

ORISSA VALUE ADDED TAX ACT

The Orissa Value Added Tax Act, 2004 received the assent of the President on the 25th March, 2005 and published by the Law Department vide Notification No. 4780, Legis., dated 30th March, 2005 and published for general information in Orissa Gazette, Extraordinary No. 535 dated March 30, 2005. The Act came into force with effect from 1st April, 2005 vide Notification issued by the Finance Department No. 15231-CTA-82/2002(Pt.II)-F., S.R.O. 198/2005 dated 31.3.2005 and published in Orissa Gazette, Extraordinary No. 539 dated March 31, 2005.

The Orissa Value Added Tax bill for the said Act was introduced in the Orissa Legislative Assembly on 23th December, 2004 vide Orissa Legislative Assembly Notification NBo. 1929/L.A. dated 23-12-2004 and was published in the Orissa Gazette, Extraordinary No. 1826 dated 23.12.2004.

The Statement of Objects and Reasons appended to the Bill are as follows :

“The issue of sales tax reform has been engaging the attention of both the Centre and States for quite a sometime. The present sales tax regime suffers from problems of double taxation of commodities and resulting in cascading effect, multiplication of tax rates, narrow tax base, cumbersome tax administration etc.

With a view to reform the sales tax system in States, a value added tax with uniformity among all States was thought of. The matter was first placed before the conference of Chief Ministers convened by Dr. Manmohan Singh, the then Union Finance Minister in 1995. In this meeting the basic issues on Value Added Tax System were discussed in general and this was followed up by periodic interactions at national level. Thereafter, in the conference of all Chief Ministers held on 16th November, 1999 under the chairmanship of the then Union Finance Minister, Shri Jaswant Sinha, the following three important decisions were taken:-

- (i) before introduction of State Level Value Added Tax system, the tax rates under State Sales Tax need to be harmonised;
- (ii) all Sales Tax related industrial incentives need to be discontinued;
- (iii) State Level Value Added Tax scheme would be implemented by all the States after achievement of first two objectives.

For ensuring implementation of these decisions an Empowered Committee of State Finance Ministers was set up. With regular discussions together with collective effort of all States in the Empowered Committee the first two objectives on harmonisation of Sales Tax structure through implementation of uniform floor rates of tax and discontinuation of sales tax related incentive schemes have been achieved. As a corollary to the above achievements the next step is to implement the State Level Value Added

Tax Scheme. In the meeting of Empowered Committee held on 18th June, 2004 attended by Sri P. Chidambaram, the Union Finance Minister there was consensus for introduction of State Level Value Added Tax in all the States w.e.f. 1st April, 2005.

Accordingly, the Value Added Tax system is now proposed to be introduced in terms of Entry-54 of List-II (State List) of the Seventh Schedule to the Constitution, in the State to replace the existing Orissa Sales Tax Act.

The design of State level VAT system has been worked out by the Empowered Committee of State Finance Ministers through a series of discussions by striking a balance between the common points of convergence regarding VAT and flexibility for the local characteristics of the States. The essence of VAT is that it is a destination based multipoint levy providing set-off of the tax paid earlier on the purchases through the system of input tax credit. This design of input tax credit is based on documentation of tax invoice, cash memo or bill. There will be no longer regular annual assessments or renewal of registration certificates and there will be automatic refund of excess amount due arising out of an order. The tax structure will become simple, more transparent and easy for compliance with uniform VAT rates. Small retailers having turnover up to ten lakhs shall be covered under composition scheme. It is, indeed, a move towards greater efficiency, equity and fairness in the taxation system and eliminating the disadvantages in the sales tax system.

The Bill, therefore, proposes to enact a new legislation for levy and collection of tax on sale or purchase of goods to be called “the Orissa Value Added Tax Act” with necessary transitional provisions. It also seeks to repeal the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947)

The Bill seeks to achieve the aforesaid objective.”

**THE ORISSA
VALUE ADDED TAX ACT, 2004**

ORISSA ACT 4 OF 2005 *

**AN ACT TO PROVIDE FOR THE IMPOSITION AND COLLECTION OF TAX ON
THE SALE OR PURCHASE OF GOODS IN THE STATE.**

*Be it enacted by the Legislature of the State of Orissa in the Fifty- fifth Year of the Republic
of India as follows :*

**CHAPTER – I
PRELIMINARY**

1. Short title, extent and commencement :-

- (1) This Act may be called the Orissa Value Added Tax Act, 2004.
- (2) It extends to the whole of the State of Orissa.
- (3) It shall come into force on such date as the Government may by notification, appoint, and different dates may be appointed for different provisions of this Act.**

2. Definitions :- In this Act, unless the context otherwise requires,:-

- (1) ***“Appellate authority”*** means any authority prescribed for the purpose of section 77 ;
- (2) ***“Appointed day”*** in relation to any provision of this Act, means the date on which such provision comes into force;
- (3) ***“Assessee”*** means any dealer by whom tax or any other sum of money is payable under this Act, and includes every dealer in respect of whom any proceedings under this Act has been initiated for the assessment of tax payable by him;
- (4) ***“Assessing authority”*** means any officer appointed under sub-section(2) of section 3 who is authorised by the Commissioner to make assessment under this Act;
- (5) ***“Assessment”*** means determination of tax liability under this Act and includes self assessment, provisional assessment, audit assessment, assessment of escaped turnover, assessment of unregistered dealers liable to be registered, assessment of casual dealers and reassessment;
- (6) ***“Audit assessment”*** means an audit assessment made under section 42;
- (7) ***“Business”*** includes :
 - (a) any trade, commerce or manufacture;
 - (b) any adventure or concern in the nature of trade, commerce or manufacture;

- (c) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;
- (d) any transaction in connection with, or incidental or ancillary to, the commencement or closure of such trade, commerce, manufacture, adventure or concern;
- (e) any occasional transaction, whether or not there is volume, frequency, continuity or regularity of such transaction, in the nature of such trade, commerce, manufacture, adventure or concern,

Whether or not such trade, commerce, manufacture, adventure, concern or transaction is effected with a motive to gain or profit or whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure, concern or transaction.

Explanation.-- For the purposes of this clause,-

- (i) the activity of raising of man-made forest or rearing of seedlings or plants shall be deemed to be a business,
- (ii) transaction of sale or purchase of capital goods pertaining to any trade, commerce, manufacture, adventure, concern or transaction shall be deemed to be a transaction comprised in business,
- (iii) purchase of any goods, the price of which is debited to the business and sale of any goods, the proceeds of which are credited to the business shall be deemed to be transactions comprised in business;

(8) ***“Capital goods”*** means plants, machinery and equipments used directly in the process of manufacturing, but does not include such plant, machinery and equipments which are used for the purposes and in the circumstances specified in Schedule ‘D’;

(9) ***“Casual dealer”*** means any person, whether as principal, agent or in any other capacity, who has occasional transactions of buying, selling or supplying or distributing goods in the State without having a fixed place of business for cash or deferred payment or for commission, remuneration or other valuable consideration and includes, whether he has a fixed place of business in this State or not;

- (a) a transporter who, while carrying any goods in his goods vehicle, fails to disclose the name and address of the consignor or consignee in the State or fails to furnish copy of invoice, challan, transport receipt or consignment note or document of like nature in respect of such goods, or
- (b) an owner or a lessee of a warehouse who fails to disclose the name and address of the owner of any goods stored at his warehouse or fails to satisfy the Commissioner that such goods are for his personal use or consumption;

(10) ***“Commissioner”*** means the Commissioner of Sales Tax appointed under sub-section (1) of section 3 or deemed to have been appointed under clause (a) of sub-section (2) of section 106;

(11) *“Co-operative society”* means a co-operative society registered under the Orissa Co-operative Societies Act, 1962 (Orissa Act 2 of 1963) and includes a Co-operative registered under the Orissa Self-Help Co-operatives Act, 2001 (Orissa Act 4 of 2002);

(12) *“Dealer”* means any person who carries on the business of buying, selling, supplying or distributing goods, executing works contract, delivering any goods on hire-purchase or any system of payment by instalments, transferring the right to use any goods or supplying by way of or as part of any service, any goods directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes :

- (a) a casual dealer ;
- (b) a commission agent, a broker or a *del credere* agent or an auctioneer or any other mercantile agent, by whatever name called;
- (c) a non-resident dealer or an agent of a non-resident dealer, or a local branch of a firm or company or association or body of persons whether incorporated or not, situated outside the State;
- (d) a person who, whether in the course of business or not,
 - (i) sells goods produced by him by manufacture, agriculture, horticulture or otherwise; or
 - (ii) transfers any goods, including controlled goods whether in pursuance of a contract or not, for cash or for deferred payment or for other valuable consideration;
 - (iii) supplies, by way of or as part of any service or in any other manner whatsoever, goods, being food or any other articles for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

(13) *“declared goods”* means goods declared to be of special importance as specified under section 14 of the Central Sales Tax Act, 1956 (74 of 1956);

(14) *“documents”* means title deeds, writing or inscription and includes electronic records and the like which is produced as documentary evidence;

(15) *“Electronic Hardware Technology Park (EHTP)Unit”* is a unit set up under the EHTP, which undertakes to export their entire production of goods outside the territory of India and is approved by the Development Commissioner of the Export Processing Zone or any other competent authority duly authorised by the Ministry of Industry, Government of India for the purpose;

(16) *“electronic record”* means electronic record as defined in the Information Technology Act, 2000 (21 of 2000);

(17) *“exempted goods”* means any goods exempted from tax under section 17;

(18) ***“Export Oriented Unit (EOU)”*** means any industrial unit, which undertakes to export their entire production of goods and is approved as such by the Development Commissioner of the concerned Export Processing Zone or any other competent authority duly authorised for the purpose by the Ministry of Industry, Government of India;

(19) ***“fixed place of business”*** means the place of business from which the dealer carries out his business activities, and includes-

- (a) a place where the management of the business is undertaken, any of its branch, office, factory or workshop, godown or warehouse;
- (b) a mine, oil or gas well, quarry, timberland or any other place from which natural resources are extracted; or
- (c) a fixed place of business of another person (other than a broker, general commission agent or other independent agent acting in the normal course of business) who is carrying on business on behalf of the dealer in the State in ordinary course of business;

(20) ***“Fund”*** means the Orissa Consumer Welfare Fund referred to in section 53;

(21) ***“goods”*** means every kind of movable property, not being newspapers, actionable claims, money, stock, shares or securities, and includes all materials, commodities and articles (including goods as goods or in some other form) involved in the execution of any works contract or goods used in the fitting out, improvement or repair of movable property and growing crops, grass and trees, plants including the produce thereof and all other things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(22) ***“goods vehicle”*** means any motor vehicle constructed or adapted for use solely for carriage of goods, or any motor vehicle not so constructed or adapted but when used for carriage of goods solely or in addition to passengers, and includes any vessel, boat, animal or any other means of conveyance other than railway wagon or coach;

(23) ***“government”*** means the Government of Orissa;

(24) ***“gross turnover”*** in relation to any period, means the aggregate of the turnover of sales and the turnover of purchases made by a dealer during that period;

(25) ***“input”*** means any goods purchased by a dealer in the course of his business for resale or for use in the execution of works contract, in processing or manufacturing, where, such goods directly goes into composition of finished products or packing of goods for sale, and includes consumables directly used in such processing or manufacturing;

(26) ***“input tax”*** in relation to any registered dealer means the tax collected and payable under this Act in respect of sale to him of any taxable goods for use in the

course of his business, but does not include tax collected on the sale of goods made to a commission agent purchasing such goods on behalf of such dealer;

(27) **“input tax credit”** in relation to any tax period means the setting off of the amount of input tax or part thereof under section 20 against the output tax, by a registered dealer other than a registered dealer paying turnover tax under section 16;

(28) **“manufacture”** means any activity that brings out a change in an article or articles as result of some process, treatment, labour and results in transformation into a new and different article so understood in commercial parlance having a distinct name, character and use, but does not include such activity of manufacture as may be notified;*

(29) **“output tax”** in relation to any registered dealer means the tax leviable and payable under this Act in respect of sale of any taxable goods made by that dealer in the course of his business, and includes tax payable by a commission agent in respect of sale of taxable goods on behalf of such dealer;

(30) **“passenger vehicle”** means a motor vehicle constructed or adapted for the carriage of passengers;

(31) **“person”** means any individual or association or body of individuals and includes a Hindu Undivided Family, a firm, a company whether incorporated or not, a society including a co-operative society, a trust, a club, an institution, an agency, a corporation, other artificial or legal person, local authority, a department of Government, a Government enterprise and a Financial Institution or Bank;

(32) **“place of business”** means any place where a dealer carries on business and includes-

- (a) any warehouse, godown or other place where the dealer stores or processes his goods,
- (b) any place where a dealer produces or manufactures. The Act received the assent of the President on the 25th March, 2005 and published by the Law Department vide Notification No. 4780, Legis., dated 30th March, 2005 and published for general information in Orissa Gazette, Extraordinary No. 535 dated March 30, 2005. The Act came into force with effect from 1st April, 2005 vide Notification issued by the Finance Department No. S.R.O. The bill of the said Act was introduced in the Orissa Legislative Assembly on 23th December, 2004 vide Orissa Legislative Assembly Notification No. 19295/L.A. dated 23-12-2004 and was published in the Orissa Gazette, Extraordinary No. 1826 dated 23-12-2004. The Statement of Objects and Reasons appended to the Bill is as follows: goods,
- (c) any place where a dealer keeps his books of account,

- (d) in case where a dealer carries on business through an agent by whatever name called, the place of business of such agent, or
- (e) any vehicle or vessel or any other carrier wherein the goods are stored or used for transporting the goods;

Explanation – The place of business specified in sub-clause (e) shall not be construed as such for the purpose of registration under sections 25 and 26.

(33) “**prescribed**” means prescribed by rules;

(34) “**prevailing market price**” in relation to any goods sold means the published price in force in the market at the time when the sale of such goods occasioned or, in the absence of any such published price, the price at which such goods were capable of being sold in the open market at that time;

(35) “**property**” means any property, whether real or personal, movable or immovable, tangible or intangible, corporal or incorporeal, and includes a right or interest of any kind, but does not include money;

(36) “**published**” means published in any newspaper, journal or periodical or notified by a market committee established under the Orissa Agricultural Produce Markets Act, 1956 (Orissa Act 3 of 1956) or any such authority as the Government may, by notification, specify from time to time;

(37) “**purchase**” with all its grammatical variations and cognate expressions shall be construed from the word sale;

(38) “**registered dealer**” means a dealer registered under this Act;

(39) “**registering authority**” means any officer appointed under sub-section(2) of section 3 who is authorised by the Commissioner to function as registering authority;

(40) “**resale**” means a sale of goods in the same form in which they were purchased;

(41) “**retailer**” means a dealer, not being a manufacturer or a person selling or despatching goods outside the State, or purchases or receives goods other than by way of purchase from outside the State, who ordinarily effects sales to consumers ;*

(42) “**return**” means any return prescribed or otherwise required to be furnished by or under this Act;

(43) “**reverse tax**” means that portion of input tax on the goods for which credit has been availed but such goods are used subsequently for any purpose other than resale or manufacture of taxable goods or execution of works contract or use as containers or packing materials ;

(44) “**rules**” means rules made under this Act;

(45) “**sale**” with all its grammatical variations and cognate expressions, means every transfer of the property in goods, other than by way of mortgage,

hypothecation, charge or pledge, by one person to another in the course of trade or business for cash, deferred payment or other valuable consideration, and includes-

- (a) a transfer, otherwise than in pursuance of a contract, of property in goods for cash, deferred payment or other valuable consideration,
- (b) transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract,
- (c) delivery of goods on hire purchase or any other system of payment by instalments,
- (d) a transfer of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or any other valuable consideration,
- (e) a supply, by way of or as part of any service or in any other manner whatsoever, of goods being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration,
- (f) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made, but does not include a mortgage, hypothecation, charge or pledge.

Explanations.-(a) A sale or purchase of goods shall be deemed to have taken place inside the State if the goods are within the State -

- (i) in the case of specific or ascertained goods, at the time the contract of sale is made, and
 - (ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller, or by the buyer, whether assent is prior or subsequent to such appropriation.
- (b) Where there is a single contract of sale or purchase of goods situated in more than one place, the provisions of this Explanation shall apply as if there were separate contracts in respect of the goods at each of such places.

Note. -A sale or purchase of goods shall not be deemed to have taken place inside the State, if the goods are sold -

- (i) in the course of inter-State trade or commerce, or
- (ii) outside the State, or
- (iii) in the course of import into or export out of the territory of India;

(46) **“sale price”** means the amount of valuable consideration received or receivable by a dealer as consideration for the sale of any goods less any sum allowed as cash discount or trade discount according to the practice normally prevailing in the trade but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof, and the expression “purchase price” shall be construed accordingly.

Explanations.– (a) Where according to the terms of contract, the cost of freight in respect of transportation of goods are incurred by the dealer for or on behalf of the purchaser such cost of freight shall not be included in the sale price but the burden of proof thereof shall be on the dealer.

- (b) In case of sale by hire purchase agreement, the prevailing market price of the goods on the date on which such goods are delivered to the purchaser under such agreement shall be deemed to be the sale price.
- (c) In relation to transfer of right to use any goods for any purpose (whether or not for a specified period) the consideration or the hire charges received or receivable for such transfer shall be the sale price.
- (d) Amount of duties levied or leviable on the goods under the Central Excise Act, 1944 (1 of 1944), and the Customs Act, 1962, (52 of 1962) whether such duties are payable by the seller or any other person, shall be included in the sale price.
- (e) Amount received or receivable by the seller by way of deposit, warranty (whether refundable or not) which has been received or is receivable whether by way of separate agreement or not, in connection with, or incidental or ancillary to, the sale of goods shall be deemed to be included in the sale price,
- (f) The sale price shall not include the tax paid or payable under this Act;

(47) **“self assessment”** means a true and correct determination of net tax liability by a dealer in relation to any tax period;

(48) **“Software Technology Park (STP)”** unit means a unit set up under the STP, which undertakes to export their entire production of goods outside the territory of India and is approved by the Development Commissioner of the concerned Export Processing Zone or any other competent authority duly authorised by Ministry of Industry, Government of India for the purpose;

(49) **“Special Economic Zone (SEZ)”** means any Special Economic Zone specified by the Government of India by notification under section 76A of the Customs Act, 1962 (52 of 1962);

(50) **“State”** means the State of Orissa;

(51) **“tax”** means tax chargeable under this Act;

(52) **“tax invoice”** means a document showing the goods sold with price, quantity and other details as required under section 62;

(53) **“tax period”** means such period for which return is required to be furnished by or under this Act;

(54) **“taxable goods”** means goods liable to tax under this Act;

(55) **“taxable limit”** in relation to the business of a dealer is that part of the gross turnover of sales or purchases, as the case may be, specified in sub-section (4) of section 10;

(56) **“taxable turnover”** means the turnover on which a dealer is liable to pay tax as determined after making such deduction from his gross turnover and in such manner as may be prescribed ;

(57) **“transporter”, “carrier” or “transporting agent”** means the owner or any person having possession or control of a goods vehicle, who transports on account of any other person for hire or on his own account, any goods from one place to another, and includes any person whose name is entered in the permit issued under the Motor Vehicles Act, 1988 (59 of 1988) as the holder thereof, the driver or any other person in-charge of such vehicle ;

(58) **“Tribunal”** means the Orissa Sales Tax Tribunal constituted or deemed to have been constituted under section 4;

(59) **“turnover of purchases”** means the aggregate of the amounts of purchase price paid and payable by a dealer in respect of the purchase or receipt of goods liable to tax under section 12 during a given period :

(60) **“turnover of sales”** means the aggregate of the amounts of sale price received or receivable by a dealer in respect of sale or supply of goods effected or made during a given period ;

(61) **“vehicle”** includes every wheeled conveyance used for the carriage of goods or goods in addition to passengers;

(62) **“vessel”** includes any ship, barge, boat, raft, timber, bamboos or floating materials propelled in any manner;

(63) **“works contract”** means a contract for the construction, building, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any property;

(64) **“year”** means the financial year.

CHAPTER II

TAXING AUTHORITIES AND TRIBUNAL

3. Taxing authorities : (1) The Government shall, for carrying out the purposes of this Act, appoint a person to be the Commissioner of Sales Tax.

