

CHAPTER X

Audit, Investigation and Enforcement

58 Audit

(1) The Commissioner may serve on any person in the prescribed manner a notice informing him that an audit of his business affairs shall be performed and where applicable, that an assessment already concluded under this Act may be reopened.

Explanation.- A notice may be served notwithstanding the fact that the person may already have been assessed under sections 31, 32 or 33 of this Act.

(2) A notice served under sub-section (1) of this section may require the person on whom it is served, to appear on a date and place specified therein, which may be at his business premises or at a place specified in the notice, to either attend and produce or cause to be produced the books of accounts and all evidence on which the dealer relies in support of his returns (including tax invoices, if any), or to produce such evidence as is specified in the notice.

(3) The person on whom a notice is served under sub-section (1) shall provide all co-operation and reasonable assistance to the Commissioner as may be required to conduct the proceedings under this section at his business premises.

(4) The Commissioner shall, after considering the return, the evidence furnished with the returns, if any, the evidence acquired in the course of the audit, if any, or any information otherwise available to him, either –

(a) confirm the assessment under review; or

(b) serve a notice of the assessment or re-assessment of the amount of tax, interest and penalty if any pursuant to sections 32 and 33 of this Act.

(5) Any assessment pursuant to an audit of the person's business affairs shall be without prejudice to prosecution for any offence under this Act.

¹[58A Special Audit

(1) If, at any stage of the proceeding under this Act, the Commissioner, having regard to the nature and complexity of the business of a dealer and the interest of the revenue, is of the opinion that it is necessary so to do, he may direct the dealer by a notice in writing to get his records including books of accounts, examined and audited by an accountant or a panel of accountants or any other professional or panel of professionals nominated by the Commissioner in this behalf and to furnish a report of such examination and audit in the format that he may specify, duly signed and verified by such accountant or panel of accountants or professional or panel of professionals and setting forth such particulars as may be specified.

(2) The provision of sub-section (1) shall have effect notwithstanding that the accounts of the dealer have been audited under any other provision of this Act or any other law for the time being in force or otherwise.

(3) Every report under sub-section (1) shall be furnished by the dealer to the Commissioner within such period as may be specified by the Commissioner:

PROVIDED that the Commissioner may, on an application made in this behalf by the dealer and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit:

¹ Section 58A inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

PROVIDED FURTHER that the aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred eighty days from the date on which the direction under sub-section (1) is received by the dealer.

(4) The expenses of, and incidental to, the examination and audit of records under sub section (1) (including the remuneration of the accountant or a panel of accountants or professional or panel of professionals) shall be paid by the dealer as determined by the Commissioner and that determination shall be final and default in such payment shall be recoverable from the dealer as tax and in the manner provided for the recovery of arrears of tax under this Act.]

59 Inspection of records

(1) All records, books of accounts, registers and other documents, maintained by a dealer, transporter or operator of a warehouse shall, at all reasonable times, be open to inspection by the Commissioner.

(2) The Commissioner may, for the proper administration of this Act and subject to such conditions as may be prescribed, require –

(a) any dealer; or

(b) any other person, including a banking company, post office, a person who transports goods or holds goods in custody for delivery to, or on behalf of any dealer, who maintains or has in his possession any books of accounts, registers or documents relating to the business of a dealer, and, in the case of a person which is an organisation, any officer thereof;

to –

(i) produce before him such records, books of account, registers and other documents;

(ii) answer such questions; and

(iii) prepare and furnish such additional information;

relating to his activities or to the activities of any other person as the Commissioner may deem necessary.

(3) The Commissioner may require a person referred to in sub-section (2) above, to –

(a) prepare and provide any documents; and

(b) verify the answer to any question;

in the manner specified by him.

(4) The Commissioner may retain, remove, take copies or extracts, or cause copies or extracts to be made of the said records, books of account, registers and documents without fee by the person in whose custody the records, books of account, registers and documents are held.

60 Power to enter premises and seize records and goods

(1) All goods kept at any business premises by a dealer, transporter or operator of a warehouse shall at all reasonable times be open to inspection by the Commissioner.

