

## CHAPTER XII

### MISCELLANEOUS

Bar to  
certain  
proceedings.

88. Save as provided in section 80, no assessment made or order passed under this Act or the rules shall be called into question in any Civil Court and, save as provided in sections 77, 78 and 79, no appeal or application for revision shall lie against any such assessment or order.

Disclosure  
of  
information  
by public  
servant.

89.(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the provisions of this Act and rules or in any record of evidence given in the course of any proceedings under this Act and the rules, other than proceedings before a criminal Court, shall, save as provided in sub-section (3), be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as aforesaid, be entitled to require a Government servant to produce before it any such statement, return, account, document or record or any part thereof, or to give evidence before it in respect thereof.

(2) Save as provided in sub-section (3), if any Government servant discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months and shall also be liable to fine.

(3) Nothing in this section shall apply to the disclosure of -

- (a) any of the particulars referred to in sub-section (1) for the purpose of investigation or prosecution under this Act or the Indian Penal Code, 1860 or any other enactment for the time being in force ; or
- (b) such facts to an officer of the Central Government or any State Government as may be necessary for verification of such facts or for the purposes of enabling that Government to levy or realise any tax imposed by it ; or
- (c) any such particulars when such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand ; or
- (d) any such particulars to a Civil Court in any suit or proceeding to which the Government or any authority under this Act is a party and which relates to any matter arising out of any proceeding under this Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder ; or

(e) any such particulars by any public servant when the disclosure is occasioned by the lawful exercise by him of his powers under the Indian Stamp Act, 1899 to impound an insufficiently stamped document ; or 2 of 1899.

(f) any such particulars to the Reserve Bank of India as are required by that Bank to enable it to compile financial statistics ; or

(g) any such particulars to any officer appointed by the Comptroller and Auditor General of India for the purpose of audit of tax receipts or refunds ; or

(h) any such particulars relevant to any inquiry into a charge of misconduct in connection with income tax proceedings against a legal practitioner or chartered Accountant, to the authority empowered to take disciplinary action against members of the profession to which he belongs ; or

(i) such particulars to the officer of the Central Government or any State Government for such other purposes, as the State Government may, by general or special order direct ; or

(j) any information relating to any class of dealers or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

Publication and disclosure of information in respect of dealers and other persons in public interest.

90.(1) Notwithstanding anything contained in section 89, if the Government is of the opinion that it is necessary or expedient in the public interest to publish or disclose the names of any dealer or other persons or any other particulars relating to any proceeding under this Act in respect of such dealers and persons, it may publish or disclose such names or particulars in such manner as it thinks fit.

(2) No publication or disclosure under this section shall be made in relation to any tax levied or penalty imposed or interest levied or any conviction for an offence connected with any proceeding under this Act, until the time for appeal to the appropriate appellate authority has expired without an appeal having been filed or the appeal, if filed, has been disposed of.

Appearance before any authority in proceedings.

91.(1) Any person, who is entitled or required to appear before any authority in connection with any proceeding under this Act, may attend –

(a) by a person authorised by him in writing, being a relative or a person regularly employed by him ; or

(b) by a legal practitioner or chartered Accountant or a cost Accountant who is not disqualified by or under sub-section (2); or

(c) by a tax practitioner who possesses the prescribed qualification and is enrolled by the Commissioner for the purpose and who is not disqualified by or under sub-section (2).

(2) The Commissioner may, by order in writing, for reasons to be recorded therein, disqualify for such period as may be stated in the order from attending before any such authority, any tax practitioner, legal practitioner, chartered Accountant or cost Accountant -

(a) who has been removed or dismissed from Government service; or

(b) who, being a legal practitioner or chartered Accountant or cost Accountant, is found guilty of misconduct in connection with any proceeding under this Act by an authority empowered to take disciplinary action against the members of the profession to which he belongs; or

(c) who, being a tax practitioner enrolled by the Commissioner, is found guilty of any misconduct.

(3) No order of disqualification under sub-section (2) shall be made in respect of any particular person, unless he has been given a reasonable opportunity of being heard.

(4) Any person against whom an order of disqualification is made under sub-section (2) may, within one month of the date of communication of such order, appeal to the Government to have the order cancelled.

(5) The order of the Commissioner shall not take effect until one month of the making thereof or, when an appeal is preferred, until the appeal is decided.

(6) The Commissioner may, at any time, suo motu or on an application made to him in this behalf, revoke any order made against any person under sub-section (2) and thereupon such person shall cease to be disqualified.

