

## **CHAPTER- XI**

### **Miscellaneous**

#### **71. Objections to jurisdiction**

- (1) No objection as to the territorial or pecuniary jurisdiction of any assessing authority shall be allowed by any appellate or revising authority or the Tribunal, unless such objection was taken before the assessing authority at the earliest possible opportunity and unless, in the opinion of the appellate or revising authority or the Tribunal, as the case may be, a failure of justice has in fact been occasioned thereby.
- (2) Where any assessment is set aside or quashed merely on the ground of want of territorial or pecuniary jurisdiction of the assessing authority or on any other ground of a like nature not affecting the substance, any tax already paid by the assessee, to the extent of the liability admitted by him shall not be refundable to him, in consequence of the assessment being so set aside or quashed.

#### **72. Indemnity**

No suit, prosecution or other legal proceedings shall lie against any servant of the Government for anything, which is in good faith done or intended to be done under this Act or the Rules made thereunder.

#### **73. Bar to certain proceedings**

No assessment made and no order passed under this Act or the rules made thereunder by any authority shall be called in question in any Court, and, save as is provided in this Act, no appeal or application for revision or review shall lie against any such assessment or order.

#### **74. Certain information to be confidential**

- (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of the Act or of the rules made thereunder, or in any evidence given or affidavit or deposition made in the course of any proceedings under the Act or the rules made thereunder, or in any record of any proceedings relating to the recovery of a demand prepared for the purpose of the Act or the rules made thereunder, shall be treated as confidential.
- (2) Nothing in sub-section (1) shall apply to the disclosure of any such particulars-
- (i) for the purpose of any investigation of, or prosecution for any offence under this Act or under the Indian Penal Code, 1860, or under any other enactment for the time being in force; or
  - (ii) to any person acting in the execution of the Act or the rules made thereunder where it is necessary to disclose the same to him for the purposes of the Act or the rules made thereunder; or
  - (iii) occasioned by the lawful employment under the Act or the rules made thereunder of any process for the recovery of any demand; or
  - (iv) to a Civil Court in any suit to which the Government are a party, which relates to any matter arising out of any proceedings under the Act or the rules made thereunder; or
  - (v) occasioned by the lawful exercise by a public servant of his powers under the Indian Stamps Act, 1899, to impound an insufficient stamped document; or
  - (vi) to an officer of Central Government or the Government of any State, for the purpose of enabling that Government to levy or realise any tax imposed by it; or
  - (vii) to an officer of the Central or the State Government for the purposes of making any inquiry against any Government servant; or
  - (viii) for purposes of audit of public accounts.

#### **75. Power to make rules**

- (1) The State Government may make rules to carry out the purposes of this Act.

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

- (a) all matters expressly required or allowed by this Act to be prescribed;
  - (b) the licensing of persons engaged in the sales or purchase of goods and the imposing of condition in respect of the sale for the purpose of enforcing the provisions of this Act;
  - (c) the determination of the turnover for the purpose of assessment of tax under this Act;
  - (d) compelling the submission of returns and the production of documents and enforcing the attendance of a person and examining them on oath or affirmation;
  - (e) the appointment, duties and powers of the officers appointed for the purpose of enforcing the provisions of this Act;
  - (f) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act;
  - (a) refunds of amounts deposited under sub-section(1) of Section 43, the procedure for such refunds and the period within which they may be made;
  - (h) the custody of the goods seized under section 46; and
  - (i) the matters which are to be or may be prescribed;

(3) The power to make Rules conferred by this section shall be subject to condition of the rules being made after previous publication for a period of not less than four weeks:

Provided that if the State Government is satisfied that circumstances exist which render it necessary for it to take immediate action, it may make any rule without such previous publication.

(4) All rules made under this section shall be published in the Gazette and upon such publication shall have effect immediately as if enacted in this Act.

## **76. Facility for sick industrial units**

(1) notwithstanding anything contained in sub-section (1) and sub-section (2) of section 33 and section 39, but subject to such conditions, as may be deemed fit to be imposed, the State Government may allow the deferment of payment

of any existing or future dues payable by an industrial unit under the provisions of this Act or allow payment of such dues in such number of instalments as may be specified, if such industrial unit is declared a sick unit in accordance with the guidelines specified in this behalf by an authorised body constituted by the Central Government or the State Government in connection with the rehabilitation of sick industrial units, and is approved for rehabilitation by an approved agency, appointed by the Central Government or the State Government.

- (2) Notwithstanding anything contained in section 32, the State Government may set aside an order of assessment or penalty passed ex-parte against a sick unit and direct fresh disposal of the case in accordance with law.

#### **77. Fees in certain cases**

- (1) Subject to other provisions under the Act, the fee payable on a memorandum of appeal or other applications under this Act filed or moved shall be as follows:

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|-----|---|--|
| (a) | On a memorandum of appeal under section 59. | Two percent of the amount of tax, fee or penalty in dispute, subject to a minimum of one hundred rupees and a maximum of one thousand rupees.                          |
| (b) | On a memorandum of appeal under section 61. | Seven and a half per cent of the amount of tax, fee or penalty in dispute, subject to a minimum of five hundred rupees and maximum of two thousand one hundred rupees. |
| (c) | On an application under section- 64         | One Hundred rupees.  |

- (d) On any other application-
  - (i) When addressed to  
the Commissioner or the Twenty rupees  
Revising Authority or the  
Tribunal or the Settlement  
Commission
  - (ii) When addressed to any Ten rupees.  
other officer or authority.

