

THE UTTARAKHAND VALUE ADDED TAX ACT, 2005

53: Appeal to the Appellate Tribunal:

(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 below)

(1) Any person aggrieved by an order passed under section 51 (other than an order referred to under sub-section (2) of that section), under section 52, or under section 76, or a decision under section 57; or a direction under sub-section (8) of section 43; or an order passed under sub-section (7) of section 43(A); or an order passed under sub-section (10) of section 48; or an order passed under sub-section (7) of section 48(A) may, within ninety days from the date of service of the copy of such order, decision or direction on him, prefer an appeal to the Tribunal:

Explanation:

For the purpose of this sub-section, the expression "any person" in relation to any order passed by an authority other than the Commissioner includes the Commissioner and, in relation to any order passed by the Commissioner includes the State Government.

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

(1) Any person aggrieved by an order passed under section 51 (other than an order referred to under sub-section (2) of that section), under section 52, or under section 76, or a decision under section 57, or a direction

under sub-section (8) of section 43, may within ninety days from the date of service of the copy of such order, decision or direction on him, prefer an appeal to the Tribunal:

Explanation: For the purpose of this sub-section, the expression "any person" in relation to any order passed by an authority other than the Commissioner includes the Commissioner and, in relation to any order passed by the Commissioner includes the State Government.

(2)(a) Notwithstanding anything contained in sub-section (1), where the disputed amount of tax, fee or penalty does not exceed two thousand rupees and no question of law is involved, the appellant may, at his option, request to the Tribunal in writing for summary disposal of his appeal, whereupon the Tribunal may decide the appeal accordingly;

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

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

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

(4) The Tribunal may at any stage, after giving the appellant a reasonable opportunity of being heard, dismiss the appeal.

(5) The Tribunal may, if it has not already dismissed the appeal under sub-section (4), after calling for and examining the relevant records and after giving the party a reasonable opportunity of being heard or, as the case may

be, after following the procedure prescribed under sub-section (2):

(a) confirm, cancel or vary such order, or

(b) set aside the order and direct the assessing or appellate or revising authority or the Commissioner as the case may be, to pass a fresh order after such further enquiry, if any, as may be specified,

(6) If any amount of tax, fee or penalty is reduced by the Tribunal under sub-section (5), he shall order that any money as may have been realized in excess of the due amount, be refunded according to the provisions of this Act:

Explanation: The power to vary an order referred to in clause (a) includes the power to vary the order by reducing or enhancing the amount of assessment or penalty. However before increasing the tax or other amount the dealer shall be given an opportunity of being heard on the proposal of increasing the liability.

(7) Where an appeal under this section has been filed, the Tribunal may, on the application of the appellant moved along with the memorandum of such appeal after giving the parties a reasonable opportunity of being heard, stay the operation of the order appealed against or the recovery of disputed amount of any tax, fee or penalty payable, or refund of the amount due, or proceedings for reassessment under the order appealed against till the disposal of the appeal:

(8) No application for stay of recovery of any disputed amount of tax, fee or penalty shall be entertained unless the applicant has furnished satisfactory proof of the payment of not less than one third of such disputed amount in

addition to the amount required to be deposited under sub-section (4) of section 51:

Provided that where the amount in dispute in appeal is less than rupees twenty five thousand the dealer shall not be required to deposit the one third of such disputed amount:

~~Provided further that the Tribunal may, for special and adequate reasons to be recorded in writing, waive or relax the requirements of this sub-section regarding payment of the one third of such disputed amount~~
(Above second proviso has been DELETED vide notification no.- 103/XXXVI(3)/2016/15(1)/2016 Dt. 31.03.2016 w.e.f. 31st March, 2016 as above)

(9) Where the Tribunal passes an order under this section for the stay of recovery of any tax, fee or penalty or for the stay of the operation of any order appealed against and such order of the Tribunal results in the stay of recovery of any tax, fee or penalty, such stay order of the Tribunal shall not remain in force for more than forty five days unless the appellant has deposited the balance amount within thirty days of the receipt of the stay order and has furnished security to the satisfaction of the assessing authority concerned for the payment of the amount, the realisation 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;

(10)(a) An appeal against an order of the Appellate Authority under section 51 shall be heard and disposed of-

(i) by a bench of two members, when such order is passed by an

Additional Commissioner (Appeals), or the amount of tax, fee or penalty in dispute exceeds two lakh rupees;

(ii) by a single member bench, in other case.

(b) An appeal against an order or direction passed under the following provisions of the Act, shall be heard and disposed of by a bench of two members;

(i) an order passed under section 52;

(ii) a direction given under sub-section (8) of section 43;

(iii) a direction given under sub-section (7) of section 43A;

(iv) a direction given under sub-section (10) of section 48;

(v) a direction given under sub-section (7) of section 48;

(Substituted vide notification no. 102/XXXVI(3)/2015/22(1)/2015 Dated 31st Mar, 2015 w.e.f. 31st Mar, 2015)

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

(b) An appeal against an order passed under section 52, or against direction given under sub-section (8) of section 43 shall be heard and disposed of by a bench of two members;

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(c) An appeal against an order under sub-section (13) or sub-section (16) of section 76 or a decision given under section 57 shall be filed before the President and shall be heard and disposed of by a bench of three members.

(d) The President may, if he so thinks fit-

(i) direct an appeal to be heard and decided by a larger bench:

(ii) transfer an appeal from one member to another member.

(e) In a case before a bench consisting of two or more members, any order other than an order finally disposing of the case may be passed by any one of the members constituting the bench.

(11) Any member who has previously dealt with any case coming up before the Tribunal in any other capacity or is personally interested in any case coming up before the Tribunal shall be disqualified to hear that case.

(12) All appeals 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 or more of such appeals have been heard and decided earlier, and if the bench hearing the remaining appeals considers that such decision may be legal impediment in giving relief in such remaining appeals, it may, if the earlier decision was given-

(a) by a smaller bench or a bench of equal strength, recall such earlier decision and proceed to decide all the appeals together;

(b) by a larger bench, refer such remaining appeals to such larger bench having jurisdiction and thereafter such larger bench may recall such earlier decision and proceed to decide all the appeals together.

(13) The decision of a case heard by a bench shall be in accordance with the opinion of the majority. Where the members are equally divided the President of the Tribunal may-

(a) if he was not a member of such bench, give his own opinion or refer the case for the opinion of another member, whereupon the case shall be decided in accordance with such opinion: or

(b) form a larger bench.

(14) Where any case is heard by a Bench consisting of two members and the members are divided in their opinion on any point and the other member or the members of the Tribunal are disqualified under sub-section(10) to hear the case or there are for the time being only two members including the President, the Government may appoint a person qualified to be appointed as a member of Tribunal, as an additional member to the Tribunal and the point shall be decided in accordance with the opinion of majority of the members of the Tribunal who have heard the case (including those who first heard it).

(15) The Tribunal shall serve the appellant with notice, in writing, of the appeal decision setting forth the reasons for the decision.