

CHAPTER - V

ASSESSMENT, RECOVERY OF TAX AND PENALTY

20. Filing of returns. - (1) Every registered dealer and every dealer liable to be registered under this Act shall submit to the assessing authority such return or returns before such dates and in such manner and accompanied by such documents as may be prescribed.

(2) In case of a dealer having more than one place of business, the aggregate turnover of all such places of business shall, subject to the provisions of sub-section (3), be taken as the turnover of the business for the purposes of this Act.

(3) The Commissioner may, on application by the dealer, treat each of such places of business as a separate unit for the purposes of levy, assessment and collection of tax, and thereupon all the provisions of this Act regarding registration, filing of returns, assessment and collection of tax shall apply, as if each of such places of business were a separate unit.

(4) Where any order is passed by the Commissioner under sub-section (3), the turnover of each of such places of business shall be liable to tax irrespective of such turnover being below the minimum turnover mentioned in section 6 provided that the total turnover in respect of all such places of business together shall not be less than the minimum turnover mentioned in section 6.

21. Self assessment: - Where the return submitted under sub-section (1) of section 20 is in the prescribed manner and accompanied by the prescribed documents, the assessment relating to the return period shall, subject to the provisions of sections 22, 24 and section 25, be deemed to have been completed on the receipt of such return.

22. Assessment in case of non-filing of return and filing of defective return: - (1) Where the return submitted under sub-

section (1) of section 20 is not in the prescribed manner or not accompanied by the prescribed documents or with incorrect particulars, the assessing authority shall, after recording its reasons, reject the return with due notice to the dealer.

Provided that the payment of any tax declared as payable as per the return shall be provisionally accepted.

(2) A dealer whose return is rejected under sub-section (1) may, file a fresh return curing the defects in such manner and with in such time as may be prescribed file a fresh return curing the defects in such manner and accompanied by such documents as provided under sub-section (1) of section 20 together with proof of payment of interest on the tax payable at the rates provided under section 31 for the period from the due date of filing of return till the date of filing of such fresh return. On the receipt of such return by the assessing authority, the assessment for the return period shall, subject to the provisions of section 24 and section 25, be deemed to have been completed.

(3) If any dealer fails to submit any return as provided under sub-section (1) of section 20 or files incorrect return and fails to file a fresh return as provided under sub-section (2), the assessing authority shall estimate the turnover of the return period and complete the assessment to the best of its judgment.

(4) No assessment under subsection (3) of this section shall be completed without affording the dealer an opportunity of being heard.

(5) On receipt of the notice under sub-section (4), if the dealer files a return for the return period as provided under subsection (1) of section 20 and accompanied by proof of payment of tax payable and interest on this amount from the due date for filing of return till the date of filing of return at the rates specified in section 31 and double the amount of interest so due as penalty the assessing authority shall drop the proposal for assessment under sub-section (3) and the assessment for the return period shall be deemed to have been

completed on receipt of such return.

(6) Any assessment, levy and collection of tax under this Act shall be in such manner as may be prescribed.

(7) Notwithstanding anything contained in any other provision of this Act, no appeal shall lie against the assessment completed under subsection (3) of this section unless the dealer has paid the entire tax assessed.

Explanation: for the purposes of this section and section 21, a return shall be deemed to have been received as and when the assessing authority acknowledges the receipt of the return in such manner as may be prescribed.

23. Visit to dealer's premises and audit of accounts and other records by audit officers: -

(1) The Government or any authority or officer empowered by them in this behalf may designate any officer not below the rank of a Deputy Commissioner to conduct audit visit at the business place of any dealer and to audit any returns books of accounts, any other records or stock statements and goods relating to the business either by himself or through audit officers not below the rank of an assessing authority. The officer so designated and the audit officers shall follow the procedure as may be notified by Government.

(2) The audit officers shall have all the powers of an assessing authority.

(3) The designated Officer may, by an order in writing, authorize not less than two audit officers to visit the place of business of any dealer and audit any returns, books of accounts any other records, stock statements and goods relating to any return period'

(4) The audit officer authorized in this behalf may, with due intimation to the dealer, enter any place of business and require the dealer, his employee or any other person found there assisting the dealer in carrying on business to make

available all or any of the books of accounts or other records relating to any return period for audit and require them to prove the correctness of the stock statement and goods and thereupon the dealer or his representative shall render necessary facilities to the audit officers to conduct the audit.