(2) Where the Commissioner, upon information in his possession or otherwise has reasonable grounds to believe that any person or dealer is attempting to avoid or evade tax or is concealing his tax liability in any manner and for the purposes of administration of this Act, it is necessary so to do, the Commissioner may-

(a) enter and search any business premises or any other place or building;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not readily available;

- (c) seize and remove any records, books of account, registers, other documents or goods;
- (d) place marks of identification on any records, books of account, registers and other documents or make or cause to be made extracts or copies thereof without charge;
- (e) make a note or any inventory of any such money or goods found as a result of such search or place marks of identification on such goods; and
- (f) seal the premises including the office, shop, godown, box, locker, safe, almirah or other receptacle.

(3) Where it is not feasible to remove any records, books of account, registers, other documents or goods, the Commissioner may serve on the owner and any person who is in immediate possession or control thereof, an order that he shall not remove or part with or otherwise deal with them except with the previous permission of the Commissioner.

(4) Where any premises have been sealed under clause (f) of sub-section (2), of this section or an order made under sub-section (3) of this section, the Commissioner may, on an application made by the owner or the person in occupation or in charge of such shop, godown, box, locker, safe, almirah or other receptacle, permit the de-sealing or release thereof, as the case may be, on such terms and conditions including furnishing of security for such sum in such form and manners as may be directed.

(5) The Commissioner may requisition the services of any police officer or any public servant, or of both, to assist him for all or any of the purposes specified in sub-section (2) of this section.

(6) Save as otherwise provided in this section, every search or seizure made under this section shall as far as possible be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

Explanation.- The powers under this section may also be exercised in respect of a dealer or a third party for the purposes of undertaking an audit or to assist in recovery.

61 Power to stop, search and detain goods vehicles

(1) To enable proper administration of this Act, the Commissioner may, at any check-post or barrier or at any other place, require the ¹[owner,] driver or person in charge of a goods vehicle to stop the vehicle and keep it stationary so long as may be required to search the vehicle, examine the contents therein and inspect all records relating to the goods carried, which are in the possession of such ²[owner,] driver or person in charge.

³[(2) The owner, driver or person in charge of a goods vehicle shall carry with him such records as may be prescribed in respect of the goods carried in the goods vehicle and produce the same before any officer in charge of a check post or barrier or any other officer or any agent as may be empowered by the Commissioner.]

⁴[(2A) The owner, driver or person in charge of a goods vehicle entering or leaving Delhi shall also file a declaration containing such particulars in the prescribed form obtainable from the Commissioner and in such manner as may be prescribed, before the officer in charge of a check post or barrier or before any other officer or agent empowered as aforesaid:

PROVIDED that where the owner, driver or person in charge of a goods vehicle, after filing a declaration at the time of entering Delhi that the goods are meant to be carried to a place outside Delhi, fails, without reasonable cause, to carry such goods outside Delhi within the

¹ Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

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

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

⁴ Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

prescribed period, he shall, in addition to the payment of tax, if any, be liable to a penalty not exceeding two and a half times the tax that would have been payable had the goods been sold inside Delhi or one thousand rupees, whichever is more.]

(3) The ¹[owner,] driver or person in charge of the goods vehicle shall, if required, inform the Commissioner of –

- (a) his name and address;
- (b) the name and address of the owner of the vehicle;
- (c) the name and address of the consignor of the goods;
- (d) the name and address of the consignee of the goods; and
- (e) the name and address of the transporter.

(4) If, on an examination of the contents of a goods vehicle or the inspection of documents relating to the goods carried, the Commissioner has reason to believe that the owner ²[or driver] or person in charge of such goods vehicle is not carrying the documents as required by sub-section (2) of this section or is not carrying proper and genuine documents or is attempting to evade payment of tax due under this Act, he may, for reasons to be recorded in writing, do any one or more of the following, namely:-

- (a) refuse to allow the goods or the goods vehicle to enter ³[or leave] Delhi;
- (b) seize the goods and any documents relating to the goods; and
- (c) seize the goods vehicle and any documents relating to the goods vehicle.

(5) Where the owner ⁴[, driver] or the person in charge of the goods vehicle –

(a) requests time to adduce evidence of payment of tax in respect of the goods to be detained or impounded; and

(b) furnishes security to the satisfaction of the Commissioner in such form and in such manner as may be prescribed for the prescribed amount;

the goods vehicle, the goods and the documents so seized may be released.

