

THE KERALA GENERAL SALES TAX ACT, 1963

(Act 15 of 1963)

[INCORPORATING UP TO DATE AMENDMENTS]

An Act to consolidate and amend the law relating to the levy of a general tax on the sale or purchase of goods in the State of Kerala.

Preamble: - Whereas it is expedient to consolidate and amend the law relating to the levy of a general tax on the sale or purchase of goods in the State of Kerala: Be it enacted in the Fourteenth Year of the Republic of India as follows: -

CHAPTER - I

PRELIMINARY

1. Short title, extent and commencement: - (1) This Act may be called the Kerala General Sales Tax Act, 1963.

(2) It extends to the whole of the State of Kerala

(3) It shall come into force on such date as the Government may by notification in the Gazette, appoint.

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

(i) “Appellate Assistant Commissioner” means any person appointed to be an Appellate Assistant Commissioner under Section 3;

(ii) “Appellate Tribunal” means the Appellate Tribunal appointed under Section 4

(iii) “Assessee” means a person by whom tax or any other sum of money is payable under this Act, and includes every person

in respect of whom any proceedings under this Act have been taken for the assessment of tax payable by him;

(iv) “Assessing Authority” means any person authorized by the Government or by any authority empowered by them to make any assessment under this Act.

(v) “Board of Revenue” means the Board of Revenue constituted under the Kerala Board of Revenue Act, 1957;

(vi) “Business” includes: -

(a) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce, or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and

(b) any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern;

(Via) ‘Book of Accounts’ means and includes ledger, day book, cash book, accounts book and other records whether kept in written form or print-out of data stored in floppy, disc, tape or any form of electro magnetic data storage device.

(Viaa) ‘Brand name’ means a name or trade mark whether registered or not registered under the Trade Marks Act, 1999(Central Act 47 of 1999) and includes a name or mark such as symbol, monogram, label, signature or intended words or any writing which is used in relation to a product for the purpose of indicating or so as to indicate, a connection in the course of trade between the product and a dealer using such name or mark with or without any indication of the said dealer,

(vii) “Casual trader” means a person who has whether as principal, agent or in any other capacity, occasional

transaction involving buying, selling, supply or distribution of goods in the state whether for cash or for deferred payment, or for Commission, remuneration, or other valuable consideration.

(viiA) “Commissioner” means the Commissioner of Commercial Taxes appointed as such by the Government.

(Viii) “Dealer” means any person who carries on the business of buying, selling, supplying or distributing goods, executing works contract, 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) Omitted

(b) a casual trader

(c) a commission agent, a broker or a del credere agent or an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods executing works contract, transferring right to use any goods or supplying by way of or as part of any service, any goods on behalf of any principal;

(d) 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;

(e) a person who, whether in the course of business or not, sells;

(i) goods produced by him by manufacture, agriculture, horticulture or otherwise; or

(ii) trees which grow spontaneously and which are agreed to be severed before sale or under the contract of sale;

(f) a person who whether in the course of business or not:

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(1) transfers any goods, including controlled goods whether in pursuance of a contract or not, for cash or deferred payment or other valuable consideration;

(2) transfers property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(3) delivers any goods on hire-purchase or any system of payment by installments;

(4) transfers the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(5) 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;

Explanation:- (1) A society including a co-operative society, club or firm or an association or body of persons, whether incorporated or not) which whether or not in the course of business, buys, sells, supplies or distributes goods from or to its members for cash or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act;

Explanation: - (2) The Central Government or a State Government, which whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash or for deferred payment, or for commission,

remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act.

(g) a bank or a financing institution, which, whether in the course of its business or not, sells any gold or other valuable article pledged with it to secure any loan, for the realisation of such loan amount;

Explanation I: - Bank for the purposes of this clause includes a Nationalized Bank or a Schedule Bank or a Co-operative Bank;

Explanation II: - Financing Institution means a financing institution other than a bank;

(ix) "Declared goods" means goods declared by section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) to be of special importance in inter state trade or commerce.

(x) "Deputy Commissioner" means any person appointed to be a Deputy Commissioner of Sales Tax under Section 3.

