

THE UTTARAKHAND VALUE ADDED TAX ACT, 2005

51: First Appeal:

(1) Any dealer or other person aggrieved by an order made by the Assessing authority or by an officer in charge of tax audit or any order passed under sub section(3) or sub-section(4) of section 42(B) other than,

(i) an order mentioned in section 56, or

(ii) an order passed under sub-section (8) of section 43, or

(iii) an order passed under sub-section (7) of section 43(A), or

(iv) an order passed under or sub-section (10) of Section 48; or

(v) an order of seizure passed under sub- section (5) of section 48(A); or

(vi) an order passed under sub-section (6) or sub-section (7) of section 48(A) may; within sixty days from the date of the service of the copy of the order, appeal to such authority as may be prescribed, and shall also serve a copy of the Memorandum of Appeal on the assessing authority.

(Substituted vide notification no.- 178/2012/XXXVI(3)/2008 Dt. 13-09-2012 read with 1099/2012/181(120)/XXVII(8)/08 Dt. 17-12-2012, w.e.f. 01-03-2013 as above)

Prior to the substitution this sub-section read as under :-

(1) Any dealer or other person aggrieved by an order made by the Assessing authority or by an officer incharge of tax audit, other than an order mentioned in section 56 or sub-section (7) and sub-section (8) of section 43, may, within sixty days (thirty days) (substituted vide notification no.-1314/XXXVI(4)/2008 Dt. 31.03.2008) from the date of the service of the copy of the order, appeal to such authority as may be prescribed, and shall also serve a copy of the Memorandum of Appeal on the assessing authority.

(Added vide notification no.-331/XXXVI(3)/2010/52(1)/2010 Dt. 06.10.2010)

(2)(a) Notwithstanding anything contained in sub-section (1), where the disputed amount of tax, fee or penalty in an appeal does not exceed one thousand rupees, the appellant may, at his option, request the Appellate Authority in writing for summary disposal of his appeal, whereupon the Appellate Authority may decide the appeal accordingly.

(b) The manner and procedure of summary disposal of appeal shall be such as may be prescribed.

(c) No appeal or revision shall lie against an order passed in appeal which has been disposed of summarily.

(3) Where an appeal under this section has been filed by any dealer or any person against an order referred to in sub-section (1) and where due to filing of such appeal the Commissioner can not revise such order passed by the assessing authority on the point of legality or propriety of such order under section 52, the Commissioner may move an application to the appellate

authority to examine the legality and propriety of such order on such point or points as may be mentioned in the application. A copy of such application shall be served on the dealer or such other person, as the case may be:

Provided that-

- (a) No application under this sub-section shall be entertained after the expiration of four years from the date of the order in question,
- (b) No application for examination of legality and propriety under this sub-section shall be entertained after the disposal of appeal filed by the dealer or other person, as the case may be,
- (c) Where the Commissioner has filed an application under this section and the dealer or other person withdraws the appeal filed by him or any other application for disposal of appeal summarily under sub-section (2), it shall be deemed for the purpose of section 52, as if no appeal has been filed, and in such a case the period commencing from the date of filing application by the Commissioner and the date of the appellate authority's order on the application of the dealer, shall be excluded in computing the period of limitation provided in section 52, and
- (d) If after computing, the period of limitation comes to less than six months, the revision under section 52 may be made within six months from the date of receipt by the Commissioner of the relevant order of the appellate authority.

Explanation: For the purpose of this sub-section, the Commissioner shall include an officer authorized to file an appeal on behalf of the Commissioner before the Tribunal under section 53 of this Act.

(4) No appeal against an assessment order under this Act shall be entertained unless the appellant has furnished satisfactory proof of the payment of the amount of tax or fee due under this Act on the turnover of sales or purchases or both, as the case may be admitted by the appellant in the returns filed by him or at any stage in any proceeding under this Act, whichever is greater.

(4A) Notwithstanding anything contained in this section,

(i) no appeal against an ex-parte order shall be entertained unless the appellant has furnished satisfactory proof of the payment of sum equal to five percent of the amount of disputed tax or penalty or Rupees One Lakh whichever is less;

(ii) no appeal against any other order, besides ex-parte assessment order or penalty shall be entertained unless the appellant has furnished satisfactory proof of the payment of sum equal to twenty percent of the amount of disputed tax, penalty or any other amount or Rupees Five Lakh which ever is less;

(iii) no appeal, against any declaration form or certificate of turnover of concession or rebate, which is being rejected by the Assessing Authority or which are not being produced before the Assessing Authority, shall be entertained unless the appellant has furnished satisfactory proof of the payment of a sum equal to ten percent of the amount at general rate of tax payable under this Act, on the amount of the turnover of such declaration form or certificate, rejected or not produced.

