

CHAPTER XIII

Penalties and Offences

86 Penalties

(1) In this section “tax deficiency” means the difference between the tax properly payable by the person in accordance with the provisions of this Act and the amount of tax paid by the person in respect of a tax period.

(2) The Government may, from time to time, if it deems it necessary, vary the amount of any penalty due under this section by a notification to that effect in the official Gazette:

PROVIDED that any penalty which is increased under this section shall have effect only for offences or failures occurring after the date of such notification;

PROVIDED FURTHER that the penalty imposed under this section can be remitted where a person is able to prove existence of a reasonable cause for the act or omission giving rise to penalty during objection proceedings under section 74 of this Act.

(3) Where two or more penalties arise under this Act in respect of the same conduct of a person, the person shall be liable to pay only the greater penalty.

¹[(4) Where a person who is required to be registered under this Act has failed to apply for registration within one month from the day on which the requirement arose, the person shall be liable to pay, by way of penalty, an amount equal to one thousand rupees per day from the day immediately following the expiry of the said period until the person makes an application for registration in the prescribed form, containing such particulars and information and accompanied by such fee, security and other documents as may be prescribed:

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

(5) If, a registered dealer fails to comply with the provisions of sub-section (1) of section 21 of this Act, the person shall be liable to pay, by way of penalty, a sum of one hundred rupees per day of default subject to a maximum of five thousand rupees.

(6) If a registered dealer –

(a) fails to comply with the provisions of sub-section (2) of section 22 of this Act; or

(b) fails to surrender his certificate of registration as provided in sub-section (7) of section 22 of this Act;

the registered dealer shall be liable to pay, by way of penalty, a sum equal to one hundred rupees for every day of default subject to a maximum of five thousand rupees.

(7) If any person falsely represents that he is registered as a dealer under this Act, he shall be liable to a penalty equal to the amount of tax wrongly collected or one lakh rupees, whichever is the greater.

(8) Where a person –

(a) has applied for registration under sub-section (4) of section 18 of this Act;

(b) has been registered; and

either –

(i) has failed to undertake activities which would make the person a dealer within

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

the period specified in his application; or

(ii) has failed to comply with any of the restrictions or conditions subject to which such registration was granted,

the person shall be liable to pay a penalty of ten thousand rupees.

²[(9) If a person required to furnish a return under Chapter V of this Act –

(a) fails to furnish any return by the due date; or

(b) fails to furnish with a return any other document that is required to be furnished with the return; or

(c) being required to revise a return already furnished, fails to furnish the revised return by the due date;

the person shall be liable to pay, by way of penalty, a sum of one hundred rupees per day from the day immediately following the due date until the failure is rectified:

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

(10) Any person who –

(a) furnishes a return under this Act which is false, misleading or deceptive in a material particular; or

(b) omits from a return furnished under this Act any matter or thing without which the return is false, misleading or deceptive in a material particular;

shall be liable to pay, by way of penalty, a sum of ten thousand rupees or the amount of the tax deficiency, whichever is the greater.

(11) Any dealer who –

(a) has claimed tax credit under section 14 of this Act to which he is not entitled; or

(b) has claimed a greater tax credit under section 14 than is allowed;

shall be liable to pay, by way of penalty, an amount equal to the amount of tax credit so claimed or ten thousand rupees, whichever is the greater.

(12) Where a tax deficiency arises in relation to a person, the person shall be liable to pay, by way of penalty, a sum equal to one per cent of the tax deficiency per week or a sum equal to rupees one hundred per week, whichever is higher, for the period of default.

(13) Where a person is required under this Act to –

(a) prepare records or accounts; or

(b) prepare records or accounts in a prescribed manner; or

(c) retain records or accounts;

and the person –

(i) fails to prepare the required records and accounts; or

(ii) fails to prepare records and accounts in the prescribed manner; or

(iii) fails to retain the records and accounts for the prescribed period;

the person shall be liable to pay, by way of penalty, a sum of fifty thousand rupees or twenty per cent of the tax deficiency, if any, whichever is greater.

