

issued under the preceding clause (a) the Commissioner shall assess to the best of his judgement the amount of tax due from him.

- (3) If a dealer does not furnish return as required under sub-section (2) of section 15 of the Act in respect of any period by the prescribed date, the Commissioner may serve on the dealer in the prescribed manner a notice requiring him, on a date and at a place specified therein, either to attend and produce or cause to be produced such evidence as is specified in the notice, and after giving the dealer a reasonable opportunity of being heard, assess to the best of his judgement, the amount of tax, if any, due from him.
- (4) In assessing the dealer under any of the clauses (b), (c) and (d) of sub-section (2), or sub-section (3) if the Commissioner has reasons to believe that the dealer has failed, without sufficient cause, to comply with the requirements of sub-section (2) or sub-section (3) or sub-section (4) of section 15 of the Act, shall after giving such dealer a reasonable opportunity of being heard, direct him, either at the time of assessment or thereafter, to pay by way of penalty in addition to the amount of tax assessed a sum not exceeding one-and-a-half times the amount of tax so assessed.
- (5) (a) If the Commissioner has reason to believe that a dealer is liable to pay tax in respect of any period, but has failed to apply for registration within time as required by section 11 of the Act, the Commissioner shall proceed to assess the amount of tax due from the dealer in respect of such period, and all subsequent periods, and for this purpose shall serve upon the dealer in the prescribed manner a notice requiring him to be present and produce or cause to be produced all evidence which he may possess or such evidence as is specified in the notice.

In assessing the dealer in the manner referred to

above a reasonable opportunity of being heard shall be given to him.

- (b) If the dealer fails to comply with the terms of the notice issued under preceding clause (a), the Commissioner may assess to the best of his judgement the amount of tax due from him.
- (c) In any of the assessments made under preceding clause (a) or (b), if the Commissioner has reasons to believe that the default in applying for registration within time was made without reasonable cause, he shall, after giving the dealer a reasonable opportunity of being heard, direct him, either at the time of assessment or thereafter, to pay by way of penalty, in addition to the amount of tax assessed, a sum not exceeding one-and-a-half times that amount.
- (6) No assessment under sub-section (2) or sub-section (3) shall be made after the expiry of four years, and no assessment under sub-section (5) shall be made after the expiry of six years, from the end of the year in respect of which or part of which such assessment is made:

Provided that, where such assessment is made in consequence of or to give effect to any order of an appellate or revisional authority or of a Court, the period of four years or six years, as the case may be, shall be reckoned from the date of such order.

Provided further that in computing the period of limitation laid down in the above sub-section (6), any period during which assessment proceedings are stayed by an order or injunction of any Court or authority shall be excluded.

- (7) Any assessment made under this section shall be without prejudice to any penalty which may be imposed under other provisions of the Act, or to any prosecution instituted for an offence under this Act.

COMMENTS

The unit of assessment of tax is one year during which the registered dealer is liable to pay tax. However the Commissioner may assess him for a part of the year, in case the dealer fails to furnish any return relating to any period of any year or the business is closed on account of his death, or the business is discontinued or the ownership of the business is transferred to other person during the year or for any other good and sufficient reason. Before proceeding to such assessment, the assessing authority shall have to record the circumstances in writing - see Rule 18.

It is well settled that in matters of taxation, there is no question of res judicata because each year's assessment is final only for that year and does not govern later years, as it determines only the tax for a particular period. [Instalment Supply (Private) Ltd. and another v. The Union of India and others (1961) 12 STC 489 (S. C.)].

If the assessing authority is satisfied that the returns filed in respect of any period are correct and complete, the amount of tax due from the dealer on the basis of such returns will be assessed. If however he is not satisfied with the correctness or completeness of the returns, he will require the dealer to adduce evidence by notice in writing. See Rule 18 for detailed procedure for assessment of tax and imposition of penalty.

The best judgement assessment is to be made by Sales Tax Officer in the following circumstances :

- a) If the Commissioner is not satisfied that the returns furnished in respect of any period are correct and complete. [17 (2) (e)]
- b) If a dealer fails to comply with the terms of any notice requiring him to attend and produce evidence in support of his return. [17 (2) (d)]
- c) If a dealer fails to furnish returns in prescribed time. [u/s. 17 (3)]
- d) Where a dealer who has been liable to pay tax has failed to get himself registered under section 11 and failed to comply with the terms of the notice served on him requiring him to produce all evidence which he may possess to assess the amount of tax due from him. [17 (5) (a) and (b)]

The best judgement assessment has to be made on an estimate which the assessing authority has to make not capriciously but on settled and recognised principles of natural justice. An element of guess-work is bound to be present in best judgement assessment but it must have a reasonable nexus with the

available material and the circumstances of each case. Where account books are accepted along with other records, there can be no ground for making a best judgement assessment. [The state of Madras v. S. G. Jayaraj Nadar & Sons (1971) 2 S. C. W R 497].