(2) The Government may appoint such other persons under any prescribed designation including a Special Commissioner, an Additional Commissioner, a Joint Commissioner, a Deputy Commissioner, an Assistant Commissioner, a Sales Tax Officer, or an Assistant Sales Tax Officer to assist the Commissioner and they shall exercise such

powers as may be conferred, and discharge such functions as may be required, by or under this Act within such local area as may be assigned by the Commissioner.¹

(3) The Commissioner shall have jurisdiction over the whole of the State and the other persons appointed under sub-section (2) shall, within such areas as the Commissioner may, by general or special order specify, exercise such powers as are, or may be conferred and discharge such functions as may be required, by or under this Act.²

(4) Without prejudice to any other functions that the Commissioner may perform under the provisions of this Act, he shall exercise the following powers and discharge the following functions:-

- (a) to superintend and control all persons employed in the executive administration of tax;
- (b) subject to the provisions of this Act and the rules, to make rules of procedure and conduct of administration for the guidance of persons subordinate to him;
- (c) to call for any record from any subordinate officer and also to call for any paper or document in connection with any assessment under this Act;
- (d) to inspect the records and to superintend the work of officers subordinate to him and their offices.

4. Orissa Sales Tax Tribunal :- (1) (a) The Government shall, by notification, constitute a Tribunal to be called the Orissa Sales Tax Tribunal, which shall exercise such powers and discharge such functions as may be conferred or imposed by or under the provisions of this Act.

(b) The Tribunal shall consist of six members, of whom, three shall be appointed from among the members of the Orissa Superior Judicial Service (Senior Branch) (hereinafter called the Judicial members of the Tribunal) and the other three members shall be appointed from among the members of the Orissa Finance Service, Class-I (Upgraded Supertime) (hereinafter called the Accounts members of the Tribunal).

(c) The Senior-most Judicial member of the Tribunal shall be the Chairman of the Tribunal, who shall constitute benches, allot cases to the benches and exercise supervision in respect of their disposal.

(d) The Chairman of the Tribunal shall look to the overall administration of the Tribunal subject to regulations to be made by the Tribunal with the previous sanction of the Government consistent with the provisions of this Act and rules.

(e) Any vacancy in the membership of the Tribunal shall be filled up by the Government.

(2) Notwithstanding anything contained in sub-section (1), the Orissa Sales Tax Tribunal constituted under the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) shall be

deemed to have been constituted under this Act with effect from the appointed day and shall be called as such from that date.

(3) The functions of the Tribunal may be exercised by a bench consisting of –

(a) the Chairman or any other single member, as may be constituted by the Chairman, when the total disputed amount of tax and interest and penalty, if any, involved in a case does not exceed rupees two lakhs;

(b) the Chairman or any other Judicial member and an Accounts member, as may be constituted by the Chairman, when the total disputed amount of tax and interest and penalty, if any, involved in a case exceeds rupees two lakhs, but does not exceed rupees ten lakhs; and

(c) three members of the Tribunal, which shall include the Chairman or any other Judicial member and one Accounts member, when the total disputed amount of tax and interest and penalty, if any, involved in a case exceeds rupees ten lakhs and shall be presided over by the Chairman or, as the case may be, the senior Judicial member.

(4) (a) Where an appeal or application is heard by a bench consisting of two members and the members are divided in opinion on any point or points, such point or points shall be referred to the Tribunal consisting of three members.'

(b) Where an appeal or application is heard by three members of the Tribunal and the members are divided in opinion on any point or points, such point or points shall be decided in accordance with the opinion of the majority.

(5) 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.

5. Delegation of the Commissioner's powers and functions:- Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers and functions under this Act or the rules to any person appointed under sub-section (2) of section 3, and any order passed by any such person in exercise of the powers so delegated shall be deemed to be an order passed by that person.*

6. Power to transfer proceedings: (1) Notwithstanding anything contained elsewhere in this Act or in the rules, the Commissioner may, by order in writing, transfer any proceeding or class of proceedings under any provision of this Act from any person appointed under sub-section (2) of section 3 to any other person so appointed, whether or not such other person has jurisdiction in respect of the local areas to which such proceedings or class of proceedings relate.

(2) The person to whom any proceeding is transferred under sub-section (1) shall proceed to dispose of such proceeding as if it has been initiated by himself.

(3) The transfer of a proceeding shall not require reissue of any notice, if such a notice has already been issued before transfer and the person to whom the proceeding is

transferred may, at his discretion, continue the proceeding from the stage at which it was left by the person from whom it was transferred.

7. Person appointed under section 3 and members of the Tribunal to be public servants: The Commissioner and all persons appointed under section 3, and the members of the Tribunal appointed under section 4 shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

8. Indemnity: No suit, prosecution or other legal proceedings shall lie against any officer or servant of Government employed for execution of the provisions of this Act or the rules for anything which is in good faith done or intended to be done.

CHAPTER III

THE INCIDENCE, LEVY AND RATE OF TAX

9. Charge to tax and incidence :- There shall be levied in accordance with the provisions of this Act, –

- (a) a Value Added Tax hereinafter called VAT on the sale or purchase of goods by a dealer; and
- (b) a turnover tax in lieu of VAT on the taxable turnover of sales of every retailer registered under this Act, whose annual gross turnover does not exceed rupees ten lakh and dealers of any specific class or category as may be notified under section 16.

10. Liability :- (1) Subject to other provisions of this Act, every dealer –

- (i) whose gross turnover of sales or purchases, as the case may be, during a period of twelve consecutive months immediately preceding the appointed day exceeded the taxable limit; or
- (ii) who is registered or liable to be registered under the Orissa sales Tax Act, 1947 (Orissa Act 14 of 1947) or the Central Sales Tax Act, 1956 (74 of 1956); or
- (iii) to whom clauses (i) and (ii) do not apply, but –
 - (a) whose gross turnover exceeds the taxable limit during any period of twelve consecutive months, or
 - (b) who has become liable to pay tax under the Central Sales Tax Act, 1956, (74 of 1956); or
 - (c) who is registered as a dealer under the Central Sales Tax Act, 1956 (74 of 1956) or under this Act at any time on and from the appointed day,

shall be liable to pay tax in accordance with the provisions of this Act, –

- (a) in cases of clauses (i) and (ii), with effect from the appointed day,
- (b) in case of sub-clause (a) of clause (iii), with effect from the date immediately following the day on which his gross turnover exceeded the taxable limit during a period of any twelve consecutive months, and

- (c) in cases of sub-clauses (b) and (c) of clause (iii), with effect from the date on which he becomes so liable, or the date of registration, whichever is earlier.

(2) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years during each of which his gross turnover has failed to exceed the taxable limit and his liability to pay tax under this Act shall cease on the expiry of the period specified above.

Explanation:- In computing the period of three years, the part of a year shall be ignored.

(3) Every dealer who has ceased to be liable under sub-section (2) shall be again liable to pay tax under this Act with effect from the date immediately following a period not exceeding twelve consecutive months during which his gross turnover again exceeds the taxable limit.

(4) For the purposes of this Act, taxable limit shall be in relation to any dealer who-

- | | |
|---|----------------|
| (a) purchases or receives any goods from outside the State for sale within the State on his own behalf or on behalf of his principal: | Nil |
| (b) executes any works contract: | Rs. 50,000/- |
| (c) manufactures or produces any goods for sale: | Rs. 1,00,000/- |
| (d) carries on any business other than those referred to in clauses (a), (b) and (c): | Rs. 2,00,000/- |

(5) For the purpose of calculating the gross turnover to determine the liability of a dealer to pay tax under this Act the turnover of all sales whether taxable or not and all purchases subject to tax shall be taken.

Explanation:- The expressions sales and purchases shall mean sales and purchases made by a dealer on his own account and those made on behalf of principal whether disclosed or not.

11. Liability of Tax on sale : (1) The tax shall be levied under this Act on every dealer who is liable to pay tax under section 10 on his taxable turnover of sales.*

(2) For the purposes of sub-section (1), the expression "taxable turnover of sales" shall mean, in relation to a dealer liable to pay tax on sale of goods under sub-section (1) of section 10, that part of the gross turnover of sales during any period which remains after deducting therefrom –

- (a) the turnover of sales of goods exempted from tax under section 17;
- (b) the turnover of sales of goods which are shown to the satisfaction of the Commissioner to have taken place –
 - (i) in course of inter-State trade or commerce, or

(ii) outside the State, or

(iii) in the course of import into or export out of the territory of India.

Explanation:- Sections 3, 4 and 5 of the Central Sales Tax Act, 1956 (74 of 1956) shall apply for determining whether or not a particular sale has taken place in the manner indicated in sub-clauses (i), (ii) and (iii) of clause (b);

(c) in case of turnover of sales in relation to works contract, the charges towards labour, services and other like charges subject to such conditions and restrictions as may be prescribed :

Provided that where the amount charged towards labour, services and other like charges in such contract are not ascertainable from the terms and conditions of the contract or the books of account maintained for the purpose, the amount of such charges shall be calculated at the prescribed rate; and

(d) such other sales on such conditions and restrictions as may be prescribed.¹

(3) Notwithstanding anything contained in any other provision of this Act and subject to such conditions as may be prescribed, a dealer executing works contract may exercise option in writing to pay tax by way of composition at such rate and on such portion of the value of consideration received or receivable and in such manner as may be prescribed.²

(4) (a) Notwithstanding anything contained in the Sale of Goods Act, 1930 (3 of 1930), but subject to clauses (b) and (c), the sale of goods shall, for the purposes of this Act, be deemed to have taken place when title or possession of the goods is transferred or, in the case of works contract, when the goods are incorporated in the course of execution of the works contract, whether or not there is receipt of payment for such sale.

(b) Where, before the time applicable under clause (a), the dealer selling the goods issues a tax invoice in respect of such sale, the sale shall, to the extent it is covered by the invoice or payment, be deemed to have taken place at the time the invoice is issued or the payment is received, whichever is earlier.

(c) Where a dealer issues a tax invoice in respect of any sale not falling under clause (b) within fourteen days from the time specified under clause (a), the sale shall be deemed to have taken place at the time the invoice is issued.

12. Levy of tax on purchase :- Every dealer who, in the course of his business, purchases or receives any goods –

(i) from a registered dealer, in the circumstances in which no tax under section 11 is payable by that registered dealer on such goods, or

(ii) from any person other than a registered dealer, shall be liable to pay tax on the purchase price or prevailing market price of such goods, if after such purchase or, as the case may be, receipt, the goods are not sold within the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India, but are

(a) sold or disposed of otherwise; or

- (b) consumed or used in the manufacture of goods declared to be exempt from tax under this Act; or
- (c) after their use or consumption in the manufacture of goods, such manufactured goods are disposed of otherwise than by way of sale in the State or in the course of inter-State trade or commerce or export out of the territory of India; or
- (d) used or consumed otherwise,

and such tax shall be levied at the same rate, at which tax under section 11 would have been levied, on the sale of such goods within the State on the date of such purchase or receipt.

13. Levy of tax on containers and packing material :- Where any goods is packed in any container or packing materials are sold, such container or packing material shall be deemed to have been sold or purchased along with such goods and the tax under section 11 or section 12 shall be levied on the sale or purchase of such container or packing material at the same rate as applicable to the sale or purchase of the goods contained therein:

Provided that no tax under section 11 or section 12 shall be levied where the container or packing material is sold or purchased along with the goods exempted from tax under section 17.

14. Rates of VAT : (1) The Value Added Tax payable by a dealer under this Act shall be levied on his taxable turnover in respect of different goods specified in Schedule B and Schedule C at the rate mentioned under the said Schedules in respect of those goods.

(2) The levy of tax under sub-section (1) in respect of goods specified in Schedule C shall be in the manner provided in section 15.

15. Points of Levy in respect of certain goods : The levy of Value Added Tax in respect of different goods as specified in Schedule C shall be at such point of sale in a series of sales by successive dealers as the Government may, by notification, specify in relation to those goods.¹

16. Levy of turnover Tax :- Every retailer registered under this Act whose gross turnover does not exceed rupees ten lakhs and every registered dealer of any specific class or category as the Government may by notification, direct, shall pay, in such manner and subject to such conditions and restrictions as may be prescribed, in lieu of the tax payable under section 11, a turnover tax at such percentage of the taxable turnover as the Government may, by notification, specify, in addition to the tax payable on the taxable turnover of purchases under section 12:²

Provided that any such retailer or dealer may, by exercising option in the prescribed manner, elect to pay tax as specified under section 11 in lieu of the turnover tax.³

17. Sales of goods exempt from tax : The sale of all goods specified in Schedule A shall be exempt from tax subject to conditions and exceptions set out therein.

18. Zero rated sales : The rate of tax on the sale of goods subject to levy of tax shall be zero when such goods are sold –

- (a) in course of inter-State trade or commerce ; or
- (b) in course of export out of the territory of India; or
- (c) to a dealer having business under –
 - (i) a SEZ; or
 - (ii) a STP; or
 - (iii) a EHTP; or
- (d) to an EOU

19. Net tax payable : (1)The net tax payable by a registered dealer for a tax period shall be the difference between the output tax (plus purchase tax, if any), and the input tax, which can be determined from the following formula.

$$\text{Net tax payable} = (O + P) - I$$

Where 'O' denotes the output tax payable for any tax period, 'P' denotes the tax payable on purchases by a registered dealer for that tax period under section 12 and 'I' denotes the input tax paid or payable for the said tax period.

(2) The net tax payable by a dealer liable to pay tax but not registered under this Act for a tax period shall be equal to the output tax payable for the said tax period.

(3) If the amount calculated under sub-section (1) is negative, the same shall be carried forward to the next tax period or periods for adjustment against the output tax payable.¹

20. Input tax credit : (1) Subject to the provisions of this Act, for the purpose of calculating the net tax payable by a registered dealer for any tax period, an input tax credit as determined under this section shall be allowed to such registered dealer against the tax paid or payable in respect of all sales or purchases taxable under this Act, other than sales or purchases of goods specified in Schedule C and Schedule D.

(2) The input tax credit to which a registered dealer is entitled under sub-section (1) shall be the amount of tax paid by the registered dealer to the seller on his turnover of purchase of goods during the tax period, calculated, subject to the provisions contained in sub-sections (3), (4) and (5), in such manner as may be prescribed.²

(3) Input tax credit shall be allowed for purchases made within the State from a registered dealer holding a valid certificate of registration in respect of goods intended for the purpose of –

- (a) sale or resale by him in the State;
- (b) use as inputs³ or as capital goods in the manufacturing⁴ or processing of goods, other than those specified in Schedule A and Schedule C and Schedule D for sale;²
- (c) sale of goods subject to levy of tax at zero rate under section 18;

- (d) for use as containers for packing of goods, other than those exempt from tax under this Act, for sale or resale; or Net tax payable.
- (e) transfer of stock of taxable goods other than by way of sale, to any place outside the State :

Provided that –

- (a) the input tax credit on purchases intended for the purpose of clause(e) shall only be allowed in respect of the amount of tax paid or payable in excess of tax at the rate of four per centum;
- (b) if goods purchased are used partially for the purposes specified in this sub-section, input tax credit shall be allowed proportionately to the extent they are used for such purposes; and
- (c) where a registered dealer sells or despatches goods, both taxable and exempt under this Act, the input tax credit shall be allowed proportionately only in relation to the goods which are not so exempt.

(4) Notwithstanding anything contained in this section or elsewhere in this Act, and subject to such conditions and restrictions and in such manner, as may be prescribed, input tax credit may be allowed partially or in phased manner, in respect of such goods or such class of dealers or in such cases, as may be prescribed.*

(5) (a) Input tax credit on capital goods shall be allowed from the date of first sale of taxable goods produced or manufactured after the commencement of such production and shall be adjusted against the output tax over a period not exceeding three years:

Provided that no input tax credit shall be allowed on such capital goods used for the purposes and in the circumstances as specified in Schedule 'D'.

- (b) Input tax credit under clause (a) of this sub-section shall be allowed in lumpsum provided the value of such capital goods is rupees one lakh or less.
- (c) Input tax credit on capital goods shall be allowed only on purchase of such goods made on or after the appointed day.
- (d) In case of closure of business before the commencement of commercial production, no input tax credit on capital goods shall be allowed and input tax credit carried forward, if any, shall be forfeited.
- (e) In case where there is production of both taxable goods and goods exempt from tax, the input tax credit admissible on capital goods shall be determined in the manner prescribed.
- (f) Where the used capital goods are sold, the same shall be subject to tax under this Act.

(6) Input tax credit shall not be claimed by the dealer for any tax period until the dealer receives the tax invoice in original evidencing the amount of input tax :

Provided that for good and sufficient reasons to be recorded in writing, the Commissioner may, in the prescribed manner, allow such credit subject to such conditions and restrictions as may be specified in the order allowing the credit.

(7) A registered dealer who intends to claim input tax credit shall, for the purpose of determining the amount of input tax credit, maintain accounts and such other records as may be prescribed in respect of the purchases and sales made by him and stock in trade held.

(8) No input tax credit shall be claimed by or be allowed to a registered dealer –

- (a) in respect of any taxable goods purchased by him from another registered dealer for resale but given away by way of free sample or gift;
- (b) who makes payment of turnover tax as provided in section 16;
- (c) in respect of capital goods used for the purposes and in the circumstances as specified in Schedule 'D';
- (d) in respect of goods brought from outside the State against the tax paid in any other State;
- (e) in respect of stock of goods remaining unsold at the time of closure of business;
- (f) in respect of goods purchased on payment of tax, if such goods are not sold because of any theft, damage and destruction;
- (g) where the tax invoice is not available with the dealer or there is evidence that the same has not been issued by the selling registered dealer from whom the goods are purported to have been purchased;
- (h) in respect of goods purchased from a dealer whose certificate of registration has been suspended;
- (i) in respect of sale of goods specified in Schedule A;
- (j) in respect of sale of goods specified in Schedule C;
- (k) in respect of raw materials used in manufacture or processing of goods, where the finished products are exempt from tax; Input tax
- (l) executing works contract, in relation to works contracts executed by him, where he has exercised option under sub-section (3) of section 11 to pay tax by way of composition; and
- (m) in any other case as the Government may, by notification, specify.

(9) If goods purchased –

- (a) are intended for any of the purposes specified under sub-section (3) but are subsequently used otherwise, or
- (b) are lost due to theft, damage or for any other reason, or
- (c) remain unsold at the time of closure of business, the input tax credit availed in respect of purchase of such goods shall be deducted from the

input tax credit admissible for the tax period during which any one or more of such events occurs :

Provided that if part of the goods so purchased are used otherwise or lost or remain unsold, the amount of reverse tax credit shall be proportionately calculated :

Provided further that if no input tax credit is available for such deduction, the input tax credit availed of shall be repayable in the manner prescribed.*

(10) Where the Commissioner is of the opinion that the method used by a registered dealer to determine the extent to which goods are used, consumed or supplied or intended to be used, consumed or supplied, in the course of manufacturing taxable goods or making sales liable to tax, is not fair and appropriate in the circumstances, he may, after giving the dealer an opportunity of being heard, for reasons to be recorded in writing, reject the method adopted by the dealer and determine the amount of input tax credit admissible.

(11) Subject to the restrictions specified in sub-section (8), input tax credit shall be allowed to a registered dealer in respect of the amount of tax paid or payable on purchase of taxable goods from a registered dealer, which the dealer holds on the date of registration, if such purchases were made within three months prior to the date of his registration.

21. Input tax credit exceeding tax liability : (1) If the input tax credit of a registered dealer other than an exporter selling goods outside the territory of India determined under section 20 for any tax period exceeds the tax liability for that period, the excess credit shall be set off against any outstanding tax, penalty or interest under this Act against that dealer.

(2) The excess input tax credit after adjustment under sub-section (1), shall be carried forward as an input tax credit, to the subsequent tax period or periods, till it is fully adjusted:

Provided that no excess input tax credit for a tax period shall be carried forward exceeding a period of twenty-four months from the close of the year to which that tax period relates.

(3) Where input tax credit is so carried forward, a quarterly credit statement shall be forwarded to the concerned dealer and the claims reconciled accordingly.

