

CHAPTER IX

APPEAL, REVIEW AND REVISION

58. Review by assessing authority

- (1) Where in any assessment order amount of tax has been assessed in excess of amount of tax admitted by the dealer only on the grounds of non-submission of any form of declaration or certificate prescribed for seeking either exemption from tax or reduction in rate of tax, and where time for submitting such form or certificate, on the application of the dealer could not be extended for any reason by the assessing authority, the assessing authority may, on the application of the dealer, review such assessment order after expiry of a period of six months but before expiry of period of one year from the date of service of such order on the dealer to allow him the benefit on account of declaration form or certificate submitted within six months from the date of service of order subject to the following conditions: -
- (i) The dealer informs in writing to the assessing authority of his intention of submitting such form of declaration or certificate within thirty days from the date of service of order on him;
 - (ii) The dealer furnishes an affidavit to the effect that he has not filed an appeal against the assessment order;
 - (iii) The dealer furnishes security of disputed amount of tax to the satisfaction of assessing authority;
 - (iv) The dealer has deposited admitted tax within thirty days from the date of service of order on him; and
 - (v) Forms of declaration or certificates submitted by the dealer are found in order;
- (2) Where any dealer has fulfilled conditions referred to in clause (i) to clause (iv) of sub-section (1), the assessing authority may stay the recovery of disputed amount of tax till the disposal of review application.

59. Appeal

- (1) Any dealer or other person aggrieved by an order made by the Assessing Authority, other than an order mentioned in sub-section (7) of section 48, section 58 or section 65 may, within thirty days from the date of service of the copy of the order, after serving a copy appeal memo on the Assessing Authority or the Commissioner, appeal to such authority (herein after referred to as appellate authority), as may be prescribed.
- (2) Where an appeal has been filed against an order referred to in sub-section (1), the Commissioner may apply to the appellate authority to examine the legality and propriety of such order on such point as may be mentioned in the application. A copy of such application shall be served on the appellant and shall be decided along with the appeal filed by the appellant:

Provided that no application for examination of legality and propriety shall be entertained after the disposal of appeal.

Provided further where the Commissioner has filed an application, the appellant shall not be entitled to withdraw appeal filed by him.

Explanation - For the purpose of this section Commissioner includes an officer authorised to file appeal on behalf of Commissioner before the Tribunal under section 61.

- (3) No appeal against an assessment order under this Act shall be entertained unless the appellant has furnished satisfactory proof of the payment of the amount of tax or fee due under this Act on the turnover of sale or purchase, or both, as the case may be, admitted by the appellant in the returns filed by him or at any stage in any proceedings under this Act, whichever is greater.
- (4) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.
- (5) The Appellate Authority may, after calling for and examining the relevant records and after giving a reasonable opportunity of being heard -
- (a) in the case of an order of assessment and penalty.-
 - (i) confirm or annul such order ; or
 - (ii) vary such order by reducing or enhancing the amount of assessment or penalty, as the case may be, whether such

reduction or enhancement arises from a point raised in the grounds of appeal or otherwise ; or

(iii) set aside the order and direct the Assessing Authority to pass a fresh order after such inquiry as may be specified ; or

(iv) direct the Assessing Authority to make such inquiry and to submit its report within such time as may be specified in the direction or within such extended time as it may allow from time to time, and on the expiration of such time the Appellate Authority may, whether the report has been submitted or not decide the appeal in accordance with the provisions of the preceding sub-clauses; or

(b) in the case of any other order-

(i) confirm, cancel or vary such order; or

(ii) set aside the order and direct the Assessing Authority to pass a fresh order after such inquiry as may be specified,

Provided that nothing in this sub-section shall preclude the Appellate Authority from dismissing the appeal at any stage with such observations as it deems fit where the appellant applies for withdrawal of the same and no request for examination of legality or propriety of order under appeal has been made by the Commissioner.

(6) The appellate Authority, may, on the application of the appellant and after giving the Commissioner a reasonable opportunity of being heard stay the operation of order appealed against or the realisation of the disputed amount of tax, fee or penalty payable by the appellant till the disposal of the appeal ;

Provided that –

(i) where an order under appeal does not involve any dispute about tax, fee or penalty, appellate authority may stay the operation of such order till the disposal of appeal subject to such conditions as it may deem fit, including condition of furnishing of security in cash;

(ii) where an order under appeal involves dispute about tax, fee or penalty, no stay order shall remain in force after thirty days from the date of on which the same has been granted, if the appellant, does not furnish security to the satisfaction of the Assessing Authority for payment of the amount, the realisation whereof has been stayed within the aforesaid period of thirty days;

(iii) no such application shall be entertained unless it is filed along with the memorandum of appeal under sub-section (1):

(7) Section 5 of the Limitation Act, 1963, shall apply to appeals or other applications under this section.