(Xa) 'Document' includes written or printed records of any sort, title deed and any electronic record as defined in the Information technology Act, 2000 (Central Act 21 of 2000),

(xi) "Food grains" means paddy, rice, wheat, maize, jowar, bajra, barley and ragi and includes such other articles as the Government may, by notification in the Gazette, specify as such;

(xia) 'Fair Market Price' means the sale price for the sale of goods fixed by the assessing authority, if he has reason to believe that the dealer has practiced under-valuation and the sale price shall be the value or price at which the goods of the kind or quality are sold or capable of being sold in the open market or the price obtained from the Kerala State Civil Supplies Corporation Ltd. or Economics and Statistics Department of the State or other reliable sources on the date of sale of such goods,

(xii) "Goods" means all kinds of movable property (other than newspapers, actionable claims, electricity, stocks and shares and securities) and includes live stock, all materials, commodities and articles (including those to be used in the construction, fitting out, improvement or repair of immovable property or used in the fitting out, improvement or repair of movable property) and every kind of property (whether as goods or in some other form) involved in the execution of a works contract, and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(xiii) Inspecting Assistant Commissioner means any person appointed to be an Inspecting Assistant Commissioner of Sales tax under section 3;

(xiii-a) "Joint Commissioner" means any person appointed to be a Joint Commissioner under Section 3;

(xiv) Local authority means a municipal council, a municipal corporation, a township committee or a panchayat;

(xv) Motor spirit means any substance which, by itself or in admixture with other substances is ordinarily used directly or indirectly to provide reasonably efficient fuel for automotive or stationary internal combustion engines and includes petrol, diesel oil and other internal combustion oils, but does not include kerosene, furnace oil, coal or charcoal;

(xv.A) "Notification" means a notification issued by the Government, under the provisions of this Act and published in the Gazette

(xv.B) "Notified goods" means goods notified by the Government for the purpose of Section 30E;

(xvi) "Permit" means a permit granted under section 15;

(xvi-a) "person" includes:-

- (i) an individual;
- (ii) a joint family;
- (iii) a company;
- (iv) a firm;
- (v) an association of persons or a body of individuals; whether incorporated or not;
- (vi) the Central Government or the Government of Kerala or the Government of any other State or Union Territory in India;
- (vii) a local authority;
- (viii) every artificial juridical person not falling under any of the preceding sub-clauses;
- (xvii) "Petrol" means dangerous petroleum having its flashing point below 24.4 degrees centigrade;
- (xviii) "Place of business" means any place where a dealer carries on business and includes:-
 - (a) any warehouse, godown or other place where a dealer stores or processes his goods;
 - (b) any place where a dealer produces or manufactures goods;
 - (c) any place where a dealer keeps his books of account;
 - (d) in any case where a dealer carries on business through an agent (by whatever name called), the place of business of such agent; and
 - (e) any Parcel office, warehouse or such similar place where goods for transportation in the course of business or otherwise are kept by dealers.

(xix) "Prescribed" means prescribed by rules made under this Act;

(xx) "Registered dealer" means a dealer registered under this Act;

(xxi) "Sale" with all its grammatical variations and cognate expressions means every transfer (whether in pursuance of a contract or not) of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge;

Explanation (1): - A transfer of the property in the following goods namely, tea, coffee, rubber, cardamom or timber, whether in the course of trade or business or otherwise, for cash or for deferred payment or other valuable consideration, by a person who produces the same, shall be deemed to be sale for the purposes of this Act;

Explanation (1A): - A transfer of property in goods by the Central Govt. or a State Govt. for cash or for deferred payment or other valuable consideration whether or not in the course of business shall be deemed to be a sale for the purposes of this Act;

Explanation (1B): - A transfer of property in trees which grow spontaneously and which are agreed to be severed before sale or under the contract of sale by the person entitled to make such transfer, whether in the course of trade or business or otherwise, for cash or for deferred payment or other valuable consideration, shall be deemed to be a sale for the purposes of this Act;

Explanation (2): - The transfer of property involved in the supply or distribution of goods by a society (including a co-operative society), club, firm or any association or body of persons, whether incorporated or not to its members, for cash or for deferred payment or other valuable consideration,

whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act;

Explanation (3): - A transfer of goods on hire-purchase or other installment system of payment shall, notwithstanding the fact that the seller retains the title in the goods as security for payment of the price, be deemed to be a sale on the date of delivery of the goods in pursuance of the agreement of such hire purchase or other system of payment in installments;

