

Point: 209

Department: Commercial Tax

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**VAT Act Sec. 70 : Determination of disputed questions**

- (i) of any such particulars where such particulars are relevant to any inquiry into a charge of misconduct in connection with any proceedings under this Act or the Act repealed by this Act against an advocate, tax practitioner, or chartered accountant, to the authority empowered to take disciplinary action against members practicing the profession of an advocate, tax practitioner or chartered accountant, as the case may be; or
- (j) of any such particulars to the Director of Economics and Statistics as may be necessary, for enabling him to work out the incidence of tax on any commodity or for carrying out any statistical survey of trade, commodity or dealers; or
- (k) of such information as may be required by any officer of department of the Central Government or of a State Government for the purpose of investigation into the conduct and affairs of any public servant or by a Court in connection with any prosecution of the public servant arising out of any such investigation.

**COMMENTS**

1. Sec. 69(1) provides that information furnished under the Act shall be confidential except as provided u/s 69(3), and notwithstanding anything contained in the Evidence Act, 1872 no Court shall ask to produce the same.
2. Sec. 69(2) provides that except as provided in Sec. 69(3), if any servant of the State Govt. discloses any information referred to in Sec. 69(1), he shall be punishable with imprisonment which may extend to 6 months or with fine which may extend to 1,000/- or with both.

**Sec. 70 : Determination of disputed questions**

(1) The Commissioner,—

- (i) either on his own motion on any question in respect of the rate of tax on any goods may, at any time, or
- (ii) if any question is raised by a dealer in respect of the rate of tax on any goods shall, <sup>297</sup>[as early as possible, not later than twelve calendar months] from the date of receipt of the application made by the dealer for this purpose in the prescribed manner and on payment of such fee as may be prescribed,

make an order determining the rate of tax on such goods in accordance with such procedure as may be prescribed.

(2) The Commissioner, if the circumstances so warrant, shall have the power to review any order passed under this Section and pass such order as he deems necessary :

**VAT Act Sec. 70: Determination of disputed questions**

<sup>298</sup> [Provided that no review of an earlier order passed on application of a dealer shall be made unless a reasonable opportunity of being heard is given to the dealer who is likely to be adversely affected by the review :

Provided further that if the application for review relates to reduction of rate of tax, the Commissioner shall reduce the rate of tax after obtaining approval from the State Government.]

- (3) Any order passed by the Commissioner under sub-section (1) and (2) shall have a prospective effect and shall be binding on the authorities referred to in Section 3 in all proceedings under this Act except appeals.

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**COMMENTS**

1. Application u/s 70 for determination of rate of tax on any commodity can be filed by any dealer and it is not necessary that the dealer should be a registered dealer.
2. Application should be filed in the prescribed manner :
  - (a) it should be in duplicate;
  - (b) should give detail description of the goods, its use, raw material required, manufacturing process, etc.;
  - (c) should be accompanied by a sample of the commodity and a copy of the sale bill/ purchase bill, if any; and
  - (d) should contain the dealer's contentions about the entry in which it is claimed to be covered;
  - (e) copy of challan for filing fee of Rs. 100/- must be enclosed with the application - **Rule 80**.
3. A separate application should be filed for each commodity - **Rule 80(3)**.  
If an application is not filed in the prescribed manner, or if filing fee is not paid, the application is liable to be rejected.
  - On receipt of an application u/s 70, the Commissioner shall, after making such enquiry and calling for such additional information from the dealer as

<sup>298</sup> For the existing proviso two new provisos inserted by VAT (Amendment) Act, 2012, w.e.f. 1.4.12.

Prior to substitution it read as under :

Provided that -

- (i) no review of an earlier order passed on application of a dealer shall be made unless a reasonable opportunity of being heard is given to the dealer who is likely to be adversely affected by the review, and

the Commissioner shall not reduce the rate of tax in review.