

CHAPTER XII

Objections, Appeals, Disputes and Questions

74 Objections

(1) Any person who is dis-satisfied with –

(a) an assessment made under this Act (including an assessment under section 33 of this Act); or

(b) any other order or decision made under this Act;

may make an objection against such assessment, or order or decision, as the case may be, to the Commissioner;

PROVIDED that no objection may be made against a non-appealable order as defined in section 79 of this Act:

PROVIDED FURTHER that no objection against an assessment shall be entertained unless the amount of tax, interest or penalty assessed that is not in dispute has been paid ¹[failing which the objection shall be deemed to have not been filed:]

²[PROVIDED ALSO that the Commissioner may, after giving to the dealer an opportunity of being heard, may direct the dealer to deposit an amount deemed reasonable, out of the amount under dispute, before such objection is entertained.]

PROVIDED ALSO that only one objection may be made by the person against any assessment, decision or order.

PROVIDED ALSO that in the case of an objection to an amended assessment, order, or decision, an objection may be made only to the portion amended.

³[PROVIDED ALSO that no objection shall be made to the Commissioner against an order made under section 84 or section 85 of this Act if the Commissioner has not delegated his power under the said sections to other Value Added Tax authorities.]

(2) A person who is aggrieved by the failure of the Commissioner to reach a decision or issue any assessment or order, or undertake any other procedure under this Act, within six months after a request in writing was served by the person, may make an objection against such failure.

(3) An objection shall be in writing in the prescribed form and shall state fully and in detail the grounds upon which the objection is made.

(4) The objection shall be made –

(a) in the case of an objection made under sub-section (1) of this section, within two months of the date of service of the assessment, or order or decision, as the case may be,; or

(b) in the case of an objection made under sub-section (2) of this section, no sooner than six months and no later than eight months after the written request was served by the person:

PROVIDED that where the Commissioner is satisfied that the person was prevented for sufficient cause from lodging the objection within the time specified, he may accept an objection within a further period of two months.

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 (Second Amendment), Act, 2012; No.F.14(6)/LA-2011/lclaw/193, dated 28.09.2011 w.e.f. 01.10.2011 vide notification No.F.3(15)/Fin.(Rev.-1)/2011-12/ssf/113 dated 30.09.2011.

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.

(5) The Commissioner shall conduct its proceedings by an examination of the assessment, or order or decision, as the case may be, the objection and any other document or information as may be relevant:

PROVIDED that where the person aggrieved, requests a hearing in person, the person shall be afforded an opportunity to be heard in person.

(6) Where a person has requested a hearing under sub-section (5) of this section and the person fails to attend the hearing at the time and place stipulated, the Commissioner shall proceed and determine the objection in the absence of the person.

(7) Within three months after the receipt of the objection, the Commissioner shall either –

(a) accept the objection in whole or in part and take appropriate action to give effect to the acceptance (including the remission of any penalty assessed either in whole or in part); or

(b) refuse the objection or the remainder of the objection, as the case may be;

and in either case, serve on the person objecting, a notice in writing of the decision and the reasons for it, including a statement of the evidence on which it is based:

PROVIDED that where the Commissioner within three months of the making of the objection notifies the person in writing, he may continue to consider the objection for a further period of two months:

PROVIDED FURTHER that the person may, in writing, request the Commissioner to delay considering the objection for a period of up to three months for the proper preparation of its position, in which case the period of the adjournment shall not be counted towards the period by which the Commissioner shall reach his decision.

(8) Where the Commissioner has not notified the person of his decision within the time specified under sub-section (7) of this section, the person may serve a written notice requiring him to make a decision within fifteen days.

(9) If the decision has not been made by the end of the period of fifteen days after being given the notice referred to in sub-section (8) of this section, then, at the end of that period, the Commissioner shall be deemed to have allowed the objection.

(10) Where on the date of commencement of this Act a dispute under the Delhi Sales Tax Act, 1975 (43 of 1975) has been pending before a sales tax authority referred to in section 9 of the Delhi Sales Tax Act, 1975 (43 of 1975), the dispute shall be disposed of within a period of ¹ [eight] years from the date of the commencement of this Act.

(11) Where the dispute referred to in sub-section (10) of this section has not been decided within the time required, the dispute shall be deemed to have been resolved in favour of the dealer.

