

CHAPTER – IX
Offence and Penalties

62. Conditions for causing investigation of offences under Section 95

The following shall be the conditions in causing an investigation by the Commissioner into an offence:-

- (i) the officer entrusted with the work of investigation will confine himself to the extent and the nature of evasion of tax under the Act :
- (ii) the investigation may be conducted outside the State if the circumstances so warrant;
- (iii) the officer making the investigation will report to the Commissioner about progress of investigation from time to time till the investigation is completed;
- (iv) in case, the Officer conducting investigation is transferred or retired before completion of investigation, he shall handover the case with the up-to-date findings of the investigation to the Commissioner, who will entrust other officer to completes the investigation.

63. Manner of assessment, re-assessment and imposition of Penalty

(1) Where –

- (a) a dealer has failed to comply with a notice issued under sub-section 5(c) of Section 55 or
- (b) a registered dealer has failed without sufficient cause, to furnish returns in Form 5 under clause (a) of sub-section (1) of Section 55 for any period and the statement in Form 6 under clause (a) of sub- section 1 of the said Section by the prescribed date; or
- (c) a registered dealer has rendered himself liable to the best judgment assessment under sub-section 5 (e) of Section 55; or
- (d) a dealer liable to pay tax has willfully failed to apply for registration and had thereby rendered himself liable to best judgment assessment under sub-section (1) of Section 56; or
- (e) the sale or purchase of goods by a dealer during any period has been under assessed or has escaped assessment, or has been assessed at a lower rate or any deduction has been wrongly made there from or Input Tax Credit has incorrectly been allowed, or
- (f) a dealer has concealed his turnover or aggregate of purchase prices in respect of any goods or has furnished a false return,

then in every such case, the appropriate assessing authority shall serve on the dealer a notice which shall, as far as may be, in Form 44 specifying the default, escapement or concealment, or incorrect allowance or Input Tax Credit, as the case may be, and call upon him to show cause by such date, ordinarily not less than thirty days from the date of service of the notice as may be fixed in that behalf, why he should not be assessed or re-assessed to tax to the best of judgment and/or penalty should not be imposed upon him and direct him to produce on the said date his books of accounts and other documents which the appropriate assessing authority may require and any evidence which he may wish to produce in support of his objection.

- (g) The order of assessment or re assessment shall be in Form **54** and an authenticated copy of the order shall be served on the dealer in Form **54(A)** Provided that no such notice shall be necessary where the dealer, appearing before the appropriate assessing authority, waives such notice.
- (2) On the date fixed in the notice issued under sub-rule (1) or in case the notice is waived, on such date which may be fixed in this behalf, the appropriate assessing authority shall, after considering the objection raised by the dealer and examining such evidence as may be produced by him and after taking such other evidence as may be available, assess or re-assess, the dealer to tax and/or impose penalty or pass any other suitable order.
- (3) In making an assessment to best of his judgment under sub-section (1) of Section **56** the appropriate assessing authority shall, as far as practicable, have due regard to the extent of the business carried on by the dealer, the surrounding circumstances and all other matters which may be of assistance in arriving at a fair and proper estimate of the taxable turnover of the dealer.

Where –

- (a) a dealer without reasonable cause fails to get himself registered within the prescribed time as required by sub-section (1) of Section **31**; or
- (b) a dealer fails to pay the tax assessed or penalty imposed on him or any other amount due from him within the time specified thereof in the notice of demand and the dealer has not obtained any order under Appeal or Revision or has failed to pay tax or penalty in accordance with the Notice of Demand; or
- (c) a registered dealer, who contravenes the provisions of sub-section (1) of Section **88**; or
- (d) a registered dealer has concealed his turnover or aggregate of purchase prices or has furnished false particulars or sales/purchases in returns furnished by him; or
- (e) a dealer has not accounted for any goods in the books, registers or accounts maintained by him in order to sell them with a view to evade payment of tax; or
- (f) a dealer contravenes the provisions of any rule made under the Act,

then, in every such case, the appropriate assessing authority or the authority competent to impose penalty, as the case may be, shall serve on the dealer, a notice which shall, as far as may be in Form **44** specifying the default and call upon him to show cause by such date ordinarily not less than fifteen days from the date of service of the notice, as may be fixed in that behalf, why additional penalty should not be imposed upon him and may require him to produce any evidence which he may wish to produce in support of his objection;

Provided that no such notice shall be necessary when the dealer appearing before the appropriate assessing authority or the authority competent to impose penalty, as the case may be, waives such notice.

On the date fixed in the notices issued under sub-rule **3(f)** the appropriate assessing authority or the authority competent to impose penalty as the case may be, shall after considering objections raised by the dealer and examining such evidence as may be produced by him and after taking such other evidence as may be available, impose additional penalty or pass any other suitable order. An authenticated copy of the order shall be served on the dealer.