Value Added Tax Act, 2003

Chapter 7 - Appeals and Revision

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(1) Any person objecting to any order or proceedings affecting him passed under the provisions of this Act by the prescribed authority may appeal to the prescribed appellate authority.

(2) The appeal shall be preferred,

(a) in respect of an order of assessment, within thirty days from the date on which the notice of assessment, was served on the appellant, and

(b) in respect of any other order, within thirty days from the date on which the order was communicated to the appellant:

(3) The appellate authority may admit an appeal preferred after the period as aforesaid but within a further period of one hundred and eighty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

(4) (a) No appeal against an order of assessment shall be entertained by the appellate authority unless it is accompanied by satisfactory proof of the payment of tax and penalty not disputed in the appeal.

(b) The tax or other amount shall be paid in accordance with the order against which an appeal has been preferred.

(c) The appellate authority may, in its discretion, give such directions as it thinks fit in regard to the payment of tax or other amount payable under clause (b), if the appellant furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

(d) Where an order staying proceedings of recovery of any tax or other amount is passed in any proceedings relating to an appeal under sub-section (1), the appellate authority shall dispose of the appeal within a period of one hundred twenty days from the date of such order.

(e) If such appeal is not so disposed of within the period specified in clause (d), the order of stay shall stand vacated after the expiry of the said period.

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

(6) In disposing of an appeal, the appellate authority may, after giving the appellant a reasonable opportunity of being heard,

(a) in the case of an order of assessment or penalty:

(i) confirm, reduce or enhance the assessment including any part thereof whether or not such part is objected to in the appeal;

(ii) pass such other orders as it may think fit; and

(b) in the case of any other order, confirm, cancel or vary such order.

(7) Every order passed on appeal under this Section shall, subject to the provisions of Sections 63 to 67, be final.

Section 63 - Appeal to the Appellate Tribunal

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(1) Any officer empowered by the Government in this behalf or any other person objecting to an order passed by the appellate authority under Section 62 may appeal to the Appellate Tribunal within a period of sixty days from the date on which the order was communicated to him.

(2) The Appellate Tribunal may admit an appeal preferred after the period of sixty days referred to in sub-section (1), but within a further period of one hundred and eighty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

(3) The officer authorized under sub-section (1) or the person against whom an appeal has been preferred, as the case may be, on receipt of notice that an appeal against the order of the appellate authority has been preferred under sub-section (1) by the other party, may, notwithstanding that he has not appealed against such order or any part thereof, file, at any time before the appeal is finally heard, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the appellate authority, and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (1).

(4) The appeal, or the memorandum of cross-objections, shall be in the prescribed form, shall be verified in the prescribed manner, and, in the case of an appeal preferred by any person other than an officer empowered by the Government under sub-section (1) shall be accompanied by a fee equal to two percent of the amount of assessment objected to, provided that the sum payable in no case be less than two hundred rupees or more than one thousand rupees.

(5) (a) The Appellate Tribunal shall, after giving both parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

(b) If the appeal involves a question of law on which the Appellate Tribunal has previously given its decision in another appeal and either a revision petition in the High Court against such decision or an appeal in the Supreme Court against the order of the High Court thereon is pending, the Appellate Tribunal may defer the hearing of the appeal before it till such revision petition in the High Court or the appeal in the Supreme Court is disposed of.

(c) If as a result of the appeal any change becomes necessary in the assessment, which is the subject matter of the appeal, the Appellate Tribunal may authorize the prescribed authority to amend the assessment, and the prescribed authority shall amend the assessment accordingly and thereupon, any amount over paid by the dealer shall be refunded to him without interest, or any additional amount of tax due from him shall be collected in accordance with the provisions of the Act, as the case may be.

(6) (a) Notwithstanding that an appeal has been preferred under sub-section (1), tax shall be paid in accordance with the assessment made in the case.

(b) The Appellate Tribunal may, except in case of an appeal against an order passed by the appellate authority under Section 62, in its discretion, give such directions as it thinks fit, in regard to the payment of tax, if the appellant furnishes sufficient security to its satisfaction in such form and manner as may be prescribed.

(7) (a) The Appellate Tribunal may, in case of appeal against an order passed by the appellate authority under Section 62, , in its discretion, stay payment of one half of tax or any other amount disputed, if the appellant makes payment of the other half of the amount disputed.

(b) The Appellate Tribunal shall dispose of such appeal falling under clause (a) within a period of one hundred eighty days from the date of the order staying proceedings of recovery of one half of tax or other amount disputed and, if such appeal is not so disposed of within the period specified, the order of stay shall stand vacated after the said period.