(5) The audit officers may inspect and verify all or any of the books of accounts and other records relating to any return period and require the dealer to furnish any information or statements relating to the business which he may deem necessary for checking the credibility or correctness of the returns.

(6) If any dealer or any other person who is required to make available any books of accounts or records for audit fails to do so without any reasonable cause or fails to prove the correctness of the stock statement, goods or the turnover or the input tax credit or the refund claimed, notwithstanding anything contained in section 11, 20, 21 and 22, —

(a) where the input tax credit or refund claimed in relation to the period covered by the audit is not proved, the claim shall be liable to be disallowed; or

(b) where the correctness of the stock statement or the turnover is not proved, the assessment for the period, the stock statement or turnover in relation to which has not been proved, shall be liable to be completed to the best of judgment, in such manner as may be prescribed.

24. Audit assessment:-(1) Notwithstanding anything contained in any other provision of this Act, if any dealer.

(a) is found on audit of his books of accounts other records or otherwise, to have submitted incorrect or incomplete return for any return period; or

(b) fails to make available any accounts or other records required by the audit officer for audit in the business place of the dealer or

(c) fails to prove the claim of input tax credit, special rebate or refund claimed, the audit officer may, at any time within two years from the last date of the year to which the return relates, after conducting such enquiry as he may deem necessary, reject the returns of such return periods and complete the assessments to the best of judgment.

Provided that no assessment under this section shall be completed without affording the dealer an opportunity of being heard.

Provided further that where the defect in the return is only the application of incorrect rate of tax, mistake in the claim of input tax credit, special rebate or refund, no assessment under this sub-section shall be made where the dealer, at his option, files revised return and pays the balance tax along with interest under sub-section (5) of section 31 and thrice the interest as settlement fee:

Provided also that the time limit mentioned in this sub-section and the preceding proviso shall not apply to a dealer where the claim of input tax credit, special rebate or refund made by him was on the basis of any bogus or forged document or where the claim was otherwise fraudulent

(2) Notwithstanding anything contained in sub-section (1) the officer designated under sub-section (1) of Section 23 may, on his own motion or on a reference being made to him by the assessing authority or on an application of an assessee, call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary so to do, he may issue such directions as he thinks fit for the guidance of the assessing authority to enable him to complete the assessment, and such directions shall be binding on the assessing authority.

Provided that no directions, which are prejudicial to the assessee, shall be issued before an opportunity is given to the assessee of being heard.

25. Assessment of escaped turnover: - (1) Where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax in any year or has been under- assessed or has been assessed at a rate lower than the rate at which it is assessable or any deduction has been wrongly made there from, or where any input tax or special rebate credit has been wrongly availed of, the assessing authority may, at any time within five years from the last date of the year to which the return relates, proceed to determine, to the best of its judgment, the turnover which has escaped assessment to tax or has been under assessed or has been assessed at a rate lower than the rate at which it is assessable or the deduction in respect of which has been wrongly made or input tax or special rebate credit that has been wrongly availed of and assess the tax payable on such turnover or disallow the input tax or special rebate credit wrongly availed of, after issuing a notice on the dealer and after making such enquiry as it may consider necessary:

Provided that before making an assessment under this sub-section the dealer shall be given a reasonable opportunity of being heard.

Provided further that where the escapement is due to the application of incorrect rate of tax, no assessment under this sub-section shall be made where the dealer files revised return and pays the tax which has escaped assessment along with interest under sub-section (5) of section 31 and thrice the interest as settlement fee.

(2) The time limit mentioned in sub-section (1) shall not apply where the turnover which escaped assessment relates to any business done by such dealer as benamidar or through a benami or where it relates to a dealer, who being liable to get

himself registered under this Act and the rules made there under, has failed to do so or where the escaped turnover is on account of the dealer having claimed any input tax credit on the basis of any bogus or forged documents.

(3) In making an assessment under sub-section (1), the assessing authority may, if it is satisfied that the escape from assessment is due to willful non-disclosure of assessable turnover by the dealer, direct the dealer to pay, in addition to the tax assessed under sub-section (1), a penalty as provided in section 67:

Provided that no such penalty shall be imposed unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

Explanation: - For the purposes of this section, the burden of proving that the escape from assessment was not due to willful non-disclosure of assessable turnover by the dealer shall be on the dealer.

(4) The powers under sub-section (1) may be exercised by the assessing authority even though the order of assessment, if any, passed in the matter, has been the subject matter of an appeal or revision.