22. Adjustment of input tax credit : Where any purchaser, being a registered dealer, has been issued with a credit note or debit note in terms of section 23, or where he returns or rejects goods purchased, as a consequence of which the input tax credit, availed by him for any period to which the purchase of goods relates, becomes less or excess, he shall make due adjustment of the amount of such less credit or excess credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned, subject to conditions as may be prescribed.*

23. Credit notes and debit notes : (1) Where a tax invoice has been issued in respect of any sale and the amount shown as tax charged in the tax invoice is found to be in excess of the tax payable under this Act in respect of that sale, the registered dealer making the

sale shall provide the purchaser with a credit note containing the requisite particulars as may be prescribed.

(2) Where the tax invoice has been issued in respect of any sale and the tax charged in the tax invoice in respect of that sale is found to be less than the amount of tax payable under this Act, the registered dealer making the sale shall provide the purchaser with a debit note containing the requisite particulars as may be prescribed.

(3) In case of goods returned or rejected by the purchaser, a credit note shall be issued by the selling dealer to the purchaser and a debit note shall be issued by the purchaser to the selling dealer containing the requisite particulars as may be prescribed.¹

CHAPTER IV REGISTRATION OF DEALERS, CANCELLATION AND AMENDMENT OF REGISTRATION CERTIFICATE

24. Persons liable to be registered : No dealer shall, while being liable to pay tax under section 10, carry on business as a dealer unless he has been registered under this Act and possesses a certificate of registration, and no dealer shall be issued more than one certificate of registration for his business in the State.

25. Compulsory registration of dealers: (1) Every dealer required by section 24 to be registered shall make an application in the prescribed manner to the registering authority within thirty days from the date of his liability to pay tax, and such application shall be accompanied by a declaration in the prescribed form duly filled in and signed by the dealer specifying therein such particulars as may be prescribed :

Provided that where a dealer has more than one place of business inside the State, he shall declare one of such places as the principal place of business and make the application for the principal place of business, in the manner prescribed.²

(2) If the registering authority, after causing such enquiry as he deems necessary, is satisfied that the applicant is a bonafide dealer and the application for registration is correct and complete and that the requirements of the provisions of this Act and rules have been complied with, he shall register the applicant and grant him a certificate of registration in the prescribed form, which shall specify the class or classes of goods dealt in or manufactured by him and such registration certificate shall be assigned a number in the manner as may be prescribed :³

Provided that the registration certificate issued in respect of dealers liable to pay turnover tax under section 16 shall be in such different form and bear such number in such manner, as may be prescribed.

(3) Nothing in sub-section (2) shall debar the registering authority from refusing to grant a certificate of registration to the applicant after giving him a reasonable opportunity of being heard, if –

- (a) the applicant has not paid any dues payable by him under this Act or under the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) or under the Central Sales Tax Act, 1956 (74 of 1956) in respect of any business ;
- (b) any person associated with the business for which the application for grant of registration is made is in arrears of any dues under the provisions of this Act or the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) in respect of any business; or
- (c) any earlier certificate of registration granted to the applicant or any person associated with the business for which the application for grant of registration is made, has been cancelled under the provisions of this Act or the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) and the circumstances and reasons for which the certificate was cancelled continue to exist; or
- (d) for any other good and sufficient reasons to be recorded in writing.

(4) Where the application for registration is made under this section, the registering authority shall grant him the certificate of registration effective from the date of filing of such application :

Provided that the registering authority shall grant to such dealer the certificate of registration from the date of commencement of liability to pay tax where the application for registration has been made within thirty days of such date.*

(5) Where a dealer registered under the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) continues to be so registered on the day immediately before the appointed day and is liable to pay tax under this Act on such appointed day, shall be deemed to be registered under this Act and the registering authority shall issue to such dealer, in the prescribed manner, a certificate of registration under this Act in the prescribed form and the certificate of registration so issued shall be effective from the appointed day :

Provided that where any such dealer has more than one place of business inside the State, the registering authority shall issue to the dealer, one registration certificate in respect of any such place of business, as he deems appropriate, unless the dealer intimates in writing, to the registering authority, within fifteen days from the appointed day, the principal place of his business in the State in respect of which the certificate of registration shall be issued.

(6) When any dealer has been convicted or has paid composition money under section 86, in respect of any contravention of the provision of section 24, the registering authority shall register such dealer and grant him a certificate of registration and such registration shall take effect from the date of the order granting such registration.

26. Voluntary registration : (1) Any person, who intends to establish a business for the purpose of manufacturing or processing of taxable goods of value exceeding rupees two lakhs per year for sale, may, notwithstanding that he is not liable to pay tax under section 10, apply in the prescribed form and manner to the registering authority for registration.*

Provided that for the purpose of this sub-section, the person shall have to furnish such evidence as may be required by the registering authority in support of his intention to establish a business for manufacturing or processing of taxable goods for sale.

(2) In respect of an application for registration under sub-section (1), the provisions of sub-sections (2), (3) and (4) of section 25 shall apply.

(3) Every dealer who has been registered on application made under this section shall, so long as his registration remains in force, be liable to pay tax under this Act.

(4) The registration of a dealer on application made under this section shall be in force for a period of not less than three complete years, unless cancelled earlier.

27. Security : (1) The registering authority may, for proper realisation of tax payable under this Act and for enforcement of lawful conduct of any dealer from time to time, demand from a registered dealer or from a dealer who has applied for registration under this Act, a reasonable security, or additional security, as the case may be, to be paid in the prescribed manner and if the security so demanded is not paid within such time as may be specified in the order demanding such security, he may, notwithstanding anything contained in this Act,--

- (a) if the defaulter happens to be a registered dealer, cancel the certificate of registration granted to him; or
- (b) if the defaulter is a dealer who has applied for registration, refuse to grant him such registration :

Provided that no such cancellation or refusal shall be made unless the dealer has been given a reasonable opportunity of being heard.*

(2) In case there is reasonable apprehension or likelihood of evasion of tax as a result of misutilisation of way bills, the registering authority may, for reasons to be recorded in writing, demand adequate security or additional security, as the case may be, in the prescribed manner from the dealer before issue of way bills to him on application made in that behalf.¹

(3) The registering authority may, by order, adjust or forfeit, as the case may be, the whole or any portion of the security furnished by a dealer –

- (a) for realising any amount of tax, penalty or interest payable by the dealer ; or
- (b) if the dealer has misused any forms or has failed to keep them in proper custody :

Provided that no order shall be passed under this sub-section without giving the dealer a reasonable opportunity of being heard.²

(4) Where, by reason of any order under sub-section (3), the security furnished by a dealer is forfeited in whole or is rendered insufficient, such dealer shall, on demand made by order of the registering authority, furnish fresh or further security of the requisite amount or shall make up the deficiency, as the case may be, in such manner and within such period as may be specified in such order.

(5) The registering authority may, on application by a dealer who has furnished security as required under sub-section (1) refund in the prescribed manner any amount of security or part thereof if such security is not required for the purposes for which it was furnished.³

28. Penalty for failure to be registered : (1) Without prejudice to any other provision in this Act, when a dealer has, without reasonable cause, failed to get himself registered within the time provided under sub-section (1) of section 25, the registering authority may, after giving such dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum of rupees five thousand :*

Provided that no such penalty shall be imposed under this sub-section in respect of the same offence for which a prosecution under section 82 has been instituted and no such prosecution shall be initiated in respect of an offence for which a penalty has been imposed under this section.

(2) If a penalty is imposed under sub-section (1), the registering authority shall issue a notice in the prescribed form directing the dealer to pay such penalty by such date as may be specified in the notice and the penalty imposed shall be paid to Government treasury.

29. Liability in case of grant of registration by mistake : Where a dealer after being registered under this Act is found that he was not entitled under the provisions of section 25 or section 26 to be so registered, he shall be liable to pay tax during the period from the date on which his certificate of registration took effect till it is cancelled, notwithstanding that he was not liable to pay tax under this Act.

30. Suspension of registration certificate :

(1) If a dealer –

- (a) fails to file the returns under this Act within the time prescribed ; or
- (b) knowingly furnishes incomplete or incorrect particulars in his returns ;or
- (c) fails to pay any tax including penalty or interest, if any, due from him under the provisions of this Act ; or
- (d) having issued tax or retail invoices, fails to account for the said invoices in his books of account ; or
- (e) holds, accepts or furnishes or causes to be furnished, a way bill which he knows or has reason to believe to be false ; or
- (f) is found to have no business at the place declared in the application for registration as his place of business; or
- (g) contravenes any of the provisions of this Act ; or
- (h) discontinues his business and fails to furnish information regarding such discontinuation,

or if there is any other reason for apprehension of evasion of tax or any attempt to evade tax, which, in the opinion of the registering authority, is good and sufficient, the

registering authority may, at any time, for reasons to be recorded in writing, suspend the certificate of registration of such dealer, by notification, in the manner prescribed.¹

(2) Where a certificate of registration is suspended under sub-section (1), the registering authority shall issue a notice to the dealer concerned requiring him to appear in person or through authorised representative and produce records, documents and evidence on the date and time specified therein, which in no case shall be later than thirty days from the date of such suspension, relying on which he intends to rebut such suspension.

(3) The certificate of registration suspended under sub-section (1) may be restored on an application made by the dealer alongwith evidence, to the satisfaction of the registering authority, of payment of taxes due and submission of returns or the evidence to the effect that the grounds on which the certificate of registration has been so suspended is erroneous or not applicable, as the case may be.

(4) Where the certificate of registration of a dealer is suspended or is restored after such suspension, the information shall be widely publicised through publication in the Commercial Tax Gazette and in any other manner as may be prescribed.²

31. Cancellation of certificate of registration : (1) Where –

- (a) any business in respect of which a certificate of registration has been granted to a dealer under this Act is discontinued ; or
- (b) in the case of transfer of business by a dealer, the transferee already holds a certificate of registration under this Act ; or
- (c) an incorporated body is closed down or otherwise ceases to exist ; or
- (d) the owner of a proprietorship business dies leaving no successor ; or
- (e) in case of a firm or association of persons, if it is dissolved ; or
- (f) a dealer has ceased to be liable to pay tax under this Act,

the registering authority may, by order, cancel the certificate of registration of such dealer or the transferor dealer, as the case may be, from such date as may be specified in that order.

(2) The certificate of registration shall be deemed to be inoperative

- (a) in case of clause (a) and clause (b) of sub-section (1), with effect from the date of discontinuance or transfer of the business, as the case may be;
- (b) in case of clauses (c), (d), (e) and (f) of sub-section (1), from the date on which the liability of the dealer to pay tax has ceased,

notwithstanding the fact that the certificate of registration is cancelled from a later date.

(3) A registered dealer, whose certificate of registration becomes liable for cancellation under clauses (a), (b), (c), (e) and (f) of sub-section (1) shall apply for cancellation of the registration to the registering authority in such manner and within such time as may be prescribed.

(4) On receipt of such application, if the registering authority is satisfied that the certificate of registration of the dealer is liable to be cancelled under sub-section (1), he may cancel such certificate.*

(5) Where the dealer whose certificate of registration has been suspended under sub-section (1) of section 30 fails to furnish the requisite evidence within the time specified under sub-section (3) of the said section, the registering authority shall, after causing such inquiry as he may consider necessary and after giving an opportunity of being heard to the dealer, cancel the certificate of registration held by him and the cancellation shall take effect from the date of order of cancellation.

(6) Every dealer whose certificate of registration is cancelled under this section shall pay in respect of every taxable goods held as stock in trade or as capital goods on the date of cancellation, an amount equal to the tax that would have been payable in respect of those goods if the goods were sold at prevailing market price on that date or the total input tax credit previously claimed in respect of those goods, whichever is higher.¹

(7) Every dealer who applies for cancellation of his registration shall surrender with his application the certificate of registration granted to him alongwith the unused way bills held on the date of such application and the account of utilisation of such way bills, if any, for which no account has been rendered.

(8) Every dealer whose certificate of registration is cancelled otherwise than on application shall surrender the certificate of registration alongwith the unused way bills, if any, held on the date of such cancellation, the account of utilisation of such way bills and the statutory declaration forms, if any, for which no account has been rendered, within seven days from the date of receipt, by him, of the order of cancellation.

(9) If a dealer –

- (a) fails, without sufficient cause, to comply with the provisions of sub-section(3) or sub-section (6); or
- (b) fails to surrender his certificate of registration as required under sub-section(7); or
- (c) fails to surrender his registration certificate alongwith unused way bills and the statutory declaration forms and the account of utilisation of such way bills and declaration forms, for which no account has been rendered under sub-section (8),

the registering authority may, by an order in writing and after giving the dealer an opportunity of being heard, direct that the dealer shall pay, by way of penalty, a sum equal to rupees one hundred for each day of default subject to a maximum of rupees ten thousand.

(10) The registering authority shall, at intervals of one month, publish in the Commercial Tax Gazette such particulars, as may be prescribed, in respect of every

dealer whose certificate of registration has been cancelled under the provisions of this Act during the intervening period.²

(11) The cancellation of a certificate of registration shall not affect the liability of any dealer to pay tax for any period till the date of such cancellation which remains unpaid or is assessed after the said date, notwithstanding that he is not liable to pay tax under this Act.*

32. Amendemnt of certificate of registration : (1) If any dealer registered under this Act –

- (a) sells or disposes of his business or any part thereof or the place of business, or discontinues his business; or
- (b) effects, or comes to know of, any other change in the ownership of the business, or changes the name, style, constitution or nature of business, or changes his place of business or warehouse, or opens a new place of business, or makes any addition or deletion in the class or classes of goods dealt in or manufactured,

he or any person duly authorized by him shall, within the prescribed time, inform the registering authority accordingly.*

(2) If under circumstances mentioned in clause (b) of sub-section (1) a registered dealer makes an application for amendment of the certificate of registration, the registering authority may, subject to provisions of sub-section (6), make or cause to be made such enquiry as he deems necessary and amend the certificate of registration of the dealer or reject the application for such amendment :

Provided that before an application for amendment of certificate of registration in rejected, an opportunity of being heard shall be allowed to the dealer.

(3) Notwithstanding anything contained in sub-section (2), where the registering authority is satisfied on his own information that the certificate of registration issued to a dealer requires amendment with regard to certain particulars specified therein, he may amend the said certificate after giving the dealer an opportunity of being heard.

(4) Where no order either granting or rejecting the application for amendment of the registration certificate is passed within thirty days from the date of receipt of such application, it shall be deemed that the amendment as applied for has been granted and the certificate of registration shall accordingly be amended :

Provided that if the delay in disposal of the application for amendment of the certificate of registration is attributable to the lapse on the part of the dealer, the limitation as provided under this sub-section shall not apply.

(5) When a certificate of registration is amended under sub-section (3) on any of the events specified in sub-section (1), such amendment shall take effect from the date of such event and in any other case of amendment coming under sub-section (2), the amendment shall take effect from the date of application.

(6) Notwithstanding anything contained in sub-section (1), where any change alters the basic status of a dealer, such as, conversion of proprietorship concern to partnership firm or vice-versa, dissolution of an existing firm and creation of a new firm, formation of a firm into a company or vice versa, a fresh certificate of registration shall be required to be obtained by the dealer.

(7) Where a dealer fails, without any reasonable cause, to inform the registering authority the changes as provided under sub-section (1) within the time prescribed, he shall be liable to a penalty of rupees one hundred for each day of default.

CHAPTER V

RETURN AND RETURN DEFAULTS

33. Periodical returns and payment of tax : (1) Every registered dealer shall furnish returns in such form, for such period, by such dates and to such authority, as may be prescribed :¹

Provided that the Commissioner may, subject to such conditions and restrictions as may be prescribed, exempt any such dealer or class of dealers from furnishing such returns or require any such dealer to furnish –

- (a) returns for such different periods; or
- (b) separate return for each or any branch or place of business inside the State, where such registered dealer has more than one branch or place of business in the State.

(2) If the Commissioner has reason to believe that the turnover of sales or the turnover of purchases of any dealer is likely to exceed or has exceeded the taxable limit as specified in sub-section (4) of section 10, he may, by notice, served in the prescribed manner, require such dealer to furnish return as if he were a registered dealer, but no tax shall be payable by him unless his gross turnover exceeds the taxable limit provided under the said sub-section.²

(3) A registered dealer, whose certificate of registration is cancelled by the registering authority under section 31, shall furnish a final return in such form as may be prescribed, within thirty days from the date of order of such cancellation.¹

(4) If any dealer, having furnished returns under sub-section (1) or sub-section (2), discovers any omission or error in any return so furnished, he may file a revised return before the date on which the return for next tax period becomes due.

(5) If any dealer, after furnishing a return under sub-section (1) or sub-section (2), discovers that a higher amount of tax was due than the amount of tax admitted by him in the original return for any reason, he may voluntarily disclose the same by filing a revised return for the purpose and pay the higher amount of tax as due at any time, in the manner provided under section 50 :

Provided that no such voluntary disclosure shall be accepted where the disclosure is made or intended to be made after receipt of the notice for tax audit under this Act, or as a result of such audit.

(6) Every dealer required to file return under sub-section (1) or sub-section (2) shall pay the full amount of tax payable according to the return or the differential tax payable according to the revised return furnished, if any, in the manner provided under section 50.²

(7) Every return under this section shall be signed and verified–

- (a) in case of an individual, by the individual himself, and where the individual is absent, by any person duly authorised by him in this behalf;
- (b) in the case of a Hindu Undivided Family, by the Karta,
- (c) in the case of a company or local authority, by the principal officer thereof;
- (d) in the case of a firm, by any partner thereof not being a minor;
- (e) in the case of any other association, by any person competent to act in that behalf.

Explanation:- For the purpose of clause(c) of sub-section (7), the expression “principal officer” shall have the meaning assigned to it under clause (35) of section 2 of the Income Tax Act, 1961 (43 of 1961).

(8) Any return signed by a person who is not authorised under sub-section (7) shall not be treated as a return for the purposes of this Act:

Provided that any amount deposited on the basis of such return shall not be refunded except where it is established under the provisions of this Act to be otherwise not payable.

34. Default in filing of return : (1) Where a dealer required to file return under sub-sections (1),(2) or (3) of section 33 –

- (a) fails without sufficient cause to pay the amount of tax due as per the return for any tax period; or
- (b) makes voluntary disclosure under sub-section (5) of section 33 showing a higher amount of tax to be due than was shown by him in the original return; or
- (c) fails to furnish return,

such dealer shall be liable to pay interest in respect of –

- (i) the tax, which he fails to pay according to the return ; or
- (ii) the difference of the amount of tax according to the voluntary disclosure; or
- (iii) the tax payable for the period for which he has failed to furnish return;

at the rate of two per centum per month from the date the return for the period was due to the date of its payment or to the date of order of assessment, whichever is earlier.¹

(2) If a registered dealer, without sufficient cause, fails to pay the amount of tax due and interest payable thereon along with return or revised return in accordance with the provisions of sub-section (1), the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to the tax and the interest payable by him, a penalty at the rate of two per centum per month on the tax and interest so payable, from the date it had become due to the date of its payment or the order of assessment, whichever is earlier.

(3) If a registered dealer or any other dealer required to furnish return under sub-section (2) of section 33, without any sufficient cause,

- (a) fails to comply with the requirements under sub-section (2) or (3) of section 33, or
- (b) fails to furnish, the proof of payment in relation to any voluntary disclosure made in accordance with sub-section (5) of section 33, or
- (c) fails to furnish the proof of payment as required under sub-section (6) of section 33,

the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to any tax, interest and penalty under sub-sections (1) and (2) payable or paid by him, a penalty of a sum of rupees one hundred per each day of default subject to a maximum of rupees ten thousand.¹

(4) The penalties as provided under this section may be imposed by the Commissioner notwithstanding the fact that assessment proceedings have not been initiated against the dealer under section 42 or section 43.

(5) Any penalty imposed under this section shall be without prejudice to any prosecution for any offence under this Act.

35. Tax to be collected by registered dealers: No person who is not a registered dealer shall collect in respect of any sale of goods by him in the State any amount by way of tax under this Act, and no registered dealer shall make any such collection except in accordance with the provisions of this Act and the rules and at any rate in excess of the rate specified for the purpose by or under this Act.