²[74A Revision

(1) After any order including an order under this section or any decision in objection is passed under this Act, rules or notifications made thereunder, by any officer or person

¹ Substituted for the word “seven” vide DVAT (Amendment) Act, 2012; No.F.14(19)/LA-2011/lclaw/5, dated 13.02.2012 w.e.f. 31.03.2012 vide Notification No.F.3(25)/Fin(Rev.-1)/2011-12/DSIII/288, dated 28.03.2012. Earlier substituted for the word “six” vide Notification No.F.14(1)/LA-2011/vlaw/91, dated 28.03.2011. Earlier substituted for the word “five” vide DVAT(Amendment) Act, 2009; No.F.14(16)/LA-2009/LJ/10/vlaw/1, dated 06.01.2010 and No.F.3(23)/Fin(T&E)/2009-10/JSF/15-25, dated 13.01.2010 w.e.f. 13.01.2010.

² Section 74A & 74B inserted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

subordinate to him, the Commissioner may, of his own motion or upon information received by him, call for the record of such order and examine whether -

(a) any turnover of sales has not been brought to tax or has been brought to tax at lower rate, or has been incorrectly classified, or any claim is incorrectly granted or that the liability to tax is understated, or

(b) in any case, the order is erroneous, in so far as it is prejudicial to the interest of revenue,

and after examination, the Commissioner may pass an order to the best of his judgment, where necessary.

(2)(a) For the purpose of the examination and passing of the order, the Commissioner may require, by service of notice, the dealer to produce or cause to be produced before him such books of accounts and other documents or evidence as he thinks necessary for the purposes aforesaid.

(b) Notwithstanding anything contained to the contrary in section 34, no order under this section shall be passed after the expiry of four years from the end of the year in which the order passed by the subordinate officer has been served on the dealer.

(c) Notwithstanding anything contained to the contrary in section 34, where in respect of any order or part of the said order passed by the subordinate officer, an order has been passed by any authority hearing the objection or any appellate authority including the Tribunal or such order is pending for decision in objection or in appeal, or an objection or an appeal is filed, then, whether or not the issues involved in the examination have been decided or raised in the objection or the appeal, the Commissioner may, within five years of the end of the year in which the said order passed by the subordinate officer has been served on the dealer, make a report to the said objection hearing authority or the appellate authority including the Tribunal regarding his examination or the report or the information received by him and the said appellate authority including the Tribunal shall thereupon, after giving the dealer a reasonable opportunity of being heard, pass an order to the best of its judgment, where necessary.

(3) If the Commissioner has initiated any proceeding before an appropriate forum against an issue which is decided against the revenue by an order of the Tribunal, then the Commissioner may, in respect of any order, other than the order which is the subject matter of the order of the Tribunal, call for the record, conduct an examination as aforesaid, record his findings, call for the said books of account and other evidence and pass an order as provided for under this section as if the issue was not so decided against the revenue, but shall stay the recovery of the dues including the interest or penalty, insofar as they relate to such issue until the decision by the appropriate forum and after such decision, may modify the order of revision, if necessary.

(4) No proceedings under this section shall be entertained on any application made by a dealer or a person.

¹[(5)] Notwithstanding anything contained in any judgment, decree or order of any court, the provisions of this section shall be deemed to have come into effect with effect from the 1st April, 2005.]

74B Rectification of mistakes and Review

(1) Notwithstanding anything contained to the contrary in section 34, the Commissioner may, at any time within four years from the end of the year in which any order passed by him has

¹ Inserted vide DVAT (Amendment) Act, 2009; No.F.14(16)/LA-2009/LJ/10/lclaw/1, dated 06.01.2010 and No.F.3(23)/Fin.(T&E)/2009-10/JSF/15-25, dated 13.01.2010.

been served, on his own motion, rectify any mistake apparent on record and shall within the said period or thereafter rectify any such mistake which has been brought to his notice within the said period, by any person affected by such order.

(2) The provisions of sub-section (1) shall apply to the rectification of a mistake by the appellate authority or an objection hearing authority as they apply to the rectification of mistake by the Commissioner:

PROVIDED that where any matter has been considered and decided in any proceedings by way of objection or appeal or review in relation to any order or part of an order, the authority passing the order on objection, appeal or review, may, notwithstanding anything contained in this Act, rectify the order or part of the order on any matter other than the matter which has been so considered and decided.

(3) Where any such rectification has the effect of reducing the amount of the tax or penalty or interest, the Commissioner shall refund any amount due to such person in accordance with the provisions of this Act.

