

CHAPTER –V

REFUNDS AND ADJUSTMENTS

40 Refunds and adjustments

- (1) Subject to provisions of sub-section (1) of section 42, the assessing authority shall in the manner prescribed; refund to the dealer an amount of tax, fee, or other dues paid in excess of the amount due from him under this Act.

Provided that, amount found to be refundable shall first be adjusted towards tax or any other amount outstanding against the dealer under this Act or under The Central Sales Tax Act 1956 or under the Uttar Pradesh Trade Tax Act, 1948 and only the balance if any shall be refunded.

Provided further that refund of excess amount of input tax credit shall be subject to conditions and restrictions of section 15.

- (2) Where amount found refundable in accordance with the provisions under sub-section (1), is not refunded within thirty days from the date of order of refund passed by the Assessing authority or where order giving rise to refund is passed by any other authority or court, from the date of receipt of such order by the assessing authority by due process, the dealer shall be entitled to simple interest on such amount at the rate of nine percent per annum from the date of such order passed by the assessing authority or from the date of receipt of the order giving rise to refund passed by any other authority or Court, till the date refund is made.

Provided that where refund relating to excess amount of input tax credit due on the basis of returns filed by the dealer, is not allowed within the time prescribed under section 15, the dealer shall be entitled to simple interest on such amount at the rate of nine percent per annum from the date on which refund becomes due and till the date refund is made.

- (3) Notwithstanding any judgment, decree or order of any Court or authority, no refund shall be allowed of any tax or fee due under this Act on the turnover of sales or purchases or both, as the case may be, admitted by the dealer in the returns filed by him or at any stage in any proceedings under this Act.

- (4) Where dealer has requested the assessing authority for withholding such amount for adjustment towards his future liabilities either under this Act or under the Central Sales Tax Act, 1956 and in the circumstances dealer shall not be entitled for interest.
- (5) Where any amount of tax under sub-section (1) or sub-section (7) of section 34 has been deducted from any dealer as tax payable by him for any assessment year, for the purpose of sub-section (3), amount deducted shall be deemed to be tax due under this Act and shall not be refunded to the dealer where the dealer -
- (i) has neither submitted returns of turnover and tax for all tax periods nor has submitted annual return for the assessment year in which sales are made; and
 - (ii) has been assessed exparte for the assessment year in which sales are made.

Explanation: The date of refund shall be deemed to be the date on which intimation regarding preparation of the refund voucher is sent to the dealer in manner prescribed.

41. Provisional refund

- (1) Notwithstanding anything contained in sections 40 and 42, in case of a dealer, whose main business is to sell goods in the course of the export of the goods out of the territory of India, the assessing authority, upon receiving the return for a tax period and application for provisional refund, pending audit and investigation to establish the correctness of the claim and consequent assessment, shall, allow provisional refund of excess amount of input tax credit for such tax period on account of sale in the course of the export of the goods out of the territory of India.

Provided that if any amount of tax, fee or penalty or any other amount either under this Act or under the Central Sales Tax Act, 1956 or under the U. P. Trade Tax Act, 1948 is due against such dealer, amount found refundable first shall be adjusted towards such amount of tax or fee or penalty, as the case may be, and excess, if any, shall be refunded to the dealer:

Provided further that before granting refund, the Assessing Authority may require the dealer to furnish security of amount of refund to its satisfaction.

- (2) If, on assessment, the provisional refund granted under sub-section (1) is found to be in excess, then the excess amount of refund shall be recovered from the dealer along with interest from the date of grant of provisional refund till the date of payment of the amount, as tax due from the dealer.

42. Withholding of refunds in certain cases

- (1) Notwithstanding anything contrary contained in any other provisions of this Act, where after giving reasonable opportunity of being heard to the dealer or the person concerned, assessing authority is satisfied that:
- (i) turnover shown in any return submitted by any dealer is not reasonable and the dealer has prevented the assessing authority or any other competent officer from making inspection and examination of books, accounts or documents maintained or goods shown to be held in stock by such dealer; or
 - (ii) there is prima facie evidence on record to show that in any return, the dealer has shown lesser turnover of sale or purchase than the actual; or
 - (iii) any purchase in respect of which input tax credit in any return has been claimed, is not verifiable, or
 - (iv) the dealer has obtained tax invoices without making actual purchase of goods,

and if the assessing authority is of the opinion that if refund is allowed, it may not be possible to realise any amount of tax or penalty to be levied, it may pass an order for withholding refund for a period not exceeding three months beyond the date of passing of assessment order or order of penalty, as the case may be, in respect of the assessment year to which refund relates.

Provided that if the dealer furnishes security of the amount of refund to the satisfaction of the assessing authority, refund shall be released.

(2) a simple interest at the rate of nine percent per annum for the period refund remains withheld shall be payable to the dealer or the person concerned and no interest shall be payable on such withheld refund if it has been released against security or has been adjusted towards any liability of the dealer.

43 Procedure for disbursement of amount wrongly realised by dealers as tax

(1) Where any amount has been realized from any person by any dealer, purporting to do so by way of realisation of tax on the sale or purchase of goods, in contravention of provisions under sections 22 and 23 such dealer shall deposit the entire amount so realised in the manner and within the period prescribed under section 24.

(2) Any amount deposited by any dealer under sub-section (1) shall to the extent it is not due as tax, be held by the State Government in trust for the person on whom such liability has been passed ultimately in respect of goods on the sale or purchase which excess amount has been charged.

(3) Where any amount is deposited by any dealer under sub-section (1) such amount or any part thereof shall on a claim being made in that behalf be refunded in the manner prescribed to the person on whom liability of such amount has been passed ultimately.

Provided that no such claim shall be entertained after expiry of three years from the date of order of assessment or one year from the date of the final order on appeal, revision or reference if any in respect thereof which ever is later.

(4) Where any amount has been deposited by any dealer in accordance with provisions under sub-section (1), dealer shall not be entitled to allow refund of such amount to the purchaser of goods.

Explanation :- The expression "Final order on appeal revision or reference" includes an order passed by the Supreme Court or by the High Court.