

Finance Act 2008

Chapter VII - Commodities Transaction Tax

- (1) This Chapter extends to the whole of India.
 - (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
 - (3) It shall apply to taxable commodities transactions entered into on or after the commencement of this Chapter.
-

Section 103 - Definitions

In this Chapter, unless the context otherwise requires,--

- (1) "Appellate Tribunal" means the Appellate Tribunal constituted under section 252 of the Income-tax Act, 1961;
 - (2) "Assessing Officer" means the Income-tax Officer or Assistant Commissioner of Income-tax or Deputy Commissioner of Income-tax or Joint Commissioner of Income-tax or Additional Commissioner of Income-tax who is authorised by the Board to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Chapter;
 - (3) "commodities transaction tax" means tax leviable on the taxable commodities transactions under the provisions of this Chapter;
 - (4) "prescribed" means prescribed by rules made under this Chapter;
 - (5) "taxable commodities transaction" means a transaction of purchase or sale of option in goods, or option in commodity derivative, or any other commodity derivative, traded in recognised associations;
 - (6) words and expressions used but not defined in this Chapter and defined in the Forward Contracts (Regulations) Act 1952(74 of 1952), the Income-tax Act, 1961(43 of 1961), or the rules made thereunder, shall have the meanings respectively assigned to them in those Acts.
-

Section 104 - Charge of commodities transaction tax

On and from the date of commencement of this Chapter, there shall be charged a commodities transaction tax in respect of every taxable commodities transaction specified in column (2) of the Table below, at the rates specified in the corresponding entry in column (3) of the said Table, on the

value of such transaction and such tax shall be payable by the seller or the purchaser, as the case may be, specified in the corresponding entry in column (4) of the said Table:

Table

Sl. No.	Taxable commodities transaction	Rate	Payable by
(1)	(2)	(3)	(4)
1.	Sale of an option in goods or an option in commodity derivative	0.017 per cent.	Seller
2.	Sale of an option in goods or an option in commodity derivative, where option is exercised	0.125 per cent.	Purchaser
3.	Sale of any other commodity derivative	0.017 per cent.	Seller

Section 105 - Value of taxable commodities transaction

The value of a taxable commodities transaction specified under column (2) of the Table in section 99 shall, with reference to such transactions--

- (a) against serial number 1, be the option premium;
- (b) against serial number 2, be the settlement price of the option in goods or option in commodity derivative, as the case may be;
- (c) against serial number 3, be the price at which the commodity derivative is sold.

Section 106 - Collection and recovery of commodities transaction tax

(1) Every recognised association (hereinafter in this Chapter referred to as assessee) shall collect the commodities transaction tax from the seller or the purchaser, as the case may be, who enters into a taxable commodities transaction in that recognised association, at the rates specified in section 99.

(2) The commodities transaction tax collected during any calendar month in accordance with the provisions of sub-section (1) shall be paid by every assessee to the credit of the Central Government by the seventh day of the month immediately following the said calendar month.

(3) Any assessee who fails to collect the tax in accordance with the provisions of sub-section (1) shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (2).

Section 107 - Furnishing of return

(1) Every assessee shall, within the prescribed time-limit after the end of each financial year, prepare and deliver or cause to be delivered to the Assessing Officer or to any other authority or agency authorised by the Board in this behalf, a return in such form, verified in such manner and setting forth such particulars as may be prescribed, in respect of all taxable commodities transactions entered into during such financial year in that recognised association.

(2) Where any assessee fails to furnish the return under sub-section (1) within the prescribed time limit, the Assessing Officer may issue a notice to such assessee and serve it upon him, requiring him to furnish the return in the prescribed form and verified in the prescribed manner setting forth such particulars within such time as may be prescribed.

(3) An assessee who has not furnished the return within the time-limit prescribed under sub-section (1) or sub-section (2), or having furnished a return under sub-section (1) or sub-section (2) notices any omission or wrong statement therein, may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

Section 108 - Assessment

(1) For the purposes of making an assessment under this Chapter, the Assessing Officer may serve on any assessee, who has furnished a return under section 102 or upon whom a notice has been served under sub-section (2) of that section, whether a return has been furnished or not, a notice requiring him to produce or cause to be produced on a date to be specified therein such accounts or documents or other evidence as the Assessing Officer may require for the purposes of this Chapter and may, from time to time, serve further notices requiring the production of such further accounts or documents or other evidence as he may require.

(2) The Assessing Officer, after considering such accounts, documents or other evidence, if any, as he has obtained under sub-section (1) and after taking into account any other relevant material which he has gathered, shall, by an order in writing, assess the value of taxable commodities transactions during the relevant financial year and determine the commodities transaction tax payable or the refund due on the basis of such assessment:

Provided that no assessment shall be made under this sub-section after the expiry of two years from the end of the relevant financial year.

(3) Every assessee, in case any amount is refundable to it on assessment under sub-section (2), shall, within such time as may be prescribed, refund such amount to the seller or the purchaser, as the case may be, from whom such amount was collected.

Section 109 - Rectification of mistake

(1) With a view to rectifying any mistake apparent from the record, the Assessing Officer may amend any order passed by him under the provisions of this Chapter within one year from the end of the financial year in which the order sought to be amended was passed.

(2) Where any matter has been considered and decided in any proceeding by way of appeal relating to an order referred to in sub-section (1), the Assessing Officer passing such order may, notwithstanding anything contained in any other law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(3) Subject to the other provisions of this section, the Assessing Officer may make an amendment under sub-section (1), either suo motu or on any mistake brought to his notice by the assessee.

(4) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the Assessing Officer has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(5) An order of amendment under this section shall be made by the Assessing Officer in writing.

