

CHAPTER VI

Assessment and Payment of Tax, Interest and Penalties and Making Refunds

30 Assessment of tax, interest or penalty

No claim may be made by the Commissioner for the payment by a person of an amount of tax, interest or penalty or other amount in the nature of tax, interest or penalty due under this Act except by the making of an assessment for the amount.

31 Self assessment

(1) Where a return is furnished by a person as required under section 26 or section 27 of this Act which contains the prescribed information and complies with the requirements of this Act and the rules –

(a) the Commissioner is taken to have made, on the day on which the return is furnished, an assessment of the tax payable of the amount specified in the return;

(b) the return is deemed to be a notice of the assessment and to be under the hand of the Commissioner; and

(c) the notice referred to in clause (b) is deemed to have been served on the person on the day on which the Commissioner is deemed to have made the assessment.

(2) No assessment shall arise under sub-section (1) of this section, if the Commissioner has already made an assessment of tax in respect of the same tax period under another section of this Act.

32 Default assessment of tax payable

(1) If any person –

(a) has not furnished returns required under this Act by the prescribed date; or

(b) has furnished incomplete or incorrect returns; or

(c) has furnished a return which does not comply with the requirements of this Act; or

(d) for any other reason the Commissioner is not satisfied with the return furnished by a person;

the Commissioner may for reasons to be recorded in writing assess or re-assess to the best of his judgment the amount of net tax due for a tax period ¹[or more than one tax period by a single order so long as all such tax periods are comprised in one year.]

²[(1A) If, upon the information which has come into his possession, the Commissioner is satisfied that any person who has been liable to pay tax under this Act in respect of any period or periods, has failed to get himself registered, the Commissioner may for reasons to be recorded in writing, assess to the best of his judgment the amount of net tax due for such tax period or tax periods and all subsequent tax periods.]

(2) Where the Commissioner has made an assessment under this section, the Commissioner shall forthwith serve on that person a notice of assessment of the amount of any additional tax due for that tax period.

(3) Where the Commissioner has made an assessment under this section and further tax is

¹ Inserted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

² Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

assessed as owed, the amount of further tax assessed is due and payable on the same date as the date on which the net tax for the tax period was due.

Explanation.- A person may, if he disagrees with the notice of assessment, file an objection under section 74 of this Act.

33 Assessment of penalty

(1) Where the Commissioner has reason to believe that a liability to pay a penalty under this Act has arisen, the Commissioner, after recording the reason in writing, shall make and serve on the person a notice of assessment of the penalty that is due under this Act.

(2) The amount of any penalty assessed under this section is due and payable on the date on which the notice of assessment is served by the Commissioner.

(3) Any assessment made under this section shall be without prejudice to prosecution for any offence under this Act.

Explanation.- A person may, if he disagrees with the notice of assessment, file an objection under section 74 of this Act.

34 Limitation on assessment and re-assessment

(1) No assessment or re-assessment under section 32 of this Act shall be made by the Commissioner after the expiry of four years from –

(a) the date on which the person furnished a return under section 26 or sub-section (1) of section 28 of this Act; or

(b) the date on which the Commissioner made an assessment of tax for the tax period, whichever is the earlier:

PROVIDED that where the Commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.

(2) Notwithstanding sub-section (1) of this section, the Commissioner may make an assessment of tax within one year after the date of any decision of the Appellate Tribunal or court where the assessment is required to be made in consequence of, or to give effect to, the decision of the Appellate Tribunal or court which requires the re-assessment of the person.

35 Collection of assessed tax and penalties

(1) Subject to sub-sections (2) and (4) of this section, where an amount of tax or penalty has been assessed under sections 32 or 33 of this Act, the Commissioner may not proceed to enforce payment of the amount assessed until two months after the date of service of the notice of assessment.

(2) Where a person has made an objection to an assessment or part of an assessment in the manner provided in section 74 of this Act, the Commissioner may not enforce the payment of any amount in dispute under that assessment until the objection is resolved by the Commissioner.

(3) Nothing in this section shall stay any proceedings by the Commissioner or before a court for the recovery of –

(a) any amounts due under this Act that are not the subject of a dispute before the Commissioner; or

(b) any amounts due under this Act where the person has made an appeal to the Appellate Tribunal.

