax, interest, penalty and any other sum, if any, payable by the company under this Act or for making any payment to secured creditors whose debts are entitled under law to priority of payments over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Prescribed Authority reasonable.

- (4) If the liquidator fails to give notice in accordance with subsection (1) or fails to set aside the amount as required by subsection (3) or parts with any assets of the company or the properties in his hand in contravention of the provisions of that sub-section, he shall be personally liable for the payment of tax, interest, penalty and any other sum, if any, which the company would be liable to pay under this Act.

Provided that if the amount of tax, interest, penalty and any other sum, if any, payable by the company is notified under sub-section (2) the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

- (5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.
- (6) When any private company is wound up and any tax, interest, penalty and any other sum, assessed under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due, shall be jointly and severally liable for the payment of such tax and penalty, if any, unless he proves to the satisfaction of the Prescribed Authority that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.
- (7) The provisos of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

71.

Amalgamation of Companies : (1) When two or more companies are to be amalgamated by the order of a Court or of the Central Government and the order is to take effect from a date earlier to the date of the order and any two or more such companies have sold or purchased any goods to or from each other in the period commencing on the date from which the order is to take effect and ending on the date of the order then such transactions of sale and purchase shall be included in the turnover of the sales or of purchases of the respective companies and shall be assessed to tax accordingly.

- (2) Notwithstanding anything contained in the said order, for all of the purposes of this Act, the said two or more companies shall be treated as distinct companies and shall be treated as such for all periods up to the date of the said order and the certificates of registration of the said companies shall be cancelled, where necessary, with effect from the date of the said order.

- (3) Words and expressions used in this section, but not defined, shall have the meanings respectively assigned to them in the Companies Act, 1956. (Central Act 1 of 1956).

71A. (1) Any dealer conducting exhibitions, exchange meals or any prize schemes for sales promotion or any caterer supplying food and service shall obtain a written permission from the Commissioner. The Commissioner may issue such permission subject to such conditions as may be specified in such permission. The dealer to whom the permission is issued shall exhibit the same at a conspicuous place where the exhibition or exchange mela or prize scheme is conducted. The owner of the premises where the exhibition, exchange mela or any prize schemes for sales promotions are conducted shall obtain a copy of the permission issued by the Commissioner and intimate the Commissioner concerned the particulars regarding the period during which the mela is conducted, the dealer conducting the mela and the conditions subject to which the premises are leased out for the conduct of such exhibition, exchange mela or prize schemes and any other relevant information. Where the owner of the premises fails to do so, he shall be jointly and severally liable for any tax that may become due on the sales of goods made in such exhibition, exchange mela or any prize schemes.

(2) A caterer supplying food and services in a place which is not his regular place of business shall obtain a written permission from the Commissioner. The Commissioner may issue such permission subject to such conditions as may be specified in such permission. The owner of the premises where such supply is made by the caterer shall obtain a copy of the permission issued by the Commissioner and intimate the Prescribed Authority concerned the particulars regarding the period during which the supply is so made. Where the owner of the premises fails to do so, he shall be jointly and severally liable for any tax that may become due on the sales of goods made in such catering.

Amendment: In the principle Act, after section 71, a new section 71A 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.