(5) In computing the period of limitation for the purposes of this section, the time during which the proceedings for assessment remained stayed under the orders of a Civil court or other competent authority shall be excluded.

26. Protective assessment. - Notwithstanding anything to the contrary contained in any judgment, decree, order, direction or decision of any Court, Tribunal or other Authority, where the assessing authority has reason to believe that any person is, or was carrying on business in the name of, or in association with any other person, either directly, or indirectly, whether as agent, employee, manager, power of attorney

holder, guarantor or in any other capacity, such person and the person in whose name the registration certificate, if any, is taken, shall jointly and severally, be liable for the payment of the tax, penalty or other amount due under this Act which shall be assessed, levied and recovered from all or any of such person or persons, as if such person or persons are dealers:

Provided that before taking action under this section, the persons concerned shall be given a reasonable opportunity of being heard.

27. Assessment of legal representatives. - Where a dealer dies, his executor, administrator, or other legal representative shall be deemed to be the dealer for the purposes of this Act, and the provisions of this Act shall apply to him in respect of the business of the said deceased dealer, provided that, in respect of any tax, fee or other amount assessed as payable by any such dealer or levied on him or any tax, fee or other amount which would have been payable by him under this Act if he had not died, the executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hands.

28. Liability of firms. - (1) Where any firm is liable to pay any tax, fee or other amount under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.

(2) Where a partner of a firm liable to pay any tax, fee or other amount under this Act retires, he shall, notwithstanding any contract to the contrary, be liable to pay the tax, fee or other amount remaining unpaid at the time of his retirement and any tax, fee or other amount due up to the date of retirement, though unassessed.

29. Firm dissolved or business discontinued. - (1) Where any business carried on by a firm is discontinued or where a firm is dissolved, the assessing authority shall make an assessment of the taxable turnover of, and determine the tax

payable by, the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to levy of penalty or any other amount payable under any provisions of this Act, shall apply, so far as may be, to such assessment and determination.

(2) Without prejudice to the generality of sub-section (1), if the assessing authority in the course of any proceedings under section 75 in respect of any such firm as is referred to in that sub-section is satisfied that the firm was guilty of willful non-disclosure of assessable turnover, it may direct payment of a penalty in accordance with the provisions of sub-section (2) of that section.

(3) Every person who was, at the time of such discontinuance or dissolution a partner of the firm and the legal representative of any such person who is deceased, shall be jointly and severally liable, for the amount of tax, penalty or other amount payable, and all the provisions of this Act shall apply, so far as may be, to any such assessment or direction for payment of penalty or other amount.

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of any year have commenced, the proceedings may be continued against the persons referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in this section shall affect the provisions of section 27.

30. Collection of tax by dealers. - (1) A registered dealer may, subject to the provisions of sub-sections (2) and (3), collect tax at the rates specified under section 6 on the sale of any goods, from the person to whom he sells the goods and pay it over to Government in such manner as may be prescribed.

(2) Dealers registered under this Act, except those dealers paying presumptive tax under sub-section (5) of section 6 and those paying compounded tax under clause (a) to clause (d) of Section 8, alone shall be eligible to collect any sum by way of, or purporting to be by way of tax under this Act.

(3) No registered dealer shall collect any sum purporting to be by way of tax: -

(a) on the sale of any goods:

(i) which is included in the First Schedule or,

(ii) at a rate exceeding the rate at which he is liable to pay tax; or

(b) in respect of the purchase of any goods, whether or not he is liable to pay tax on such purchase.

Provided that nothing contained in this sub-section shall apply to the collection of an amount by a registered dealer towards the amount of tax already paid under this Act in respect of goods, the sale or purchase price of which is controlled by any law in force and the retail price fixed for such goods under such law is not inclusive of such tax:

Provided further that where the sale of any goods is exempted only at the point of sale by any dealer, such dealer may, notwithstanding anything contained in sub-section (1), at his option, collect tax in respect of the sale of such goods and there up on he shall be liable to pay tax in respect of such goods.

(4) Where a registered dealer has collected tax in respect of any goods in accordance with sub-section (1), he shall be liable to tax notwithstanding that his total turnover for the year is below the limit specified under sub-section (1) of section 6.