36. Rounding off of amount of tax or penalty : The amount of tax or penalty payable or refundable for any period under the provisions of this Act shall be rounded off to the nearest rupee where such amount contains a fraction of a rupee being fifty paise or more, and where such fraction is less than fifty paise, it shall be ignored.

37. Rounding off of tax or penalty for calculation of interest: In calculating the interest payable under section 34, the amount of tax in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees, if such amount contains a part of rupees one hundred being fifty rupees or more, and if such part is less than fifty rupees it shall be ignored.

38. Scrutiny of returns : (1) Each and every return in relation to any tax period furnished by a registered dealer under section 33, shall be subject to scrutiny by the

assessing authority to verify the correctness of calculation, application of correct rate of tax and interest, claim of input tax credit made therein and full payment of tax and interest, payable by the dealer for such period.

(2) If any mistake is detected as a result of scrutiny made under sub-section (1), the assessing authority shall serve a notice in the prescribed form on the dealer to make payment of the extra amount of tax alongwith the interest as per the provisions of this Act, by the date specified in the said notice.¹

CHAPTER VI

ASSESSMENT, REFUND AND RECOVERY OF TAX

39. Self assessment : (1) Subject to provisions of sub-section (2), the amount of tax due from a registered dealer or a dealer liable to be registered under this Act shall be assessed in the manner hereinafter provided, for each tax period or tax periods during which the dealer is so liable.

(2) If a registered dealer furnishes the return in respect of any tax period within the prescribed time and the return so furnished is found to be in order, it shall be accepted as self-assessed subject to adjustment of any arithmetical error apparent on the face of the said return.²

40. Provisional assessment: (1) Where a registered dealer fails to furnish the return in respect of any tax period within the prescribed time, the assessing authority, if he is satisfied that provisional assessment is necessary in that case, may proceed to assess the dealer provisionally for that period, notwithstanding anything contained in section 42.³

(2) The provisional assessment under sub-section (1) shall be made on the basis of past returns or past records and, where no such returns or records are available, on the basis of information received by the assessing authority and in every such case, the assessing authority shall direct the dealer to deposit the amount of tax so assessed in such manner and by such date as may be prescribed.

(3) If the dealer furnishes return along with evidence showing full payment of the tax due and the interest and penalty, payable, if any, under section 34 on or before the date specified under sub-section (2), the provisional assessment made under sub-section (1) shall stand revoked on the date on which such return is filed by the dealer.

(4) Nothing contained in this section shall prevent the assessing authority from making assessment under section 42 and any tax, interest or penalty paid against the provisional assessment under this section shall be adjusted against tax, interest or penalty payable on such assessment.

41. Identification of tax payers for tax audit : (1) The Commissioner may select such individual dealers or class of dealers for tax audit on random basis or on the basis of risk analysis or on the basis of any other objective criteria, at such intervals or in such audit cycle, as may be prescribed.

(2) After identification of individual dealers or class of dealers for tax audit under sub-section (1), the Commissioner shall direct that tax audit in respect of such individual

dealers or class of dealers be conducted in accordance with the audit programme approved by him:

Provided that the Commissioner may direct tax audit in respect of any individual dealer or class of dealers on out of turn basis or for more than once in an audit cycle to prevent evasion of tax and ensure proper tax compliance.

(3) Tax audit shall ordinarily be conducted in the prescribed manner in the business premises or office or godown or warehouse or any other place, where the business is normally carried on by the dealer or stock in trade or books of account of the business are kept or lodged temporarily or otherwise.¹

(4) After completion of tax audit of any dealer under sub-section (3), the officer authorised to conduct such audit shall, within seven days from the date of completion of the audit, submit the audit report, to be called "Audit Visit Report", to the assessing authority in the prescribed form alongwith the statements recorded and documents obtained evidencing suppression of purchases or sales, or both, erroneous claims of deductions including input tax credit and evasion of tax, if any, relevant for the purpose of investigation, assessment or such other purposes.

42. Audit assessment : (1) Where the tax audit conducted under sub-section (3) of section 41 results in the detection of suppression of purchases or sales, or both, erroneous claims of deductions including input tax credit, evasion of tax or contravention of any provision of this Act affecting the tax liability of the dealer, the assessing authority may, notwithstanding the fact that the dealer may have been assessed under section 39 or section 40, serve on such dealer a notice in the form and manner prescribed along with a copy of the Audit Visit Report, requiring him to appear in person or through his authorised representative on a date and place specified therein and produce or cause to be produced such books of account and documents relying on which he intends to rebut the findings and estimated loss of revenue in respect of any tax period or periods as determined on such audit and incorporated in the Audit Visit Report.¹

(2) Where a notice is issued to a dealer under sub-section (1), he shall be allowed time for a period of not less than thirty days for production of relevant books of account and documents.

(3) If the dealer fails to appear or cause appearance, or fails to produce or cause production of the books of account and documents as required under sub-section (1), the assessing authority may proceed to complete the assessment to the best of his judgement basing on the materials available in the Audit Visit Report and such other materials as may be available, and after causing such enquiry as he deems necessary.

(4) Where the dealer to whom a notice is issued under sub-section (1), produces the books of account and other documents, the assessing authority may, after examining all the materials as available with him in the record and those produced by the dealer and after causing such other enquiry as he deems necessary, assess the tax due from that dealer accordingly.

(5) Without prejudice to any penalty or interest that may have been levied under any provision of this Act, an amount equal to twice the amount of tax assessed under sub-section (3) or sub-section (4) shall be imposed by way of penalty in respect of any assessment completed under the said sub-sections.

(6) Notwithstanding anything contained to the contrary in any provision under this Act, an assessment under this section shall be completed within a period of six months from the date of receipt of the Audit Visit Report :

Provided that if, for any reason, the assessment is not completed within the time specified in this sub-section, the Commissioner may, on the merit of each such case, allow such further time not exceeding six months for completion of the assessment proceeding.

(7) No order of assessment shall be made under sub-section (3) or sub-section (4) after the expiry of one year from the date of receipt of the Audit Visit Report.

43. Turnover escaping assessment : (1) Where, after a dealer is assessed under section 39, 40 or 42 for any tax period, the assessing authority, on the basis of any information in his possession, is of the opinion that the whole or any part of the turnover of the dealer in respect of such tax period or tax periods has –

- (a) escaped assessment ; or
- (b) been under-assessed ; or
- (c) been assessed at a rate lower than the rate at which it is assessable,

or that the dealer has been allowed –

- (i) wrongly any deduction from his turnover ; or
- (ii) input tax credit, to which he is not eligible,

the assessing authority may serve a notice on the dealer in such form and manner as may be prescribed and after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he deems necessary, proceed to assess to the best of his judgment the amount of tax due from the dealer.¹

(2) If the assessing authority is satisfied that the escapement is without any reasonable cause, he may direct the dealer to pay, by way of penalty, a sum equal to twice the amount of tax additionally assessed under this section.

(3) No order of assessment shall be made under sub-section (1) after the expiry of five years from the end of the tax period or tax periods in respect of which the tax is assessable.

44. Assessment of dealer who being liable to tax fails to register : (1) If the assessing authority, on the basis of any information in his possession, is satisfied that any dealer, who has been liable to pay tax under this Act in respect of any period, has failed to get himself registered, the assessing authority shall proceed in such manner as may be prescribed to assess to the best of his judgment the amount of tax due from the dealer in respect of such period and all subsequent periods and, in making such assessment, shall give the dealer reasonable opportunity of being heard, and the

assessing authority may, if he is satisfied that the default is without reasonable cause, direct the dealer to pay, in addition to the amount of tax so assessed, a penalty equal to the amount of tax so assessed.²

(2) No assessment under sub-section (1) shall be made after the expiry of five years from the end of the tax period or tax periods to which the assessment relates.

45. Assessment of a casual dealer : (1) Every casual dealer shall be liable to pay tax on all his –

- (a) sales, within the State, of taxable goods purchased or received by him; and
- (b) purchases of taxable goods within the State, which are liable to be taxed under section 12.

(2) A casual dealer shall furnish to the assessing authority including the officer-in-charge of any check-post or barrier referred to in section 74, voluntarily or immediately when called upon to do so by a notice in the prescribed form, a return of estimated turnover in the form prescribed.

(3) If a casual dealer does not furnish the return as required under sub-section (2) or if the return furnished by him appears to the assessing authority or the officer-in-charge of the check-post or barrier to be incorrect or incomplete, such authority or the officer-in-charge shall, after giving the casual dealer a reasonable opportunity of being heard, assess him to the best of his judgment.

(4) The assessing authority or the officer-in-charge of the check-post or barrier shall, if he is satisfied after making such scrutiny of the accounts of the casual dealer and such enquiry as he may consider necessary that the return furnished under sub-section (2) is correct and complete, provisionally assess the amount of tax due from him on the basis of such return.

(5) The provisional and the final assessment of a casual dealer shall be made in the manner prescribed.¹

(6) No order under sub-sections (3) or (4) shall be passed after the expiry of six months from the date the notice calling upon the casual dealer to furnish return is served on him or the date on which such return is voluntarily filed.

46. Period of limitation where proceeding for prosecution has been initiated, not to apply in certain case : In case any offence under this Act for which proceeding for prosecution has been initiated, the limitation as specified under sub-section (7) of section 42, sub-section(3) of section 43 and sub-section (2) of section 44 shall not apply.

47. Assessment where proceeding for prosecution has been initiated : Any assessment made or penalty imposed under section 40, 42, 43 or 44 shall be without prejudice to any prosecution that may have been initiated for an offence under this Act.

48. Exclusion of time period for assessment : In computing the period of limitation specified for assessment or reassessment, as the case may be, the time during which any assessment or reassessment proceeding remained stayed under the order of a competent Court shall be excluded.

49. Power of reassessment in certain cases : (1) Where any order passed by the assessing authority in respect of a dealer for any period is found to be erroneous or prejudicial to the interest of revenue consequent to, or in the light of, any judgement or order of any Court or Tribunal, which has become final and binding, then, notwithstanding anything contained in this Act, the assessing authority may proceed to reassess the tax payable by the dealer in accordance with such judgement or order, at any time within a period of three years from the date of the judgement or order.

(2) Where any Court or Tribunal passes an order in appeal or revision to the effect that any tax assessed under this Act or the Central Sales Tax Act, 1956 (74 of 1956) should have been assessed under the provision of a law other than that under which it was assessed, then, in consequence of such order or to give effect to the finding or direction contained in such order, the turnover or any part thereof as relates to such assessment may be assessed or reassessed, as the case may be, to tax at any time within five years from the date of such order, notwithstanding the applicability of any period of limitation to such assessment or reassessment under this Act.

50. Payment and recovery of tax, interest and penalty : (1) Tax payable under this Act shall be paid in the manner hereinafter provided in this section at such intervals as may be prescribed.

(2) A registered dealer furnishing any return under sub-section (1) of section 33 shall pay into Government Treasury, in such manner and at such intervals as may be prescribed, the amount of tax due from him for the tax period covered under the return and, where he furnishes such return after the prescribed date, shall pay the tax so due along with the amount of interest, penalty, or both, as payable by him under section 34, and shall furnish a receipt from the Treasury showing the payment so made.¹

(3) A registered dealer furnishing a revised return in accordance with sub-section (4) or sub-section (5) of section 33, which shows that a higher amount of tax is due than that was paid or payable in accordance with the original return, shall furnish alongwith such return a receipt showing payment of the differential amount of tax payable alongwith the interest, penalty, or both, as payable under section 34, in the manner provided in sub-section (2).

(4) The amount of –

- (a) tax due where returns have been filed without full payment of tax due;
or
- (b) tax assessed under sections 39,40,42,43,44, or 45 less the sum already paid in respect of any tax period, together with interest required to be paid and the penalty, if any, imposed under section 42, 43 or section 44;
or
- (c) penalty imposed under any provision of this Act not covered by clause (b); or
- (d) any other dues under this Act,

shall be paid by the dealer in the manner provided under sub-section (2) within thirty days from the date of service of the notice issued by the assessing authority for the purpose.²

(5) Where a dealer fails to make payment of the tax assessed, interest payable or penalty imposed or any other amount due from him under this Act within thirty days of the date of service of the notice of demand, the assessing authority shall, after giving the dealer a reasonable opportunity of being heard, direct that such dealer shall pay, in addition to the amount due for payment, by way of penalty, a sum equal to two per centum of such amount of tax, interest, penalty or any other amount due, for every month for which payment has been delayed by him after the date on which such amount was due to be paid:

Provided that where any appeal under section 77 or 78 or revision under section 79 has been filed, -

- (i) such penalty shall be payable from the date so specified on the amount ultimately found due from the dealer; and
- (ii) if the tax or penalty, if any, is enhanced in such appeal or revision, such penalty on the excess amount shall be payable from the date by which the dealer is required to pay such excess amount.

(6) When a dealer is in default in making the payment of any amount payable by him under sub-sections (4) and (5) he shall be liable to pay simple interest on such amount at the rate of two per centum per month with effect from the date of such default till the payment of the amount.

(7) All amounts that remain unpaid after the due date of payment in pursuance of the notice issued under sub-section (4) and sub-section (5) shall be recoverable as arrears of public demand or in accordance with the provisions contained in Schedule E.

(8) Where, in pursuance of sub-section (7), any proceedings for the recovery, as arrears of public demand or in accordance with the provisions of Schedule E, of any tax, interest or penalty or part thereof or any other amount remaining unpaid, have been commenced and the amount of tax, interest, penalty or any other amount is subsequently enhanced or reduced as a result of any assessment made or order passed in appeal under section 77 or 78 or revision under section 79 or rectification under section 81, the assessing authority may, in such manner and within such period as may be prescribed, inform accordingly the dealer and the authority by whom or under whose order the recovery is to be made and, thereupon, such proceedings may be continued as if the amount of tax, interest, penalty or any other amount as enhanced or reduced, had been substituted for the tax, interest, penalty or any other amount, as the case may be, which was to be recovered under sub-section (7).¹

51. Special mode of recovery. (1) Notwithstanding anything contained in section 50 or any law or contract to the contrary, the assessing authority may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last address known, require-

- (a) any person from whom any money is due or may become due to a dealer, who has failed to comply with a notice served under sub-section (4) or sub-section (5) of section 50 or has failed to pay any interest due from him under this Act ; or
- (b) any person who holds or may subsequently hold any money for or on account of such dealer, to pay into Government Treasury in the manner specified in the notice issued under this sub-section either forthwith or upon the money becoming due or being held , or at or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount of tax due from the dealer with the interest or penalty or both , as the case may be, as payable under this Act or the whole of the money when it is equal to or less than that amount.

(2) The assessing authority may, at any time or from time to time, amend or revoke any notice issued under sub-section (1) or extend the time for making the payment in pursuance of such notice.¹

(3) Any person making any payment in compliance with a notice issued under sub-section (1) shall be deemed to have made the payment under the authority of the dealer and the receipt from the Government Treasury shall constitute a good and sufficient discharge of the liability of such person to the dealer to the extent of the amount specified in the receipt.

(4) Any person discharging liability to the dealer after service on him of the notice issued under sub-section (1) shall , if the liability is discharged in any manner other than that required under the said notice, be personally liable to the Government to the extent of the liability so discharged or to the extent of the liability of the dealer for the tax due under this Act alongwith the interest or penalty or both, as payable, whichever is less.

(5) Where a person on whom a notice is served under sub-section (1) proves to the satisfaction of the assessing authority that the money demanded or any part thereof was not due to the dealer or that he did not hold any money for or on account of the dealer, at the time the notice was served on him, or that the money demanded or any part thereof is not likely to become due to, or to be held for or on account of, the dealer, nothing contained in this section shall be deemed to require such person to pay into Government Treasury any such money or part thereof , as the case may be.

(6) Any amount of money which a person is required to pay under sub-section (1) or for which he is personally liable to the Government under sub-section (4) shall , if it remains unpaid, be recoverable in the same manner as provided under sub-section (7) of section 50 :

Provided that nothing in this section shall operate to affect any action taken or that may have been taken or prevent any action that may be or is being taken under section 50 for recovery from the dealer the amount due from him.

52. Unauthorised and excess collection of tax by dealer : (1) Any person who, –

- (a) not being a registered dealer, collects any sum by way of tax ; or
- (b) being a registered dealer , collects any amount by way of tax in excess of the tax payable by him,

shall be liable to pay in addition to the tax for which he may be liable, a penalty equal to twice the sum so collected by way of tax.¹

(2) If the assessing authority in the course of any proceeding under this Act or otherwise has reason to believe that any person has become liable to a penalty under sub-section (1) , he shall serve on the person a notice in the prescribed form requiring him to show cause as to why a penalty as provided under sub-section (1) shall not be imposed on him.

(3) On receipt of the reply, if any, to the notice served under sub-section (2), the assessing authority shall, after such enquiry as he may consider necessary, make such order as he deems fit.

(4) (a) The amount of tax collected by any person or dealer in contravention of section 35 shall be forfeited to the Government by an order of the assessing authority :

Provided that no such order shall be made by the assessing authority without giving the person or, as the case may be, the dealer concerned an opportunity of being heard.

- (b) When any such order of forfeiture is made, the assessing authority shall publish a notice in the prescribed manner specifying the names and addresses of the persons from whom tax was collected in contravention of section 35 and other details, if any, relating thereto as may be prescribed and giving such persons an opportunity to file their claims, accompanied by such documentary or other evidence as each such person may furnish to establish his claim, within sixty days from the date of publication of the notice, for refund of the amount collected from them.
- (c) If, on receipt of any such claim, the assessing authority is satisfied that the whole or any part of the amount of such claim is refundable, he shall refund such amount to the person concerned within one month after the amount is collected or recovered from the person or dealer who collected the amount in contravention of section 35.

53. Consumer Welfare Fund : (1) The Orissa Consumer Welfare Fund established under the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) shall be deemed to have been established under this Act.¹

(2) There shall be credited to the Fund, in such manner as may be prescribed all amounts forfeited under sub-section (4) of section 52 and all amounts of penalty paid pursuant to that section, including interest recovered, if any, on such amounts (except any amount refunded under clause (c) of sub-section (4) of the said section) and excluding the expenses of collection and recovery as determined by the Government.²

(3) The moneys credited to the Fund shall be utilised by the Government for the welfare of the consumers in accordance with such rules and the accounts and other relevant records in relation to the Fund shall be maintained in such manner, as may be prescribed.

54. Deduction of tax at source from payment to works contractor : (1) Notwithstanding anything contained in section 50 or any other law or contract to the contrary, any person responsible for making payment of any sum to any contractor (hereinafter referred to in this section as deducting authority) for carrying out any works contract, which involves transfer of property in goods, in pursuance of a contract between the contractor and –

- (a) the Central Government or any State Government, or
- (b) any local authority, or
- (c) any authority or corporation established by or under a statute, or
- (d) any company incorporated under the Companies Act, 1956 (1 of 1956) including any State or Central Government undertaking, or
- (e) any co-operative society, or any other association registered under the Societies Registration Act, 1860 (21 of 1960),

shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or any other mode, whichever is earlier, deduct, subject to the certificate, if any, produced by the contractor in pursuance of sub-section (5), an amount towards tax equal to four per centum of such sum in respect of the works contract, if the value of works contract exceeds rupees fifty thousand.

(2) While making deduction as referred to in sub-section (1), the deducting authority shall grant a certificate to the contractor in the form prescribed and send a copy thereof to the assessing authority within whose jurisdiction the work contract is executed within a period of thirty days of such deduction:

Provided that where the tax is deducted from a registered dealer, the assessing authority who receives the certificate shall forward the same, alongwith the payment received, to the assessing authority under whose jurisdiction the dealer is registered in the manner prescribed.¹

(3) The amount deducted from the bills or invoices shall be deposited into a Government Treasury within one week from the date of deduction in such form or challan as may be prescribed.²

(4) Such deposit into Government Treasury shall be adjusted by the concerned assessing authority towards the tax liability of the contractor and shall constitute a good and sufficient discharge of liability of the deducting authority to the contractor to the extent of the amount deposited.