(4) Notwithstanding sub-section (1) of this section, where an amount of tax or penalty has been assessed by the Commissioner and he is satisfied that there is a likelihood that it may not be possible

to recover the amount assessed if collection is delayed, the Commissioner may specify a date in the notice of assessment as the date on which collection of the amounts due and payable may commence which is earlier than two months after the date of service of the notice of assessment.

36 Manner of payment of tax, penalties and interest

Every person liable to pay tax, interest, penalty or any other amount under this Act shall pay the amount to the Government Treasury of Delhi, the Reserve Bank of India or a branch in Delhi of a bank prescribed under the rules, or at such other place or in such other manner as may be prescribed.

³**[36A Tax deducted at source**

⁴[(1) Any person, not being an individual or a Hindu undivided family, who is responsible for making payment to any dealer (hereinafter in this section referred to as “the contractor”) for discharge of any liability on account of valuable consideration payable for the transfer of property in goods (whether as goods or in some other form) in pursuance of a works contract, for value exceeding twenty thousand rupees or such amount as may, by order in writing published in official Gazette, be notified by the Commissioner from time to time, shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by any other mode, whichever is earlier, deduct tax thereon at the rate of two percent.

(1A) Any contractor responsible for making any payment or discharge of any liability to any sub-contractor, in pursuance of a contract with the sub-contractor, for value exceeding twenty thousand rupees or such amount as may, by order in writing and published in the official Gazette, be notified by the Commissioner from time to time, for the transfer of property in goods (whether as goods or in some other form) involved in the execution, whether wholly or in part, of the works contract undertaken by the contractor, shall, at the time of such payment or discharge, in cash or by cheque or draft or any other mode, deduct an amount equal to two percent of such payment or discharge, purporting to be part of full amount of the tax payable under this Act.]

(2) Where, on an application being made by the contractor in this behalf, the Commissioner is satisfied that any works contract involves both transfer of property in goods and labour and service, or involves only labour and service and accordingly, justifies deduction of tax on a part of the sum in respect of the works contract or, as the case may be, justifies no deduction of tax, he shall, after giving the contractor a reasonable opportunity of being heard, grant him such certificate and for such period as may be appropriate:

PROVIDED that nothing in the said certificate shall affect liability of the contractor to pay tax under this Act.

(3) Where any such certificate is granted, the person responsible for making payment under sub-section (1) shall, until such certificate is cancelled by the Commissioner, deduct tax at the rate specified in such certificate or deduct no tax, as the case may be.

(4) The amount deducted under this section shall be deposited into the appropriate Government treasury by the person making such deduction ⁵[before the expiry of fifteen days] following the month in which such deduction is made in the manner as may be prescribed.

(5) The person making such deduction under this section shall, at the time of payment or discharge, furnish to the contractor from whose bills or invoices such deduction is made, a

³ Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

⁴ Substituted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

⁵ Substituted for the words “before the expiry of twenty eight days” vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

certificate as may be prescribed in respect of the amount deducted, the rate at which it has been deducted and the details of deposit into the Government treasury.

⁶[(5A) If any person referred to in sub-section (5) fails to furnish to the contractor the certificate of tax deduction at source within seven days of making payment or discharge, the person shall be liable to pay, by way of penalty, a sum of one hundred rupees per day from the day of making payment to the contractor or discharge until the failure is rectified:

PROVIDED that the amount of penalty payable under this sub-section shall not exceed twenty thousand rupees.]

(6) Any deduction made in accordance with the provisions of this section and credited into the appropriate Government treasury shall be treated as payment of tax on behalf of the person from whose bills or invoices the deduction has been made, and he shall claim the adjustment towards the payment of output tax of the amount so deducted in his return for the tax period in which certificate of such deduction was issued to him.

(7) A dealer claiming adjustment in his tax return of the amount deducted under this section shall preserve the certificate issued to him for a period of seven years and shall produce the same to the Commissioner on demand.

(8) If any person as is referred to in this section fails to make the deduction or, after deducting fails to deposit the amount so deducted as required in this section, the Commissioner may, by order in writing, direct that such person shall pay, by way of penalty, a sum not exceeding twice the amount deductible under this section besides tax deductible but not so deducted and, if deducted, not so deposited into the appropriate Government treasury.