(8) The appellate authority shall be under the superintendence and control of the Commissioner:

Provided that in the exercise of such superintendence and control, 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.

(9) For the purpose of this section service of an order passed by appellate authority under this section and service of memo of appeal on the State Representative, shall be deemed to be service on the Commissioner.

(10) All appeals arising out of the same cause of action in respect of an assessment year, as far as possible, shall be heard and decided together.

60. Revision by the commissioner.

(1) The Commissioner or such other Officer not below the rank of Joint Commissioner, as may be authorised in this behalf by the Commissioner, may call for and examine the record relating to any order other than an order mentioned in section 65, passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order with respect thereto as he thinks fit.

(2) No order under sub-section (1) affecting the interest of a party adversely shall be passed unless he has been given a reasonable opportunity of being heard.

(3) No order under sub-section (1), shall be passed-

- (a) to revise an order, which is or has been the subject matter of an appeal under section 59, or an order passed by the Appellate Authority under that section.
- (b) before the expiration of sixty days from the date of the order in question;
- (c) after the expiration of four-years from the date of the order in question .

Explanation- Where the appeal against any order is withdrawn or is dismissed for non-payment of fee payable under section 75 or for non-compliance of sub-section (3) of section 59, the order shall not be deemed to have been the subject-matter of an appeal under section 59;

- (4) No dealer or any other person aggrieved by an order against which appeal lies under section 59 shall be entitled to present an application for review of such order under this section.

61. Tribunal

- (1) There shall be a Tribunal consisting of such members including a President as the State Government may, from time to time, deem it necessary to appoint from amongst-

- (a) the persons who are qualified to be the judge of the High Court, and
- (b) the persons belonging to the Uttar Pradesh Trade Tax Services who hold or have held a post not below the rank of Joint Commissioner:

Provided that-

- (i) Where the Tribunal consists of one or more persons who is or are member or members of the U.P. Higher Judicial Service, then he or senior most amongst them shall be appointed as the President.
- (ii) No person shall be appointed from amongst the advocate unless-
 - (a) he has paid Income Tax from his legal in each of ten consecutive years preceding such appointment.
 - (b) he has attained the age of forty-five years on the first day of the appointment year.

The appointment year shall have the same meanings as assigned to it under the Uttar Pradesh Trade Tax Service Rules, 1983.

(c) Members under this clause shall be appointed for a term of three years from the date of appointment or till he attains the age of superannuation as prescribed under U.P. Fundamental rules, whichever is earlier.

- (2) The State Government may prescribe such other qualification or conditions for the appointment of the President and the other members of the Tribunal as it may deem fit.
- (3) The provisions of rule 56 of the U.P. Fundamental Rules shall continue to apply to every member of the Tribunal including the President whether appointed before or after the commencement of this Act, as they apply to any other Government servant.
- (4) Any person aggrieved by an order passed under section 35, section 59, section 60, a decision under section 64 or a direction under the proviso to sub-section (7) of section 48 may, within ninety days from the date of service of the copy of such order, decision or direction on him, prefer an appeal to the Tribunal.

Provided that where order passed by appellate Authority under section 59 or by revising authority under section 60 of the Act, is an order in respect of demand of any security, not being security demanded for release of goods seized under any provisions of this Act, appeal under this section can be filed only after furnishing security, fixed by the appellate authority under section 59 or as the case may be, by revising authority under section 60.

Provided further that where the disputed amount of tax, fee or penalty does not exceed five thousand rupees and no question of law is involved, the appellant may, at his option, request the Tribunal in writing for summary disposal of his appeal, whereupon the Tribunal may decide the appeal accordingly.

Explanation : For the purposes of this sub-section, the expression ' any person' in relation to any order passed by an authority other than the Commissioner includes the Commissioner and, in relation to any order passed by the Commissioner includes the State Government;

- (5) The manner and procedure of summary disposal of appeal shall be such as may be prescribed.

