

CHAPTER – IX

APPEAL AND REVISION

79. **Appeals to the appellate authority:** (1) Any person aggrieved by an order passed under the Act by a taxing authority lower in rank than a Deputy Commissioner of Taxes, may appeal to the Appellate Authority, in the manner as may be prescribed, within sixty days from the date of receipt of such order.
- (2) Where the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, it may admit an appeal after the expiry of the said period provided it is presented within a further period of one hundred eighty days.
- (3) The appeal shall be in the prescribed form and verified in the prescribed manner. It shall specify in detail the grounds upon which it is made and shall be accompanied by such documents as may be prescribed.
- (4) No appeal shall be entertained by the Appellate Authority unless it is satisfied that such amount of the tax, penalty or interest, as the case may be, as the appellant may admit to be due from him, has been paid.
- (5) No appeal by a person shall be entertained by an Appellate Authority unless such appeal is accompanied by satisfactory proof of payment of minimum twenty five per cent of the disputed tax, penalty, if any, imposed and the interest accrued thereon, if any;
- Provided that such authority may stay the recovery of the full or part of the balance amount of tax, interest and penalty, till disposal of the appeal.
- (6) Where an order staying proceedings of recovery of any tax or other amount is made in any proceedings relating to an appeal, the Appellate Authority shall dispose of the appeal within a period of one hundred twenty days from the date of such order.
- (7) If such appeal is not so disposed of within the period specified in sub-section (6) for the reasons attributable to the appellant, the order of stay shall stand vacated after the expiry of the said period.
- (8) The Appellate Authority may, at the hearing of an appeal, after giving the authority which passed the order under appeal a reasonable opportunity of being heard, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, or to produce any evidence whether oral or documentary, not produced at any earlier stage of the proceedings in so far as such ground or evidence does not relate to any matter or facts relating to any claim not made before the lower authority, if the Appellate Authority is satisfied that the omission of that ground from the grounds of appeal or the failure to produce the evidence at the earlier state was not willful or unreasonable.
- (9) The appellant shall serve a copy of the appeal memo to the authority against whose order the appeal is filed.
- (10) The Appellate Authority shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and the tax authority against whose order the appeal is preferred.
- (11) The Appellate Authority, after calling for and examining the relevant records and making such further inquiry as may be necessary, may-
- (a) confirm, reduce, enhance, or annul the decision or order appealed against; or
- (b) consider and decide any matter arising out of the proceedings in which the order appealed against was passed, irrespective of the fact that such matter has not been raised before it by the appellant or that no order has been made in the said proceedings regarding such matter for any reason whatsoever.

Amendment: In section 79, in sub-section (11) for clause (b) has been substituted by Assam Act No. IX of 2008 published in the Assam Gazette vide Notification No. LGL.6/2003/Pt/132 Dtd. the 8th April,2008.

(c) omitted.

Amendment: Clause (c) has been omitted by Assam Act No. IX of 2008 published in the Assam Gazette vide Notification No. LGL.6/2003/Pt/132 Dtd. the 8th April, 2008.

Explanation I- while disposing of an appeal, the Appellate Authority may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before it by the appellant or that no order was made in the said proceedings regarding such matter.

Explanation, II- In disposing of an appeal, the Appellate Authority may summarily reject the appeal if the requirements of this section and the rules framed thereunder are not complied with.

- (12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. On the disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, the tax authority whose order was appealed against and the Commissioner.
- (13) All appeals arising out of the same cause of action in respect of an assessment year shall be heard and decided together
- (14) An order passed under this section shall, subject to the other provisions of this Act, be final.
- (15) Any Appellate Authority who has previously dealt with any case coming up before it in any other capacity or is personally interested in any case coming up before it shall be disqualified to hear that case. The Commissioner may, by an order, transfer such case to any other Appellate Authority for adjudication.
- (16) In every appeal, the Appellate Authority, where it is possible, hear and decide such appeals within a period of one year from the end of the financial year in which such appeal is filed before it.
- (17) No appeal shall lie against-
 - (a) an order withholding a refund; or
 - (b) a notice issued under this Act calling upon a dealer for assessment or asking a dealer to show cause as to why he should not be prosecuted for an offence under this Act; or
 - (c) an order pertaining to the seizure or retention of books of accounts, registers and other documents; or
 - (d) an order sanctioning prosecution under the provisions of this Act, or
 - (e) an order refusing to compound any offence; or
 - (f) an interim order passed in the course of any proceedings under this Act, or
 - (g) such other order as may be prescribed.

80. Appeals to the Appellate Tribunal: (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order,-

- (a) an order passed by the Appellate Authority under section 79; and
- (b) an order passed by an authority not below the rank of Deputy Commissioner of Taxes.

(2) omitted.

Amendment: 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. 9th September, 2005.

- (3) Every appeal under sub-section (1) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the person;

Provided that the Appellate tribunal may admit an appeal after the expiry of sixty days if he is satisfied that the Appellant had sufficient reasons for not filing the appeal within the aforesaid time, if, it is within a further period of one hundred twenty days.

Amendment: Sub-section (3) 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.

- (4) The Appellate Tribunal may, on an application made by the appellant, order stay of recovery of an amount under dispute subject to such terms and conditions as are deemed necessary.
- (5) In deciding an appeal, the Appellate Tribunal shall make an order, after affording the dealer or other person and the concerned authority a reasonable opportunity of being heard, -
 - (a) affirming, reducing, increasing or varying the assessment or other order under appeal; or
 - (b) remitting the assessment or other order under appeal for reconsideration by the Authority concerned with such directions as it may deem fit.

