Value Added Tax Act, 2003

Chapter 8 - Penalties, Offences and Power to Make Rules

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(1) A dealer who, without reasonable cause, fails to apply for registration within the time prescribed in sub-sections (1) or (2) or (3) of Section 22 shall be liable to a penalty of five thousand rupees in addition to the interest chargeable on the tax payable at the rate provided under Section 37.

(2) A dealer who fails to report to the prescribed authority a change in circumstances as required by Section 28 shall be liable to a penalty of five thousand rupees.

(3) The power to levy the penalties shall be vested in the registering authority as prescribed.

Section 72 - Penalties relating to returns

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(1) A dealer who fails to furnish a return or who fails to pay the tax due on any return furnished as required under Section 35 shall be liable to a penalty of two hundred rupees for each day of default in addition to a further penalty of a sum not less than ten per cent but not exceeding fifty per cent of the amount of tax due, together with any tax or interest due.

(2) A dealer who for any prescribed tax period furnishes a return which understates his liability to tax or overstates his entitlement to a tax credit by more than five per cent of his actual liability to tax, shall after being given the opportunity of showing cause in writing against the imposition of a penalty, be liable to a penalty equal to twenty per cent of the amount of such tax under or overstated.

(3) A dealer who furnishes a return which is incomplete or incorrect in any material particular, shall be liable to a penalty of two hundred rupees for each day the return remains incomplete or incorrect.

(4) In any case where a dealer who has failed to furnish a return has been issued with an assessment showing less than his actual liability to tax and he pays such tax as assessed, such dealer, after being given the opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty equal to fifty per cent of the amount of the tax under-assessed.

(5) The power to levy the above penalties shall be vested in the prescribed authority to which returns are required to be furnished.

Section 73 - Penalties in relation to unauthorised collection of tax

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(1) If any dealer, not being registered under this Act, collects any amount by way of tax or purporting to be by way of tax under this Act, he shall be liable to remit to the prescribed authority such amount, whether or not that amount would be payable under the provisions of this Act, and also liable to a penalty of an amount equal to the amount so collected, after being given the opportunity of showing cause in writing against repayment of the tax and the imposition of such penalty.

(2) The power to levy the above penalty shall be vested in the assessing authority as prescribed.

Section 74 - Penalties relating to the keeping of records

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(1) Any dealer who fails to keep and maintain proper records, in accordance with Sections 31 or by order of the prescribed authority shall be liable to a penalty of five thousand rupees and, in addition, two hundred rupees per day for so long as the failure continues after being given an opportunity to show cause against such imposition of penalty.

(2) Any dealer who fails to retain records and accounts in accordance with Sections 32 and 33, after being given the opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty of ten thousand rupees.

(3) The power to levy the above penalty shall be vested in the officer authorised under Section 52.

Section 75 - Penalties relating to production of records and furnishing of information

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Any dealer or person who on demand by the prescribed authority fails to produce any records or furnish any information in accordance with the requirements of this Act, after being given the opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty of five thousand rupees and, in addition, two hundred rupees per day for so as long as the failure continues.

Section 76 - Penalties relating to tax invoices, credit notes and debit notes

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(1) A registered dealer who.-

(a) fails to provide a tax invoice as required by sub-section (1) of Section 29 or a credit or debit note as required by sub-section (1) or sub-section (2) of Section 30, or

(b) provides a tax invoice otherwise than in accordance with the provisions of Section 29 or a credit or a debit note as provided in Section 30,

shall be liable to a penalty of not less than five thousand rupees or an amount equivalent to the tax payable on the transaction, whichever is higher.

(2) The power to levy the above penalty shall be vested in the officer authorised under Section 52.

Section 77 - Penalties relating to seals and to unaccounted stocks

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(1) Any person who removes, or in any way tampers with, a seal attached under the provisions of clause (f) of sub-section (1) of Section 52, and sub-section (4) of Section 53, shall be liable on conviction by a Court, not inferior to that of a Magistrate of the First Class, to a fine of not less than five thousand rupees but not exceeding fifty thousand rupees and imprisonment for a period not less than fifteen days but not exceeding one year.

(2) Any person or dealer who is found to be in possession of unaccounted stocks of any taxable goods under the provisions of clause (j) of sub-section (1) of Section 52, after being given the opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty of five thousand rupees.

(3) The power to levy the penalty under sub-section (2) shall be vested in the officer authorised under Section 52.

Section 78 - Offences against officers

Any person who obstructs, hinders, molests or assaults an authorised officer or any other public servant assisting him in the performance of his duties under this Act, or does anything which is likely to prevent or obstruct any search or production of evidence, shall be liable on conviction by a Court, not inferior to that of a Magistrate of the First Class, to a fine of not less than five thousand rupees but not exceeding fifty thousand rupees and imprisonment for a period not less than fifteen days but not exceeding one year.