(14) Any person who fails to comply with the requirement under sub-section (2) or sub-section (3) of section 59 of this Act shall be liable to pay, by way of penalty, a sum of fifty

² Substituted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

thousand rupees.

(15) Where a person who is required to prepare records and accounts under this Act, prepares records and accounts in a manner that is false, misleading or deceptive, the person shall be liable to pay, by way of penalty, a sum of one lakh rupees or the amount of the tax deficiency, if any, whichever is greater.

(16) Where a person –

(a) has issued a tax invoice or retail invoice with incomplete or incorrect particulars; or

(b) having issued a tax invoice or retail invoice, has failed to account it correctly in his books of account;

the person shall be liable to pay, by way of penalty, an amount of five thousand rupees or twenty per cent of the tax deficiency, if any, whichever is greater.

(17) Where a person who is not authorised under this Act to issue a tax invoice has issued a tax invoice for a sale, the person shall be liable to pay, by way of penalty, an amount of one lakh rupees or the tax deficiency, if any, whichever is greater.

(18) If any dealer liable to have his accounts audited under section 49 of this Act fails to furnish a true copy of such report within the prescribed time, the person shall be liable to pay, by way of penalty, a sum of ten thousand rupees.

(19) Where goods are being carried by a transporter without the documents or without proper and genuine documents or without being properly accounted for in the documents referred to in sub-section (2) of section 61 of this Act, the transporter shall be liable to a penalty equal to the amount of tax payable on such goods.

(20) Any person who –

(a) makes a statement to the Commissioner which is false, misleading or deceptive in a material particular; or

(b) omits from a statement made to the Commissioner any matter or thing without which the statement is false, misleading or deceptive in a material particular;

the person shall be liable to pay, by way of penalty, a sum of fifty thousand rupees, or the amount of the tax deficiency, whichever is greater.

Explanation.- The liability to pay a penalty and the amount of the penalty may be the subject of an objection under section 74 of this Act.

³[(21) Where a casual trader who is required to be registered under this Act has failed to apply for registration within stipulated period, the casual trader shall be liable to pay, by way of penalty, an amount equal to five thousand rupees per day, from the day immediately following the expiry of the due date until the person makes an application for registration under this Act :

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

(22) If a casual trader required to furnish a return under this Act–

(a) fails to furnish any return by the due date; or

(b) fails to furnish with a return any other document that is required to be furnished with the return;

the person shall be liable to pay, by way of penalty, a sum of one thousand rupees per day from the day immediately following the due date until the failure is rectified:

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

³ Inserted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

(23) Where any person who, whether as principal, agent or in any other capacity organizes any exhibition-cum-sale in Delhi and fails –

(a) to furnish any information in respect of the goods brought or kept in stock or sold by any participant before or during or after the exhibition-cum-sale; or

(b) to ensure that all such participants in the exhibition-cum-sale have obtained registration under this Act and paid due tax; or

(c) to permit inspection of the business premises or goods or account and records of the participants; or

(d) to permit inspection of the accounts and records of the organizer in respect of the exhibition-cum-sale;

such person shall be liable to pay, by way of penalty, a sum equal to fifty thousand rupees or a sum equal to the amount of tax payable on such goods if such goods were sold in Delhi, whichever is greater.]

87 Automatic mitigation and increase of penalties

(1) Where as a result of any proceedings the amount of tax with respect to which a penalty was levied has been wholly reduced, the penalty levied shall be cancelled and if the penalty has been paid, it shall be refunded.

(2) If –

(a) a person is liable to pay a penalty under ⁴[***] sub-section (12) of section 86 of this Act; and

(b) the person voluntarily discloses to the Commissioner in writing the existence of the tax deficiency before the Commissioner informs the person that an audit of the person's tax obligations is to be carried out;

the amount of the penalty otherwise due shall be reduced by eighty per cent of the penalty.