(9) Without prejudice to the provisions of sub-section (8), if any person fails to make deduction or, after deducting, fails to deposit the amount so deducted, he shall be liable to pay simple interest at the annual rate to be notified by the Government on the amount deductible under this section but not so deducted, and if deducted, not so deposited from the date on which such amount was deductible to the date on which such amount is actually deposited into the appropriate Government treasury.

(10) Where the amount has not been deposited after deduction such amount together with interest and penalty referred to in sub-section (8) and sub-section (9) shall be a charge upon all the assets of the person concerned and recoverable as arrears of land revenue.

(11) Every person responsible for making deduction of tax under this section shall apply to the Commissioner for a Tax Deduction Account Number within the prescribed time and in the prescribed form and shall also furnish a return in the prescribed form within the prescribed period:

PROVIDED that, unless intimated otherwise by the Commissioner, every person having obtained Tax Deduction Account Number under the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) shall be deemed to have obtained a Tax Deduction Account Number under this Act and shall use the same Tax Deduction Account Number under this Act.

(12) Any person who fails to comply with the requirement under sub-section (11) shall be liable to pay, by way of penalty, a sum of two hundred rupees per day from the day on which requirement arose until the failure is rectified:

PROVIDED that the amount of penalty payable under this sub-section shall not exceed twenty thousand rupees.

Explanation. - Nothing contained in this section shall apply to works contract executed in the course of inter-state trade or commerce or outside the state, or in the course of import into or

⁶ Inserted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

export out of India.]

37 Order of application of payments

Where a person owes to the Commissioner tax, interest, or penalty and the person pays to the Commissioner or the Commissioner recovers some but not all of the amounts owed by the person, the amounts shall be treated as reducing the person's obligations to pay –

- (a) interest, penalty and tax owed under this Act; and
- (b) interest, penalty and tax owed under the Central Sales Tax Act, 1956 (74 of 1956);
in the above order.

38 Refunds

(1) Subject to the other provisions of this section and the rules, the Commissioner shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him.

(2) Before making any refund, the Commissioner shall first apply such excess towards the recovery of any other amount due under this Act, or under the CST Act, 1956 (74 of 1956).

(3) Subject to ⁷[sub-section (4) and sub-section (5)] of this section, any amount remaining after the application referred to in sub-section (2) of this section shall be at the election of the dealer, either –

⁸[(a) refunded to the person, –

(i) within one month after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is one month;

(ii) within two months after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is a quarter; or]

(b) carried forward to the next tax period as a tax credit in that period.

(4) Where the Commissioner has issued a notice to the person under section 58 of this Act advising him that an audit, investigation or inquiry into his business affairs will be undertaken ⁹[or sought additional information under section 59 of this Act,] the amount shall be carried forward to the next tax period as a tax credit in that period

(5) The Commissioner may, as a condition of the payment of a refund, demand security from the person pursuant to the powers conferred in section 25 of this Act ¹⁰[within fifteen days from the date on which the return was furnished or claim for the refund was made.]

¹¹[(6) The Commissioner shall grant refund within fifteen days from the date the dealer furnishes the security to his satisfaction under sub-section (5).

¹²[(7) For calculating the period prescribed in clause (a) of sub- section (3), the time taken to -

- (a) furnish the security under sub-section (5) to the satisfaction of the Commissioner; or
- (b) furnish the additional information sought under section 59; or
- (c) furnish returns under section 26 and section 27,
shall be excluded.]]

⁷ Substituted for the word and figures “sub-section (4)” vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

⁸ Substituted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

⁹ Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

¹⁰ Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

¹¹ Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

¹² Substituted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

- (8) Notwithstanding anything contained in this section, where –
- (a) a registered dealer has sold goods to an unregistered person; and
 - (b) the price charged for the goods includes an amount of tax payable under this Act;
 - (c) the dealer is seeking the refund of this amount or to apply this amount under clause (b) of sub-section (3) of this section;

no amount shall be refunded to the dealer or may be applied by the dealer under clause (b) of sub-section (3) of this section unless the Commissioner is satisfied that the dealer has refunded the amount to the purchaser.

- (9) Where –
- (a) a registered dealer has sold goods to another registered dealer; and
 - (b) the price charged for the goods expressly includes an amount of tax payable under this Act,

the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section and the Commissioner may reassess the buyer to deny the amount of the corresponding tax credit claimed by such buyer, whether or not the seller refunds the amount to the buyer.