Powers to  
summon  
and take  
evidence  
on oath,  
etc.

92.(1)The Commissioner, the Tribunal and any person appointed under sub-section (2) of section 3 to assist the Commissioner shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely –

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1908.

(a) enforcing attendance of any person and examining him on oath affirmation;

(b) compelling the production of accounts and documents; and

(c) issuing summons for the examination of witnesses.

(2) Any proceeding under this Act before the Commissioner or the Tribunal or person referred in sub-section (1) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196, of the Indian Penal Code, 1860.

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1860.

Transfer of assets during pendency of proceedings to be void.

93. Where, during the pendency of any proceeding under this Act or under the Act repealed by section 104 of this Act, any person creates a charge on or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever, of any of his assets in favour of any other person with the intention to defraud revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by such person as a result of completion of the said proceeding.

Power to make rules.

94.(1) The Government may, by notification, make rules, with prospective or retrospective effect, for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which under any provision of this Act are required to be prescribed or to be provided for by rules.

Burden of proof.

95.(1) Where any dealer claims that-

- (a) the receipt or despatch of any goods made by him is otherwise than by way of purchase or sale of such goods by him;
- (b) any sum of money received or paid by him in the course of business is otherwise than by way of sale or purchase of goods by him;
- (c) any purchase or sale of goods made by him is not liable to tax by reason of such purchase or sale being outside the State or in the course of inter-State trade or commerce or in the course of the import of the goods into or the export of the goods out of the territory of India;
- (d) any purchase or sale of goods made by him is exempt from tax or leviable to tax at a particular rate;
- (e) any purchase or sale of goods made by him is not taxable because of return of goods;
- (f) any purchase, sale, import or export of goods made by him is not part of his gross turnover;
- (g) any part of the gross turnover declared by him in the returns filed is not taxable;
- (h) any tax paid under this Act relates to the goods purchased by him, for which, it is part of the input tax in respect of the purchase of such goods by him;

(i) input tax in respect of any purchase of goods made by him is part of the input tax credit admissible to him;

(j) any amount has been paid by him as tax, interest or penalty under this Act; or

(k) any book, document or account kept or found in his business premises or any place including a godown, warehouse, vehicle or vessel over which he has ultimate control does not relate to his business,

the burden of so proving shall be on him and, for the purpose of proving one or all or any of the claims, he shall produce or furnish such documents containing such particulars, within such time, before such authority and in such manner, as may be prescribed and such authority may, for sufficient reasons, require him to produce such further evidence as it may deem necessary, and where no document has been prescribed, such authority may require such evidence to be produced before it as it may deem necessary.

Manner of payment of tax, interest, penalty, etc.

96. Where the manner of payment of any tax, interest or penalty payable by a person, or any sum determined by the Commissioner in compounding any offence under this Act, is not provided specifically elsewhere in this Act, such tax, interest, penalty or sum shall be paid into a Government Treasury in the manner prescribed:

Provided that the Government may, by notification, specify such different manner of payment of tax, interest, penalty or sum payable under this Act in respect of any individual dealer or class of dealers.

Power of Government to prescribe fees.

97.(1) There shall be paid, upon every memorandum of appeal, application for revision and other miscellaneous application or petition, other than an application referred to in sub-section (1) of section 78 and a petition referred to in sub-section (1) of section 80, for any relief under this Act, such fees as may be prescribed :

Provided that any fee prescribed under this section shall not exceed rupees one thousand.

(2) The fee as aforesaid shall be paid in court-fee stamps to be affixed to the memorandum of appeal, application for revision or other miscellaneous application or petition, as the case may be, referred to in sub-section (1).

Assessment proceedings, etc. not to be invalid on certain grounds.

98.(1) No return, assessment, appeal, rectification, notice, summons or other proceedings accepted, made, issued or taken, or purported to have been accepted, made, issued or taken in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such return, assessment, appeal, rectification, notice, summons or other proceedings, if such return, assessment, appeal, rectification, notice or other proceedings are, in substance and effect, in conformity with or according to the intents, purposes and requirements of this Act.

(2) The service of any notice, order or communication shall not be called in question if the notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.

(3) No order, including an order of assessment, revision or rectification passed by any authority under any provision of this Act shall be invalid merely on the grounds that the action could also have been taken by any other authority under any other provision of this Act.

Clearance certificate. 99. Notwithstanding anything contained in any other law for the time being in force, no dealer shall be entitled to undertake any contract with any Government, local authority or other corporate body, unless he obtains a certificate in the prescribed manner from the Commissioner to the effect that he has no liability to pay tax nor he has defaulted under this Act.