(4) Where any such rectification has the effect of enhancing the amount of the tax or penalty or interest or reducing the amount of refund, the Commissioner shall recover the amount due from such person in accordance with the provisions of this Act.

(5) Save as provided in the foregoing sub-sections, and subject to such rules as may be prescribed, any assessment or re-assessment made or order passed under this Act or the rules made thereunder by any person appointed under section 66 may be reviewed by such person *suo motu* or upon an application made in that behalf.]

75 Power of Commissioner and other authorities to take evidence on oath, etc.

(1) The Commissioner or any person determining objections under section 74 of this Act, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit, in respect of the following matters, namely: –

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of accounts and documents; and
- (c) issuing commissions for the examination of witnesses;

and any proceeding under this Act before the Commissioner or person determining objections under section 74 of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code, 1860 (45 of 1860).

(2) Subject to any rules made in this behalf, the Commissioner or any person determining objections under section 74 of this Act may impound and retain in his custody, any books of accounts or other documents produced before him in any proceedings under this Act until such proceedings are concluded:

PROVIDED that the Commissioner or the person determining an objection under section 74 shall not impound any books of accounts or other documents without recording in writing his reasons for so doing.

76 Appeals to Appellate Tribunal

¹[(1) Any person aggrieved by a decision made by the Commissioner under sections 74, 84

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. Earlier read as:

“Any person aggrieved by a decision made by the Commissioner under sections 74, 84 and 85 of this Act may

and 85 of this Act may appeal to the Appellate Tribunal against such decision:

PROVIDED that no appeal may be made against a non-appealable order under section 79 of this Act.

Explanation.— The Commissioner does not appeal to the Appellate Tribunal but may make a re-assessment of tax where he is of the opinion that further tax is owed.]

(2) Subject to the provisions of section 77 of this Act, no appeal shall be entertained unless it is made within two months from the date of service of the decision appealed against.

(3) Every appeal made under this section shall be in the prescribed form, verified in the prescribed manner and shall be accompanied by such fee as may be prescribed.

(4) No appeal against an assessment shall be entertained by the Appellate Tribunal unless the appeal is accompanied by satisfactory proof of the payment of the amount in dispute and any other amount assessed as due from the person:

PROVIDED that the Appellate Tribunal may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order without payment of some or all of the amount in dispute, on the appellant furnishing in the prescribed manner security for such amount as it may direct:

PROVIDED FURTHER that no appeal shall be entertained by the Appellate Tribunal unless it is satisfied that such amount as the appellant admits to be due from him has been paid.

(5) In proceedings before the Appellate Tribunal –

(a) the person aggrieved shall be limited to disputing only those matters stated in the objection;

(b) the person aggrieved shall be limited to arguing only those grounds stated in the objection; and

(c) the person aggrieved may be permitted to adduce evidence not presented to the Commissioner for good and sufficient reasons.

(6) The Appellate Tribunal shall –

(a) in the case of an assessment, confirm, reduce, or annul the assessment (including any penalty and interest imposed);

(b) in the case of any other decision of the Commissioner, affirm or reject the decision; or

(c) pass such other order for the determination of the issue as it thinks fit:

PROVIDED that the Appellate Tribunal shall give reasons in writing for its decision which shall include its findings on material questions of fact and the evidence or other material on which those findings were based.

(7) The Appellate Tribunal shall use its best endeavours to make a final resolution of the matter before it and for this purpose may make a decision in substitution for the order in dispute, including the exercise or re-exercise of any discretion or power vested in the Commissioner.

(8) The Appellate Tribunal shall not set aside an assessment and remit the matter to the Commissioner for a further assessment, unless it has first –

(a) advised the aggrieved person of the proposed order;

(b) offered the person the opportunity to adduce such further evidence before it as might

appeal to the Appellate Tribunal against such decision:

PROVIDED that no appeal may be made against a non-appealable order under section 79 of this Act.

Explanation.— The Commissioner does not appeal to the Appellate Tribunal but may make a re-assessment of tax where he is of the opinion that further tax is owed.”

assist the Appellate Tribunal to reach a final determination.

(9) Where the Appellate Tribunal sets aside an assessment and remits the matter to the Commissioner for a further assessment, the Appellate Tribunal shall at the same time order the Commissioner to refund to the person some or all of the amount in dispute:

PROVIDED that where no order is made, it shall be presumed that the Appellate Tribunal has ordered the refund of the amount in dispute.