Explanation (3A): - A transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract shall be deemed to be a sale;

Explanation (3B): - A transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration shall be deemed to be a sale;

Explanation (3C): - Any supply, by way of or as part of any service or in any other manner whatsoever, of 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 shall be deemed to be a sale;

Explanation (3D): - Unless otherwise expressly provided in this Act, any transfer, delivery or supply of any goods referred to in this clause shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and purchase of those goods by the person to whom such transfer, delivery or supply is made;

Explanation (4) (a) The sale or purchase of goods shall be deemed, for the purposes of this Act, to have taken place in the State whether the contract of sale or purchase might have been made, if the goods are within the State.

(i) In the case of specific or ascertained goods at the time the contract of sale or purchase is made; and

- (ii) In the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior or subsequent to such appropriation.
- (b) Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of clause (a) shall apply as if there were separate contracts in respect of the goods at each of such places;
- (c) For the purpose of this Act, the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract shall be deemed to have taken place in the State, if the goods are within the State at the time of such transfer irrespective of the place where the agreement of works contract is made, whether the assent of other party to the contract is prior or subsequent to such transfer.

Explanation 5: - Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, two independent sales or purchases shall, for the purposes of this Act, be deemed to have taken place,-

- (a) when the goods are transferred from a principal to his selling agent and from the selling agent to the purchaser;
or

- (b) when the goods are transferred from the seller to a buying agent and from the buying agent to his principal, if the agent is found in either of cases aforesaid

- (i) to have sold the goods at one rate and to have passed on the sale proceeds to his principal, at another rate, or

- (ii) to have purchased the goods at one rate and to have passed them on to his principal at another rate, or

(iii) not to have accounted to his principal for the entire collections or deductions made by him in the sales or purchases effected by him on behalf of his principal ;
or

(iv) to have acted for a fictitious or non-existent principal:

Provided that the deduction or addition, as the case may be of the commission agreed upon and specified in the accounts and incidental charges incurred by the agent which are specified in the accounts and which the assessing authority considers legitimate shall not be deemed to be a difference in the rates referred to in sub-clauses (i) and (ii).

(xxii) "Sales Tax Officer" means any person appointed to be a Sales tax Officer under Section 3;

(xxii a) "Settlement Commission" means the Settlement Commission appointed under section 4A;

(xxii b) "Smuggling" means transportation of goods without proper documents as specified in sub-section (1) of section 30E of the Act;

(xxiii) "State" means the State of Kerala;

(xxiv) "Tax" means the tax payable under this Act;

(xxv) "Taxable turnover" means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover of purchase or sale in the course of inter-state trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into territory of India;

(xxvi) "Total Turnover" means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of

inter-state trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India;

(xxvii) "Turnover" means the aggregate amount for which goods are either bought or sold, supplied or distributed by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration.

(xxviii) 'Vehicle' includes every wheeled conveyance used for the carriage of goods solely or in addition to passengers;

(xxix) 'Vessel' includes any ship, barge, boat, raft, timber, bamboos or floating materials propelled in any manner.

(xxix-a) "Works Contract" - includes any agreement for carrying out for cash or for deferred payment or other valuable consideration the construction, fitting out, improvement, repair, manufacture processing, fabrication, erection, installation, modification or commissioning of any movable or immovable property;

(xxx) "Year" means the financial year.

CHAPTER - II

AUTHORITIES AND APPELLATE TRIBUNAL

3. Sales tax Authorities: - (1) The Board of Revenue shall have and exercise all the powers and shall perform all the duties conferred or imposed upon it by or under this Act.

(1A) The Board of Revenue shall have superintendence over all officers and persons employed in the execution of this Act and the Board of Revenue may, -

(a) Call for returns from such officers and persons;

(b) Make and issue general rules and prescribe forms for regulating the practice and proceedings of such offices and persons;

(c) Issue such orders, instructions and directions to such officers and persons as it may deem fit, for the proper administration of this Act;

(2) The Government shall appoint as many Joint Commissioners, Deputy Commissioners, Appellate Assistant Commissioners, Inspecting Assistant Commissioners, Sales Tax Officers and such other officers as they think fit for the purpose of performing the functions respectively assigned to them by or under this Act. Such officers shall perform the said functions within such local limits as the Government or any authority or officer empowered by them in this behalf may assign to them.