Section 79 - Fraudulent evasion of tax

Without prejudice to the provisions of Sections 71 to 77, if any person is knowingly concerned, in or in the taking of steps with a view to the fraudulent evasion of tax by him or any other person, he shall be liable to a fine of one lakh rupees or double the amount of the tax evaded, whichever is the greater or to imprisonment for a minimum term of six months but not exceeding five years, or to both.

Section 80 - Cognizance of offences

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(1) No Court shall take cognizance of any offence punishable under Sections 79 except with the previous sanction of the Joint Commissioner, and no Court inferior to that of a Magistrate of the First Class, shall try any such offence.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), all offences punishable under Sections 79 shall be cognizable and bailable.

Section 81 - Disclosure of information

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(1) All particulars contained in any statement made, returns furnished or accounts or documents produced in accordance with this Act, other than proceedings before a criminal court, shall, save as provided in sub- section (2), be treated as confidential and not withstanding anything contained in the Indian Evidence Act, 1872, no court shall save as aforesaid be entitled to require any officer of the Government to produce before it any such statement, return, account, document or record or any part thereof to give evidence before it in respect thereof.

(2) The Commissioner may furnish or cause to be furnished to:

(a) any officer, authority or body performing any function under any law relating to the imposition of any tax, duty, cess or fee; or

(b) any such officer, authority or body performing any function under any other law as the Government in the public interest may by notification specify,

any such information relating to any person in respect of any assessment made under this Act as may, in the opinion of the Commissioner be necessary for the purpose of enabling the officer, authority or body to perform his or its function under that law.

(3) If the Government or Commissioner is of the opinion that it is necessary or expedient in the public interest to publish name of any person along with his photograph or any other particulars relating to any proceeding under this Act in respect of such person, it may cause to be published such name along with his photograph and particulars in such manner as it thinks fit.

(4) No publication under this Section shall be made relating to any penalty imposed or any conviction for any offence connected with any proceeding under this Act, until the time for presenting an appeal to the Appellate Authority has expired without any appeal having been presented or the appeal has been disposed of.

Section 82 - Compounding offences

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(1) Where any dealer has committed an offence under sub-section (1) of Section 77 or Section 79, the prescribed authority may, on admission by such dealer in writing and upon his option to compound at any time prior to the commencement of the court proceedings relating thereto, compound such offence and order the dealer to pay such sum of money as specified by the prescribed authority, which shall not exceed the amount of the fine prescribed for the offence, in addition to any tax and interest due.

(2) Furnishing of a cheque or any other instrument towards payment of a sum by any such dealer shall be deemed to be an application for compounding the offence.

(3) Where the prescribed authority compounds an offence under this Section, the order referred to in sub-section (1),

(a) shall be in writing and specify the offence committed, the sum of money to be paid and the due date for the payment; and

(b) shall be served on the dealer who committed the offence; and

(c) shall be final and not subject to any appeal; and

(d) may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order.

(4) When the prescribed authority compounds an offence under this Section, the dealer concerned shall not be liable to prosecution in respect of such offence or to any further penalty under this Section and such dealer shall not appeal against the said proceedings.

Section 83 - Validity of assessments not to be questioned in prosecution

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The validity of the assessment of any tax or of the levy of any fee or other amount, made under this Act, or the liability of any person to pay any tax, fee or other amount so assessed or levied shall not be questioned in any Criminal Court in any prosecution or other proceeding, whether under this Act or otherwise.

Section 84 - Bar and limitation to certain proceedings

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(1) No suit, prosecution or other proceeding shall lie against any officer or servant of the Government, for any act done or purported to be done under this Act without the previous sanction of the Government.

(2) No officer or servant of the State Government shall be liable in respect of any such act in any civil or criminal proceeding if the act was done in good faith in the course of the execution of duties or the discharge of the functions imposed by or under this Act.

(3) No suit shall be instituted against the State Government and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the State Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of.

Section 85 - Courts not to set aside or modify assessments except as provided under this Act

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Notwithstanding anything contained in any law for the time being in force, no suit or other proceedings shall be entertained by any court, except as expressly provided for under this Act, to set aside or modify any assessment or other proceedings commenced by virtue of the provisions of this Act, and no such court shall question the validity of any assessment, levy of penalty or interest nor grant any stay of proceedings or allow recovery of any amount due under this Act.