(5) (a) Where, on an application being made by the contractor in this behalf, the assessing authority is satisfied that any works contract of the nature referred to in sub-section (1) involves both transfer of property in goods and labour or services, or involves

only labour or services and, accordingly, justifies deduction of tax on a part of the sum in respect of the works contract or, as the case may be, justifies no deduction of tax, he shall, after giving the contractor a reasonable opportunity of being heard, grant him such certificate as may be appropriate, in the manner prescribed :

Provided that nothing in the said certificate shall affect the assessment of the tax liability of the contractor under this Act :

Provided further that where the assessing authority, in consideration of the facts and circumstances of the case, is of the opinion that such certificate of no deduction or deduction of tax on a part of the sum as claimed is not justified he may, after allowing the dealer a reasonable opportunity of being heard, refuse to issue such certificate.¹

(b) Where such a certificate is produced by a contractor before the deducting authority, until such certificate is cancelled by the assessing authority, the deducting authority shall either make no deduction of tax or make the deduction of the tax, as the case may be, in accordance with the said certificate.

(6) If any person contravenes the provision of sub-section (1), (2) or (3) or of clause (b) of sub-section (5), the assessing authority shall, after giving him an opportunity of being heard, by an order in writing, impose on such person a penalty equal to twice the amount required to be deducted and deposited by him into Government Treasury.

Explanation.- Nothing in sub-section (5) or any other provision of this section shall be construed as to authorise deduction of any amount towards tax on the value of any property in goods transferred in the course of inter-State sales, sales outside the State or sales in the course of import.

(7) Where any certificate issued under sub-section (5) is found to have been obtained on incorrect or fraudulent representation of facts, the assessing authority shall cancel the certificate with direction to the deducting authority to recover the tax, not deducted on the strength of such certificate, from the subsequent payments due to the works contractor :

Provided that no such order of cancellation shall be issued without giving a reasonable opportunity of being heard to the works contractor.

55. Tax to be first charge on property : Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, including interest or penalty or both, if any, payable by a dealer or any other person under this Act, shall be a first charge on the property of the dealer or such person, as the case may be.

56. Period of limitation for recovery of tax : Notwithstanding anything contained in any law for the time being in force, no proceedings for recovery of any amount under sub-section (7) of section 50 or under sub-section (6) of section 51 shall be initiated after the expiry of five years from the date the amount becomes due for payment :

Provided that when an appeal or revision has been filed, the period of limitation shall run from the date on which the amount due is finally determined.

57. Refund : (1) Subject to other provisions of this Act and the rules, the assessing authority shall refund to a dealer, within a period of sixty days of the date of receipt of such order giving rise to such refund, the amount of tax, including interest or penalty or both, if any, paid by such dealer in excess of the amount due from him, through refund adjustment or through refund voucher:

Provided that the assessing authority shall first adjust such excess amount towards the recovery of any amount due in respect of which a notice under sub-section (4) of section 50 has been issued, or any amount due for any period covered by a return but not paid and, thereafter, refund only the balance, if any.

(2) Where any refund is due to any dealer according to return furnished by him for any period, such refund may provisionally be adjusted by him against the tax due or tax payable, as per the returns filed under section 33, for any subsequent period :

Provided that the excess input tax credit for any tax period shall not be carried forward beyond a period of twenty four months from the close of the year to which that tax period relates for adjustment against the tax due for subsequent period or periods, except when the dealer exercises option in writing for further carry over :

Provided further that the amount of tax, including interest or penalty or both, if any, due from, and payable by, the dealer on the date of such adjustment shall first be deducted from the amount of such refund before adjustment.¹

(3) No claim for refund of any tax, including interest or penalty or both, if any, paid for any tax period or periods under this Act shall be allowed in any case where there is an order for reassessment for such period until such reassessment is completed.

58. Refund of tax under special circumstances : (1) (a) Where any return filed under this Act shows any amount to be refundable to a dealer on account of sales referred to in clauses (b), (c) and (d) of section 18, the dealer may make an application to the assessing authority for refund of that amount in the manner and form as may be prescribed.²

(b) As soon as may be, on receipt of the application for such refund, the assessing authority shall direct a tax audit under sub-section (2) of section 41 of the transactions pertaining to such refund as covered under the return referred to in clause (a) which shall be completed within a period of one month from the date of issue of such direction, to establish the correctness of such claim :

Provided that if there is any delay in completing the audit under this clause due to non-co-operation of the dealer or non-production of evidence as may be required to be furnished in support of the claim of refund or any other lapse on the part of the dealer, the period of such delay shall be excluded while computing the period of limitation and such period shall not be reckoned for grant of interest, if any, admissible under section 59:

Provided further that if such lapse on the part of the dealer persists without any valid reason, the assessing authority may reject the application for such refund after giving the dealer an opportunity of being heard;

(c) Where, on assessment based on tax audit under clause (6), the amount of refund claimed is found to be inadmissible or more than what is admissible, then, the claim of refund of excess amount shall be disallowed and if, in consequence thereof, any amount is found due from the dealer, he shall be liable to pay interest at the rate of two per centum per month on that amount from the date of filing of the return giving rise to the refund till the date of the assessment;

(d) The dealer may, by application made in this behalf, exercise option for grant of provisional refund pending audit, investigation and assessment;

(e) Subject to the provisions of clauses (b) and (c), the assessing authority may require a dealer exercising option under clause (d) to furnish Bank guarantee to the satisfaction of the assessing authority for an amount equal to the amount of refund claimed;

(f) On receipt of such Bank guarantee, the assessing authority shall, subject to the procedure prescribed, grant the dealer a provisional refund of such amount as may be determined to be refundable.

(g) Where a provisional refund has been granted, the assessing authority may, after an audit under section 41 and assessment under section 42 when so required as a result of such audit, grant final refund, and the excess amount, if any, allowed by provisional refund may be recovered as if it is a tax payable under this Act and, thereafter, release the Bank guarantee furnished by the dealer at the time of grant of provisional refund, in the manner prescribed:

Provided that the Bank guarantee shall be forfeited, if –

- (i) the dealer is found to have made an incorrect claim of refund against which payment has already been made; or
 - (ii) the dealer fails to produce evidence in support of the claim of refund; or
 - (iii) the refund claim is reduced by any reason whatsoever and the dealer fails to pay the excess amount of refund provisionally allowed, to such extent and in such manner as may be prescribed, and, where the refund claim is reduced, the dealer shall be liable to pay interest at the rate of two per centum on the excess amount of refund so granted from the date of such grant to the date of its recovery.
- (h) Where any refund claimed is found to be admissible under this sub-section, it shall be granted within a period of ninety days from the date of application for such refund;

(2) (a) Any foreign diplomatic mission or consulate in India or the United nations or any other similar international body, as may be notified by the Government, shall be entitled to refund of tax paid for goods purchased in the State and all such refunds shall be subject to the conditions and restrictions as may be prescribed;¹

(b) Any person, who is authorised by the body referred in clause (a), entitled to refund thereunder, may apply to the assessing authority for such refund in the manner and within the time as may be prescribed,¹

(3) (a) Subject to the provisions of section 31, where a registered dealer closes down or discontinues his business and the net tax payable as a result of such closure or discontinuance of business, after taking into account the closing stock, is a negative value, the dealer shall make an application for refund to the assessing authority in such form and within such time as may be prescribed.

(b) Any refund covered under clause (a) shall be granted in such manner and subject to such conditions and restrictions as may be prescribed.

(4) (a) Where any excess input tax credit for a tax period is carried forward for adjustment against the tax due for subsequent tax period or periods and such credit or part thereof remains unadjusted even after a period of twenty four months from the close of the year to which the tax period for which the return showing the excess input tax credit relates, the dealer may opt to further carry forward the credit till final adjustment or may claim refund of the amount of such excess credit remaining unadjusted.

(b) Where a dealer opts for refund under clause (a), he shall make an application to that effect to the assessing authority within such time and in such manner as may be prescribed.¹

(c) Any refund covered under this sub-section shall be granted in such manner and subject to such conditions and restrictions as may be prescribed.

59. Interest on amount refunded : (1) (a) A registered dealer entitled to refund in pursuance of any order under this Act including an order of assessment under sections 40, 42 and 43 or in pursuance of any order of a Court shall, in addition to the refund, be paid in the prescribed manner simple interest at the rate of eight per centum per annum for the period commencing immediately after the expiry of sixty days of receipt of the order till the date on which the refund is granted:

Provided that interest as applicable under this section shall be admissible after the expiry of the period of ninety days from the date of receipt of the application for grant of refund under sub-section (1) of section 58 till the date of its sanction;

(b) The interest payable under clause (a) shall be calculated on the amount of refund as due after deducting therefrom any tax, interest, penalty or any other dues payable by the dealer under this Act.

(c) If, as a result of any order passed under this Act, the amount of such refund is enhanced or reduced, such interest shall be enhanced or reduced accordingly, and where the interest is reduced, the excess amount of interest granted, if any shall be recovered as if it is an arrear of tax under this Act;

(2) Where, as a result of any final order, the amount of tax including penalty, if any, is –

- (a) found to be not due or not defaulted, the interest paid, if any, on that account shall be refunded; or
- (b) reduced, the interest payable on that account shall be calculated accordingly and the excess amount of interest paid, if any, shall be refunded :

Provided that where any amount of tax payable is enhanced by any such final order, interest shall be payable on the amount by which the tax is enhanced after the expiry of a period of three months from the date of the order :

Provided further that where the realisation of any amount remains stayed by the order of any Court or authority competent under this Act and such order is subsequently vacated, interest shall be payable also for any period during which such order remained in operation.

(3) If, as a result of an appeal or revision, any change becomes necessary in the assessment order, and the appellate authority or the revisional authority directs the assessing authority to amend the assessment order accordingly and, thereupon, the amount paid in excess, if any, shall be refunded to him without interest.

60. Power to withhold refund in certain cases : (1) Where any order giving rise to a refund is the subject matter of an appeal or further proceeding, or where any other proceeding under this Act is pending, and the Commissioner is of the opinion that the grant of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may withhold the refund till the final order is passed in such appeal or proceeding.

(2) Where a refund is withheld under sub-section (1), the dealer shall be entitled to interest as provided under sub-section (1) of section 59, if he becomes entitled to the refund as a result of the appeal or further proceeding or, as the case may be, any other proceeding, under this Act.

CHAPTER VII

ACCOUNTS AND RECORDS

61. Maintenance of accounts and records, etc. : (1) Every registered dealer or a dealer to whom a notice has been served to furnish return under sub-section (2) of section 33 shall maintain, in such form as may be prescribed, a true and up to date account of the value of goods purchased or manufactured and sold by him or goods held by him in stock.¹

(2) Every registered dealer shall keep, at his place of business as recorded in the certificate of registration, all accounts, registers and documents maintained in the course of business :

Provided that if any such dealer has established branch offices of the business at different places of the State other than the principal place of his business, the relevant accounts, registers and documents in respect of each such branch shall be kept by him at the concerned branch.

(3) If the Commissioner is of the opinion that the accounts maintained by any dealer or class of dealers are not sufficient for verification of the returns referred to in sub-section (1) of section 33 or that the assessment cannot be made on the basis thereof, he may require such dealer or class of dealers to keep such accounts, in such form and in such manner as he may, subject to rules, direct.

(4) If the Commissioner is satisfied that dealers of any class are not in a position to maintain accounts in accordance with the provisions of sub-section (1), he may, for reasons to be recorded in writing, exempt such class of dealers from maintaining such accounts.

(5) If a dealer fails to make available the books of account as specified under sub-section (1) at his principal place of business or the branch office, as the case may be, to any officer appointed under section 3 to assist the Commissioner for inspection other than audit, the Commissioner may impose on such dealer a penalty of rupees five thousand, after giving him an opportunity of being heard.

62. Tax Invoice : (1) Every registered dealer making a taxable sale to another registered dealer shall provide that purchaser, at the time of sale, with a tax invoice containing such particulars in such manner as may be prescribed¹ and retain a copy thereof :

Provided that –

- (i) a tax invoice shall not be issued by a registered dealer to a retailer registered under this Act who is paying turnover tax under section 16; and
- (ii) not more than one tax invoice shall be issued for any taxable sale.

(2) Except when tax invoice is issued under sub-section (1), if a registered dealer sells any goods exceeding such amount in value as may be prescribed,¹ in any single transaction to any person, he shall issue to the purchaser a retail invoice containing such particulars in such manner as may be prescribed and retain a copy thereof.²

(3) Tax invoice shall have both original and counterfoil of which the original shall be issued to the purchaser or the person taking delivery of the goods, as the case may be, and the counterfoil shall be retained by the selling dealer.

(4) Retail invoice shall have original and counterfoil of which the original shall be issued to the purchaser and the counterfoil shall be retained by the selling dealer.

(5) Every dealer as referred to in sub-section (1) shall preserve the books of account including tax invoice and retail invoice until the expiry of five years after the end of the year to which they relate or for such further period as may be prescribed, or until the assessment reaches its finality, whichever is later:

Provided that where such dealer is a party to any appeal or revision under this Act, the person shall retain, until the appeal or revision is finally disposed of, every record and accounts that pertain to the subject matter of the appeal or revision.

(6) If a registered dealer fails, without any reasonable cause, to issue tax invoice or retail invoice, as the case may be, in accordance with the provisions of sub-section (1) or sub-section (2), the Commissioner may, after giving an opportunity of being heard, direct the dealer to pay, by way of penalty, a sum of rupees one thousand or twice the amount of tax due in that invoice, whichever is higher, for each occasion of such failure.

(7) Where any tax invoice or retail invoice issued is found to be incorrect or false, the selling dealer shall be liable to pay the tax as passed on to the purchaser on the strength of such invoice with a penalty equal to twice the amount of such tax.

63. Electronic record : (1) Every dealer required under this Act to keep or maintain records, may retain them in the form of electronic records for the period specified in sub-section (5) of section 62.

(2) The Commissioner may, for the purposes of sub-section (1), establish an electronic data processing system at the head quarters level and at any other level including the check-gates, as may be prescribed, for implementing the provisions of this Act and the rules.

(3) For the smooth functioning of the system referred to in sub-section (2) and effective regulation of the interactions between the dealers, authorities appointed under this Act and the Government Treasury, the Commissioner may issue appropriate instruction, from time to time.

(4) Subject to the procedure as may be prescribed, a dealer or a person may issue computer generated tax invoice or retail invoice containing the required particulars.¹

64. Required to provide document and information : Notwithstanding anything to the contrary in this Act, the Commissioner may , for any purpose related to the administration or enforcement of the provisions of this Act, by notice, require any person to furnish to the Commissioner, within such reasonable time as may be specified in the notice, - ²

(a) any information or additional information including a return under this Act, or

(b) any document including electronic records.

65. Accounts to be audited in certain cases : (1) If, in respect of any particular year, the gross turnover of a dealer exceeds rupees forty lakh or any other amount as the Commissioner may specify by notification in the Commercial Tax Gazette, then such dealer shall get his accounts in respect of such year audited by an Accountant within a period of six months from the date of expiry of that year and obtain within that period a report of such audit in the prescribed form containing the prescribed particulars duly signed and verified by such Accountant and, in every such case, a true copy of such report shall be furnished by such dealer to the Commissioner by the end of the month following the expiry of the said period of six months.³

Explanation.- The expression "Accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949) or a cost accountant

within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959) and includes a person who is entitled to be appointed to act as an auditor of companies under sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956).

(2) If any dealer liable to get his accounts audited under sub-section (1) fails to furnish a true copy of such report within the time specified in sub-section (1), the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, impose on him a penalty of rupees one hundred per each day of default.

66. Dealer to declare the name of manager etc. of business :

(1) Every dealer, liable to pay tax, shall furnish a declaration at the time of registration or at such other time in any case, and in such manner, as may be prescribed, stating the name of the person or persons who shall be deemed to be manager or managers of the business of such dealer for the purposes of this Act and such declaration shall be subject to revision in the prescribed manner when there is any change of manager or managers of such business :¹

Provided that the declaration furnished under this sub-section shall also contain the name and address, with designation, of such other persons who are authorised to receive notice and other documents under this Act in relation to the business and when any notice is served on any such person it shall be binding on the dealer.

CHAPTER VIII

LIABILITY IN SPECIAL CASES

67. Liability in case of transfer of business : (1) Where a dealer liable to pay tax under this Act, transfers his business in whole or in part, by sale, lease or license, hire or in any other manner whatsoever, the dealer and the person to whom the business is so transferred shall jointly and severally be liable to pay tax, including any interest and penalty, due from the dealer upto the time of such transfer, whether such tax including interest and penalty has been determined before or after such transfer.

(2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the sale of goods effected by him with effect from the date of such transfer and shall, if he is an existing registered dealer, apply within the prescribed time for amendment of his certificate of registration.²

68. Liability in case of company under liquidation :

(1) Every person –

- (a) who is a liquidator of any company liable for any dues under this Act which is being wound up, whether under the orders of a Court or otherwise; or
- (b) who has been appointed as the receiver of any assets of a company liable for any dues under this Act (hereinafter referred to as liquidator),

shall, within thirty days after he has become such liquidator, intimate the fact of his appointment as such to the Commissioner.

(2) The Commissioner shall, after making such inquiries or calling for such information as he may deem necessary, notify to the liquidator within three months from the date on which he received the intimation of the appointment of the liquidator, the amount which, in the opinion of the Commissioner, would be sufficient to discharge the liability of the company for any tax including interest and penalty, if any, which is then, or is likely thereafter to become, payable by the company.

(3) The liquidator shall not part with any of the assets of the company or the properties in his hand, until he has been notified by the Commissioner under sub-section (2) and, on being so notified, he sets aside an amount equal to the amount notified :

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties in compliance with any order of a court or for the purpose of payment of tax, interest and penalty, if any, payable by the company under this Act or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Commissioner reasonable.

(4) If the liquidator fails to intimate in accordance with sub-section (1) or fails to sets aside the amount as notified by the Commissioner under sub-section (3) or parts with any assets of the company or the properties in his hand in contravention of the provisions of sub-section (3), he shall be personally liable for the payment of tax including interest and penalty, if any, which the company would be liable to pay under this Act :

Provided that where the amount of tax including interest and penalty, if any, payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

(5) Where there are more than one liquidator, the obligations and liabilities attached to the liquidator under this section shall be attached to all the liquidators jointly and severally.

(6) When any private company is wound up and any tax including interest and penalty, if any, determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company, except the Government nominee directors, if any, at any time during the period for which the tax including interest and penalty is due, shall be jointly and severally liable for payment of such dues, if any, unless he proves to the satisfaction of the Commissioner that non-recovery cannot be attributed to any wilful neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(7) The provisions of this section shall have effect notwithstanding anything to the contrary in any other law for the time being in force.

(8) For the purposes of this section, the expression 'Company' and 'Private company' shall have the meaning respectively assigned to them under clauses (i) and (ii) of sub-section (1) of section 3 of the Companies Act, 1956 (1 of 1956).

69. Liability of partners of firm to pay tax : Notwithstanding any contract to the contrary, where any firm is liable to pay any tax including penalty under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment :

Provided that where any such partner retires from the firm, he shall intimate the date of his retirement to the Commissioner in writing and shall be liable to pay tax including penalty remaining unpaid at the time of his retirement and any tax including penalty due upto the date of his retirement though not assessed on that date :

Provided further that if no such intimation is given within fifteen days from the date of retirement, the liability of the partners under the first proviso shall continue until the date on which the intimation is received by the Commissioner.

70. Liability of guardians, trustees, etc.: Where the business in respect of which tax is payable under this Act is carried on by, or is in charge of any guardian, trustee or agent of a minor or other incapacitated person on his behalf and for the benefit of such minor or incapacitated person, the tax including penalty, if any, shall be levied upon, and recoverable from, such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be assessed upon and recoverable from any such minor or other incapacitated person, if he were of full age and of sound mind and if he were conducting this business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.

71. Liability in other cases : (1) Where a dealer is a firm or an association of persons or a Hindu Undivided Family, and such firm, association or Family has discontinued business –

- (a) the tax payable by such firm, association or Family up to the date of such discontinuance may be assessed as if no such discontinuance had taken place ; and
- (b) every person who was at the time of such discontinuance a partner of such firm or a member of such association or Family, shall, notwithstanding such discontinuance, be liable jointly and severally for the payment of tax, penalty and interest, if any, payable by such firm, association or Family, whether such tax has been assessed and penalty imposed prior to or after such discontinuance.

and, subject to as aforesaid, the provisions of this Act shall, so far as may be applicable, apply as if every such person or partner or member were himself a dealer :

Provided that where a partner of a firm liable to pay such tax including penalty and interest, if any, dies, the provisions contained in sub-section (4) shall apply.