If the dealer has failed to furnish returns and pay tax in time he is liable to penalty not exceeding one and a half times the amount of tax assessed.

The prepayment of the admitted amount of tax is a precondition of the furnishing of a return and unless such prepayment is made, the return furnished cannot be considered as a valid return and it is 'no return' in the eye of the law. If the admitted amount of tax is paid but for some reason or other the challan has not been enclosed, that may make the return incomplete. [Kharkhajora Coal Co. Ltd. v. Member Board of Revenue, W. Bengal (1966) 18 STC 79].

Limitation Period for completing assessments

Limitation period prescribed for completing assessment in respect of a registered dealer is four years and for assessment of an unregistered dealer is six years from the end of the year in respect of which or part of which such assessment is made. Where such assessment is made to give effect to any order of an appellate or revisional authority or of a Court, the limitation period of four years or six years is to be reckoned from the date of such order. Similarly, any period during which assessment proceedings are stayed by Court, same is to be excluded.

Limitation period for imposition of penalty.

Penalty proceedings being ancillary to the assessment proceedings cannot stand on a higher footing and the period prescribed for making the assessment equally applies to the levy of penalty. [State of Andhra Pradesh v. Shri Gonesh Bhavan Hotel (1983) 53 STC 169].

Assessment and reassessment of tax.

18. (1) If the Commissioner has reasons to believe that any turnover of sales of any goods chargeable to tax under the Act, has in respect of any year escaped assessment, or has been under-assessed, or assessed at a lower rate, or that any deductions have been wrongly made, in an

1 Substituted by Act No. 12 of 1973 w. e. f. 1-11-1974.

order of assessment made under section 17, then the Commissioner may —

- (a) where he has reasons to believe that the dealer has concealed such sales or any material particulars relating thereto, or has knowingly furnished incorrect particulars of returns, at any time within eight years, and
- (b) in any other case, at any time within five years, of the end of the period to which such turnover or deductions relate,

serve on the dealer liable to pay tax a notice requiring him, on a date and at place specified therein, either to attend or produce or cause to be produced such evidence as may be specified in the notice, and may proceed to assess or reassess the amount of tax due from such dealer; and accordingly the other provisions of the Act and the rules made thereunder shall, so far as may be, apply as if the notice were a notice referred to in sub-section (2) or (3) of section 17 of the Act:

Provided that the amount of tax shall be assessed at the rates at which it would have been liable to tax had there been no under-assessment or escapement or assessment at a lower rate, but after making deductions, if any, admissible under the Act during the period to which the turnover relates.

- (2) Nothing in sub-section (1) shall apply to any proceeding, including any notice issued, under section 17 of the Act.
- (3) Any assessment or reassessment made under this section shall be without prejudice to any penalty imposed, or to any prosecution instituted, for an offence under the Act.

COMMENTS

After completing the assessment of a dealer for any period, it may be

discovered that any turnover of sales chargeable to tax has escaped assessment or turnover has been underassessed or assessed at lower rates than at the rates at which assessable or that any deduction have been wrongly made therefrom. In such circumstances, the Sales Tax Officer / Assistant Sales Tax Officer can reassess him within a period of 8 years, if he has reason to believe that the dealer has concealed particulars or malafidely furnished wrong particulars. In all other cases, the limitation period for assessment is 5 years from the end of the period to which such turnover or deductions relate.

The reassessment made under section 18 shall be without prejudice to any penalty imposed or prosecution instituted for an offence under the Act.

Refund.

19. (1) The Commissioner shall in the prescribed manner, refund to the dealer any amount of tax or penalty paid by such dealer in excess of the amount due from him under the Act or unduly paid by him. The refund referred to above may arise from an order of assessment, or from an order passed in appeal, revision or review under section 27, or reference under section 28 of the Act, or from an order passed in respect of payment unduly made.

(2) (a) Where any declared goods referred to in section 14 of the Central Sales Tax Act, 1956 (74 of 1956) are sold by a dealer in the course of inter-state trade or commerce and such dealer shows to the satisfaction of the Commissioner that a tax under this Act has been levied in respect of any earlier sale of such goods made within the Union territory of Goa, Daman and Diu, then an amount equal to the tax so levied shall be refunded to such dealer in such manner, and subject to such conditions as may be prescribed.

(b) On receipt of the application for refund referred to above the Commissioner shall, after verifying the claim, make an order either granting or rejecting the application wholly or in part :

1 Substituted by Act No. 12 of 1973 w. e. f. 1-11-1974