Section 86 - Appearance before any Authority in proceedings

Any person who is entitled to appear before any authority other than the High Court in connection with any proceeding under this Act, may be represented before such authority-

(a) by his relative or a person regularly employed by him if such relative or person is duly authorized by him in writing in this behalf;

(b) by a legal practitioner; or

(c) subject to such conditions as may be prescribed, by an Accountant or by a person enrolled in the prescribed manner as a Tax Practitioner by the Commissioner, and duly authorized by the person whom he represents.

Section 87 - Power to summon persons to give evidence

(1) The officers empowered by Rules made in this behalf shall have all the powers conferred on a Court by the Code of Civil Procedure, 1908 (Central Act V of 1908), for the purpose of securing attendance of persons or the production of documents in any enquiry under this Act.

(2) The Commissioner or the assessing, appellate or revising authority shall, in securing the attendance of any dealer as a witness before the Tribunal or High Court or for production of any document for the purposes of this Act at such proceedings, have the same powers as those conferred on a civil court under the provisions of the Civil Procedure Code, 1908 (Central Act 5 of 1908).

Section 88 - Power to make rules

(1) The Government may, subject to the condition of previous publication, make rules, by notification, to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for:

(a) all matters expressly required or allowed by this Act to be prescribed;

(b) estimation of turnover for purposes of registration on the basis of inventory of goods found at the time of inspection or during survey

(c) the assessment to tax under this Act of business which are discontinued or the ownership of which has changed;

(d) the procedure for assessment of Central and State Government Departments, Statutory Bodies and Local Authorities;

(e) the assessment to tax under this Act of business owned by minors and other incapacitated persons or by persons residing outside the State;

(f) the assessment of a business owned by any person whose estate or any portion of whose estate is under the control of the court of Wards, the Administrator-General, the Official trustee or any receiver or manager, including any person whatever his designation who in fact manages property on behalf of another, appointed by or under any order of a Court;

(g) the administration of the checkposts set up and the barriers erected under this Act and the regulation of work therein;

(h) the assessment to tax under this Act of any turnover which has escaped assessment;

(i) compelling the submission of returns and the production of documents and enforcing the attendance of persons and examining them on oath or affirmation;

(j) securing that returns furnished or accounts or documents produced or evidence of any kind given under this Act before any prescribed authority or an appeal or revision from any decision of such authority are kept confidential;

(k) the procedure to be followed and the powers exercisable in proceedings for recovery under Section 42;

(l) the duties and powers of officers appointed for the purpose of enforcing the provisions of this Act;

(m) the term of office and conditions of service of the members of the Appellate Tribunal;

(n) the fees payable for the grant of duplicate certificates of registration or licences or copies of such certificates and licences or of any other document;

(o) the maintenance of purchase bills or accounts of purchases and sales by dealers and the time for which they should be preserved;

(p) the issue of delivery notes or way bills in respect of goods delivered or transferred to retail dealers in pursuance of sales effected to them, the form and manner of their issue and the time for which they should be preserved;

(q) the extent of liability of commission agent, broker, del credere agent, auctioneer or any other mercantile agent, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;

(r) the qualifications and disqualifications of Tax Practitioners, the procedure for their enrolment, the fees payable for enrolment and the fees payable for annual renewal of such enrolment;

(s) generally regulating the procedure to be followed and the forms to be adopted in proceeding under this Act;

(t) any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the Government, necessary for giving effect to the purposes of this Act.

(3) In making a rule under sub-section (1) or sub-section (2), the Government may provide that a person guilty of breach thereof shall, on conviction by a Magistrate of the first class, be punishable with fine which may extend to five thousand rupees and where the breach is a continuing one, with further fine which may extend to one hundred rupees for every day after the first breach during which the breach continues.

(4) Any rule under this Act may be made to have effect retrospectively and when any such rule is made, a Statement specifying the reasons for making such a rule shall be laid before both Houses of the State Legislature along with the rule under Section 90, and

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Section 89 - Laying of Rules and notifications before the State Legislature

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Every rule made under this Act and every notification issued under Section 88 shall be laid as soon as may be after it is published before each House of the State Legislature 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 in which it is so laid or the sessions immediately following, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification 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 or notification.

Section 90 - Power to remove difficulties

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(1) If any difficulty arises in giving effect to the provisions of this Act in consequence of the transition to the said provisions of this Act from the provisions of the Acts in force immediately before the commencement of this Act, the Government may by Notification in the Official Gazette make such provisions as appear to it to be necessary or expedient for removing difficulty.

(2) If any difficulty arises in giving effect to the provisions of the Act, otherwise than in relation to the transition from the provisions of the Acts in force before the commencement of this Act, the Government may, by notification, make such provisions, not inconsistent with the purposes of this Act, as appear to it to be necessary or expedient for removing the difficulty.
