

CHAPTER VIII

LIABILITY IN SPECIAL CASES

Liability in case of transfer of business.

67.(1) Where a dealer liable to pay tax under this Act, transfers his business in whole or in part, by sale, lease or license, hire or in any other manner whatsoever, the dealer and the person to whom the business is so transferred shall jointly and severally be liable to pay tax, including any interest and penalty, due from the dealer upto the time of such transfer, whether such tax including interest and penalty has been determined before or after such transfer.

(2) Where the transferee 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 registered dealer, apply within the prescribed time for amendment of his certificate of registration.

Liability in case of company under liquidation.

68.(1) Every person -

(a) who is a liquidator of any company liable for any dues under this Act which is being wound up, whether under the orders of a Court or otherwise; or

(b) who has been appointed as the receiver of any assets of a company liable for any dues under this Act (hereinafter referred to as liquidator),

shall, within thirty days after he has become such liquidator, intimate the fact of his appointment as such to the Commissioner.

(2) The Commissioner shall, after making such inquiries or calling for such information as he may deem necessary, notify to the liquidator within three months from the date on which he received the intimation of the appointment of the liquidator, the amount which, in the opinion of the Commissioner, would be sufficient to discharge the liability of the company for any tax including interest and penalty, if any, 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 Commissioner under sub-section (2) and, on being so notified, he sets aside an amount equal to the amount notified :

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 payment of tax, interest and penalty, if any, payable by the company under

this Act or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Commissioner reasonable.

(4) If the liquidator fails to intimate in accordance with sub-section (1) or fails to set aside the amount as notified by the Commissioner under sub-section (3) or parts with any assets of the company or the properties in his hand in contravention of the provisions of sub-section (3), he shall be personally liable for the payment of tax including interest and penalty, if any, which the company would be liable to pay under this Act :

Provided that where the amount of tax including interest and penalty, 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 than one liquidator, the obligations and liabilities attached to the liquidator under this section shall be attached to all the liquidators jointly and severally.

(6) When any private company is wound up and any tax including interest and penalty, if any, determined 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, except the Government nominee directors, if any, at any time during the period for which the tax including interest and penalty is due, shall be jointly and severally liable for payment of such dues, if any, unless he proves to the satisfaction of the Commissioner that non-recovery cannot be attributed to any wilful neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(7) The provisions of this section shall have effect notwithstanding anything to the contrary in any other law for the time being in force.

(8) For the purposes of this section, the expression 'Company' and 'Private company' shall have the meaning respectively assigned to them under clauses (i) and (ii) of sub-section (1) of section 3 of the Companies Act, 1956.

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Liability
of
partners
of firm to
pay tax.

69. Notwithstanding any contract to the contrary, where any firm is liable to pay any tax including penalty under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment :

Provided that where any such partner retires from the firm, he shall intimate the date of his retirement to the Commissioner in writing and shall be liable to pay tax including penalty remaining unpaid at the time of his retirement and any tax including penalty due upto the date of his retirement though not 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 partners under the first proviso shall continue until the date on which the intimation is received by the Commissioner.

Liability of guardians, trustees, etc.

70. Where the business in respect of which tax is payable under this Act is carried on by, or is in 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 incapacitated person, the tax including penalty, if any, 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 this business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.

Liability in other cases.

71.(1) Where a dealer is a firm or an association of persons or a Hindu Undivided Family, and such firm, association or Family has discontinued business -

(a) the tax payable by such firm, association or Family up to the date of such discontinuance may be assessed as if no such discontinuance had taken place ; and

(b) every person who was at the time of such discontinuance a partner of such firm or a member of such association or Family, shall, notwithstanding such discontinuance, be liable jointly and severally for the payment of tax penalty and interest, if any, payable by such firm, association or Family, whether such tax has been assessed and penalty imposed prior to or after such discontinuance,

and, subject to as aforesaid, the provisions of this Act shall, so far as may be applicable, apply as if every such person or partner or member were himself a dealer :

Provided that where a partner of a firm liable to pay such tax including penalty and interest, if any, dies, the provisions contained in sub-section (4) shall apply.

(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, without prejudice to the provisions of section 69, jointly and severally be liable to pay tax including penalty due from such firm or association for any period before its reconstitution.

(3) The provisions of sub-section (1) shall apply where the dealer, being a firm or association of persons, is dissolved or where the dealer, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and, accordingly, references in that sub-section to discontinuance shall be construed as reference to dissolution or, as the case may be, to partition.

(4) 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, he shall be liable to pay tax

including penalty due from the dealer under this Act, whether such tax has been assessed, penalty imposed and interest levied before his death but has remained unpaid, or is assessed, imposed and levied after his death; and

(b) if the business carried on by the dealer is discontinued after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent the estate is capable of meeting the charge, the tax including penalty and interest due from the dealer under this Act, whether such dues have been determined before his death but has remained unpaid, or is determined after his death,

and the provisions of this Act shall, so far as may be, apply to such legal representative or other person as if he were the dealer himself.

Explanation.- For the purpose of this sub-section, "legal representative" shall have the same meaning as assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908. 5 of 1908.

(5) Where a dealer liable to pay tax under this Act is succeeded in the business by any person in any manner described in clause (a) of sub-section (4) or sub-section (1) of section 67, then such person shall be liable to pay tax on the sales or purchases of goods made by him on and after the date of succession.

(6) (a) Where any person sells or purchases any taxable goods as a commission agent on behalf of his principal, such commission agent and his principal shall both be jointly and severally liable to pay tax on the turnover of such sales or purchases, as the case may be.

(b) Where the commission agent has sold or purchased any goods on behalf of the principal and it is shown to the satisfaction of the Commissioner that the tax has been paid by such commission agent on such goods the principal shall not be liable to pay the tax again in respect of the same transaction.

(c) Where a manager or agent of a non-resident dealer sells or purchases any goods on behalf of that non-resident dealer in the State, 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, as the case may be :

Provided that if the non-resident dealer shows to the satisfaction of the Commissioner that the tax payable in respect of such sale or purchase has been paid by the manager or agent residing in the State, the non-resident dealer shall not be liable to pay tax in respect of the same transaction.

(7) (a) 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 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 order, then such transactions of sale or purchase will be included in the turnover of sales or of purchases, as the case may be, of the respective companies and will be assessed to tax accordingly.

(b) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies and shall also be treated as such for all periods upto the date of the said order, and the registration certificate of the company, which merged, shall be cancelled with effect from the date of the said order.

Explanation. - Words and expressions used in this sub-section, but not defined, shall have the respective meanings as assigned to them in the Companies Act, 1956. 1 of 1956.