(2) The fee referred to in this section and in any other provision of this Act shall be payable in the manner prescribed, and proof of deposit of the same shall be attached to the memorandum or application, as the case may be:

Provided that where the amount of fee payable does not exceed fifty rupees, the same may be paid in court fee stamps.

(3) No fee shall be payable in respect of:-

- (a) an application or a memorandum of appeal presented by the Commissioner or any other officer or authority appointed under this Act or the rules made thereunder.
- (b) an application in which only information is sought and in which no specific relief is prayed for ; and
- (c) an application under section 64, seeking a decision only as to the rate of tax applicable or the point at which the tax is payable.

## **78. Transfer to defraud revenue void**

(1) Where, during the pendency of any proceedings under this Act. any person liable to pay any tax or other dues creates a charge on, or transfers any movable or immovable property belonging to him in favour of any other person with the intention of defrauding any such tax or other dues, such charge or transfer shall be void as against any claim in respect of any tax or other dues payable by such person as a result of the completion of the said proceedings:

Provided that nothing in this section shall impair the rights of a transferee in good faith and for consideration.

- (2) Nothing in sub-section (1) shall apply to a charge or transfer in favour of a banking company as defined in the Banking Regulation Act, 1949 ( Act X of 1949) or any other financial institution specified by the State Government by notification in this behalf.

#### **79. Power to issue notifications**

Where the State Government is satisfied that it is necessary so to do in the public interest, it may issue notification wherever required under the provision of this Act so as to make it effective from a date not earlier than six months from the date of issuance of such notification:

Provided that no notification having the effect of increasing the liability to tax of a dealer shall be issued with retrospective effect under this section.

#### **80. Power to collect statistics**

- (1) The Commissioner may, by issuing a circular or by publication in the news paper, direct that statistics be collected relating to any matter under this Act.
- (2) Any officer authorised to collect statistics may, call upon all dealers or class of dealers or a particular dealer to furnish such information, returns or statements as may be required relating to any matter in respect of which statistics are to be collected.
- (3) Dealer shall be liable to furnish such information within the time allowed.

#### **81. Tax to be first charge on property**

Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person under this Act on account of tax, fee, penalty or interest, shall be a first charge on the property of the dealer or such person.

## 82. Powers of Authorities under the Act

- (1) The authorities under the Act mentioned In column (2) shall be under the superintendence and administrative control of the authorities mentioned in column (3) of the table below: -

Sl. No. (1)	Authorities (2)	Superintendence and control (3)
(1)	Chairman Settlement Commission, President Tribunal and Commissioner	The State Government
(2)	Members of the Settlement Commission	Chairman Settlement Commission
(3)	Members of Tribunal and Registrar of Tribunal	President Tribunal
(4)	Special Commissioner, Additional Commissioner and Joint Commissioner	Commissioner
(5)	All other Officers	As may be prescribed

- (2) The Settlement Commission, President of Tribunal and Commissioner shall have jurisdiction over whole of the State and shall exercise the powers conferred upon, and perform the duties imposed by or under the Act and rules framed thereunder.
- (3) The Chairman and members of the Settlement Commission shall exercise powers and perform the duties assigned to them under section 70 and rules framed thereunder.
- (4) President and members of the Tribunal shall exercise the powers and perform the duties assigned to them under sections 61 and 62 and rules framed thereunder.
- (5) The Commissioner shall exercise the powers and perform the duties assigned to him under the Act and the rules framed thereunder and shall have all

powers exercisable by subordinate authorities other than the appellate authority under section 59.

- (6) Consistent with the provisions of this Act and Rules made thereunder, the Commissioner may issue instructions to officers under his subordination, generally regulating the procedure to be followed in carrying out the provisions of the Act or Rules made thereunder:

Provided that no order, instructions or directions shall be given by the Commissioner so as to interfere with the discretion of the appellate authority in the exercise of its appellate functions.

- (7) Subject to general control of the Commissioner-

- (i) Special Commissioner and all Additional Commissioners shall also exercise powers vested in the Commissioner;
- (ii) all Joint Commissioners and Deputy Commissioners shall exercise the powers conferred upon and perform the duties imposed by or under the Act or the Rules made thereunder, as may be consistently with the Act or the Rules made thereunder, be conferred and assigned to them; and
- (iii) All other officers shall exercise the powers and perform the duties as may be assigned to them under rules framed under this Act.

- (8) The State Government, for the purpose of carrying out the provisions under the Act or rules framed thereunder, may appoint and, or as the case may be, post such other officers by name or designation as it may deem fit and as may be prescribed.

- (9) Authorities under the Act shall exercise their powers in the jurisdiction as may be prescribed or as may be notified by the State Government in exercise of the powers vested in it under the Rules.