Provisional attachment. 100.(1) Notwithstanding anything contained in any law for the time being in force or any contract to the contrary, the Commissioner, during the course of inquiry in any proceedings including proceedings related to recovery of any amount due, in respect of any person or dealer or during any inspection or search in relation to the business of any person or dealer under this Act, if he is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, may attach provisionally by notice in writing the stock in trade held by such person or dealer during such enquiry, inspection or search :

Provided that the Commissioner may, by order, revoke such notice if the dealer furnishes to the Commissioner, such security, for such period and within such time, as may be specified in the said order.

(2) Every such provisional attachment shall cease to have effect after the expiry of one year from the date of service of the notice issued under sub-section (1):

Provided that the Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he may think fit to do so, however that the total period of such extension shall not in any case exceed one year.

(3) Where a notice under sub-section (1) is served upon any person or dealer provisionally attaching the stock in trade held by him, such person or dealer shall be personally liable, so long as the attachment notice is not revoked or has not ceased to

have effect, to pay, to the Commissioner, the amount of money covered under such attachment.

Special provision relating to under-invoicing.

101.(1) Where the Commissioner has, for the purpose of any proceeding under this Act, reasons to believe that any goods kept in stock or being carried by a dealer or any person on behalf of a dealer are undervalued or underpriced in any document relating to such goods produced before him, he may, after causing such enquiry as he considers necessary in the circumstances, intimate such dealer or person, by a notice in the prescribed form, the prevailing market price of such goods and direct such dealer or person to pay tax under this Act on the basis of the prevailing market price.

(2) Where the goods referred to in sub-section (1) are being carried, the officer-in-charge of the check-gate or barrier or an officer authorised under sub-section (3) of section 74, as the case may be, may detain the vehicle carrying such goods until the tax demanded under sub-section (1) is paid.

(3) Where the goods referred to in sub-section (1) are found in stock and the dealer or the person on behalf of the dealer, on whom the notice under that sub-section was served, fails to pay the tax in terms of such notice, or where the tax demanded is not paid under sub-section (2), the Commissioner may offer to purchase such goods at a price at ten per centum above the purchase value or the value disclosed by the principal or agent in the case of goods received on consignment basis plus actual transportation charges and entrust such goods to the Orissa State Civil Supplies Corporation Ltd. or any co-operative society as may be notified for sale or sell it through public auction in the prescribed manner.

(4) The dealer or the person on being directed under sub-section (3) shall be bound to sell the goods to the Commissioner and if he refuses, fails or does not deliver the goods within the time mentioned in the notice offering to purchase goods he shall be liable to penalty, which shall be equal to twenty per centum of the value of the goods at the prevailing market price.

(5) No penalty under sub-section (4) shall be imposed without allowing such dealer or person, as the case may be, an opportunity of being heard.

(6) If, in pursuant to the notice issued under sub-section (4), the dealer or the person delivers the goods to the Commissioner he shall be paid the price of such goods as determined under sub-section (3) along with the cost of transportation within fifteen days of the delivery of the goods.

(7) Any person aggrieved by the order or notice, as the case may be, under sub-section (3) or under sub-section (4) may file an application for revision before the prescribed authority within thirty days from the date of receipt by him of the decision, in such form and in such manner as may be prescribed :

Provided that the said prescribed authority may admit an application made after the expiry of the period of thirty days, if he is satisfied that the applicant had sufficient cause for not making the application within the said period.

Settlement  
of disputed  
tax under  
appeal or  
revision.

102. Notwithstanding anything contained in any law for the time being in force, the Government may, subject to such conditions and restrictions as may be specified by the notification made in this behalf, refer, during the period as may be specified in the notification, any case pending in appeal under section 77 or 78 or in revision in the High Court under section 80 to the Commissioner to settle the disputed amount under appeal or revision, as the case may be, in the manner prescribed.

Power to  
remove  
difficulties.

103.(1) If any doubt or difficulty arises in giving effect to any of the provisions of this Act, in consequence of the transition to the said provisions from the corresponding provisions of the Act repealed by section 104, or otherwise, the Government may, as the occasion may require, by order, do anything not inconsistent with the provisions of this Act or the rules, which appears to it necessary for the purpose of removing the doubt or difficulty :

Provided that no order shall be issued under this section after the expiry of a period of two years from the date of commencement of this Act.

(2) Any order made under this section shall be laid before the Assembly.