

CHAPTER VII

Recovery of Tax, Interest and Penalties

43 Recovery of tax

(1) The amount of any tax, interest, penalty or other amount due under this Act shall be paid in the manner specified in section 36 of this Act and a notice of assessment served on the person for such an amount shall constitute a demand for payment of the amount stated in the assessment by the time stipulated in the notice of assessment.

(2) On an application made before the expiry of the due date under section 35 of this Act, the Commissioner may, in respect of any dealer or person and for reasons to be recorded in writing, extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

¹[(3) Any amount of tax, interest or penalty, composition money or other amount due under this Act which remains unpaid, shall be recoverable-

(a) as arrears of land revenue, or

(b) by the Commissioner in accordance with the provisions of sub-section (6) of this section and the rules regulating the procedure of recovery of tax, interest or penalty, composition money or other amount due as may be prescribed.]

(4) Where security, other than in the form of surety bond, has been furnished under the Act,

the Commissioner may, for reasons to be recorded in writing, recover any amount of tax, interest, penalty, composition money or other amount due or part thereof by ordering the forfeiture of the whole or any part of the security.

(5) Where any security tendered for the purposes of this Act is to be sold, it shall be sold in the manner stipulated in section 63 of this Act.

²[(6) Where any amount of tax, interest or penalty, composition money or other amount due under this Act is recoverable in accordance with the provisions of clause (b) of sub-section (3), the Commissioner may prepare a recovery certificate (hereinafter referred to as "certificate") under his signature specifying the amount of such tax, interest or penalty, composition money or other amount due from the dealer, casual dealer, transporter, carrier or transporting agent, owner or lessee or occupier of warehouse, owner of any goods or any other person (hereinafter referred to as the "certificate-debtor") and he shall cause the said certificate to be served upon the certificate debtor, in such manner and form as may be prescribed and proceed to recover from the certificate-debtor the amount specified in the certificate by one or more of the following modes in accordance with the rules as may be prescribed:-

(a) attachment and sale of movable property of the certificate debtor;

(b) attachment and sale of immovable property of the certificate-debtor;

(c) arrest of the certificate-debtor and his detention in prison for a period of fifteen days;

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, "(3) Any amount of tax, interest or penalty, composition money or other amount due under this Act which remains unpaid, shall be recoverable as arrears of land revenue.

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.

(d) appointing a receiver for the management of the movable and immovable properties of the certificate-debtor.

(7) The Commissioner may serve upon the defaulter the recovery certificate under sub-section (6), notwithstanding that proceedings for recovery of such tax, interest or penalty, composition money or other amount due have been initiated or continuing by any other mode.

(8) On the service of the certificate under sub-section (6) upon a certificate- debtor.-

(a) any private transfer or delivery of any of his immovable property or of any interest in any such property, shall be void against any claim enforceable in the execution of the certificate; and

(b) the amount due from time to time in respect of the certificate shall be a charge upon the immovable property of the certificate-debtor, to which every other charge created subsequently to the service of the said certificate shall be postponed.

(9) The certificate-debtor may, within thirty days from the service of the certificate, present to the Commissioner a petition denying his liability in whole or in part.

(10) The Commissioner shall hear the petition, take evidence, if necessary, and determine whether the certificate-debtor is liable for the whole or any part of the amount for which certificate was signed.

(11) Where any proceedings for the recovery of any tax, interest or penalty, composition money or other amount due remaining unpaid have been commenced under this section and the tax, interest or penalty, composition money or other amount due is subsequently modified, enhanced or reduced in consequence of any assessment made, or order passed on objection, appeal, revision or review under this Act, the Commissioner may inform the certificate-debtor and thereupon such proceedings may be continued as if the tax, interest or penalty, composition money or other amount due as so modified, enhanced or reduced has been substituted for the tax, interest or penalty, composition money or other amount due which was to be recovered under sub-section (3).]

¹[44 Application of the Delhi Land Reforms Act, 1954 for purposes of recovery

(1) For the purposes of recovery of any amount recoverable as arrears of land revenue under this Act, the provisions of the Delhi Land Reforms Act, 1954 (Delhi Act 8 of 1954), as to the recovery of arrears of land revenue shall, notwithstanding anything contained in that Act or in any other enactment, be deemed to be in force throughout Delhi and the provisions of the Revenue Recovery Act, 1890 (1 of 1890) shall have effect accordingly.

(2) For the purposes of sub-section (1) -

(a) the Additional Commissioner of Value Added Tax and the Joint Commissioner of Value Added Tax shall have and exercise all the powers and perform all the duties of the Deputy Commissioner under the Delhi Land Reforms Act, 1954 (Delhi Act 8 of 1954);

(b) the Deputy Commissioner of Value Added Tax shall have and exercise all the powers and perform all the duties of Revenue Assistant under the said Act;

(c) the Value Added Tax Officers and the Assistant Value Added Tax Officers shall have

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:-

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and exercise all the powers and perform all the duties of Tehsildar and Assistant Collector of the First Grade under the said Act.]