(8) (a) The Appellate Tribunal may, on the application either of the appellant or of the respondent, review any order passed by it under sub-section (5) on the basis of facts which were not before it when it passed the order.

(b) No such application under clause (a) shall be preferred more than once in respect of the same order.

(c) The application for review shall be preferred in the prescribed manner within six months from the date on which the order to which the application relates was communicated to the applicant; and where the application is preferred by any person other than an officer empowered by the State Government under sub-section (1), it shall be accompanied by a fee equal to that which has been paid in respect of the appeal.

(d) If the application for review is preferred within ninety days from the date on which the order to which the application relates is communicated to the applicant, the application shall be accompanied by half the fee which had been paid in respect of the appeal.

(9) (a) With a view to rectifying any mistake apparent from the record, the appellate Tribunal may, at any time, within five years from the date of any order passed by it under sub-section (5) or sub-section (8), amend such order.

(b) No order under this sub-section shall be made without giving both parties affected by the order a reasonable opportunity of being heard.

(10) Except as provided in the rules, the Appellate Tribunal shall not have powers to award costs to either of the parties to the appeal or review.

(11) Every order passed by the Appellate Tribunal under sub-section (5) or (8) or (9) shall be communicated to the appellant, the respondent, the appellate authority on whose order the appeal was preferred and the Commissioner.

(12) Every order passed by the Appellate Tribunal under sub-section (5) shall, subject to the provisions of sub-section (8), sub-section (9) and Section 65, be final and every order passed by it under sub-section (8) shall, subject to the provisions of sub-section (9) and Section 65, be final.

Section 64 - Revisional powers of Additional Commissioner and Commissioner

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(1) The Additional Commissioner may on his own motion call for and examine the record of any order passed or proceeding recorded under this Act and if he considers that any order passed therein by any officer, who is not above the rank of a Joint Commissioner, is erroneous in so far as it is prejudicial to the interest of the revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or canceling the assessment or directing a fresh assessment.

(2) The Commissioner may on his own motion call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue, he may if necessary, stay the operation of such order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or canceling the assessment or directing a fresh assessment.

(3) The Additional Commissioner or the Commissioner shall not exercise any power under sub-section (1) or sub-section (2), as the case may be, if.-

(a) the time for appeal against the order has not expired;

(b) the matter has been subject to an appeal under Section 63 or a revision in the High Court; or

(c) more than four years have expired after the passing of the order sought to be revised.

(4) Notwithstanding anything contained in sub-section (3), the Additional Commissioner or the Commissioner may pass an order under sub-section (1) or (2), as the case may be, on any point which has not been raised and decided in an appeal or revision referred to in clause (b) of sub-section (3), before the expiry of a period of one year from the date of the order in such appeal or revision or before the expiry of a period of four years referred to in clause (c) of that sub-section, whichever is later.

(5) Every order passed in revision under sub-section (1) shall, subject to the provisions of sub-section (2) of this Section and Sections 66 and 67, be final.

(6) Every order passed in revision under sub-section (2) shall, subject to the provisions of Sections 65 and 66, be final.

(7) If the order passed or proceedings recorded by the appropriate authority referred to in sub-section (1) or (2), involves an issue on which the High Court has given its decision adverse to the revenue in some other proceedings and an appeal to the Supreme Court against such decision of the High Court is pending, the period spent between the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period referred to in clause (c) of sub-section (3).

(8) In computing the period of limitation for the purpose of sub-section (3), any period, during which any proceeding under this Section is stayed by an order or injunction of any court, shall be excluded.

(9) For the purposes of this Section, record shall include all records relating to any proceedings under this Act available at the time of examination by the Additional Commissioner or the Commissioner.

Section 65 - Revision by High Court in certain cases

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(1) Within one hundred and twenty days from the date on which an order under sub-section (5) or (8) or (9) of Section 63 was communicated to him, the appellant or the respondent may prefer a petition to the High Court against the order on the ground that the Appellate Tribunal has either failed to decide or decided erroneously any question of law:

(2) The High Court may admit a petition preferred after the period of one hundred and twenty days aforesaid if it is satisfied that the petitioner has sufficient cause for not preferring the petition within that period.

(3) The petition shall be in the prescribed form, shall be verified in the prescribed manner, and shall, when it is preferred by any person other than an officer empowered by the Government under sub-section (1) of Section 63, be accompanied by a fee of one hundred rupees.

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

(5) The High Court shall not dismiss any petition unless the petitioner has had a reasonable opportunity of being heard in support thereof.

