

## CHAPTER - VII

### REGULATORY PENALTIES

28. Unless otherwise provided in this chapter, the Appropriate Government and NECO may in exercise of their powers under sections 3(-), 4(1) and 13(4) respectively of this Act, specify that any energy user who contravenes any directions that may be issued thereunder shall be liable to pay a penalty not exceeding Rs.10,000 in such manner as may be prescribed. **Penalty for contravention of directions**
29. (i) Any energy user who fails to set-up Energy Conservation Cell and appoint an energy manager as required under section 21, shall be liable to pay a penalty which shall be not less than Rs. 10,000 and which shall not exceed Rs. 25,000. **Penalties under section 21**
- (ii) Any energy user who fails to organise accurate metering, monitoring and reporting of energy consumption as required under section 21 shall be liable to pay a penalty which shall be not less than Rs. 20,000 and which shall not exceed Rs. 1,00,000.
- (iii) Any energy user who fails to maintain full and accurate particulars of the energy consumption for inspection at any time by the prescribed authority as required under section 21 shall be liable to pay a penalty which shall be not less than Rs.20,000 and which shall not exceed Rs.1,00,000.
- (iv) Any energy user who fails to implement energy conservation action schemes as identified in reports prepared by expert agencies/personnel to be feasible for implementation and within the time considered feasible in such reports as required under section 21 shall be liable to pay a penalty equal to twice the prevailing cost of that quantum of energy which could have been saved according to the said report or Rs. 1,00,000. whichever is higher.
- (v) Any energy user (including a manufacturer) who in contravention of section 21 fails to arrange/depute his/its selected plant personnel for training in energy conservation shall be liable to pay a penalty of not less than Rs. 25,000 and not exceeding Rs. 50,000.

Penalty under section  
23

30. Any energy user (including a manufacturer) who in contravention of section 23 fails to cogenerate energy or generate energy through effective recovery of waste heat shall be liable to pay a penalty to the extent of double the cost of that additional quantity of energy that he had consumed as a result of such failure and shall further be liable to a penalty of upto Rs.10,00,000 if such contravention continues beyond 24 months.

Penalty under section  
24

31. Any energy user (including a manufacturer) who displays, supplies or offers or agrees to supply any machinery, equipment, devices or goods, whether manufactured in India or imported, contrary to the provisions of section 24 shall be liable to pay a penalty of not less than 25 per cent of the invoiced value of the machinery, equipment, devices or goods or Rs. 10,00,000, whichever is higher.

Penalty for a continuing  
contravention

32. In case of a contravention of a continuing nature under sections 21,23,24 and 28 the minimum and maximum penalty leviable for such continuing contravention will be twice the amount levied under sections 28 to 32 as the case may be, provided that such continuing contravention will be deemed to have been committed only when there is a failure to comply with the directions given at the time of levy of the first penalty within the time stipulated in the said directions.

Assessment of Penalties

33. (1) The identification of the defaulter and the levying of the penalty shall be done by NECO who shall, upon identification, inform the Central Government.

(2) Penalties shall be levied on an annual basis on each defaulter, and for those who continue to violate the provisions of this Act, the penalty shall double every year beginning from the first year of default.

(3) In working out the economic assessment for levying penalty on defaulters the NECO shall take the following into consideration:-

(a) laying down different amount of penalties for different categories of energy users, or manufacturers, depending upon their volume of consumption of energy and capacity to manufacture;

(b) identifying the total of all expenditure necessary for the

- energy user to comply with the law during each year of the assessment period and adjusting for anticipated inflation;
- (c) capital costs, maintenance and operating expenses;
  - (d) obtaining the net cost by adjusting the figure in paragraphs (a) and (b) above for the effect of tax deductions and credits;
  - (e) bringing up this net cost to a present value (using a cost of capital rate if the energy user is a business);
  - (f) calculating the final economic assessment as the amount which would, if paid monthly over the assessment period, create a stream of payments whose present value, using the same discount rate as in paragraph (d) above, would equal the present value of the cost of compliance;
  - (g) laying down a reasonable upper limit for penalties;
  - (h) such other considerations as the Central Government may prescribe for the purposes of securing the effective implementation of the provisions of this Act.

34. (1) Where any default under this Act has been committed by a company, every person who, at the time the default was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be liable for the default and shall be proceeded against and penalised accordingly;

**Contravention by Companies**

Provided that nothing contained in this sub-section shall render any such person liable for penalty provided in this Act, if he proves that the default was committed without his knowledge or that he exercised all due diligence to prevent the commission of such default.

- (2) Notwithstanding anything contained in sub-section (1), where a default under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer

of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that default and shall be liable to be proceeded against and penalised accordingly.

**Explanation** - For the purposes of this section -

(a) "company" means any body corporate and includes a firm or other association of individuals;

(b) "director" in relation to a firm, means a partner in the firm.

**Contravention by  
government depart-  
ments**

35. (1) Where any default under this Act has been committed by any department of government, the Head of the Department shall be deemed to be liable for the default and shall be proceeded against and penalized accordingly;

Provided that nothing contained in this section shall render such Head of the Department liable for any penalty if he proves that the default was committed without his knowledge or that he exercised all due diligence to prevent the commission of such default.

- (2) Notwithstanding anything contained in sub-section (1), where any default under this Act has been committed by any department of government and it is proved that default has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the Head of the Department, such officer shall also be liable for that default and shall be proceeded against and penalised accordingly.

**Review**

36. Any person or energy user aggrieved by an order made by NECO under section 21, 23 and 24 may prefer a review before the Review Committee within such period and in such form and in such manner as may be prescribed.

**Appeal**

37. (1) Any person or energy user aggrieved by an order made by NECO under sections 21, 23 and 24 may after preferring a review under section 36, prefer an appeal to the Central Government within such period and in such form and in such manner as may be prescribed.

- (2) The procedure for disposing of an appeal shall be such as may

be prescribed.

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

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*The penalties provided under this Act are regulatory in nature. The Act creates certain administrative duties to be complied with by the energy users and for the contravention of which some civil penalties are prescribed. This type of penalties are preferred over the conventional one because of the non-feasibility of applying criminal sanctions, to eliminate criminalization and harassment and to remove genuine difficulties and delays in the judicial process. Since the industries to which the Act will affect in the first place are all large, the amount of penalties are also large to have a deterrent effect on them. To safeguard defaulters from arbitrary imposition of penalties, NECO is required to consider certain matters before imposing them. To ensure justice and fairness, provisions for review at the NECO level and an appeal to the Central Government are also provided.*

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## CHAPTER - VIII

### MISCELLANEOUS

38. No suit, other legal proceedings, shall lie against the Appropriate Government or any other officer or other employee of that Government or any authority constituted under this Act or any member, officer or other employee of such authority in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued thereunder. **Ban on suits, prosecutions**
39. The Central Government may, in relation to its functions under this Act, from time to time, require any person, officer, State Government or other authority to furnish to it any reports, returns, statistics, accounts and other information and such person, officer, State Government or other authority shall be bound to do so. **Power of Central Government to call for information**