(10) Where a person has failed to attend the hearing at the time and place stipulated, the Appellate Tribunal may adjourn the proceedings, strike out the appeal or proceed to make an order determining the objection in the absence of the person.

(11) Save as provided in section 81 and sub-section (12) of this section, an order passed by the Appellate Tribunal on an appeal shall be final.

(12) The Appellate Tribunal may rectify any mistake or error apparent from the record of its proceedings.

¹[(13) Any order passed by the Appellate Tribunal may be reviewed *suo-motu* or upon an application made in that behalf:

PROVIDED that before any order which is likely to affect any person adversely is passed, such person shall be given a reasonable opportunity of being heard.]

77 Extension of period of limitation in certain cases

(1) The Appellate Tribunal may admit an appeal under section 76 of this Act after the period of limitation laid down in that section, if the appellant satisfies the Appellate Tribunal that he had sufficient cause for not preferring the appeal within such period.

(2) In computing the period laid down under sections 76 and 81 of this Act, the provisions of sections 4 and 12 of the Limitation Act, 1963 (36 of 1963), shall, so far as may be, apply.

(3) In computing the period of limitation prescribed by or under any provision of this Act, or the rules made thereunder, other than sections 76 or 81 of this Act, any period during which any proceeding is stayed by an order or injunction of any court shall be excluded.

78 Burden of proof

The burden of proving any matter in issue in proceedings under section 74 of this Act, or before the Appellate Tribunal which relates to the liability to pay tax or any other amount under this Act shall lie on the person alleged to be liable to pay the amount.

Explanation. - The burden of proof in criminal prosecutions is unaffected by this section.

79 Bar on appeal or objection against certain orders

(1) No objection or appeal shall lie against –

(a) a decision of the Commissioner to make an assessment of tax or penalty;

(b) a notice requiring a person to furnish a return;

²[(c) a notice issued under section 58, section 59 and direction under section 58A of this Act;]

(d) a decision of the Commissioner to notify any matter;

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

(e) a notice asking a dealer to show cause why he should not be prosecuted for an offence under this Act;

(f) a decision relating to the seizure or retention of books of account, registers and other documents;

(g) a decision sanctioning a prosecution under this Act;

(h) an interim decision made in the course of any proceedings;

(i) a decision of the Commissioner touching on the internal administration of the Value Added Tax authorities; ¹[***]

²[***]

³[(j)] an assessment issued by the Commissioner to give effect to an order of the ⁴[Appellate Tribunal or a court; or]

⁵[(k) a notice served on the person under sub-section (10) of section 84.]

(in this Act referred to as “non-appealable orders”).

(2) Save as provided in ⁶[clause (j)] of sub-section (1) of this section, nothing in sub-section (1) of this section shall prevent the person from objecting to the amount or the obligation to pay any amount assessed by the Commissioner under section 74 of this Act.

80 Assessment proceedings, etc. not to be invalid on certain grounds

(1) No assessment, notice, summons or other proceedings made or issued or taken or purported to have been made or issued or taken in pursuance of any of the provisions of this Act or under the earlier law shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such assessment, notice, summons or other proceedings, if such assessment, notice, summons or other proceedings are in substance and effect in conformity with or according to the intent and purposes of this Act or any earlier law.

(2) The service of any notice, order or communication shall not be called in question if the said notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or which service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.

(3) No assessment made under this Act shall be invalid merely on the ground that the action could also have been taken by any other authority under any other provisions of this Act.

¹ Omitted the word “or” vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005. Earlier inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

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

³ Re-lettered from “(k)” to “(j)” vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

⁴ Substituted the word “Appellate Tribunal or a court” vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

⁵ Inserted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

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

¹[81 Appeal to High Court

(1) An appeal shall lie to the High Court from every order passed by the Appellate Tribunal in appeal under this Act, if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be –

(a) filed within sixty days from the date on which the order appealed against is received by the Commissioner or ²[served upon] the other party.

³[PROVIDED that the High Court may entertain an appeal after the expiry of the period of sixty days, if it is satisfied that there was sufficient cause for not filing within that period].

⁴[PROVIDED FURTHER that the above proviso shall be deemed to have come into force with effect from the First day of April, 2005.]

(b) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

PROVIDED that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which-

(a) has not been determined by the Appellate Tribunal;

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(7) Where an appeal has been filed before the High Court, it shall be heard by a bench of not less than two judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

(8) Where there is no such majority, the judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other judges of the High Court and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.]