(3) If –

(a) a person is liable to pay a penalty under ⁵[***] sub-section (12) of section 86 of this Act; and

(b) the person voluntarily discloses to the Commissioner in writing the existence of the tax deficiency after the Commissioner informs the person that an audit of the person's tax obligations is to be carried out;

the amount of the penalty due shall be reduced by fifty per cent of the penalty.

(4) If –

(a) a person is liable to pay a penalty under ⁶[***] sub-section (12) of section 86 of this Act;

(b) the tax deficiency arose because the person treated this Act as applying to the person in a particular way; and

(c) the decision to adopt that treatment was made by the person relying on a determination given to the person by the Commissioner under section 84 of this Act or a ruling issued by the Commissioner under section 85 of this Act;

the amount of the penalty otherwise due shall be reduced to nil.

⁴ Omitted for the words, brackets and letters "clause (b), (c) or (d) of" vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

⁵ Omitted for the words, brackets and letters "clause (b), (c) or (d) of" vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

⁶ Omitted for the words, brackets and letters "clause (b), (c) or (d) of" vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

- (5) Where –
- (a) penalty under this Act has been assessed;
 - (b) the penalty has not been remitted in full after objection; and
 - (c) the person is subsequently assessed to a further penalty in respect of the same or a substantially similar failure occurring on another occasion (in this section called the “subsequent offence”);
- the penalty otherwise due under this Act shall be increased by –
- (i) in the case of the first subsequent offence, fifty per cent of the specified penalty; and
 - (ii) in the case of the second and any further subsequent offence, one hundred per cent of the specified penalty.

88 Relationship to assessment and impact on criminal penalties

- (1) The penalties specified under this Act are owed notwithstanding that no assessment of tax owed under this Act has been made.
- (2) Any penalty imposed under this Act shall be without prejudice to any prosecution for any offence under this Chapter.

89 Offences and criminal penalties

- (1) Whoever –
- (a) not being a registered dealer, falsely represents that he is or was a registered dealer at the time when he sells or buys goods;
 - (b) knowingly keeps false account or does not keep the account of the value of the goods bought or sold by him in contravention of section 48; or
 - (c) issues to any person a false invoice, bill, cash-memorandum, voucher or other document which he knows or has reason to believe to be false;
- shall, on conviction, be punished with rigorous imprisonment for a term which may extend to six months, and with a fine.
- (2) Whoever knowingly –
- (a) furnishes a false return;
 - (b) produces before the Commissioner, false bill, cash-memorandum, voucher, declaration, certificate, tax invoice or other document for claiming deduction on tax credit; or
 - (c) produces false accounts, registers or documents or knowingly furnishes false information;
- shall –
- (i) in case where the amount of tax which could have been evaded if the false return, bill, cash-memorandum, voucher, declaration, certificate, tax invoice or other document for claiming deduction on tax credit, accounts, registers or documents or false information, as the case may be, had been accepted as true exceeds fifty thousand rupees, on conviction, be punished with rigorous imprisonment for a term which may extend to six months ; and
 - (ii) in any other case, with rigorous imprisonment for a term which may extend to six months, and with a fine.
- (3) Whoever, willfully attempts, in any manner whatsoever, to evade payment of tax, penalty or interest or all of them under this Act, shall, on conviction, be punished –
- (a) in any case where the amount involved exceeds fifty thousand rupees during the period of a year, with rigorous imprisonment for a term which may extend to six months, and with a fine; and
 - (b) in any other case, with rigorous imprisonment for a term which may extend to three months and with a fine.
- (4) Whoever –