- (6) Section 5 of the Limitation Act, 1963 shall apply to appeals or other applications under this section.
- (7) The Tribunal may at any stage, after giving the appellant a reasonable opportunity of being heard, dismiss the appeal.
- (8) The Tribunal may, if it has not already dismissed the appeal under sub-section (7), after calling for and examining the relevant records, and after giving the parties a reasonable opportunity of being heard or, as the case may be, after following the procedure prescribed under sub-section (5):
- (a) confirm, cancel or vary such order, or
 - (b) set aside the order and direct the assessing or appellate or revising authority or the Commissioner as the case may be, to pass a fresh order after such further enquiry, if any, as may be specified, or
 - (c) order such amount of tax, fee or penalty or other money as may have been realized in excess of the due amount to be refunded according to the provisions of this Act.
- (9) Where an appeal under this section has been filed, the Tribunal may, on the application of the appellant moved along with the memorandum of such appeal after giving the parties a reasonable opportunity of being heard, stay the operation of the order appealed against or the recovery of the disputed amount of any tax, fee or penalty payable, or refund of the amount due, or proceeding for reassessment under the order appealed against till the disposal of the appeal:

Provided that-

- (i) where appellate authority under section 59 has set aside an order of assessment or penalty and has remanded the case to the assessing authority, for decision afresh, and the appellant under this section is a person other than the Commissioner or the State Government, for the purpose of this section, disputed amount of tax or penalty shall be deemed to be the same which had been before appellate authority under section 59; and
- (ii) subject to provision under sub clause (i) above where order appealed against does not involve any dispute about quantum of tax, fee or penalty, on the application of the appellant the

Tribunal may stay the operation of such order till the disposal of appeal subject to such conditions including a condition of furnishing of a security in cash within the time allowed;

Provided further that-

- (a) no application for stay of recovery of any disputed amount of tax, fee or penalty shall be entertained unless the applicant has furnished satisfactory proof of the payment of not less than one third of such disputed amount in addition to the amount required to be deposited under sub-section (3) of section 59.
- (b) the Tribunal may, for special and adequate reasons to be recorded in writing, waive or relax the requirement of clause (a) regarding payment of the one-third of such disputed amount.

(10) Where the Tribunal passes an order under this section for the stay of recovery of any tax, fee or penalty or for the stay of the operation of any order appealed against and such order of the Tribunal results in the stay of recovery of any tax, fee or penalty, such stay order of the Tribunal shall not remain in force for more than thirty days unless the appellant furnished adequate security to the satisfaction of the assessing authority concerned for the payment of the outstanding amount.

(11) The members of the Tribunal shall sit in such benches of one, two or more members, as may be constituted from time to time, and do such work of the Tribunal as may, subject to sub-section (12) and the rules, be allotted to them, by order or in accordance with the directions of the President of Tribunal.

(12) (a) An appeal against the order of appellate authority under section 59 shall be heard and disposed of-

- (i) by a bench of two members, where such order, not being an order passed on the application of the appellant for stay, is

passed by an Additional commissioner (Appeals) or the amount of tax, fee or penalty in dispute, exceeds two lakh rupees;

(ii) by a single member bench, in any other case.

(b) An appeal against a direction given under the proviso to sub-section (7) of section 48 shall be heard and disposed of by a -

(i) bench of two members where such direction under appeal has been given by the Commissioner, Special Commissioner or an Additional Commissioner;

(ii) by a single member bench in any other case;

(a) An appeal against an order under section 60 shall be heard and disposed of by a -

(i) bench of two members where amount of tax, fee or penalty in dispute exceeds rupees two lakh or where order under appeal has been passed by the Commissioner, Special Commissioner or an Additional Commissioner;

(ii) single member bench in any other case;

(d) An appeal against a decision given under section 35 or section 64, shall be filed before the President and shall be heard and disposed of by a bench of three members.

(e) The President may, if he so thinks fit,-

(i) direct an appeal to be heard and decided by a larger bench;

(ii) transfer an appeal from one bench to another bench.

(e) In a case before a bench consisting of two or more members any order other than an order finally disposing of the case may be passed by any one of the members constituting the bench.

Provided that an appeal against an order passed on an application for stay, may be disposed of finally by a single member bench.

(13) All appeals arising out of the same cause of action in respect of an assessment year shall, as far as possible, be heard and decided together:

Provided that where anyone or more of such appeals have been heard and decided earlier, if the bench hearing the remaining appeals considers

that such decision may be a legal impediment in giving relief in such remaining appeals, it may, if the earlier decision was given-

- (a) by a smaller bench or a bench of equal strength, recall such earlier decision and proceed to decide all the appeals together;
- (b) by a larger bench, refer such remaining appeals to such larger bench having jurisdiction and thereafter such larger bench may recall such earlier decision and proceed to decide all the appeals together.

(14) The place of sitting and procedure of, and the manner of presenting appeals and other documents to the Tribunal shall, subject to the rules, be such as the Tribunal may deem fit to adopt.

(15) The decision of case heard by a bench, shall be in accordance with opinion of the majority. Where the members are equally divided the President of the Tribunal may,-

- (a) if he was not a member of such bench, give his own opinion or refer the case for the opinion of another member, whereupon the case shall be decided in accordance with such opinions; or
- (b) form a larger bench.