Explanation: The above mentioned amount shall be in addition to the condition of the stay given under sub-section (6).

(Sub-section 4A has been ADDED vide notification no.- 103/XXXVI(3)/2016/15(1)/2016 Dt. 31.03.2016 w. e. f. 31st March, 2016 as above)

(5) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(6) The appellate authority:

(a) shall in a case where the appellant makes a request under sub-section(2) and

(b) may, in any other case on the application of the appellant and after giving the Commissioner a reasonable opportunity of being heard, stay the realization of the amount of the tax, fee or penalty payable by the appellant till the disposal of the appeal:

(7) No application under clause (b) of sub-section (6) shall be entertained unless it is filed along with the memorandum of appeal under sub-section (1) and no stay order shall remain in force for more than forty five days unless the appellant has deposited the balance amount within thirty days of receipt of stay order or the time allowed in the order of the assessing authority under appeal which ever is later and before the expiry of the said period, furnished security to the satisfaction of the assessing authority for payment of the amount, the realization whereof has been stayed:

Provided that where the amount stayed is less than rupees twenty five thousand, the dealer shall not be required to furnish the security in respect of such amount;

Provided further that where an order under appeal does not involve any dispute about tax, fee or penalty, the appellate authority may stay the operation of such order till the disposal of appeal subject to such conditions as he may deem fit.

Explanation: Rejection of similar application for stay by any authority for want of jurisdiction shall not by itself preclude the Appellate Authority from entertaining such application.

(8) The appellate authority may, after calling for and examining the relevant records and after giving the appellant and the Commissioner a reasonable opportunity of being heard or, as the case may be, after following the procedure under sub-section (2), -

- (a) confirm or annul such order; or
- (b) vary such order by reducing or enhancing the amount of assessment or penalty, as the case may be, whether such reduction or enhancement arises from a point raised in the grounds of appeal or otherwise; or
- (c) set aside the order and direct the assessing authority to pass a fresh order after such inquiry as may be specified; or
- (d) direct the assessing authority to make such inquiry and to submit its report within such time as may be specified in the direction or within such extended time as it may allow from time to time, and on the expiration of such time the Appellate Authority may, whether the report has been submitted or not, decide the appeal in accordance with the provisions of the preceding sub-clauses:

Provided that nothing in this sub-section shall preclude the Appellate Authority from dismissing the appeal at any stage with such observation as it deems fit where the appellant applies for withdrawal of the same and no

request for enhancement of the assessment or penalty has been made by the Commissioner,

Provided further that before making an enhancement the appellant shall be given an opportunity of being heard on the proposal of enhancement;

Provided also that the appeal shall be disposed off within such time as may be prescribed.

Provided further that on an appeal, against an order passed after the direction under Clause (c), no further direction to pass a fresh order be made under Clause (c).

(Above third proviso has been ADDED vide notification no.- 103/XXXVI(3)/2016/15(1)/2016 Dt. 31.03.2016 w.e.f. 31st March, 2016 as above)

(9) An order passed under this section shall, subject to the provisions of this Act, be final.

(10) If the amount of the tax assessed, fee levied or penalty imposed is reduced by the appellate authority under sub-section (6) he shall order the excess amount of tax, fee or penalty, if realized, to be refunded.

(11) section 5 of the Limitation Act, 1963, shall apply to appeals or other applications under this section.

(12) The appellate authority shall be under the superintendence and control of the Commissioner:

Provided that in the exercise of such superintendence and control of the Commissioner, no order, instructions and directions shall be given by the Commissioner so as to interfere with the discretion of the appellate authority in the exercise of its appellate functions.

(13) Appeal filed by the dealer and the application filed by the Commissioner arising out of the same cause of action in respect of an assessment year shall be heard and decided together:

Provided that where any one of such appeal or application has been heard and decided earlier, and if the Appellate Authority hearing the remaining appeal or application considers that such decision may be legal impediment in giving relief in such remaining appeal and application, he may recall such earlier decision and proceed to decide the appeal and the application together, after giving a fresh hearing.