(10) Where a registered dealer sells goods and the price charged for the goods is expressed not to include an amount of tax payable under this Act the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section without the seller being required to refund an amount to the purchaser.

¹³[(11) Notwithstanding anything contained to the contrary in sub-section (3) of this section, no refund shall be allowed to a dealer who has not filed any return due under this Act.]

39 Power to withhold refund in certain cases

(1) Where a person is entitled to a refund and any proceeding under this Act, including an audit under section 58 of this Act, is pending against him, and the Commissioner is of the opinion that payment of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may for reasons to be recorded in writing, either obtain a security equal to the amount to be refunded to the person or withhold the refund till such time the proceeding or the audit has been concluded.

(2) Where a refund is withheld under sub-section (1) of this section, the person shall be entitled to interest as provided under sub-section (1) of section 42 of this Act if as a result of the appeal or further proceeding, or any other proceeding he becomes entitled to the refund.

40 Collection of tax only by registered dealers

(1) No person who is not a registered dealer shall collect in respect of any sale of goods by him in Delhi any amount by way of tax under this Act and no registered dealer shall make any such collection except in accordance with this Act and the rules made thereunder and at the rates specified under this Act.

(2) Tax collected by a person who is not a registered dealer shall not be refunded and shall stand forfeited.

¹³ Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

¹⁴**[40A Agreement to defeat the intention and application of this Act to be void**

(1) If the Commissioner is satisfied that an arrangement has been entered into between two or more persons or dealers to defeat the application or purposes of this Act or any provision of this Act, then, the Commissioner may, by order, declare the arrangement to be null and void as regard the application and purposes of this Act and may, by the said order, provide for the increase or decrease in the amount of tax payable by any person or dealer who is affected by the arrangement, whether or not, such dealer or person is a party to the arrangement, in such manner as the Commissioner considers appropriate so as to counteract any tax advantage obtained by that dealer from or under the arrangement.

(2) For the purposes of this section -

(a) “arrangement” includes any contract, agreement, plan or understanding, whether enforceable in law or not, and all steps and transactions by which the arrangement is sought to be carried into effect;

(b) “tax advantage” includes, -

- (i) any reduction in the liability of any dealer to pay tax,
- (ii) any increase in the entitlement of any dealer to claim input tax credit or refund,
- (iii) any reduction in the sale price or purchase price receivable or payable by any dealer.]

41 Refund of tax for embassies, officials, international and public organizations

(1) The bodies listed in the Sixth Schedule shall be entitled to claim a refund of tax paid on goods purchased in Delhi, subject to such restrictions and conditions as may be prescribed.

(2) Any person entitled to a refund under sub-section (1) of this section may apply to the Commissioner in the manner and within the time prescribed.

42 Interest

(1) A person entitled to a refund under this Act, shall be entitled to receive, in addition to the refund, simple interest at the annual rate notified by the Government from time to time, computed on a daily basis from the later of –

- (a) the date that the refund was due to be paid to the person; or
- (b) the date that the overpaid amount was paid by the person, until the date on which the refund is given.

PROVIDED that the interest shall be calculated on the amount of refund due after deducting therefrom any tax, interest, penalty or any other dues under this Act, or under the Central Sales Tax Act, 1956 (74 of 1956):

PROVIDED FURTHER that if the amount of such refund is enhanced or reduced, as the case may be, such interest shall be enhanced or reduced accordingly.

Explanation.- If the delay in granting the refund is attributable to the said person, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which the interest is payable.

(2) When a person is in default in making the payment of any tax, penalty or other amount due under this Act, he shall, in addition to the amount assessed, be liable to pay simple interest on such amount at the annual rate notified by the Government from time to time, computed on a daily basis, from the date of such default for so long as he continues to make default in the payment of the said amount.

(3) Where the amount of tax including any penalty due is wholly reduced, the amount of

¹⁴ Inserted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

interest, if any, paid shall be refunded, or if such amount is varied, the interest due shall be calculated accordingly.

(4) Where the collection of any amount is stayed by the order of the Appellate Tribunal or any court or any other authority and the order is subsequently vacated, interest shall be payable for any period during which such order remained in operation.

(5) The interest payable by a person under this Act may be collected as tax due under this Act and shall be due and payable once the obligation to pay interest has arisen.