62. Review by the tribunal

The Tribunal may, on the application presented within Ninety days from the date of order by either party to the appeal, may within one hundred and eighty days from the date of such order passed by it under sub-section (7) or sub-section (8) of section 61 review such order on the basis of facts which were not before it when the order was passed.

Provided that no order passed by it under sub-section (7) or sub-section (8) of section 61 shall be reviewed if revision filed under section 61 against such order has been decided by the High Court.

63. Revision by high court in special cases

(1) Any person aggrieved by an order made under sub-section (7) or sub-section (8) of section 61 other than an order under sub-section (4) of that section summarily disposing of the appeal or by an order passed under section 62, may, within ninety days from the date of service of such order, apply to the

High Court for revision of such order on the ground that the case involves any question of law.

- (2) The application for revision under sub-section (1) shall precisely state the question of law involved in the case, and it shall be competent for the High Court to formulate the question of law or to allow any other question of law to be raised.
- (3) Where an application under this section is pending, the High Court may, on an application in this behalf, stay recovery of any disputed amount of tax, fee or penalty payable, or refund of any amount due under the order sought to be revised:

Provided that no order for stay or recovery of such disputed amount shall remain in force for more than thirty days unless the applicant furnishes adequate security to the satisfaction of the Assessing Authority concerned.

- (4) The High Court shall, after hearing the parties to revision, decide the question, of law involved therein, and where as a result of such decision, the amount of tax, fee or penalty is required to be determined afresh, the High Court may send a copy of the decision to the Tribunal for fresh determination of the amount, and the Tribunal shall thereupon pass such orders as are necessary to dispose of the case in conformity with the said decision.
- (5) All applications for revision of orders passed under sections 61 or 62 in appeals arising out of the same cause of action in respect of an assessment year shall be heard and decided together:

Provided that where any one or more of such applications have been heard and decided earlier, if the High Court, while hearing the remaining applications, considers that the earlier decision may be a legal impediment in giving relief in such remaining applications, it may recall such earlier decision and may thereafter proceed to hear and decide all the applications together.

- (6) The provisions of section 5 of the Limitation Act, 1963, shall *mutatis mutandis*, apply to every application, for revision under this section.

Explanation- For the purpose of this section, the expression "any person" includes the Commissioner and the State Government.

64. Determination of disputed questions

(1) If any question arises, otherwise than in a proceedings pending before a Court or before an authority under the Act, whether, for the purposes of this Act-

- (a) any person or association of persons, society, club, firm, company, corporation, undertaking or Government Department is a dealer; or
- (b) any particular thing done to any goods amounts to or results in the manufacture of goods within the meaning of that term; or
- (c) any transaction is a sale or purchase and, if so, the sale or purchase price, as the case may be, therefor; or
- (d) any particular dealer is required to obtain registration ; or
- (e) any tax is payable in respect of any particular sale or purchase and, if so, the rate thereof, the person or the dealer concerned may, after depositing the fee specified in section 77, submit an application to the commissioner, along with such documents as may be prescribed.

(2) The Commissioner shall, after giving the applicant an opportunity of being heard, decide as he deems fit the question so arising:

Provided that, before giving such decision, the Commissioner may, in his discretion, ask an officer subordinate to him to make such inquiries as he considers necessary for the decision of the question.

(3) No decision of the Commissioner under this section shall affect the validity or operation of any order passed earlier by any assessing authority, appellate authority, revising authority or the Tribunal.

- (4) No question which arises from an order already passed, in the case of applicant, by any authority under this Act or the Tribunal, shall be entertained for determination under this section.
- (5) Except as provided in sub-section (3), a decision given by the Commissioner under this Section shall, subject to the provisions of sections 61 and 63 be final and binding on the applicant, the Assessing Authority and the Appellate Authority.
- (6) A copy of the decision given under this section shall be sent to the applicant and to the assessing authority concerned.

65. Orders against which no appeal or revision shall lie

No appeal and no application for revision shall lie against-

- (a) an order or notice initiating an inquiry for assessment or re-assessment;
- (b) any order or action under section 45, sub-sections (1), (2) or (7) of section 48, sub-section (6) of section 50 or an order of seizure of goods.

66. Additional evidence in appeal

The assessee shall not be entitled to produce additional evidence, whether oral or documentary, before the appellate authority or the Tribunal except where the evidence sought to be adduced is evidence, which the assessing authority had wrongly refused to admit or which after exercise of due diligence was not within his knowledge or could not be produced by him before the assessing authority, and in every such case, upon the additional evidence being taken on record, reasonable opportunity for challenge or rebuttal shall be given to the Assessing Authority.