- (a) carries on business as a dealer without being registered in willful contravention of sub-section (1) of section 18 of this Act;
- (b) fails without sufficient cause to furnish any information required under section 21 of this Act;
- (c) fails to surrender his certificate of registration as provided in sub-section (7) of section 22 of this Act;
- (d) fails without sufficient cause to furnish any returns as required under section 27 of this Act by the date or in the manner prescribed;
- (e) without reasonable cause, contravenes any of the provisions of section 40 of this Act;
- (f) without sufficient cause fails to issue invoice as required under section 50 of this Act;
- (g) fails without sufficient cause, when directed so to do under section 48 of this Act to keep any accounts or record, in accordance with the directions;
- (h) fails without sufficient cause, to comply with any requirements made of him under section 59 of this Act, or obstructs any officer making inspection or search or seizure under sections 60 and 61 of this Act;
- (i) obstructs or prevents any officer performing any function under Chapter X of this Act;
- (j) being owner in charge of a goods vehicle fails, neglects or refuses to comply with any of the requirements contained in section 61 of this Act; or
- (k) interferes with or obstructs the Commissioner or any officer exercising any other power conferred under this Act;

shall, on conviction, be punished with imprisonment for a term which may extend to six months, and with a fine.

(5) Whoever aids or abets any person in the commission of any act specified in sub-sections (1) to (3) of this section shall, on conviction, be punished with rigorous imprisonment which may extend to six months, and with a fine.

(6) Whoever commits any of the acts specified in sub-sections (1) to (5) of this section and the offence is a continuing one under any of the provisions of these sub-sections, shall, on conviction, be punished with a fine of not less than one hundred rupees per day during the period of the continuance of the offence, in addition to the punishments provided under this section.

(7) Notwithstanding anything contained in sub-sections (1) to (5) of this section, no person shall be proceeded under these sub-sections if the total amount involved is less than two hundred rupees during the period of a year.

(8) Where a dealer is accused of an offence specified in sub-sections (1), (2) or (3) or in clauses (a), (b), (c), (d), (e), (f), (g), (h) and (i) of sub-section (4), or sub section (6) of this section the person deemed to be the manager of the business of such dealer under section 95 shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission thereof.

90 Offences by companies, etc.

(1) Where an offence under this Act or the rules has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) of this section, where an offence under this Act has been committed by a company and it is proved that the offence has been

committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purpose of this section –

(a) “company” means a body corporate, and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.

(3) Where an offence under this Act has been committed by a Hindu undivided family, the Karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this sub-section shall render the Karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence:

PROVIDED FURTHER that where an offence under this Act has been committed by a Hindu undivided family and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any adult member of the Hindu undivided family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

91 Cognizance of offences

(1) No court shall take cognizance of any offence under this Act or rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Metropolitan Magistrate shall try any such offence.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offences punishable under this Act or the rules made thereunder shall be cognizable and bailable.

92 Investigation of offences

(1) Subject to such conditions as may be prescribed, the Commissioner may authorise either generally or in respect of a particular case or class of cases any officer or person subordinate to him to investigate all or any of the offences punishable under this Act.

(2) Every officer or person so authorised shall, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) upon an officer in charge of a police station for the investigation of a cognizable offence.

93 Compounding of offences

(1) The Commissioner may, before the institution of proceedings for any offence punishable under sub-section (4) of section 89 of this Act or under any rules made under this Act, accept from any person charged with such offence by way of composition of offence, a sum not exceeding fifty thousand rupees or a sum not exceeding three times the amount of tax which would thereby have been avoided, whichever is higher.

(2) On payment of such sum as may be determined by the Commissioner under sub-section (1) of this section, no further proceedings shall be taken against such person in respect of the same offence.

94 Chapter XXXVI of the Code of Criminal Procedure, 1973, not to apply to certain offences

Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to –

- (a) any offence punishable under this Act; or
- (b) any other offence which under the provisions of that Code may be tried along with such offence; and

every offence referred to in clause (a) or clause (b) above may be taken cognizance of by the court having jurisdiction under this Act as if the provisions of that Chapter were not enacted.