

CHAPTER X

APPEAL, REVISION AND RECTIFICATION

Appeals.

77.(1) Any dealer aggrieved by an order passed under section 34,40, 42,43, 44, 45 or 52 may prefer an appeal to such authority as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), no appeal shall lie against –

(a) a notice issued under this Act calling upon a dealer for assessment or any person to show cause as to why he shall not be prosecuted for an offence under this Act; or

(b) an order pertaining to the seizure or retention of any books of account, registers and other documents of a dealer; or

(c) an order sanctioning prosecution of a dealer under this Act ; or

(d) an interim order passed in the course of any proceeding under this Act.

(3) The appeal under sub-section (1) shall be preferred within thirty days from the date on which the order is served on the dealer.

(4) No appeal against any order shall be entertained by the appellate authority, unless it is accompanied by satisfactory proof of payment of admitted tax in full and twenty per centum of the tax or interest or both, in dispute.

(5) Subject to the provisions contained in sub-section (4), the appellate authority may, on application in that behalf filed by the dealer within the period as provided in sub-section (3), stay the realisation of the balance of tax, interest or penalty, as the case may be, under dispute either in part or in full till disposal of the appeal.

(6) The appeal shall be preferred in the prescribed form and shall be verified in the prescribed manner.

(7) In disposing of an appeal, the appellate authority may, after giving the appellant a reasonable opportunity of being heard and after causing such enquiry as he may deem necessary-

(a) confirm, reduce or annul the assessment of tax, or the imposition of interest or levy of penalty, if any; or

(b) enhance the assessment including any part thereof whether or not such part is the subject matter in the appeal; or

(c) set-aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed.

(8) Every order passed in an appeal under this section shall, subject to the provisions of section 79, be final.

Appeal to
Tribunal
and stay of
recovery
of dues
during
pendency
of appeal.

78.(1) Any dealer or, as the case may be, the Government, if not satisfied with an order passed under sub-section (7) of section 77 may, within sixty days from the date of receipt of such order, prefer an appeal in the prescribed manner to the Tribunal :

Provided that an appeal preferred after a period of sixty days may be admitted by the Tribunal, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(2) The dealer or the Government, as the case may be, on receipt of notice that an appeal has been preferred under sub-section (1) may, notwithstanding that such dealer or the Government may not have appealed against such order or any part thereof, within sixty days of the service of the notice, file a memorandum of cross objections, and such memorandum shall be disposed of by the Tribunal, as if it were an appeal presented within time under sub-section (1).

(3) The appeal or the memorandum of cross objections shall be in the prescribed form and shall be verified in the prescribed manner and, in case where appeal has been preferred by any dealer or person other than the Government, it shall be accompanied by a fee of rupees one hundred.

(4) The Tribunal shall, after giving both parties to the appeal a reasonable opportunity of being heard, dispose of the appeal.

(5) For the purpose of sub-section (4), the Tribunal shall have the same powers and shall be subject to the same conditions as provided in sub-section (7) of section 77, and any order passed under sub-section (4) shall be final.

(6) Where a dealer has preferred an appeal under sub-section (1), the Commissioner may, stay realisation, either in part or in full, the amount of tax, interest or penalty, as the case may be, remaining outstanding for recovery as a result of the disposal of appeal under sub-section (7) of section 77, on application in that behalf filed by the dealer within the period as provided in sub-section (1).

Revisional
powers of
Commissioner.

79.(1) Subject to rules and for reasons to be recorded in writing, the Commissioner may, on his own motion, revise any order passed under this Act or the rules by any person, other than the Tribunal, appointed under sub-section (2) of section 3 to assist the Commissioner.

(2) Subject to rules and for reasons to be recorded in writing, the Commissioner may, upon application filed within the prescribed period, revise any order, other than an order of the Tribunal, passed by any person appointed under sub-section (2) of section 3 to assist the Commissioner.

(3) The Commissioner shall not entertain any application for revision under sub-section (1), if the dealer or person filing the application, having a remedy by way of appeal under section 77 or section 78, did not avail of such remedy or did not file the application within the prescribed period.