(6) (a) If the High Court does not dismiss the petition summarily, 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 either reverse, affirm or amend the order against which the petition was preferred or remit the matter to the Appellate 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 Appellate Tribunal under clause (a) with its opinion on questions of law raised, the latter shall amend the order passed by it in conformity with such opinion.

(7) Before passing an order under sub-section (6) the High Court may, if it considers necessary so to do remit the petition to the Appellate Tribunal and direct it to return the petition with its finding on any specific question or issue.

(8) Notwithstanding that a petition has been preferred under sub-section (1), the tax shall be paid in accordance with the assessment made in the case.

(9) If as a result of the petition, any change becomes necessary in such assessment, the High Court may authorize the prescribed authority to amend the assessment and the prescribed authority shall amend the assessment accordingly and thereupon the amount overpaid by the person concerned shall be refunded to him without interest or the additional amount of tax due from him shall be collected in accordance with provisions of this Act, as the case may be.

(10)(a) The High Court may, on the application of either party to the petition, review any order passed by it under sub-section (6) 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 an officer empowered by the Government under sub-section (1) of Section 63 be accompanied by a fee of one hundred rupees.

(11)(a) With a view to rectifying any mistake apparent from the record, the High Court may, at any time within five years from the date of the order passed by it under sub-section (6), amend such order.

(b) The High Court shall not pass an order under this sub-section without giving both parties affected by the order a reasonable opportunity of being heard.

(12) In respect of every petition preferred under sub-section (1) or (10), the costs shall be in the discretion of the High Court.

Section 66 - Appeal to High Court

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(1) Any person objecting to an order passed by the Commissioner or the Additional Commissioner under Section 64 may appeal to the High Court within sixty days from the date on which the order was communicated to him.

(2) The High Court may admit an appeal preferred after the period of sixty days aforesaid, if it is satisfied that the person had sufficient cause for not preferring the appeal within that period.

(3) The appeal shall be in the prescribed form, shall be verified in the prescribed manner, and shall be accompanied by a fee of five hundred rupees.

(4) The High Court shall, after giving both parties to the appeal a reasonable opportunity of being heard, pass such order thereon as it thinks fit.

(5) The provisions of sub-sections (6) to (12) of Section 65, shall apply in relation to appeals preferred under sub-section (1) as they apply in relation to petitions preferred under sub-section (1) of Section 65.

Section 67 - Objections to Jurisdiction

No objection as to the territorial or pecuniary jurisdiction of any prescribed authority shall be entertained or allowed by any Court, Tribunal or authority in an appeal or revision, unless such objection was taken before the prescribed authority at the earliest possible opportunity.

Section 68 - Petitions, applications and appeals to High Court to be heard by a Bench of not less than two judges

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Every Petition, application or appeal preferred to the High Court under Section 65 or 66 shall be heard by a bench of not less than two Judges, and in respect of such petition, application or appeal, the provisions of Section 98 of the Code of Civil Procedure, 1908 (Central Act V of 1908), shall apply.

Section 69 - Rectification of mistakes

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(1) With a view to rectifying any mistake apparent from the record, the prescribed authority, appellate authority or revising authority, may, at any time within five years from the date of an order passed by it, amend such order.

(2) Any amendment which has the effect of enhancing an assessment or otherwise increasing the liability of the person concerned shall not be made unless the prescribed authority, appellate authority

or revising authority, as the case may be, has given notice to the person concerned of its intention to do so and has allowed the person concerned the opportunity of showing cause in writing against such amendment.

(3) Where an order has been considered and decided in any proceedings by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any 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.

(4) An order passed under sub-section (1), shall be deemed to be an order passed under the same provision of law under which the original order, the mistake in which was rectified, has been passed.

Section 70 - Burden of proof

(1) For the purposes of payment or assessment of tax or any claim to input tax under this Act, the burden of proving that any transaction of a dealer is not liable to tax, or any claim to deduction of input tax is correct, shall lie on such dealer.

(2) Where a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed, or liable to tax at a lower rate, or that a deduction of input tax is available, the prescribed authority shall, on detecting such issue or production, direct the dealer issuing or producing such document to pay as penalty:

(a) in the case of first such detection, three times the tax due in respect of such transaction or claim; and

(b) in the case of second or subsequent detection, five times the tax due in respect of such transaction or claim.

(3) Before issuing any direction for the payment of the penalty under this Section, the prescribed authority shall give to the dealer the opportunity of showing cause in writing against the imposition of such penalty.