(6) Subject to the other provisions of this Chapter, where any such amendment has the effect of reducing the assessment, the Assessing Officer shall make the refund, which may be due to such assessee.

(7) Where any such amendment has the effect of enhancing the assessment or reducing the refund already made, the Assessing Officer shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly.

Section 110 - Interest on delayed payment of commodities transaction tax

Every assessee, who fails to credit the commodities transaction tax or any part thereof as required under section 101 to the account of the Central Government within the period specified in that section, shall pay simple interest at the rate of one per cent. of such tax for every month or part of a month by which such crediting of the tax or any part thereof is delayed.

Section 111 - Penalty for failure to collect or pay commodities transaction tax

Any assessee who--

(a) fails to collect the whole or any part of the commodities transaction tax as required under section 101; or

(b) having collected the commodities transaction tax, fails to pay such tax to the credit of the Central Government in accordance with the provisions of sub-section (2) of that section, shall be liable to pay,--

(i) in the case referred to in clause (a), in addition to paying the tax in accordance with the provisions of sub-section (3) of that section, or interest, if any, in accordance with the provisions of section 105, by way of penalty, a sum equal to the amount of commodities transaction tax that he failed to collect; and

(ii) in the case referred to in clause (b), in addition to paying the tax in accordance with the provisions of sub-section (2) of that section and interest in accordance with the provisions of section 105, by way of penalty, a sum of one thousand rupees for every day during which the failure continues; so, however, that the penalty under this clause shall not exceed the amount of commodities transaction tax that it failed to pay.

Section 112 - Penalty for failure to furnish return

Where an assessee fails to furnish the return within the time-limits prescribed under subsection (1) or sub-section (2) of section 102, it shall be liable to pay, by way of penalty, a sum of one hundred rupees for each day during which the failure continues.

Section 113 - Penalty for failure to comply with notice

If the Assessing Officer in the course of any proceedings under this Chapter is satisfied that the assessee has failed to comply with a notice under sub-section (1) of section 103, he may direct that such assessee shall pay, by way of penalty, in addition to any commodities transaction tax and interest, if any, payable by him, a sum of ten thousand rupees for each day during which the failure continues.

Section 114 - Penalty not to be imposed in certain cases

(1) Notwithstanding anything contained in section 106 or section 107 or section 108, no penalty shall be imposed for any failure referred to in the said sections, if the assessee proves to the satisfaction of the Assessing Officer that there was reasonable cause for the said failure.

(2) No order imposing a penalty under this Chapter shall be made unless the assessee has been given a reasonable opportunity of being heard.

Section 115 - Application of certain provisions of Income-tax Act

The provisions of sections 120, 131, 133A, 156, 178, 220 to 227, 229, 232, 260A, 261, 262, 265 to 269, 278B, 282 and 288 to 293 of the Income-tax Act, 1961(43 of 1961), shall apply, so far as may be, in relation to commodities transaction tax.

Section 116 - Appeal to Commissioner of Incometax (Appeals)

(1) An assessee aggrieved by any assessment order made by the Assessing Officer under section 103 or any order under section 104, or denying his liability to be assessed under this Chapter, or by an order imposing penalty under this Chapter, may appeal to the Commissioner of Income-tax (Appeals) within thirty days from the date of receipt of the order of the Assessing Officer.

(2) An appeal under sub-section (1) shall be in such form and shall be verified in such manner as may be prescribed and shall be accompanied by a fee of one thousand rupees.

(3) Where an appeal has been filed under sub-section (1), the provisions of sections 249 to 251 of the Income-tax Act, 1961(43 of 1961), shall, as far as may be, apply to such appeal.

Section 117 - Appeal to Appellate Tribunal

(1) An assessee aggrieved by an order made by a Commissioner of Income-tax (Appeals) under section 111 may appeal to the Appellate Tribunal against such order.

(2) The Commissioner of Income-tax may, if he objects to any order passed by the Commissioner of Income-tax (Appeals) under section 111, direct the Assessing Officer to appeal to the Appellate Tribunal against such order.

(3) An appeal under sub-section (1) or sub-section (2) shall be filed within sixty days from the date on which the order sought to be appealed against is received by the assessee or by the Commissioner of Income-tax, as the case may be.

(4) An appeal under sub-section (1) or sub-section (2) shall be in such form and verified in such manner as may be prescribed and, in the case of an appeal filed under sub-section (1), shall be accompanied by a fee of one thousand rupees.

(5) Where an appeal has been filed before the Appellate Tribunal under sub-section (1) or subsection (2), the provisions of sections 253 to 255 of the Income-tax Act, 1961(43 of 1961), shall, as far as may be, apply to such appeal.

Section 118 - Punishment for false statement

(1) If a person makes a false statement in any verification under this Chapter or any rule made thereunder, or delivers an account or statement, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years and with fine.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), an offence punishable under sub-section (1) shall be deemed to be non-cognizable within the meaning of that Code.

Section 119 - Institution of prosecution

No prosecution shall be instituted against any person for any offence under section 113 except with the previous sanction of the Chief Commissioner of Income-tax.

Section 120 - Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the time-limits within which and the form and the manner in which the return shall be delivered or caused to be delivered or furnished under section 102; and

(b) the form in which an appeal may be filed and the manner in which it may be verified under sections 111 and 112.

(3) Every rule made under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Section 121 - Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Chapter, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Chapter come into force.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Section 121A - Provisions of Chapter VII not to apply to taxable commodities transaction

1[Nothing contained in this Chapter shall apply to, or in relation to, the taxable commodities transaction entered on or after the 1st day of April, 2009.]

1. Inserted by the Finance (No. 2) Act, 2009.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com