(2) Where a change has occurred in the constitution of a firm or an association of persons, the partners or members of the firm or association as it existed before and as it exists after its reconstitution shall, without prejudice to the provisions of section 69, jointly and severally be liable to pay tax including penalty due from such firm or association for any period before its reconstitution.

(3) The provisions of sub-section (1) shall apply where the dealer, being a firm or association of persons, is dissolved or where the dealer, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and, accordingly, references in that sub-section to discontinuance shall be construed as reference to dissolution or, as the case may be, to partition.

(4) Where a dealer liable to pay tax under this Act dies, then, -

- (a) if the business carried on by the dealer is continued after his death by his legal representative or any other person, he shall be liable to pay tax including penalty due from the dealer under this Act, whether such tax has been assessed, penalty imposed and interest levied before his death but has remained unpaid, or is assessed, imposed and levied after his death; and
- (b) if the business carried on by the dealer is discontinued after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent the estate is capable of meeting the charge, the tax including penalty and interest due from the dealer under this Act, whether such dues have been determined before his death but has remained unpaid, or is determined after his death,

and the provisions of this Act shall, so far as may be, apply to such legal representative or other person as if he were the dealer himself.

Explanation:- For the purpose of this sub-section, “legal representative” shall have the same meaning as assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908).

(5) Where a dealer liable to pay tax under this Act is succeeded in the business by any person in any manner described in clause (a) of sub-section (4) or sub-section (1) of section 67, then such person shall be liable to pay tax on the sales or purchases of goods made by him on and after the date of succession.

(6) (a) Where any person sells or purchases any taxable goods as a commission agent on behalf of his principal, such commission agent and his principal shall both be jointly and severally liable to pay tax on the turnover of such sales or purchases, as the case may be.

(b) Where the commission agent has sold or purchased any goods on behalf of the principal and it is shown to the satisfaction of the Commissioner that the tax has been paid by such commission agent on such goods, the principal shall not be liable to pay the tax again in respect of the same transaction.

(c) Where a manager or agent of a non-resident dealer sells or purchases any goods on behalf of that non-resident dealer in the State, the non-resident dealer and the manager or agent residing in the State shall be jointly and severally liable to pay tax on the turnover of such sales or purchases, as the case may be :

Provided that if the non-resident dealer shows to the satisfaction of the Commissioner that the tax payable in respect of such sale or purchase has been paid by

the manager or agent residing in the State, the non-resident dealer shall not be liable to pay tax in respect of the same transaction.

(7) (a) When two or more companies are to be amalgamated by the order of a Court or of the Central Government and the order is to take effect from a date earlier to the date of order and any two or more such companies have sold or purchased any goods to or from each other in the period commencing on the date from which the order is to take effect and ending on the date of order, then such transactions of sale or purchase will be included in the turnover of sales or of purchases, as the case may be, of the respective companies and will be assessed to tax accordingly.

(b) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies and shall also be treated as such for all periods upto the date of the said order, and the registration certificate of the company, which merged, shall be cancelled with effect from the date of the said order.

Explanation- Words and expressions used in this sub-section, but not defined, shall have the respective meanings as assigned to them in the Companies Act, 1956 (1 of 1956).

CHAPTER IX

LIABILITY TO PRODUCE ACCOUNTS AND SUPPLY OF INFORMATION

72. Survey of unregistered dealers: (1) With a view to identifying dealers who are liable to pay tax under this Act, but have remained unregistered, the Commissioner shall from time to time cause survey of unregistered dealers to be undertaken.

(2) For the purpose of such survey, the Commissioner may –

- (a) by general or special notice, require any dealer or class of dealers to furnish the names, addresses and such other particulars as he may find necessary relating to the persons and dealers who have purchased any goods from or sold any goods to such dealer or class of dealers during any given period;
- (b) call for details and particulars regarding the services provided by public utilities or any person which, in his opinion, are relevant and useful and cause the results of the survey to be published, from time to time, in any manner as he deems fit; and
- (c) enter any place where a person is engaged in business, but is not registered or has not applied for grant of certificate of registration under this Act, whether such place is the principal place of business or not and require any person, whether the owner of the business or not, including any employee or any other person who at the time and place be attending in any manner to, or helping in, the business –

- (i) to afford him the necessary facility to inspect such books of account or other documents as the Commissioner may require from him and which he may be maintaining in course of business at such place, and
- (ii) to furnish such information as he may require as to any matter which according to him is useful for, or relevant to, any proceeding under this Act.

Explanation - For the purposes of this clause, a place where the person is engaged in business shall also include any other place in which the person engaged in business or the employee or other person attending to or helping in the business states that any of the books of account or other documents or any part of the cash, stock or other valuable articles or things relating to the business are kept or are reasonably believed to have been kept.

(3) The Commissioner may enter the place where the person is carrying on the business only during the hours at which such place of business is open for business and after sunrise and before sunset, and make or cause to be made extracts or copies from books of account and other documents inspected by him, make an inventory of any cash, stock or other valuable articles or things checked or verified by him, take samples of goods available at the time of inspection and record the statement of any such person which, according to him, may be useful for, or relevant to, any proceeding under this Act.

(4) The Commissioner while exercising powers under this section shall, on no account, remove or cause to be removed from the place where he has entered, any books of account, other documents, cash, stock or other valuable articles or things without giving receipt thereof.¹

73. Production and inspection of accounts and search of premises: (1) The Commissioner may, subject to such conditions as may be prescribed, require any dealer or any other person to –

- (a) produce before him such books of account, registers and documents;
- (b) furnish such information relating to the stock of goods or purchases, sales or deliveries of goods or any other information relating to his business, as may be deemed necessary for the purposes of this Act;
- (c) allow access to the electronic records, if maintained by the dealer.

(2) All books of account, registers and documents relating to the stock of goods, purchases, sales or deliveries of goods by any dealer and all goods and cash kept in any place of business or warehouse, if any, by him or at any other place for and on behalf of him shall at all reasonable times be open to inspection by the Commissioner, and the Commissioner may take or cause to be taken such copies or extracts of the said books of account, registers or documents and such inventory of the goods found along with samples of such goods, as may be necessary for the purposes of this Act.¹

(3) Where the Commissioner, upon information in his possession or otherwise, is of the opinion that –

- (a) any person, to whom a notice under this Act was issued to produce or cause to be produced any books of account or other documents, has failed to produce or cause to be produced such books of account or other documents as required by or under such notice; or
- (b) any person, to whom a notice as aforesaid has been or may be issued, may not produce or cause to be produced any books of account or other documents considered to be useful for, or relevant to, any proceeding under this Act; or
- (c) books of account, registers or documents of any dealer may be destroyed, mutilated, altered, falsified or secreted or any sales by that dealer have been or may be suppressed, or any goods have not been or may not be accounted for in the books of account, registers or other documents required to be maintained under this Act, with a view to evading or attempting to evade payment of tax due under this Act,

the Commissioner or any other person appointed under section 3 if so authorised by the Commissioner may -

- (i) inspect or survey the place of business of a dealer or any other place where it is believed by the Commissioner or the person so authorised that business is being carried on or accounts and documents are being kept by such dealer;
- (ii) direct such dealer to produce accounts, registers and documents relating to his business activities for examination;
- (iii) inspect the goods in the possession of the dealer or in the possession of anybody else on behalf of such dealer, wherever such goods are placed;
- (iv) make search of such places including the search of the person found there, where concealment of facts relating to the business is suspected;
- (v) break open the door of any premises or break open any almirah, box, receptacle in which any goods, accounts, registers or documents of the dealer are expected to be concealed, where access to such premises, almirah, box or receptacle is denied;
- (vi) record the statement of the dealer or his manager, agent or servant or take extracts from the record and put identification marks on accounts, registers or documents and on any door, almirah, box or receptacle.

Explanation. - The goods, accounts, registers or documents, which are found at any place of business or any other place, of a dealer shall be deemed to belong to the dealer, unless the contrary is proved by him.

(4) Notwithstanding anything contained in sub-section (3), the Commissioner or any officer appointed under section 3 if so authorised by the Commissioner may, without prior notice, undertake inspection of the place of business of a dealer or any other place where it is believed that the business is being carried on or accounts are being kept by such dealer and take such other action as specified in that sub-section.

(5) Where any accounts, registers or documents are produced before an officer appointed under section 3 to assist the Commissioner in any proceeding under this Act, such officer may, for reasons to be recorded in writing, impound and retain them in custody for a period not exceeding six months, and shall give the dealer or any other person who has produced such accounts, registers or documents a receipt for the same.

(6) Where, at the time of inspection, the officer authorised by the Commissioner in this behalf has reason to suspect that the dealer is attempting to avoid or evade tax or is concealing his tax liability in any manner, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer as he may consider necessary and shall give the dealer or any other person from whose custody such accounts, registers or documents are seized a receipt for the same, and may retain the same in his custody for examination, inquiry, prosecution or other legal action, for such period not exceeding six months.¹

(7) Notwithstanding anything contained in sub-section (6), the accounts, registers or documents impounded under sub-section (5) or seized under sub-section (6) may be retained beyond a period of six months and upto a maximum period of two years from the date of impounding or seizure, as the case may be, by such officer, after having obtained permission in writing from the Commissioner :

Provided that where the books or documents impounded or seized form a part of the record of assessment, the limitation as provided under this sub-section shall not apply.

(8) The officer authorised by the Commissioner under sub-section (3) may seize any goods liable to tax which are found in the possession of a dealer or in the possession of any person on behalf of such dealer and which are not accounted for in his accounts, registers or documents maintained in the course of his business, and a list of goods so seized shall be prepared by such officer and a copy thereof shall be given to the dealer or any other person from whose custody such goods are seized.²

(9) Where it is not feasible to seize any accounts, registers or documents under sub-section (6) or any goods under sub-section (8), the officer concerned may serve on the owner or the person, who is in immediate possession or control thereof, an order that he shall not remove, part with or otherwise deal with them except with the previous permission of such officer, and, after serving such order, may take such steps as may be deemed necessary under the circumstances.

(10) The officer referred to in sub-section (8) may, after giving the dealer an opportunity of being heard and after holding such further enquiry as he may consider necessary, impose on him for the possession of goods not accounted for, whether seized or not under sub-section (8), a penalty equal to five times of the tax leviable or twenty percent of the value of such goods, whichever is higher, and such officer may release the goods, if seized, on payment of the penalty imposed.

(11) The Commissioner shall have the power to confiscate any goods, whether or not they have been seized under this Act, of any dealer or person which are found in

any office, shop, godown, vehicle, vessel or any other place of the dealer but not accounted for by him in his accounts, registers and other documents maintained in the course of business :¹

Provided that no such order for confiscation of goods shall be made without giving the dealer or person concerned an opportunity of being heard.

(12) (a) The officer referred to in sub-section (8) may require any person –

- (i) who transports or holds in custody any goods of a dealer, to give any information in his possession in respect of such goods or to allow inspection thereof ; and
- (ii) who maintains or has in his possession any accounts, registers or documents relating to the business of a dealer, to produce such accounts, registers or documents for inspection.

(b) If the officer authorised under sub-section (6) has reason to suspect that any transporter, bailee, or the owner or lessee of a warehouse to whom the goods are delivered for transportation is attempting to contravene the provisions of clause (a), or evade payment of any tax due from him under this Act, he may, for reasons to be recorded in writing, seize any accounts, registers or documents as referred to in sub-clause (ii) of the said clause, of the transporter, bailee or, as the case may be, the owner or lessee of the warehouse as may be necessary, granting a receipt for the same and, on such seizure, he shall retain the same as long as may reasonably be necessary for examination thereof or for appropriate legal action.

(c) The powers conferred under clause (b) shall include the power to break open any almirah or box or receptacle in which any account, register or other documents of the transporter, bailee or the owner or lessee of a warehouse are believed to have been kept, or to break open the doors of any premises where any such account, register or documents of any goods referred to in the said clause are believed to have been kept.

(d) The powers under clause (c) shall not be exercisable by an officer below the rank of a Sales Tax officer appointed under this Act.

(e) The Commissioner shall have the power to seize any goods vehicle or seize and confiscate any goods of any transporter, bailee or owner or lessee of a warehouse, which are found in any office, shop, godown, vehicle or vessel or any other place while in transit but not accounted for by the transporter, bailee, or the owner or lessee of the warehouse, as the case may be, in his accounts, registers and other documents maintained in respect of such goods :

Provided that before taking action for the confiscation of goods under this sub-section, the Commissioner shall give the affected person an opportunity of being heard and make an enquiry in the prescribed manner :

Provided further that where an affected person makes payment to the Commissioner the amount of tax at the appropriate rate payable in respect of such goods, to be assessed in the prescribed manner, with a penalty equivalent to twenty per

centum of the value of the goods seized, the goods and the vehicle so seized shall be released.

(13) If a dealer fails to produce books of account and such other records and documents as may be required for the purpose of audit or fails to provide necessary cooperation to facilitate smooth conduct of audit or prevents, in any manner, the conduct of audit, the Commissioner may, after giving the dealer an opportunity of being heard, impose a penalty not exceeding rupees twenty five thousand on the dealer.

74. Establishment of check-posts and inspection of goods while in transit: (1) The Government may, with a view to preventing or checking avoidance or evasion of tax, by notification, direct the establishment of a check-post or barrier or both at such places as may be specified in the notification and specify any of the officers appointed under sub-section (2) of section 3 to be in charge of every such check-post or barrier.¹

(2) The driver or person-in-charge of every vehicle or carrier of goods in transit shall –¹

- (a) carry with him the records of the goods including “Challan” and “Bilties”, bills of sale or despatch memos and prescribed declaration form or way bill duly filled in and signed by the consignor of goods carried;
- (b) stop the vehicle or carrier at every check-post or barrier set up under sub-section (1) or at any other place when so required by an officer authorised by the Commissioner in this behalf;
- (c) produce all the documents, including the prescribed way bill relating to the goods, before the officer-in-charge of the check-post or barrier or the authorised officer;
- (d) give all the information in his possession relating to the goods; and
- (e) allow the inspection of the goods or search of the vehicle by the officer-in-charge of the check-post or barrier or the authorised officer.

(3) Where any goods are in transit within the territory of the State, an officer authorised by the Commissioner in this behalf may stop the vehicle or the carrier or the person carrying such goods, for inspection, at any place within his jurisdiction and the provisions of sub-section (2) shall apply mutatis mutandis for such inspection.²

(4) Where any goods in transit are without documents, or are not supported by documents as referred to in sub-section (2), or documents produced appear to be false or forged, the officer-in-charge of the check-post or barrier, as the case may be, or the officer authorised under sub-section (3), may –

- (a) direct the driver or the person in charge of the goods or carrier of the goods not to part with the goods in any manner including transportation or re-booking the same till a verification of, or an enquiry into such goods is made, which shall be completed within a period of seven days ; and

- (b) seize the goods for reasons to be recorded in writing giving receipt for the goods so seized to the person from whose possession or control the goods are seized.³

(5) The officer-in-charge of the check-post or barrier or the officer authorised under sub-section (3), after giving the driver or person in charge of the goods a reasonable opportunity of being heard and holding such enquiry as he may deem fit, may impose, for possession or movement of goods (in transit), whether seized or not, in violation of the provisions of clause (a) of sub-section (2) or for submission of false or forged documents or way bill either covering the entire goods or a part of the goods carried, a penalty equal to five times of the tax leviable on such goods, or twenty per centum of the value of goods, whichever is higher, in such manner as may be prescribed.

(6) During the pendency of the proceeding under sub-section (5), if anyone prays for being impleaded as a party to the case on the ground of involvement of his interest therein, the officer-in-charge or the authorised officer referred to in that sub-section may, if satisfied, permit him to be so impleaded, and, thereafter, all the provisions of this section shall mutatis mutandis apply to him.

(7) Subject to such rules as may be prescribed, the officer-in-charge of the check-post or barrier or the officer authorised under sub-section (3) may release the goods to the owner of the goods or to any person duly authorised by such owner, on payment of the penalty imposed under sub section (5) in addition to tax payable thereon.

(8) Where the driver or person in charge of the vehicle or the carrier is found guilty of violation of the provisions of clause (b), (c), (d) or (e) of sub-section (2), subject to the provisions of clause(a) of sub-section (4), the officer-in-charge of the check-post or barrier or the officer authorised under sub-section (3) may detain such vehicle or carrier and after affording an opportunity of being heard to such driver or person in charge of the goods or the carrier, may impose a penalty on him as provided under sub- section (5).

(9) Where a transporter, while transporting goods, is found to be in collusion or is likely to be in collusion with a dealer to avoid or evade tax, the officer-in-charge of the check-post or barrier or the officer authorised under sub-section (3) shall detain the vehicle or carrier of such transporter and, after affording him an opportunity of being heard and with the approval in writing of the Commissioner, may seize and confiscate such vehicle or carrier.

(10) When a vehicle or boat carrying goods, coming from any place outside the State and bound for any other place outside the State, passes through the State, the driver or other person in charge of such vehicle or boat shall –

- (a) declare, in such form and manner before the officer-in-charge of the first check-post or barrier, as the case may be, after his entry into the State, that the goods under transport shall not be unloaded, delivered or sold inside the State;

- (b) obtain, in the prescribed manner, a transit pass in such form containing such particulars as may be prescribed, from the said officer; and
- (c) deliver the transit pass so obtained to the officer-in-charge of the last check-post or barrier before his exit from the State, failing which, it shall be presumed that the goods carried thereby have been sold within the State by the owner or person in charge of the vehicle or boat:

Provided that where the goods carried by such vehicle or boat are, after their entry into the State, transported outside the State by any other vehicle, boat or conveyance, the onus of proving that the goods have actually been moved out of the State shall be on the owner or person-in-charge of the vehicle or boat.¹

Explanation.- Where a vehicle or boat owned by a person is hired for transportation of goods by any other person, the hirer of that vehicle or boat shall, for the purposes of this section, be deemed to be the owner of the vehicle or boat, as the case may be.

(11) The officer-in-charge of any check-post or barrier or any other officer, duly authorised by the Commissioner, may detain any vehicle or boat and keep it stationary as long as may reasonably be necessary for examination of the contents therein and the records relating to the goods under transport by such vehicle or boat, and seize the same if, -

- (a) it is presumed under clause (c) of sub-section (10) that the goods carried by the vehicle or boat, as the case may be, has been sold inside the State; or
- (b) the driver or the other person-in-charge of the vehicle or boat, as the case may be, fails, without reasonable cause, to produce or deliver the transit pass required under sub-section (10); or
- (c) he has reason to believe that the goods carried by the vehicle or boat, as the case may be, has been unloaded, delivered or sold inside the State in contravention of the declaration furnished under sub-section (10),

and, thereafter, he may direct the driver or the other person in charge of the vehicle or boat, as the case may be, to pay within a specified period, by way of penalty, a sum equivalent to twenty per centum of the value of the goods under transport by such vehicle or boat, as the case may be, or rupees twenty thousand, whichever is higher, in addition to tax as otherwise payable under this Act, failing which, the said officer may seize and confiscate the goods under transport or seize the vehicle or boat carrying such goods in the prescribed manner to recover such tax and penalty:

Provided that-

- (i) before taking any action for confiscation of the goods, the officer shall give the driver or the person in charge of the vehicle or boat, as the case may be, an opportunity of being heard and, if necessary, may make an enquiry in the manner prescribed; and
- (ii) where the goods under transport are not available at the time of seizure of the vehicle or boat, as the case may be, the officer may detain the vehicle or boat

until such penalty and tax are paid and shall take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle or boat, and the registered owner or the person having possession or control of such vehicle or boat and the driver or boatman, as the case may be, thereof shall be bound to comply with orders and directions as the said officer may, in respect of the movement of such vehicle or boat, issue for giving effect to such seizure.¹

(12) Where the goods seized are of a perishable nature they shall be sold in the prescribed manner.

(13) Where any goods seized under this section are sold, the sale proceeds thereof, after deduction of the tax including penalty payable under this section and the expenses incurred for such sale, be paid to the person from whom the goods are seized.