(5) Where any dealer has collected any tax under sub section (1) but has failed to pay the tax due under this Act for such sale to the Government, any person or persons responsible for

such collection on behalf of the dealer including a Director, Manager, Secretary or other officers of a company shall be jointly and severally liable for payment of such amounts to the Government forthwith as if it were a tax due from him.

Explanation. - For the purposes of this section:

- (a) "Company" means any body corporate and includes a firm or other association of individuals, or a Co-operative society; and
- (b) "Director" in relation to a firm, means partner in the firm.

31. Payment and recovery of tax. - (1) Every dealer liable to pay tax under this Act for any return period shall pay tax within such period, as may be prescribed.

(2) In the case of a dealer from whom any tax or other amount is demanded shall pay tax in such manner and in such installments, if any, and within such time, as may be specified in the notice of demand, not being less than fifteen days from the date of service of the notice:

Provided that the time limit of fifteen days for a notice under this sub-section shall not apply to casual traders.

(3) If default is made in payment under sub-section (2), the whole of the amount outstanding on the date of the default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or other amount under this Act:

(4) Any tax or any other amount due under this Act from a dealer or any other person may, without prejudice to any other mode of recovery, be recovered,

- (a) as if it were an arrear of land revenue:
- (b) on application to any Magistrate, by such Magistrate as if it were a fine imposed by him:

Provided that no proceedings for such recovery shall be taken or continued as long as such dealer or other person has, in regard to the payment of such tax or other amount, as the case may be complied with an order by any of the authorities to whom he has appealed or applied for revision, under the provisions of this Act.

(5) If the tax or any other amount assessed or due under this Act is not paid by any dealer or any other person within the time prescribed therefore in this Act or in any rule made there under and in other cases within the time specified therefore in the notice of demand, the dealer or the other person, shall pay simple interest at the rate of twelve percent per annum on the tax or other amount defaulted.

(6) Where any dealer has failed to include any turnover of his business in any return filed or where any turnover or tax has escaped assessment, interest under sub-section (5) shall accrue on the tax due on such turnover or tax with effect from such date on which the tax would have fallen due for payment, had the dealer included the turnover or tax in the return relating to the period to which such turnover relates.

(7) Where, as a result of any order in appeal or revision or in any other proceedings, the tax or any other amount due under this Act is finally settled, the interest leviable under sub-section (5) shall be on the amount as finally settled and the period during which the collection of tax or other amount is stayed by any Court or any other authority shall not be excluded in computing the period for calculating interest under the said sub-section.

(8) Where, as a result of any order in appeal or revision or any rectification under section 66 any dealer or other person is not liable to pay the tax or any other amount, the levy of interest for the non-payment of such tax or other amount shall be cancelled and if any amount of such interest has been collected, it shall be refunded to the dealer or other person as the case may be, in such manner as may be prescribed.

(9) Where, as a result of any order in appeal or revision or any rectification under section 66, any tax or any other amount due from any dealer or other persons has been reduced, the interest levied for the non-payment of such tax or other amount shall be proportionately reduced and if any amount of interest in excess of such reduced interest has been collected, such excess shall be refunded to the dealer or other person as the case may be.

(10) The provisions of the Kerala Taxation Laws (Continuation and Validation of Recovery Proceedings) Act 1967 (23 of 1967), shall apply for all proceedings in relation to the recovery of any amount due under this Act.

32. Deferment of tax payable by Industrial Units: -

(1) Where the Government had granted any exemption in respect of the tax payable by any industrial unit under the Kerala General Sales Tax Act, 1963 (15 of 1963) or, the Kerala Surcharge on Taxes Act, 1957 (11 of 1957) for any specified period under any notification issued under section 10 of the Kerala General Sales Tax Act, 1963 (15 of 1963) under the Industrial policy of the State, or where any application or other proceedings is pending on the date of commencement of this Act, such exemption granted or due to be granted shall have operation only till the day preceding the date of commencement of this Act:

Provided that the Government may, by notification, which may be subject to such conditions and restrictions as may be specified therein, order to defer the payment of the whole or any part of the tax payable by such industrial units under this Act, which shall not be more than the unavailed portion of the exemption to which such unit would have been eligible had the notification issued under the Kerala General Sales Tax Act, 1963 (15 of 1963) been in force on the date of commencement of this Act, and that the tax or taxes so deferred shall be repaid, after the expiry of the period for which such deferment

is granted, in such installments over a period of five years, in such manner as may be specified.

