

CHAPTER X

Settlement Commission

67. Constitution of the Settlement Commission

- (1) There shall be a Settlement Commission consisting of a Chairman and such number of other Judicial and Accounts members not less than two in each category as may be determined by the State Government.

Explanation: For the purpose of Settlement Commission, a person who has been a Judge of a High Court or a member of Uttar Pradesh Higher Judicial Service shall be deemed a judicial member and person who has been member of any other service shall be deemed an accounts member.

- (2) The Commission shall be located at the State headquarter but the Commission for discharge of its functions, may, at its option, hold its camp at any public place anywhere inside the State.

- (3) A person shall not be qualified for appointment as Chairman, unless he -
- (a) has been a judge of a High Court, or
 - (b) has, for at least one year, held the post of the President of Tribunal under this Act or the Uttar Pradesh Trade Tax Act, 1948; or
 - (c) has been a member of the Indian administrative Service who has held the post of a Secretary to the State Government or any other post under the State Government equivalent thereto, and has adequate experience in taxation matters.

- (4) A person shall not be qualified for appointment as member unless he,
- (a) has for at least two years, held the post of Member Tribunal under this Act or under the Uttar Pradesh Trade Tax Act 1948 ; and
 - (b) he is or has been a member of U.P. Higher Judicial Service or a member of Uttar Pradesh Trade Tax Service, as the case may be.

- (5) The chairman and every other Member shall be appointed by the State Government but the judicial member shall be appointed after consultation with the Chief Justice for which proposal will be initiated by the State Government;

Provided that the Chairman or member shall not assume the office unless he has resigned or retired from, as the case may be, the Judgeship of the High Court, or the Uttar Pradesh Higher Judicial Service or any other service in which he was serving.

- (6) The Chairman and member shall hold office as such for a term of three years from the date on which he enters upon his office:

Provided that no Chairman or other member shall hold office as such after he has attained.

- (a) in the case of Chairman the age of sixty five years, and
- (b) in the case of any other Member the age of sixty two years.

- (7) The Chairman or any other member may by notice in writing under his hand addressed to the Governor resign his office.

- (8) The Chairman or any other member shall not be removed from his office except by an order made by the Governor on the ground of proved misbehaviour or incapacity after (an inquiry made by the Chief Justice or such Judge of the High Court as may be nominated by the Chief Justice,) in the prescribed manner, in which such Chairman or other member as the case may be, has been informed of the charges against him and given reasonable opportunity of being heard in respect of those charges.
- (9) On ceasing to hold office, the Chairman or other member shall not appear, act or plead before any authority under this Act.
- (11) The salaries and allowances payable to the Chairman and other member and the other conditions of their service shall be such as may be determined by the State Government from time to time.
- (12) Where the Chairman is unable to discharge his functions owing to absence, illness or any other cause, or where any vacancy occurs in the Office of the Chairman by reason of his death, resignation or otherwise, the President of Tribunal shall discharge the function of the Chairman until the Chairman resumes his duties or as the case may be, a Chairman appointed in accordance with the provisions of this Act assumes charge of his office.

68. Staff of the Settlement Commission

- (1) The State Government shall determine the nature and categories of the officers and other employees required to assist the Settlement Commission (hereinafter referred to as the Commission) in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit.
- (2) The officers and other employees of the Commission shall discharge their function under the general superintendence of the Chairman.
- (3) The salaries and allowances and conditions of service of the officers and other employees of the Commission shall be such as may be notified by the State Government.

69. Reference of case to the Settlement Commission-

- (1) Any dealer or other person who has been served with a notice –
 - (i) under sub-section (10) of section 45 and who is suspected to have evaded payment of tax exceeding one lakh rupees or such larger amount of tax as the State Government may by notification in the Gazette specify; or
 - (ii) for imposition of penalty either under sub-section (4) of section 48 or under clause (c) or clause (o) of sub-section (1) of section 56 and where the maximum amount of penalty that can be imposed is likely to exceed one lakh rupees,may file a petition before the Commission for settlement of amount of tax that may be assessed or amount of penalty that may be

imposed or both, as the case may be, within thirty days from the date of receipt of such notice after giving intimation to the authority who has issued such notice.

Provided that the Commission may, in appropriate cases, accept the application after expiry of period of thirty days but before expiry of period of ninety days where the assessing authority has not passed order of assessment or penalty, as the case may be, in pursuance of such notice.

- (2) The petition, in the prescribed form and manner along with such other documents as may be prescribed, shall be addressed to the Chairman of the Commission and shall be submitted in the office of the Commission along with satisfactory proof of deposit of fee of five thousand rupees.

70. Procedure to be adopted by the Commission

- (1) The Chairman may from time to time constitute bench of two members for the disposal of the settlement cases received under section 69.
- (2) A bench of two members shall include a Judicial Member and an accounts Member:

Provided that Chairman may nominate himself as one of the members of the bench.

- (3) The petition referred to in section 69 shall be placed before the bench to which it has been marked by the Chairman and where the bench, after giving reasonable opportunity of being heard to the petitioner and the representative officer of the commissioner, is of the opinion that prima facie case for settlement is made out, it shall, subject to provision under sub-section (4), –
- (i) order for registration of the case; and
 - (ii) stay the proceedings before the assessing authority in the case.
- (4) Where after giving reasonable opportunity of being heard as provided under sub-section (3) if the Commission is of the opinion that a case for settlement is not made out, it shall reject the petition.