(14) No order of penalty shall be made under this section in respect of goods which are not liable to payment of tax under this Act.

75. Restriction on movement of goods through railways, water ways, air, postal and courier services : (1) No person shall transport from any railway station, steamer station, airport, post office, courier office or from any other place whatsoever as the Government may, by notification, specify, any consignment of such goods exceeding such quantity as may be specified in the notification, except in accordance with such conditions as may be prescribed and such conditions shall be made with a view to ensuring that there is no evasion of tax payable under this Act.¹

(2) Any officer who may be authorised by the Commissioner in this behalf, may, for the purpose of verifying whether any goods are being transported in contravention of the provisions of sub section (1) and subject to such restrictions as may be prescribed, intercept, detain and search any road vehicle or river craft or any load carried by persons.

(3) Notwithstanding anything contained in this Act, where any transporter or bailee happens to be the railways, air ways, river craft, postal or courier services to whom goods are delivered for transportation keep such goods before delivery thereof in any office, warehouse, vessel, boat, receptacle or any other place, the Commissioner may subject to appropriate permission where necessary, enter into and search such office, warehouse, vessel, boat, receptacle or other place, and, thereupon, the person-in-charge of such goods and records relating thereto shall give all facilities for such examination and inspection and shall produce all relevant information as may be required relating to the goods.

76. Control on clearing, forwarding or booking agent and any person transporting goods and furnishing of information by such agent or person : (1) Every clearing, forwarding or booking agent or broker or a person transporting goods who, in the course of his business, handles documents of title to goods, transports goods or takes delivery of goods for or on behalf of a dealer, shall furnish information about his places of business to such authority, within such time, in such form, as may be prescribed.²

(2) Every agent, broker or person referred to in sub-section (1) shall maintain true and complete accounts, registers and documents in respect of the goods handled by him and the documents and title relating thereto, and shall furnish true and complete particulars and information relating to the transaction of goods of any dealer to any officer appointed under sub-section (2) of section 3 and authorised by the Commissioner for the purpose and shall produce such accounts, registers and documents before such officer as and when required by him.

(3) Where any agent, broker or person referred to in sub-section (1) contravenes the provisions of the said sub-section or sub-section (2), the Commissioner may, after giving such agent, broker or person an opportunity of being heard, direct him to pay by way of penalty –

- (a) rupees two thousand for contravention of the provision of sub-section (1); and
- (b) an amount equal to three times of the tax payable in respect of the goods involved in the transactions of a dealer which appears to have been evaded by such dealer, if the contravention pertains to the provisions of sub-section (2).

Explanation.- The expression –

- (i) “clearing, forwarding, booking agent or broker” referred to in sub-section (1) shall include a person who renders his services for clearing, forwarding or booking of or taking delivery of consignment of goods at railway premises, air cargo complex, container depot, booking agency, goods transport company office or any place of loading or unloading of goods or contrives, makes and concludes, bargains and contracts for or on behalf of any dealer for a fee, reward, commission, remuneration or other valuable consideration or otherwise; and
- (ii) “person transporting goods” referred to in sub-section (1) shall include the owner, the manager, agent, driver and employee of the owner, a person who is in charge of a place of loading or unloading of goods, or of goods carrier carrying such goods for despatch to other places, or who gives delivery of any consignment of such goods to the consignee.

(4) Without prejudice to the provisions contained in sections 74 and 75, where a transporter or a bailee or the owner or lessee of a warehouse to whom goods are delivered for transportation keeps such goods before delivery thereof in any office, shop, warehouse, godown, vessel, boat, receptacle, vehicle or any other place, the Commissioner shall have the power to enter into and search such office, shop, godown, vessel, receptacle, vehicle or other place, as the case may be, and to examine the goods and inspect all records relating thereto and, in every such case, the transporter, bailee, owner or lessee of the warehouse or the person-in-charge of such goods and records shall give all facilities for such examination and inspection and shall produce the bills of sale or such other documents as may be required relating to the goods and give his

name and address and the name and address of the transporter, bailee, owner or lessee of the warehouse or the person-in-charge of such goods and records, as the case may be.

Explanation.- For the purposes of this section, where goods are delivered to a transporter, bailee or the owner or lessee of a warehouse for transmission, the movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from the transporter, bailee or the owner or lessee of the warehouse, as the case may be.

(5) If the Commissioner has reason to suspect that any transporter, bailee or the owner or lessee of a warehouse is attempting to contravene the provisions of sub-section (4) or to evade payment of any tax due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the transporter, bailee or, as the case may be, the owner or lessee of the warehouse, as may be necessary, by issuing a receipt for the same, and shall retain the same as long as may reasonably be necessary for examination thereof or for a prosecution.

(6) The power conferred under sub-section (5), shall include the power to break open any box, almirah or other receptacle in which any account, register or other documents of the transporter, bailee or the owner or lessee of a warehouse or to break open the doors of any premises where any such account, register or documents or any goods may be kept.

(7) The powers exercisable under sub-section (6) shall not be delegated to any officer below the rank of a Sales Tax Officer appointed under this Act.

(8) The Commissioner shall have the power to seize any goods vehicle or seize and confiscate any goods of any transporter, bailee or the owner or lessee of a warehouse, which are found in any office, shop, godown, vehicle or vessel or any other place while on transit but not accounted for by the transporter, bailee or the owner or lessee of a warehouse, as the case may be, in his accounts, registers and other documents maintained in respect of such goods:¹

Provided that before taking action for the confiscation of goods under this sub-section, the Commissioner shall give the person affected an opportunity of being heard and make such enquiry as found necessary for the purpose :

Provided further that where the person affected makes payment to the Commissioner of the amount of tax payable in respect of such goods to be assessed in the prescribed manner, with a penalty equivalent to twenty per centum of the value of the goods seized, the goods and the vehicle seized as aforesaid shall be released.

CHAPTER X APPEAL, REVISION AND RECTIFICATION

77. Appeals : (1) Any dealer aggrieved by an order passed under section 34,40, 42,43, 44, 45 or 52 may prefer an appeal to such authority as may be prescribed.²

(2) Notwithstanding anything contained in sub-section (1), no appeal shall lie against –

- (a) a notice issued under this Act calling upon a dealer for assessment or any person to show cause as to why he shall not be prosecuted for an offence under this Act; or
- (b) an order pertaining to the seizure or retention of any books of account, registers and other documents of a dealer; or
- (c) an order sanctioning prosecution of a dealer under this Act ; or
- (d) an interim order passed in the course of any proceeding under this Act.

(3) The appeal under sub-section (1) shall be preferred within thirty days from the date on which the order is served on the dealer.

(4) No appeal against any order shall be entertained by the appellate authority, unless it is accompanied by satisfactory proof of payment of admitted tax in full and twenty per centum of the tax or interest or both, in dispute.

(5) Subject to the provisions contained in sub-section (4), the appellate authority may, on application in that behalf filed by the dealer within the period as provided in sub-section (3), stay the realisation of the balance of tax, interest or penalty, as the case may be, under dispute either in part or in full till disposal of the appeal.¹

(6) The appeal shall be preferred in the prescribed form and shall be verified in the prescribed manner.²

(7) In disposing of an appeal, the appellate authority may, after giving the appellant a reasonable opportunity of being heard and after causing such enquiry as he may deem necessary-

- (a) confirm, reduce or annul the assessment of tax, or the imposition of interest or levy of penalty, if any; or
- (b) enhance the assessment including any part thereof whether or not such part is the subject matter in the appeal; or
- (c) set-aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed.³

(8) Every order passed in an appeal under this section shall, subject to the provisions of section 79, be final.⁴

78. Appeal to Tribunal and stay of recovery of dues during pendency of appeal : (1) Any dealer or, as the case may be, the Government, if not satisfied with an order passed under sub-section (7) of section 77 may, within sixty days from the date of receipt of such order, prefer an appeal in the prescribed manner to the Tribunal : ⁵

Provided that an appeal preferred after a period of sixty days may be admitted by the Tribunal, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(2) The dealer or the Government, as the case may be, on receipt of notice that an appeal has been preferred under sub-section (1) may, notwithstanding that such dealer or the Government may not have appealed against such order or any part thereof,

within sixty days of the service of the notice, file a memorandum of cross objections, and such memorandum shall be disposed of by the Tribunal, as if it were an appeal presented within time under sub-section (1).

(3) The appeal or the memorandum of cross objections shall be in the prescribed form and shall be verified in the prescribed manner and, in case where appeal has been preferred by any dealer or person other than the Government, it shall be accompanied by a fee of rupees one hundred.

(4) The Tribunal shall, after giving both parties to the appeal a reasonable opportunity of being heard, dispose of the appeal.¹

(5) For the purpose of sub-section (4), the Tribunal shall have the same powers and shall be subject to the same conditions as provided in sub-section (7) of section 77, and any order passed under sub-section (4) shall be final.

(6) Where a dealer has preferred an appeal under sub-section (1), the Commissioner may, stay realisation, either in part or in full, the amount of tax, interest or penalty, as the case may be, remaining outstanding for recovery as a result of the disposal of appeal under sub-section (7) of section 77, on application in that behalf filed by the dealer within the period as provided in sub-section (1).

79. Revisional powers of Commissioner : (1) Subject to rules and for reasons to be recorded in writing, the Commissioner may, on his own motion, revise any order passed under this Act or the rules by any person, other than the Tribunal, appointed under sub-section (2) of section 3 to assist the Commissioner.²

(2) Subject to rules and for reasons to be recorded in writing, the Commissioner may, upon application filed within the prescribed period, revise any order, other than an order of the Tribunal, passed by any person appointed under sub-section (2) of section 3 to assist the Commissioner.³

(3) The Commissioner shall not entertain any application for revision under sub-section (1), if the dealer or person filing the application, having a remedy by way of appeal under section 77 or section 78, did not avail of such remedy or did not file the application within the prescribed period.

(4) The Commissioner shall not revise, under sub-section (1), any order, if –

- (a) period for filing of appeal against the order as provided under section 77 or 78 has not expired; or
- (b) the order has been made a subject matter of appeal under section 77 or 78; or
- (c) more than five years have expired after the order sought to be revised was passed.

(5) Notwithstanding anything contained in sub-section (4), the Commissioner may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (b) of sub-section (4) before the expiry of the period specified in clause (c) of the said sub-section.

(6) If the Commissioner proposes to reject an application for revision made under sub-section (2), he shall record the reasons for such rejection.

(7) Any dealer or person or, as the case may be, the Government, aggrieved by any order passed by the Commissioner under sub-section (1) may, within sixty days from the date of receipt of such order, prefer an appeal –

- (a) if the order is passed by the Commissioner, to the High Court; and
- (b) if the order is passed by any authority subordinate to the Commissioner, to the Commissioner.

(8) All orders passed under sub-section (1) shall, subject to orders passed in an appeal, if any, be final.

(9) Any dealer or person likely to be affected prejudicially by any order passed under sub-section (1) shall be given a reasonable opportunity of being heard before such order is made.

80. Revision by High Court in certain cases : (1) Within sixty days from the date on which an order under sub-section (4) of section 78 was served affecting liability of any dealer to pay tax, interest or penalty under this Act, such dealer by petition in writing accompanied by a fee of rupees one hundred, or the Commissioner by petition in writing, may move the High Court against the order on grounds of any question of law arising out of such order of the Tribunal :

Provided that the High Court may admit a petition preferred after the period of sixty days as aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within that period.

(2) The petition shall be in the prescribed form and shall be verified in the prescribed manner.

(3) If the High Court, in perusing the petition, considers that there is no sufficient ground for interfering, it may dismiss the petition :

Provided that no petition shall be dismissed without giving the petitioner a reasonable opportunity of being heard.

(4) (a) If the High Court does not dismiss the petition under sub-section (3), it shall, after giving both the parties to the petition a reasonable opportunity of being heard, determine the question or questions of law raised and reverse, confirm or amend the order against which the petition was preferred or remit the matter to the Tribunal with the opinion of the High Court on the question or questions of law raised or pass such other order in relation to the matter as the High Court thinks fit.

(b) Where the High Court remits the matter to the Tribunal under clause (a) with its opinion on the question or questions of law raised, the latter shall amend the order passed by it in conformity with such opinion.

(5) Before passing an order under sub-section (4), the High Court may, if it considers necessary to do so, remit the petition with its findings on any specific question or issue.

(6) Notwithstanding that a petition has been moved under sub-section (1), the tax or any other dues under this Act shall be paid in accordance with the order against which the petition has been moved :

Provided that if, as a result of the petition, any change in the assessment becomes necessary, the High Court may direct the assessing authority to amend the assessment and the assessing authority shall amend the assessment accordingly and, there upon, the excess amount paid, if any, by the assessee shall be refunded to him without interest or the additional amount of tax or other dues payable by him shall be collected in accordance with provisions of this Act, as the case may be.

(7) (a) The High Court may , on the application of either party to the petition, review any order passed by it under sub-section (4), on the basis of facts, which were not before it when it passed the order.

(b) The application for review shall be preferred within such time and in such manner as may be prescribed and shall, where it is preferred by any person other than the Commissioner, be accompanied by a fee of rupees one hundred.

81. Rectification of mistakes: (1) With a view to rectifying any arithmetical or clerical mistake or any error apparent on the face of record, the assessing authority, appellate authority or revisional authority or the Tribunal may, at any time within five years from the date of an order passed by it, amend such order:

Provided that an amendment which has the effect of enhancing an assessment or otherwise increasing the liability of the assessee shall not be made unless the assessing authority, appellate authority or revisional authority or the Tribunal, as the case may be, has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

(2) Where any order, sought to be rectified under sub-section (1) by amendment, has been considered and decided in any proceedings by way of appeal or revision, then, notwithstanding anything contained in any law for the time being in force, the authority acting under the said sub-section shall not make any amendment in relation to any matter which has been so considered and decided.

(3) An order passed under sub-section (1) shall be deemed to be an order passed under the same provisions of law under which the original order containing the mistake or error was passed.

CHAPTER XI

OFFENCES, PROSECUTION AND COMPOSITION OF OFFENCES

82. Offences and penalties : (1) Whoever –

(a) knowingly furnishes a false return ; or

- (b) not being a registered dealer, falsely represents that he is a registered dealer at the time when he sells or purchases goods ; or
- (c) knowingly produces false bill, invoice, cash memorandum, voucher, declaration, certificate or other documents for evading tax payable under this Act; or
- (d) knowingly keeps false account of the value of the goods purchased or sold by him in contravention of the provisions of this Act; or
- (e) knowingly produces false accounts or documents, or furnishes false information ; or
- (f) issues to any person, certificate, declaration or tax invoice under this Act or any false bill, cash-memorandum, voucher, delivery challan, lorry receipt or other document which he knows or has reason to believe to be false ; or
- (g) wilfully attempts, in any manner whatsoever, to evade any tax, interest or penalty payable under this Act,

shall, on conviction, be punished –

- (i) where the amount of tax, interest or penalty, or all of them together involved is less than rupees fifty thousand in a year, with imprisonment of either description for a term which shall not be less than three months but which may extend to one year and with fine; and
- (ii) in any other case, with imprisonment of either description for a term which shall not be less than six months but which may extend to two years and with fine.

(2) Whoever aids, abets or induces any person in commission of any act specified in clauses (a) to (g) of sub-section (1) shall, on conviction, be punished with imprisonment of either description which shall not be less than three months but which may extend to one year and with fine.

(3) Whoever –

- (a) is engaged in any business as a dealer without being registered in willful contravention of section 24; or
- (b) fails, without sufficient cause, to keep any accounts or record as directed in accordance with the provisions of this Act; or
- (c) fails, without sufficient cause, to keep such records as required by the Commissioner under sub-section (3) of section 61; or
- (d) fails, without sufficient cause, to comply with any requirements made of him under section 73; or
- (e) voluntarily obstructs any officer making inspection or search or seizure under section 73, 74 or 75,

shall, on conviction, be punished with imprisonment of either description for a term which shall not be less than six months but which may extend to one year and with fine.

(4) Whoever fails, without sufficient cause, to furnish any return for any tax period by the date and in the manner prescribed under this Act shall, on conviction, be punished with imprisonment of either description for a term which may extend to one year and with fine which shall not be less than-

- (a) rupees two thousand, if the tax due for the period covered by the return, not so furnished, does not exceed rupees twenty thousand;
- (b) rupees five thousand, if the tax due for the period covered by the return, not so furnished, exceeds rupees twenty thousand but does not exceed rupees one lakh;
- (c) rupees ten thousand, if the tax due for the period covered by the return, not so furnished, exceeds rupees one lakh.

(5) Whoever commits any of the acts specified in sub-sections (1) to (4) and when such act is a continuing one, he shall, on conviction, be punished with daily fine amounting to not less than rupees one hundred during the period of the continuance of the offence, in addition to the punishment provided under this section.

(6) Notwithstanding anything contained in sub-sections (1) to (5), no person shall be prosecuted under any of these sub-sections for any act referred to therein, if the total amount of tax evaded or attempted to be evaded is less than rupees two hundred during the period of a year.

(7) When a dealer accused of an offence specified in sub-sections (1) to (5), the person declared to be the manager of the business or the person holding power of attorney of such dealer or the person who in any manner acts for or on behalf of such dealer shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission thereof.

(8) In any prosecution for an offence under this section, which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state, but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.- In this sub-section "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

83. Offences by companies and Hindu Undivided Families : (1)

Where any act specified in section 82 has been committed by a company, every person other than a nominated director who, at the time the offence was committed, was 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 guilty of the offence and shall be liable to be proceeded against and punished accordingly :

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

(2) Notwithstanding anything contained in sub-section (1), where an offence 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 offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purpose of this section,--

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to the firm, means partner in the firm.

(3) Where any offence under this Act has been committed by a Hindu Undivided Family, the Karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render the Karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised due diligence to prevent the commission of such offence:

Provided further that where an offence under this Act has been committed by a Hindu Undivided Family 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 adult member of the family, such member shall also be deemed to be guilty and shall be liable to be proceeded against and punished accordingly.

84. Cognizance of offence : (1) No Court shall take cognizance of any offence under this Act or the rules, except with the previous sanction of the Commissioner and no Court inferior to that of a Magistrate of the first class shall try such offence.

(2) The offences punishable under sub-sections (1), (2) and clause (e) of sub-section (3) of section 82 shall be cognizable and non-bailable and other offences punishable under the said section shall be cognizable.

85. Investigation of offences : (1) Subject to conditions, if any, as may be prescribed, the Commissioner may authorise either generally or in respect of a particular case or class of cases, any officer appointed under sub-section (2) of section 3 to investigate all or any of the offences punishable under this Act.¹

(2) Every officer so authorised shall, in the conduct of such investigation, exercise the powers, conferred by the Code of Criminal Procedure, 1973 (2 of 1974) upon an officer in charge of a police station for the investigation of a cognizable offence.

86. Compounding of offences : (1) The Commissioner may, either before or after the institution of proceedings of any offence punishable under section 82, accept, by way of composition, from any person charged with any offence under sub-sections (1), (3) or (4) of the said section a sum not exceeding three times the amount of tax which would have been payable on the sale or purchase turnover to which the offence relates or rupees ten thousand, whichever is higher.

(2) On payment of such sum as may be determined by the Commissioner under subsection (1), no further proceedings shall be taken against the accused person in respect of the same offence and any proceeding, if already taken, shall not be proceeded with further.

87. Offences against officers : Any person who obstructs, molests or assaults an officer appointed under sub-section (2) of section 3 to assist the Commissioner in or during the performance of his duties as are or may be conferred or imposed by or under the provisions of this Act, or does anything which is likely to prevent or obstruct the performance of any of such duties including recording of evidence, shall be liable for prosecution and, on conviction, be punished with rigorous imprisonment which may extend upto six months or fine not exceeding rupees twenty five thousand or both.

CHAPTER XII MISCELLANEOUS

88. Bar to certain proceedings: Save as provided in section 80, no assessment made or order passed under this Act or the rules shall be called into question in any Civil Court and, save as provided in sections 77, 78 and 79, no appeal or application for revision shall lie against any such assessment or order.

89. Disclosure of information by Public Servant : (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the provisions of this Act and rules or in any record of evidence given in the course of any proceedings under this Act and the rules, other than proceedings before a criminal Court, shall, save as provided in sub-section (3), be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), no Court shall, save as aforesaid, be entitled to require any Government servant to produce before it any such statement, return, account, document or record or any part thereof, or to give evidence before it in respect thereof.