45 Continuation of certain recovery proceedings

Where an assessment or notice of demand in respect of any tax, penalty or other amount payable under this Act (hereinafter in this section referred to as “government dues”) is served upon any person and any objection or appeal is initiated by the person against the assessment or demand for such government dues then –

(a) if the objection or appeal is disallowed in whole or in part, any recovery proceedings taken for the recovery of such government dues before the making of the objection or appeal, may, without the service of any fresh assessment or notice of demand, be continued from the stage at which such recovery proceedings stood immediately before the person made the objection or appeal; and

(b) where such government dues are reduced in any objection or appeal –

(i) it shall not be necessary for the Commissioner to serve upon the person a fresh assessment or notice of demand; and

(ii) the Commissioner shall give intimation of such reduction to him and to the person with whom recovery proceedings are pending.

¹[(iii) any recovery proceedings initiated on the basis of an assessment or notice of demand served upon a person before the disposal of such objection or appeal, may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before the person made the objection or appeal.]

²[(c) no recovery proceedings in relation to such Government dues shall be invalid by reason only that no fresh notice of demand was served upon the dealer or person after the disposal of such objection or appeal or such Government dues have been enhanced or reduced in such objection or appeal.]

46 Special mode of recovery

(1) Notwithstanding anything contained in any law or contract to the contrary, the Commissioner may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the person at his last known address, require, -

(a) any person from whom any amount of money is due, or may become due, to the person (in this section called “the taxpayer”) liable to pay tax, interest or penalties u/s 45 of this Act, or

(b) any person who holds or may subsequently hold money for or on account of the taxpayer,

to pay to the Commissioner, either forthwith upon the money becoming due or being held or within the time specified in the first mentioned notice (but not before the money becomes due or is held as aforesaid) so much of the money as is sufficient to pay the amount due by the taxpayer in respect of the arrears of tax, interest and penalty under this Act, or the whole of the money when it is equal to or less than that amount.

Explanation.- For the purposes of this sub-section, the amount of money due to a taxpayer from, or money held for or on account of a taxpayer by any person, shall be calculated by the Commissioner after deducting therefrom such claims, if any, lawfully subsisting, as may have fallen due for payment by such taxpayer to such person.

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

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

(2) The Commissioner may amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(3) Any 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 taxpayer, and the receipt thereof by the Commissioner shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount specified in the receipt.

(4) Any person discharging any liability to the taxpayer after receipt of the notice referred to in this section, shall be personally liable to the Commissioner to the extent of the liability discharged or to the extent of the liability of the dealer for tax and penalty, whichever is less.

(5) Where a person to whom a notice under this section is sent, proves to the satisfaction of the Commissioner that the sum demanded or any part thereof is not due to the taxpayer or that he does not hold any money for or on account of the taxpayer, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Commissioner.

(6) Any amount of money which the aforesaid person is required to pay to the Commissioner, or for which he is personally liable to the Commissioner under this section shall, if it remains unpaid, be recoverable as if arrears of land revenue.

(7) The Commissioner may apply to the court in whose custody there is money belonging to the taxpayer for payment to him of the entire amount of such money or if it is more than the tax, interest and penalty, if any, due, an amount sufficient to discharge such tax and the penalty.

¹[46A Provisional attachment to protect revenue in certain cases

(1) Where, during the course of inquiry of any proceeding including any proceeding for recovery of any amount due in respect of any person or dealer or during any inspection or search in relation to the business of any person or dealer under this Act, the Commissioner is of the opinion that for the purpose of protecting the interest of the revenue it is necessary so to do, he may, notwithstanding anything contained in any law for the time being in force or any contract to the contrary, by order in writing, attach provisionally any property movable or immovable, belonging to such person or dealer.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

PROVIDED that the Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years:

PROVIDED FURTHER that the Commissioner may, by an order, revoke such order if the person or the dealer furnishes to the Commissioner, a Bank Guarantee in such time, for such period as may be specified by the Commissioner in this behalf:

PROVIDED ALSO that the power under this section shall be exercised by the Commissioner himself or by the Additional Commissioner to whom the Commissioner has delegated such power.]

47 Transfer of assets during pendency of proceedings void

Where, during the pendency of any proceedings for the recovery of an amount owed by a

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.

person under this Act, that person creates a charge on or parts with the possession by way of sale, mortgage, gift or exchange or any other mode of transfer whatsoever, any of his assets in favour of any other person, such charge or transfer shall be void against any claim by the Commissioner in respect of the amount which is the subject of proceedings, unless the other person –

- (a) acted *bona fide* and without notice of the recovery proceedings; and
- (b) has paid the fair market value for the assets.

¹[*Explanation.*– In this section “assets” includes land, building, machinery, plant, equipments, shares, securities and fixed deposits in the banks, vehicles, furniture and fixture to the extent to which any of the assets aforesaid does not form part of the stock in trade of the business of the person.]

²[**47A Liability under this Act to be the first charge**

Notwithstanding anything contained in any contract to the contrary, but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any amount of tax, penalty, interest, composition money, sum forfeited, fine or any other sum payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer or, as the case may be, the person.]

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

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