(4) The Commissioner shall not revise, under sub-section (1), any order, if -
(a) period for filing of appeal against the order as provided under section 77 or 78 has not expired; or

(b) the order has been made a subject matter of appeal under section 77 or 78; or

(c) more than five years have expired after the order sought to be revised was passed.

(5) Notwithstanding anything contained in sub-section (4), the Commissioner may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (b) of sub-section (4) before the expiry of the period specified in clause (c) of the said sub-section.

(6) If the Commissioner proposes to reject an application for revision made under sub-section (2), he shall record the reasons for such rejection.

(7) Any dealer or person or, as the case may be, the Government, aggrieved by any order passed by the Commissioner under sub-section (1) may, within sixty days from the date of receipt of such order, prefer an appeal -

(a) if the order is passed by the Commissioner, to the High Court; and

(b) if the order is passed by any authority subordinate to the Commissioner, to the Commissioner.

(8) All orders passed under sub-section (1) shall, subject to orders passed in an appeal, if any, be final.

(9) Any dealer or person likely to be affected prejudicially by any order passed under sub-section (1) shall be given a reasonable opportunity of being heard before such order is made.

80(1) Within sixty days from the date on which an order under sub-section (4) of section 78 was served affecting liability of any dealer to pay tax, interest or penalty under this Act, such dealer by petition in writing accompanied by a fee of rupees one hundred, or the Commissioner by petition in writing, may move the High Court against the order on grounds of any question of law arising out of such order of the Tribunal :

Provided that the High Court may admit a petition preferred after the period of sixty days as aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within that period.

(2) The petition shall be in the prescribed form and shall be verified in the prescribed manner.

(3) If the High Court, in perusing the petition, considers that there is no sufficient ground for interfering, it may dismiss the petition :

Provided that no petition shall be dismissed without giving the petitioner a reasonable opportunity of being heard.

(4) (a) If the High Court does not dismiss the petition under sub-section (3), it shall, after giving both the parties to the petition a reasonable opportunity of being heard, determine the question or questions of law raised and reverse, confirm or amend the order against which the petition was preferred or remit the matter to the Tribunal with the opinion of the High Court on the question or questions of law raised or pass such other order in relation to the matter as the High Court thinks fit.

(b) Where the High Court remits the matter to the Tribunal under clause (a) with its opinion on the question or questions of law raised, the latter shall amend the order passed by it in conformity with such opinion.

(5) Before passing an order under sub-section (4), the High Court may, if it considers necessary to do so, remit the petition with its findings on any specific question or issue.

(6) Notwithstanding that a petition has been moved under sub-section (1), the tax or any other dues under this Act shall be paid in accordance with the order against which the petition has been moved :

Provided that if, as a result of the petition, any change in the assessment becomes necessary, the High Court may direct the assessing authority to amend the assessment and the assessing authority shall amend the assessment accordingly and, there upon, the excess amount paid, if any, by the assessee shall be refunded to him without interest or the additional amount of tax or other dues payable by him shall be collected in accordance with provisions of this Act, as the case may be.

(7) (a) The High Court may , on the application of either party to the petition, review any order passed by it under sub-section (4), on the basis of facts, which were not before it when it passed the order.

(b) The application for review shall be preferred within such time and in such manner as may be prescribed and shall, where it is preferred by any person other than the Commissioner, be accompanied by a fee of rupees one hundred.

Rectification
of mistakes.

81.(1) With a view to rectifying any arithmetical or clerical mistake or any error apparent on the face of record, the assessing authority, appellate authority or revisional authority or the Tribunal may, at any time within five years from the date of an order passed by it, amend such order:

Provided that an amendment which has the effect of enhancing an assessment or otherwise increasing the liability of the assessee shall not be made unless the assessing authority, appellate authority or revisional authority or the Tribunal, as the case may be, has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

(2) Where any order, sought to be rectified under sub-section (1) by amendment, has been considered and decided in any proceedings by way of appeal or revision, then, notwithstanding anything contained in any law for the time being in force, the authority acting under the said sub-section shall not make any amendment in relation to any matter which has been so considered and decided.

(3) An order passed under sub-section (1) shall be deemed to be an order passed under the same provisions of law under which the original order containing the mistake or error was passed.