(2) Save as provided in sub-section (3), if any Government servant discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months and shall also be liable to fine.

(3) Nothing in this section shall apply to the disclosure of –

- (a) any of the particulars referred to in sub-section (1) for the purpose of investigation or prosecution under this Act or the Indian Penal Code, 1860 (45 of 1860) or any other enactment for the time being in force ; or
- (b) such facts to an officer of the Central Government or any State Government as may be necessary for verification of such facts or for the purposes of enabling that Government to levy or realise any tax imposed by it; or
- (c) any such particulars when such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand ; or

- (d) any such particulars to a Civil Court in any suit or proceeding to which the Government or any authority under this Act is a party and which relates to any matter arising out of any proceeding under this Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder ; or
- (e) any such particulars by any public servant when the disclosure is occasioned by the lawful exercise by him of his powers under the Indian Stamp Act, 1899 (2 of 1899) to impound an insufficiently stamped document ; or
- (f) any such particulars to the Reserve Bank of India as are required by that Bank to enable it to compile financial statistics ; or
- (g) any such particulars to any officer appointed by the Comptroller and Auditor General of India for the purpose of audit of tax receipts or refunds ; or
- (h) any such particulars relevant to any inquiry into a charge of misconduct in connection with income tax proceedings against a legal practitioner or chartered Accountant, to the authority empowered to take disciplinary action against members of the profession to which he belongs ; or
- (i) such particulars to the officer of the Central Government or any State Government for such other purposes, as the State Government may, by general or special order direct ; or
- (j) any information relating to any class of dealers or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

90. Publication and disclosure of information in respect of dealers and other persons in public interest : (1) Notwithstanding anything contained in section 89, if the Government is of the opinion that it is necessary or expedient in the public interest to publish or disclose the names of any dealer or other persons or any other particulars relating to any proceeding under this Act in respect of such dealers and persons, it may publish or disclose such names or particulars in such manner as it thinks fit.

(2) No publication or disclosure under this section shall be made in relation to any tax levied or penalty imposed or interest levied or any conviction for an offence connected with any proceeding under this Act, until the time for appeal to the appropriate appellate authority has expired without an appeal having been filed or the appeal, if filed, has been disposed of.

91. Appearance before any authority in proceedings : (1) Any person, who is entitled or required to appear before any authority in connection with any proceeding under this Act, may attend –

- (a) by a person authorised by him in writing, being a relative or a person regularly employed by him ; or
- (b) by a legal practitioner or chartered Accountant or a cost Accountant who is not disqualified by or under sub-section (2); or

- (c) by a tax practitioner who possesses the prescribed qualification and is enrolled by the Commissioner for the purpose and who is not disqualified by or under sub-section(2).¹

(2) The Commissioner may, by order in writing, for reasons to be recorded therein, disqualify for such period as may be stated in the order from attending before any such authority, any tax practitioner, legal practitioner, chartered Accountant or cost Accountant –

- (a) who has been removed or dismissed from Government service; or
- (b) who, being a legal practitioner or chartered Accountant or cost Accountant, is found guilty of misconduct in connection with any proceeding under this Act by an authority empowered to take disciplinary action against the members of the profession to which he belongs; or
- (c) who, being a tax practitioner enrolled by the Commissioner, is found guilty of any misconduct.

(3) No order of disqualification under sub-section (2) shall be made in respect of any particular person, unless he has been given a reasonable opportunity of being heard.

(4) Any person against whom an order of disqualification is made under sub-section (2) may, within one month of the date of communication of such order, appeal to the Government to have the order cancelled.

(5) The order of the Commissioner shall not take effect until one month of the making thereof or, when an appeal is preferred, until the appeal is decided.

(6) The Commissioner may, at any time, suo motu or on an application made to him in this behalf, revoke any order made against any person under sub-section (2) and thereupon such person shall cease to be disqualified.

92. Powers to summon and take evidence oath, etc : (1)The Commissioner, the Tribunal and any person appointed under sub-section (2) of section 3 to assist the Commissioner shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely –

- (a) enforcing attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of accounts and documents; and
- (c) issuing summons for the examination of witnesses.

(2) Any proceeding under this Act before the Commissioner or the Tribunal or person referred in sub-section (1) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196, of the Indian Penal Code, 1860 (45 of 1860).

93. Transfer of assets during pendency of proceedings to be void : Where, during the pendency of any proceeding under this Act or under the Act repealed by section 104 of

this Act, any person creates a charge on or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever, of any of his assets in favour of any other person with the intention to defraud revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by such person as a result of completion of the said proceeding.

94. Power to make rules : (1) The Government may, by notification, make rules, with prospective or retrospective effect, for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which under any provision of this Act are required to be prescribed or to be provided for by rules.

95. Burden of proof : (1) Where any dealer claims that --

- (a) the receipt or despatch of any goods made by him is otherwise than by way of purchase or sale of such goods by him;
- (b) any sum of money received or paid by him in the course of business is otherwise than by way of sale or purchase of goods by him;
- (c) any purchase or sale of goods made by him is not liable to tax by reason of such purchase or sale being outside the State or in the course of inter-State trade or commerce or in the course of the import of the goods into or the export of the goods out of the territory of India;
- (d) any purchase or sale of goods made by him is exempt from tax or leviable to tax at a particular rate;
- (e) any purchase or sale of goods made by him is not taxable because of return of goods;
- (f) any purchase, sale, import or export of goods made by him is not part of his gross turnover;
- (g) any part of the gross turnover declared by him in the returns filed is not taxable;
- (h) any tax paid under this Act relates to the goods purchased by him, for which, it is part of the input tax in respect of the purchase of such goods by him;
- (i) input tax in respect of any purchase of goods made by him is part of the input tax credit admissible to him;
- (j) any amount has been paid by him as tax, interest or penalty under this Act; or
- (k) any book, document or account kept or found in his business premises or any place including a godown, warehouse, vehicle or vessel over which he has ultimate control does not relate to his business,

the burden of so proving shall be on him and, for the purpose of proving one or all or any of the claims, he shall produce or furnish such documents containing such particulars, within such time, before such authority and in such manner, as may be prescribed and such authority may, for sufficient reasons, require him to produce such

further evidence as it may deem necessary, and where no document has been prescribed, such authority may require such evidence to be produced before it as it may deem necessary.

96. Manner of payment of tax, interest, penalty, etc. : Where the manner of payment of any tax, interest or penalty payable by a person, or any sum determined by the Commissioner in compounding any offence under this Act, is not provided specifically elsewhere in this Act, such tax, interest, penalty or sum shall be paid into a Government Treasury in the manner prescribed: ¹

Provided that the Government may, by notification, specify such different manner of payment of tax, interest, penalty or sum payable under this Act in respect of any individual dealer or class of dealers.

97. Power of Government to prescribe fees : (1) There shall be paid, upon every memorandum of appeal, application for revision and other miscellaneous application or petition, other than an application referred to in sub-section (1) of section 78 and a petition referred to in sub-section (1) of section 80, for any relief under this Act, such fees as may be prescribed :

Provided that any fee prescribed under this section shall not exceed rupees one thousand.²

(2) The fee as aforesaid shall be paid in court-fee stamps to be affixed to the memorandum of appeal, application for revision or other miscellaneous application or petition, as the case may be, referred to in sub-section (1).

98. Assessment proceedings, etc. not to be invalid on certain grounds: (1) No return, assessment, appeal, rectification, notice, summons or other proceedings accepted, made, issued or taken, or purported to have been accepted, made, issued or taken in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such return, assessment, appeal, rectification, notice, summons or other proceedings, if such return, assessment, appeal, rectification, notice or other proceedings are, in substance and effect, in conformity with or according to the intents, purposes and requirements of this Act.

(2) The service of any notice, order or communication shall not be called in question if the notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.

(3) No order, including an order of assessment, revision or rectification passed by any authority under any provision of this Act shall be invalid merely on the grounds that the action could also have been taken by any other authority under any other provision of this Act.

99. Clearance certificate : Notwithstanding anything contained in any other law for the time being in force, no dealer shall be entitled to undertake any contract with any

Government, local authority or other corporate body, unless he obtains a certificate in the prescribed manner from the Commissioner to the effect that he has no liability to pay tax nor he has defaulted under this Act.¹

100. Provisional attachment : (1) Notwithstanding anything contained in any law for the time being in force or any contract to the contrary, the Commissioner, during the course of inquiry in any proceedings including proceedings related to recovery of any amount due, in respect of any person or dealer or during any inspection or search in relation to the business of any person or dealer under this Act, if he is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, may attach provisionally by notice in writing the stock in trade held by such person or dealer during such enquiry, inspection or search :

Provided that the Commissioner may, by order, revoke such notice if the dealer furnishes to the Commissioner, such security, for such period and within such time, as may be specified in the said order.

(2) Every such provisional attachment shall cease to have effect after the expiry of one year from the date of service of the notice issued under sub-section (1):

Provided that the Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he may think fit to do so, however that the total period of such extension shall not in any case exceed one year.

(3) Where a notice under sub-section (1) is served upon any person or dealer provisionally attaching the stock in trade held by him, such person or dealer shall be personally liable, so long as the attachment notice is not revoked or has not ceased to have effect, to pay, to the Commissioner, the amount of money covered under such attachment.

101. Special provision relating to under-invoicing : (1) Where the Commissioner has, for the purpose of any proceeding under this Act, reasons to believe that any goods kept in stock or being carried by a dealer or any person on behalf of a dealer are undervalued or underpriced in any document relating to such goods produced before him, he may, after causing such enquiry as he considers necessary in the circumstances, intimate such dealer or person, by a notice in the prescribed form, the prevailing market price of such goods and direct such dealer or person to pay tax under this Act on the basis of the prevailing market price.¹

(2) Where the goods referred to in sub-section (1) are being carried, the officer-in-charge of the check-gate or barrier or an officer authorised under sub-section (3) of section 74, as the case may be, may detain the vehicle carrying such goods until the tax demanded under sub-section (1) is paid.

(3) Where the goods referred to in sub-section (1) are found in stock and the dealer or the person on behalf of the dealer, on whom the notice under that sub-section was served, fails to pay the tax in terms of such notice, or where the tax demanded is not paid under sub-section (2), the Commissioner may offer to purchase such goods at a price at ten per centum above the purchase value or the value disclosed by the principal

or agent in the case of goods received on consignment basis plus actual transportation charges and entrust such goods to the Orissa State Civil Supplies Corporation Ltd. or any co-operative society as may be notified for sale or sell it through public auction in the prescribed manner.

(4) The dealer or the person on being directed under sub-section (3) shall be bound to sell the goods to the Commissioner and if he refuses, fails or does not deliver the goods within the time mentioned in the notice offering to purchase goods he shall be liable to penalty, which shall be equal to twenty per centum of the value of the goods at the prevailing market price.

(5) No penalty under sub-section (4) shall be imposed without allowing such dealer or person, as the case may be, an opportunity of being heard.

(6) If, in pursuant to the notice issued under sub-section (4), the dealer or the person delivers the goods to the Commissioner he shall be paid the price of such goods as determined under sub-section (3) along with the cost of transportation within fifteen days of the delivery of the goods.

(7) Any person aggrieved by the order or notice, as the case may be, under sub-section (3) or under sub-section (4) may file an application for revision before the prescribed authority within thirty days from the date of receipt by him of the decision, in such form and in such manner as may be prescribed :

Provided that the said prescribed authority may admit an application made after the expiry of the period of thirty days, if he is satisfied that the applicant had sufficient cause for not making the application within the said period.

102. Settlement of disputed tax under appeal or revision : Notwithstanding anything contained in any law for the time being in force, the Government may, subject to such conditions and restrictions as may be specified by the notification made in this behalf, refer, during the period as may be specified in the notification, any case pending in appeal under section 77 or 78 or in revision in the High Court under section 80 to the Commissioner to settle the disputed amount under appeal or revision, as the case may be, in the manner prescribed.

103. Power to remove difficulties : (1) If any doubt or difficulty arises in giving effect to any of the provisions of this Act, in consequence of the transition to the said provisions from the corresponding provisions of the Act repealed by section 104, or otherwise, the Government may, as the occasion may require, by order, do anything not inconsistent with the provisions of this Act or the rules, which appears to it necessary for the purpose of removing the doubt or difficulty :

Provided that no order shall be issued under this section after the expiry of a period of two years from the date of commencement of this Act.

(2) Any order made under this section shall be laid before the Assembly.

CHAPTER XIII

REPEAL AND SAVINGS, ADOPTATION AND TRANSITIONAL PROVISIONS

104. Repeal and savings.: (1) The Orissa Sales Tax Act, 1947 is hereby repealed.

(2) The repeal of the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947.) (hereinafter referred to as the repealed Act) under sub-section (1) shall not –

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of the repealed Act or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the repealed Act; or
- (d) affect any tax, surcharge, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the repealed Act; or
- (e) affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy in respect of any such tax, surcharge, penalty, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid,

and any such investigation, enquiry, assessment proceeding, other legal proceeding or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, forfeiture or punishment may be levied or imposed as if this Act had not been enacted.

105. Adaptations : All Assessment Units, Investigation Units, Railway Receipt Units, Circles and Ranges including Intelligence Circles and Ranges and Vigilance Circles constituted under the repealed Act or the rules and notifications issued thereunder, all check-gates and barriers established under the said Act and all interception points authorised by the Commissioner of Sales Tax or by any officer appointed to assist him under the said Act, as exist on the day immediately before the appointed day, shall be deemed to have been so respectively constituted, established or authorised under and in accordance with the provisions of this Act and the rules.

106. Transitional Provisions : (1) A dealer registered under the repealed Act, who would have continued to be liable to pay tax under that Act had this Act not come into force, shall be deemed to be a registered dealer under this Act.

(2) Notwithstanding anything contained elsewhere in this Act and until, specifically, so or otherwise prescribed or notified or done in accordance with the provisions of this Act, -

- (a) any person appointed by the Government as the Commissioner of Sales Tax under sub-section (1) of section 3 of the repealed Act and continuing in office as such on the day immediately before the appointed day shall, on and from the appointed day, be deemed to have been appointed as the Commissioner of Sales Tax under sub-section (1) of section 3 of this Act and he shall exercise such powers and discharge such functions as are or may be conferred or imposed by or under the provisions of this Act;

- (b) such other persons who have been appointed by the Government under sub-section (3) of section 3 of the repealed Act as Additional Commissioner of Sales Tax, Special Additional Commissioner of Sales Tax, Assistant Commissioner of Sales Tax, Sales Tax Officer, Assistant Sales Tax Officer and Inspector of Sales Tax to assist the Commissioner under the said Act and continuing as such in office on the day immediately before the appointed day shall, on and from the appointed day, be deemed to have been, respectively, so appointed under sub-section (2) of section 3 of this Act.

Explanation - The designation by which such other persons shall be deemed to have been appointed under clause (b) shall, for the purposes of sub-section (2) of section 3, be deemed to be the prescribed designations, until otherwise prescribed;

- (c) all such powers and duties, as have been conferred or imposed by or under the provisions of the repealed Act or the rules made and notifications issued thereunder or the persons appointed under any designation prescribed under the said Act to assist the Commissioner, and are exercised and performed on the day immediately before appointed day within or over a Circle or a Range or the State, as have been assigned to them by the Commissioner, shall, on and from the appointed day, for all intents and purposes, be deemed to have been conferred or imposed by or under the corresponding provisions of this Act on the persons who, under clause (b) are deemed to have been appointed under such designation to assist the Commissioner under this Act and shall be exercised and performed by them within or over the same circle or Range or the State as the case may be, as if such area has been assigned to them by the Commissioner in accordance with the provisions of this Act for purpose of exercising their jurisdiction.

Explanation - For the purposes of exercising any power or performing any function under the provisions of this Act, such power and such function under the corresponding provisions of this Act shall be deemed to have been delegated to the persons deemed to have been appointed under the respective designation under clause (b);

- (d) the Chairman or any member of the Orissa Sales Tax Tribunal constituted under the repealed Act and continuing in office as such immediately before the appointed day, shall, on and from the appointed day, be deemed to have been respectively appointed as the Chairman or member of the Tribunal and shall exercise such powers and perform such functions as are conferred or imposed by or under the provisions of this Act;
- (e) all forms including way bill and transit pass prescribed under the repealed Act or the rules made or notifications issued thereunder and in force and use for any purpose on the day immediately before the appointed day, shall be used for the same purpose under the provisions of this Act.
- (f) any application for issue of way bill, pending on the day immediately before the appointed day, shall for all intent and purposes of this Act be deemed to

have been made under this Act and shall be disposed of in accordance with the provisions of this Act;

- (g) any way bill referred to in clause (e) which is valid on the day immediately before the appointed day and endorsed for the transport of goods into or outside the State shall continue to be valid for all intents and purposes of this Act on and from the appointed day if the period of validity of such way bill has not expired;
- (h) a dealer, required to furnish a return for any period by a specific date to the prescribed authority under the provisions of the repealed Act or the rules made or notice issued thereunder, shall furnish such return under this Act by the said date to the corresponding authority as if he is so required to furnish the return under the provisions of this Act :

Provided that if the appointed day falls during the period for which the return is required to be furnished, he shall furnish separate returns for the period ending on the day immediately before the appointed day and for the period commencing on the appointed day, respectively in accordance with the provisions of the repealed Act and this Act;

- (i) for the purposes of clauses (a) to (h), all rules made or notifications or notices issued or orders passed under or in pursuance of the provisions of the repealed Act shall be deemed to have been made, issued or passed under or in pursuance of the corresponding provisions of this Act, unless they are inconsistent with this Act;
- (j) a registered dealer, who was eligible to the benefit of deferment of tax in terms of a notification issued under the repealed Act on the day immediately before the appointed day and who would have continued to be so eligible on appointed day under the repealed Act had this Act not come into force, shall be allowed the benefit of such deferment in respect of tax payable by him under this Act, by the Commissioner, for the balance unexpired period subject to the limit of such percentage of gross value of the fixed capital investment to which such dealer would have been entitled and the same restrictions and conditions as specified in such notification;
- (k) nothing contained in clause (j) shall prevent the Commissioner from withdrawing the benefit of deferment of tax, if the registered dealer eligible for such deferment violates the restrictions and conditions subject to which such deferment was allowed;
- (l) a registered dealer, who was eligible to the benefit of, or was entitled to, exemption from payment of tax on purchase of raw materials, spare parts, packing materials and sale of its finished products under the repealed Act on the day immediately before the appointed day, shall, on and from the appointed day, be allowed the benefits of deferment of tax, in lieu of such exemption subject to such restrictions and conditions as the Government may, by notification, specify in this behalf.

107. Input tax credit in respect of stock held on the appointed day : (1) Within a period of one month from the appointed day, all dealers whose registration has been continued under sub-section (5) of section 25, other than those who are liable to pay turnover tax under section 16, shall furnish a statement of their opening stock of raw materials, finished goods, semi-finished goods including capital goods, if any, and goods for resale held on the date of such appointed day to the Commissioner in the prescribed form.¹

(2) In respect of that part of the opening stock of goods on the appointed day, purchased within a period of twelve months immediately preceding the appointed day, which suffered tax under section 3-B of the repealed Act or on which tax has been paid under section 8 of that Act, input tax credit shall be admissible at such rate and in such manner as may be prescribed.

(3) The part of the opening stock of goods which is not covered under sub-section (2), when sold inside the State after the appointed day shall be subject to output tax as applicable under this Act and in respect of such goods, subsequent input tax credit in accordance with the provisions contained therein shall be available.

(4) If the Commissioner is satisfied that a dealer has claimed input tax credit in excess of what is admissible or to which he is not entitled under sub-section (3), the Commissioner may, after allowing the dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum equal to ten times the amount of input tax credit which is not so admissible or to which he is not so entitled.

(5) For the purpose of sub-section (4), the dealer shall, in support of his claim, produce before the Commissioner, if so deemed necessary, the sale vouchers in original under the repealed Act or the Central Sales Tax Act, 1956 (74 of 1956) against the purchases or the relevant document showing despatch of goods from outside the State otherwise than by way of sales to that dealer.