(2) Notwithstanding anything contained in this Act but subject to such conditions as the Government may, by general or special order specify, where in respect of an industrial unit deferment is granted under sub-section (1) and where liability equal to the amount of any such tax deferred has been created as a loan by Government, such tax deferred shall not attract interest under sub-section (5) of Section 31 during the period for which deferment is granted.

33. Special powers of Assistant Commissioners under Revenue Recovery Act. - (1) The Government may, by notification in the Gazette, appoint any Assistant Commissioner to exercise the functions of a Collector under the Kerala Revenue Recovery Act, 1968 (15 of 1968) for the recovery of arrears due under this Act.

(1) Notwithstanding anything contained in any other law for the time being in force, an officer appointed under sub-section (1) shall be deemed to be a Collector within the meaning of clause (c) of section 2 of the Kerala Revenue Recovery Act, 1968 (15 of 1968).

34. Recovery of penalty. - Penalty payable under this Act shall be deemed to be a tax under this Act for the purpose of collection and recovery and shall be recoverable without prejudice to the institution of any proceeding for prosecution for an offence under this Act.

35. Further mode of recovery. - (1) The assessing authority may, at any time or from time to time by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to the assessing authority) require any court or any officer of the Central Government or of the Government of any State or Union Territory or any other person (other than an individual) from whom money is due or may become due to the dealer or any court or any such officer or any other person (other than an individual) who holds or may subsequently hold money for or on account of the dealer, to pay to the assessing

authority, either forthwith if the money has become due or is so held or within the time specified in the notice (not being before the money becomes due or is held), so much of the money as is sufficient to pay the amount due by the dealer in respect of arrears of tax, fee or penalty or the whole of the money when it is equal to or less than the arrears of tax, fee or penalty.

(2) The assessing authority may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(3) Any court, officer or other person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the dealer and the receipt by the assessing authority shall constitute a good and sufficient discharge of the liability of such court, officer or other person to the extent of the amount referred to in the receipt.

(4) Any court or person other than an officer of the Government making any payment to the dealer after receipt of the notice referred to in this section shall be liable to the assessing authority to the extent of the payment made or to the extent of the liability of the dealer for the amount due under this Act, whichever is less.

(5) Where any court or person other than, an officer of the Government to which or to whom a notice under this section is sent objects to it on the ground that the sum demanded or any part thereof is not due by it or him to the dealer or that such court or person does not hold any money for or on account of the dealer, then nothing contained in this section shall be deemed to require such court or person to pay the sum demanded or any part thereof to the assessing authority.

(6) Any amount which a court or person other than any officer of the Government is required to pay the assessing

authority or for which it or he is liable to the assessing authority under this section shall, if it remains unpaid, be a charge on the properties of such court or person, as the case may be, and may be recovered as if it were an arrear of public revenue due on land.

Explanation: - For the purposes of this section, the amount due to a dealer or money held for or on account of a dealer by any court, officer or other person shall be computed after taking into account such claims if any, as may have fallen due for payment by such court, officer or other person, as the case may be, and as may be, lawfully subsisting.

36. Recovery of tax when business is transferred. - Where the ownership of the business of a dealer liable to pay tax or other amount is transferred, any tax or other amount payable under this Act in respect of such business and remaining unpaid at the time of the transfer and any tax or other amount due up to the date of transfer, though unassessed may, without prejudice to any action that may be taken for its recovery from the transferor, be recovered from the transferee as if he were the dealer liable to pay such tax or other amount:

Provided that the recovery from the transferee of the arrears of tax due for the period prior to the date of the transfer shall be limited to the value of the assets he obtained by transfer.

37. Certain transfers to be void. - Where, during the pendency of any proceedings under this Act or after the completion thereof, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of any of his assets in favour of any person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee under this Act.

38. Tax payable to be first charge on the property. - Notwithstanding anything to the contrary contained in any other law for the time being in force, any amount of tax,

penalty, interest and any other amount, If any, payable by a dealer or any another person under this Act, shall be the first charge on the property of the dealer, or such person.

39. Liability of Directors of a Private Company. - Where any tax or other amount recoverable under this Act from any private company, whether existing or wound up or under liquidation, cannot be recovered for any reason whatsoever, every person who was a director of such company at any time during the period for which the tax or other amount is due under this Act shall be jointly and severally liable for the payment of such tax or other amount unless he proves that the non-recovery cannot be attributed to any negligence, misfeasance or breach of duty on his part in relation to the affairs of the company.