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

³ Inserted vide DVAT (Amendment) Act, 2010; No.F.14(5)/LA-2010/law/359, dated 31.12.2010 read with No.F.3(29)/Fin.(T&E)/2009-10/asf/6, dated 31.01.11, w.e.f. 1.2.2011.

⁴ Inserted vide DVAT (Amendment) Act, 2012; No.F.14(19)/LA-2011/lclaw/5, dated 13.02.2012 w.e.f. 01.04.2005 vide Notification No.F.3(25)/Fin(Rev.-1)/2011-12/DSIII/288, dated 28.03.2012.

82 Appearance before any authority in proceedings

(1) Any person, who is entitled or required to attend before any authority in connection with any proceedings under this Act, may attend—

(a) by a person authorised by him in writing in this behalf, being a relative or a person regularly employed by him; or

(b) by a legal practitioner or chartered accountant ¹[or cost accountant] ²[or company secretary] who is not disqualified by or under sub-section (2) of this section; or

(c) by a Value Added Tax practitioner who possesses the prescribed qualifications and is entered in the list, which the Commissioner shall maintain in that behalf, and who is not disqualified by or under sub-section (2) of this section.

(2) The Commissioner may, for reasons to be recorded in writing, disqualify for a period from appearing before any such authority, any legal practitioner, ³[chartered accountant, cost accountant, company secretary] or Value Added Tax practitioner—

(a) who has been dismissed from government service; or

(b) who, being a legal practitioner or chartered accountant, ⁴[or cost accountant] ⁵[or company secretary] is found guilty of misconduct in connection with any proceedings under this Act by an authority empowered to take disciplinary action against the members of the profession to which he belongs; or

(c) who, being a Value Added Tax practitioner, is found guilty of such misconduct by the Commissioner.

(3) Any person who is disqualified under this section may, within one month of the date of disqualification, appeal to the Government to have the disqualification cancelled.

(4) The decision of the Commissioner shall not take effect until one month of the making thereof or when an appeal is preferred, until the appeal is decided.

(5) The Commissioner may, at any time, *suo moto* or on an application made to him in this behalf, revoke any decision made against any person under sub-section (2) of this section and thereupon such person shall cease to be disqualified.

Explanation.- A decision made by the Commissioner under this section may also be the subject of an objection under section 74 of this Act.

83 Bar of suits in civil courts

No suit shall be brought in any civil court to set aside or modify any assessment made or any order passed under this Act or the rules made thereunder.

84 Determination of specific questions

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 (Second Amendment) Act, 2012; No. F.14(6)/LA-2012/cons2law/61, dt. 15.06.2012 read with No.F.3(6)/Fin.(Rev.-1)/2012-13/SSF/92 dated 16.06.2012 w.e.f. 18.06.2012.

³ Substituted for the words “chartered accountant” vide DVAT (Second Amendment) Act, 2012; No. F.14(6)/LA-2012/cons2law/61, dt. 15.06.2012 read with No.F.3(6)/Fin.(Rev.-1)/2012-13/SSF/92 dated 16.06.2012 w.e.f. 18.06.2012.

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

⁵ Inserted vide DVAT (Second Amendment) Act, 2012; No. F.14(6)/LA-2012/cons2law/61, dt. 15.06.2012 read with No.F.3(6)/Fin.(Rev.-1)/2012-13/SSF/92 dated 16.06.2012 w.e.f. 18.06.2012.

(1) If any determinable question arises, otherwise than in proceedings before a court, a person may apply in the prescribed manner to the Commissioner for the determination of that question.

(2) Subject to sub-section (3) of this section, an application for the determination of a determinable question may be made in respect of a proposed transaction, a transaction that is being undertaken, or a transaction has been concluded.

(3) An application for the determination of a determinable question may not be made after –

(a) the Commissioner has commenced the audit of the person pursuant to section 58 of this Act; or

(b) the Commissioner has issued an assessment for the tax period in which the transaction that is the subject of the determinable question occurred.

Explanation.- For the purposes of this sub-section, the Commissioner shall be deemed to have commenced the audit of a person under section 58 of this Act when the Commissioner serves a notice to this effect.