Amendment: In sub-section (5), the word “Commissioner” appearing between the words “the” and “a” has been substituted by the word “concerned authority” 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.

- (6) The Appellate Tribunal shall serve the appellant and the concerned authority with the order in writing, of its decision in the appeal setting forth the reasons for such decision.

Amendment: In sub-section (6), the word “Commissioner” appearing between the words “the” and “with” has been substituted by the word “concerned authority” 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.

- (7) The appellate Tribunal shall hear and decide every appeal, as expeditiously as possible, and ordinarily within a period of one year from the end of the financial year in which such appeal is filed before it.
- (8) The Appellate Tribunal may, on an application either by the appellant or by the respondent made within one year from the date of receipt of the order under this section, review any order passed by it on the basis of the facts which were not before it when the order was passed.

81. Revision to High court: (1) Any dealer or other person, who is dissatisfied with the decision of the Appellate Tribunal, or the Commissioner may, within sixty days after being notified of the decision of the Appellate Tribunal, file a revision to the High Court, and the dealer or other person so appealing shall serve a copy of the notice of revision on the respondents to the proceedings.

- (2) A revision to the High Court may be made on question of law or an erroneous decision or failure to decide a question of law that shall be raised in the revision.
- (3) The Commissioner shall also be made a party to the proceedings before the High Court where revision is filed by the dealer or other person.
- (4) The High Court may on application either by the petitioner or by any of the respondents review any order passed by it provided such application is made within one year from the date of receipt of the judgment. (5) A revision or "review application presented before the High Court under this section shall be heard by the bench consisting of not less than two judges.

82. Revision by the Commissioner: (1) The Commissioner may, on his own motion, call for and examine the record of any proceedings under this Act and if he considers that any order passed by any authority subordinate to him, is erroneous in so far as it is prejudicial to the interest of the revenue, may, after giving the dealer a reasonable opportunity of being heard, pass such order as he deems fit.

Provided that the Commissioner shall not pass any order under this sub-section after the expiry of eight years from the end of the year in which the order sought to be revealed was made.

(2) In the case of any order passed by a person appointed to assist the Commissioner under sub-section (1) of section 3, not being an order to which sub-section (1) applies, and not being an order against which an appeal under section 79 has been filed or an order in respect of which the time allowed for appeal under section 79 has not expired, the Commissioner may, either of his own motion or on an application made in the prescribed manner by the dealer or person affected by such order, call for the record of any proceeding under this Act in which any such order has been passed and may make such enquiry or cause

such enquiry to be made and subject to the provisions of this Act, pass such orders thereon, not being an order prejudice to the dealer or person to whom the order relates as thinks fit.

(2A) An application by a dealer or person shall not be entertained by the Commissioner unless such application is accompanied by satisfactory proof of payment of minimum twenty five percent of the disputed tax, penalty, if any, imposed and the interest accrued thereon, if any:

Provided that the Commissioner may, if it thinks fit, for reasons to be recorded in writing and subject to furnishing of such security as Commissioner may deem fit, admit an application with part payment or without any payment of the disputed amount of tax including penalty, if any, required under this sub-section with a view to mitigate undue hardship which is likely to be caused to the dealer or person if the payment of such disputed amount is insisted on.

Provided further that the Commissioner may stay the recovery of the full or part of the balance amount of tax, interest and penalty, till disposal of the application.

Amendment: In section 82, after sub-section (2), a new sub-section (2A) has been inserted by Assam Act No. IX of 2008 published in the Assam Gazette vide Notification No. LGL.6/2003/Pt/132 Dtd. the 8th April, 2008.

(3) Every application for revision under sub-section (2) shall be filed within ninety days of the date on which the order is sought to be revised against is communicated to the dealer or the person:

Provided that the Commissioner may admit an application for revision after the expiry of ninety days if he is satisfied that the dealer or the person had sufficient reasons for not filing the appeal within the aforesaid time, if it is within a further period of one hundred eighty days.

(4) (a) When a Prescribed Authority is aggrieved by any order passed by the Appellate Authority, he may file a revision petition within ninety days from the date of receipt of such order.

(b) When a revision petition is filed by a Prescribed Authority, the Commissioner may, after examination of the order of the Appellate Authority and the records of any proceeding under the Act to which the order of the Appellate Authority relates and after making an enquiry, or causing an enquiry to be made, as he may deem necessary, pass any order reversing, modifying or upholding the order of the Appellate Authority:

Provided that Commissioner shall not pass any order prejudicial to the dealer or the person to whom the order relates without giving him a reasonable opportunity or being heard.

Amendment: Section 82 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.

83. Power to rectify error apparent on the record : (1) Any authority including the Appellate Authority, Revisional Authority and Appellate Tribunal may, on an application or otherwise at any time within three years from the date of any order passed by it, rectify any error apparent on the face of the record.

Provided no such rectification which has the effect of enhancing the liability to pay tax or penalty or penal interest shall be made unless such authority has given notice to the person affected and has allowed him a reasonable opportunity of being heard.

(2) Where such rectification has the effect of enhancing the tax liability or penalty or both, the Prescribed Authority shall give the dealer or other person a notice of enhanced tax or penalty and the dealer or other person shall pay the enhanced tax or penalty or both in the manner prescribed and when such rectification has the effect of reducing the tax liability or penalty or

both the Prescribed Authority shall issue a refund order of the excess tax or penalty or both paid, if any.

- 84. Application of section 4 and 12 of Limitation Act, 1963 :** In computing the period of limitation under this chapter, the provisions of section 4 and 12 of the Limitation Act, 1963 shall, so far as may be, apply.