Provided that where petition presented is incomplete, the commission, shall not reject the petition if the petitioner removes defects within the time allowed by the Commission.

- (5) Where a case for settlement has been registered, the Commission shall order to call for the report in the matter from the authority who has issued notice on the basis of which settlement case has been registered and such officer shall submit its report within thirty days of receipt of the direction from the Commission or such extended time as the Commission may allow.
- (6) Upon receiving the report referred to in sub-section (5) the Commission after giving reasonable opportunity of hearing to both parties and examining the records shall prepare the proposal of amount of tax or penalty or both, as the case may be, which in its opinion will be appropriate in the facts and circumstances of the case.
- (7) For the purpose of sub-section (6) the Commission may call for any records from the petitioner and the Commissioner relating to the case or such other records which may be helpful in the case.
- (8) In a case of difference of opinion between the two members, the Chairman shall constitute a bench of three members including the members who have heard the case previously. Such bench after following the procedure under sub-section (6) and sub-section (7) shall, with majority of opinion, prepare the proposal referred to in sub-section (6).
- (9) The petitioner shall be served with the proposal under sub-section (6) or Sub-section (8), as the case may be, for giving its consent within a period of fifteen days from the date of receipt of the proposal.
- (10) The petitioner shall, within fifteen days from the receipt of the proposal from the Commission, shall submit its willingness to pay the proposed amount of tax or penalty or both, as the case may be, and where the petitioner accepts the proposal the Commission shall pass an order in the matter and shall direct the petitioner to deposit the amount within thirty days from the date of service of order on him.
- (11) Where the petitioner is not willing to pay the proposed amount , he shall intimate to the Commission along with reasons why he does not consider the proposal to be reasonable and shall also quote his own proposal. The Commission in such case, in the joint sitting of the members who have heard the case, shall reconsider the case and where amount proposed by the petitioner seems to be reasonable in view of the new facts brought to the notice of the Commission or on the grounds set forth in his proposal by the applicant, it may accept the proposal and may pass the order accordingly.

- (12) If the applicant does not respond to the proposal offered by the Commission within the time prescribed or within such further time, as may be allowed by the Commission on the application of the petitioner, the Commission shall dismiss the case stating reasons therefor.
- (13) Copies of order under sub-sections (10), (11) and (12) shall be sent to the officer who has issued the notice to the applicant, the petitioner through his assessing authority, the assessing authority of the applicant and the Commissioner and where the order passed by the Commission relates to payment of amount of tax, the assessing authority shall also serve the notice of demand for the amount which is to be paid by the petitioner.
- (14) The Commission may grant facility of payment of the amount mentioned in the settlement order along with amount of interest payable, in monthly instalments not exceeding twenty four subject to such conditions including condition of furnishing security to the satisfaction of the assessing authority, as it may deem fit..
- (15) Where the petitioner does not deposit the amount or any part of it mentioned in the settlement order, the same shall become recoverable as arrears of land revenue after expiry of a period of thirty days from the date of service of the order on him and the assessing authority shall recover such amount as if such amount is amount of tax assessed or penalty imposed under any other provisions of the Act.
- (16) Provisions relating to payment of interest in respect of amount of tax shall apply to the amount mentioned in the settlement order in the manner the same are applicable in the case of tax levied under any other provisions of the Act.
- (17) For all purposes under the Act, amount determined under this section shall be treated to be tax levied or amount of penalty imposed, as the case may be, and date of order made by the Commission shall be treated to be the date of order of assessment or penalty as the case may be.
- (18) Where petition of the dealer or other person has been rejected by the Commission, the assessing authority shall proceed to assess the tax or to impose the penalty in case of such dealer or other person in accordance with the other provisions of the Act.

- (19) Notwithstanding anything contained contrary to in section 28 of the Act, where in any case of assessment a petition under this section has been rejected by the Commission, the assessment or re-assessment, as the case may be, may be made by the assessing authority before the expiry of the assessment year succeeding the assessment year in which order passed by the Commission has been received by the assessing authority by due process.
- (20) Where a case of settlement under this section is pending before the Commission, nothing shall preclude the assessing authority from making an assessment or re-assessment pertaining to the assessment years to which settlement case is pending but the assessing authority shall make its order by ignoring the material under the show cause notice before the Commission.
- (21) Where any settlement case relating to evasion of tax is pending for consideration before the Commission, if any additional notice in respect of tax evasion by the same authority or any fresh notice by any other authority is issued on any ground not mentioned in the earlier notice, the petitioner or the Commissioner may request the Commission to consider the material set out in such other notice provided the Commission has not made the settlement order.
- (22) The Chairman, during pendency of a case, can -
- (i) transfer any case from one bench to the other; or
 - (ii) reconstitute the bench.
- (23) The Commission shall not entertain a petition regarding a matter which has been subject matter of any petition filed earlier by the dealer or other person.
- (24) No appeal, revision or review shall lie against any proceedings or any order made under this section.