(4) For the purposes of this section, the following shall be determinable questions:-

(a) whether any person, society, club or association or any firm or any branch or department of any firm is or would be a dealer;

(b) whether any dealer is or would be required to be registered under this Act;

(c) the amount of the taxable quantum of a dealer for a period;

(d) whether a transaction is or would be a sale, or requires an adjustment to be made under section 8 of this Act arising out of a sale;

(e) whether a transaction is or would be in the nature of works contract, or transfer of right to use any goods;

(f) whether a sale is not liable to tax under section 7 of this Act;

(g) whether a sale is exempt from tax under section 6 of this Act;

(h) the sale price of a transaction;

(i) the proportion of the turnover or turnover of purchases of a dealer which arises in a tax period, and the time at which an adjustment to tax or tax credit arises;

(j) whether any transaction is or would be the import of goods;

(k) the value of any goods imported into Delhi;

(l) the rate of tax that is payable on a sale or import of goods and the classification of the goods under the Schedules;

(m) whether a transaction is the purchase of goods, or requires an adjustment to be made under section 10 of this Act arising out of a purchase;

(n) the amount of any tax credit to which the dealer is entitled in respect of a purchase or import of goods;

(o) the amount of any tax credit in respect of any used goods purchased by a dealer;

(p) the location of any sale or purchase;

(q) the application of a composition scheme in the circumstances of the dealer; or

(r) the tax period of a dealer.

(5) The Commissioner shall make the determination within such period as may be prescribed.

(6) Where –

(a) the Commissioner fails to make a determination under this section within the time

prescribed under sub-section (5) of this section;

(b) the person thereafter implements the transaction which is the subject of the application and in the manner described in the application; and

(c) the person has, in the application for the determination of the determinable question, indicated the answer to the determinable question which the person believes to be correct (in this section called the “proposed determination”);

the Commissioner shall be deemed for the purposes of this Act to have made and issued to the person on the day after the expiry of the prescribed period, a determination of the determinable question in the terms of the proposed determination.

(7) The Commissioner may –

(a) direct that the determination shall not affect the liability of any person under this Act with respect to any transaction effected prior to the determination;

(b) limit the period for which the determination will apply;

(c) limit the transactions to which the determination will apply; and

(d) impose such other limitations or restrictions on the determination as seem appropriate.

(8) If any such question arises from any order already passed under this Act or under the Delhi Sales Tax Act, 1975 (43 of 1975) or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) or the Delhi Tax on Entry of Motor Vehicles into Local areas Act, 1994 (Delhi Act 4 of 1995), as then in force in Delhi, no such question shall be entertained for determination under this section but such question may be raised in an objection or appeal against such order.

(9) Where –

(a) the Commissioner has issued to a person a determination in respect of a particular transaction; and

(b) the person implements the transaction based on the determination issued to him under this section and in the manner described in the application;

no assessment may be raised by the Commissioner against that person which is inconsistent with the determination and no penalty may be imposed on the person if the determination is later held incorrect.

(10) The Commissioner may, by notice served on the person, withdraw or qualify a determination issued under this section but such withdrawal or qualification shall not affect the entitlement of any person to rely on the determination with respect to any transaction or action which he has commenced or which he has completed prior to the withdrawal or qualification.

85 Ruling on general questions

(1) The Commissioner may, by notification in the official Gazette, publish his ruling on the answer to any question involving the interpretation of this Act or application of this Act to a class of persons or class of transactions.

(2) A ruling issued by the Commissioner under this section may be issued subject to such restrictions and conditions as the Commissioner may deem fit.

(3) The ruling shall be treated as coming into effect on the date stated in the ruling (which may be a date prior to the publication of the ruling) or, if no date is stated in the ruling, on the date of publication of the official Gazette.

(4) Where –

(a) the Commissioner has published a ruling in respect of a class of persons or transactions;

- (b) a person implements a transaction or undertakes any action based on the ruling;
- (c) the ruling has, at the time of implementing the transaction or undertaking the action, not been withdrawn by the Commissioner; and
- (d) according to the terms of the ruling, the ruling purports to apply to the transaction or action undertaken by the person;

no assessment which is inconsistent with the ruling, may be raised by the Commissioner against that person and no penalty may be imposed on the person if the ruling is later held incorrect.

Explanation.- A person may rely on the Commissioner's ruling or on the determination made under section 84 of this Act.

(5) The Commissioner may, by notification published in the official Gazette, withdraw or qualify a ruling already issued under this section but such withdrawal or qualification shall not affect the entitlement of any person to rely on the ruling with respect to any transaction or action commenced or completed by him prior to such withdrawal or qualification.