⁵[PROVIDED that where the owner or his agent, driver or person in charge of the goods vehicle exercises the option of paying by way of penalty, a sum equal to three and a half times the tax, which in the opinion of the Commissioner, would be leviable on such goods, if such goods were sold in Delhi, the Commissioner instead of detaining or impounding the goods or the goods vehicle or the documents relating to the goods and goods vehicle shall release the same.]

(6) The Commissioner may permit the owner ⁶[, driver] or person in charge of goods vehicle to remove any goods or goods vehicle seized under sub-section (4) subject to an undertaking –

(a) that the goods and goods vehicle shall be kept in the office, godown or other place within Delhi, belonging to the owner of the goods vehicle and in the custody of such owner; and

(b) that the goods shall not be delivered to the consignor, consignee or any other person without the approval in writing of the Commissioner,

and for this purpose the person in charge of the goods vehicle shall furnish an authorization from the owner of the goods vehicle authorizing him to give such undertaking on his behalf.

¹ Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

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

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⁵ Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

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

(7) Save as otherwise provided in this section, every search or seizure made under this section shall as far as possible be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

(8) Nothing contained in this section shall apply to the rolling stock as defined in the Railway Act 1989 (24 of 1989).

62 Custody and release of records

(1) Where the Commissioner seizes any books of accounts or other documents, he shall give the dealer or the person present on his behalf, as the case may be, a receipt for the same and obtain acknowledgement of the receipt so given to him.

PROVIDED that if the dealer or person from whose custody the books of accounts or other documents are seized refuses to give an acknowledgement, the Commissioner may leave the receipt at the premises and record this fact.

(2) The Commissioner shall keep in his custody the books of accounts, registers, other documents seized under section 60 of this Act for a period not exceeding one year, and thereafter shall return the same to the dealer or person from whose custody or power they were seized;

PROVIDED that the Commissioner may, before returning the books of accounts, registers and other documents, require the dealer or the person, as the case may be, to give a written undertaking that the books of accounts, registers and other documents shall be presented whenever required by the Commissioner for any proceedings under this Act:

PROVIDED FURTHER that the Commissioner shall, when requested, allow the person whose books of accounts, registers and documents have been seized, reasonable access to the books of accounts, registers and documents for the purpose of inspection and shall allow the person the opportunity to make copies thereof at the person's own expense.

PROVIDED ALSO that the period of custody of the books of accounts, registers and other documents seized under section 60 of this Act may be extended beyond one year if any proceedings under this Act are pending or for reasons to be recorded by the Commissioner in writing.

63 Custody, return and disposal of goods, goods vehicle and security

(1) Where the Commissioner seizes any goods or goods vehicle, he shall give the dealer, person in charge of the goods vehicle or a person present on his behalf, as the case may be, a receipt for the same and obtain acknowledgement of the receipt so given to him:

PROVIDED that if the person from whose custody the goods or goods vehicle are seized refuses to give an acknowledgement, the Commissioner may leave the receipt in his presence and record this fact.

(2) The Commissioner –

- (a) shall keep any goods or goods vehicle seized under section 61 in his custody;
- (b) may retain them for such time as he considers reasonable; and
- (c) subject to sub-section (3) of this section, shall return the goods or goods vehicle to the dealer or other person from whose custody or power they were seized.

(3) Where the Commissioner -

- (a) has seized any goods;
- (b) has seized a goods vehicle; or
- (c) holds any goods as security for the performance of an obligation under this Act;

the Commissioner may, not sooner than one month after the service of notice on –

- (i) the person from whom the goods were seized;
- (ii) the person from whom the goods vehicle was seized;
- (iii) the person for whom the security was given; and
- (iv) any person against whom the security is to be enforced;

as the case may be, of his intention to sell the goods, direct the auction of such goods or goods vehicle to meet any arrears of tax, interest or penalty owed under this Act.

(4) An auction of goods or a goods vehicle shall be carried out in the manner prescribed for the sale of property held by the Commissioner.

64 Detention of goods pending disclosure

(1) If any person on being required by the Commissioner, fails to give any information in respect of any goods in his possession or fails to permit the inspection thereof, the Commissioner may seize any goods in his custody or possession in respect of which the default is committed.

(2) The seizure shall remain in force until it is revoked or the person concerned furnishes the information required or makes proper arrangements for the inspection of the goods, whichever occurs first.

65 Obligation to provide reasonable assistance

Every person shall provide all co-operation and reasonable assistance to the Commissioner as may be required to conduct the Commissioner's activities under the Act.