(3) All officers and persons employed for the execution of this Act shall observed and follow the orders, instructions and directions of the officer's superior to them:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.

(4) The Board of Revenue or the Deputy Commissioner may by order in writing.-

(a) transfer any case or cases relating to any assessee or class of assessees pending before an assessing authority to another assessing authority having jurisdiction to deal with such case or cases; or

(b) specify one of the assessing authorities having jurisdiction over an area, which shall deal with any case or cases relating to any assessee or class of assessees

(5) Where any case is transferred to an assessing authority under clause (a) of sub-section (4), such assessing authority may deal with the case either de novo or from the stage at which it was transferred.

4. Appellate Tribunal: - (1) The Government shall appoint an Appellate Tribunal consisting of a Chairman and as many other members as they think fit to perform the functions assigned to the Appellate Tribunal by or under this Act. The Chairman shall be a person who is or has been or is qualified to be appointed as a Judicial Officer not below the rank of a District Judge and the other members shall possess such qualifications as may be prescribed.

(2) Any vacancy in the office of a member of the Appellate Tribunal shall be filled by the Government.

(3) (a) Subject to the provisions of clause (b), the functions of the Appellate Tribunal may be performed -

(i) by a Bench consisting of the Chairman and any other member; or

(ii) by a Bench consisting of the chairman and two other members; or

(iii) by a Bench consisting of two or more members other than the chairman

(b) The Chairman or any other member of the Appellate Tribunal nominated by him may, sitting singly, dispose of any case where the amount of tax or penalty disputed in appeal does not exceed twenty five thousand rupees and the order of assessment or penalty appealed against is issued by an officer not above the rank of a Sales Tax Officer.

(c) A bench consisting of two or more members other than the Chairman or a judicial member may dispose of any case where the amount of tax or penalty disputed in appeal does not exceed three lakhs rupees.

(3A) If any case which comes up before a Bench consisting of a single member other than the chairman or a Bench consisting of more than one member, of which the chairman is not a member, involves a question of law, the bench may, in its discretion, reserve such case for decision by the Chairman or by a Bench to be constituted under sub-section (3B), of which the chairman shall be a member.

(3B) The Bench or Benches of the Appellate Tribunal shall be constituted by the chairman in accordance with the provisions of this Act and the rules made there under.

(3C) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority but if the members are equally divided, they shall state the point or points on which they differ, and such point or points shall be heard -

- (i) when the chairman is not a member of that Bench, either by the chairman or by the chairman and any other member or members as the chairman may direct; and

- (ii) when the chairman is a member of that Bench, by any other member or members to whom the case is referred by the chairman; and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(3D) Any member who has previously dealt with any case coming up before the Appellate Tribunal in any other capacity or is personally interested in any case coming up before the Appellate Tribunal shall be disqualified to hear that case.

(3E) Where any case is heard by a Bench consisting of two members and the members are divided in their opinion on any point and the other member or members of the Tribunal are disqualified under sub-section (3D) to hear the case, the Govt. may appoint a person qualified to be appointed as a member of the Appellate Tribunal as an additional member of the

Tribunal and the point shall be decided in accordance with the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(3F) The additional member appointed under sub-section (3E) shall cease to hold office on the disposal of the case for which he was appointed.

(4) The appellate Tribunal shall, with the previous sanction of the Government make regulations consistent with the provisions of this Act and the rules made there under for regulating its procedure and the disposal of its business.

(5) The regulations made under sub-section (4) shall be published in the Gazette.

4A. Settlement Commission. - (1) The Government may appoint, for a period of one year, a settlement commission consisting of a chairman and as many other members as they think fit, to perform a function assigned to the settlement Commission by or under this Act. The chairman shall be the person who is Judicial officer not below the rank of a District Judge and the other member shall possess such qualification as may be prescribed. -

(2) Any vacancy in the office of the member of the settlement commission shall be filled by the government

(3) The function of the settlement commission may be performed-

- (i) by a bench consisting of chairman and any other members ;or
- (ii) by a bench consisting chairman and two other members or
- (iii) by a bench of two or more members other than chairman;

(4) Any members who has previously dealt with any case coming up before the commission in any other capacity or is

personally interested in any such cases shall be disqualified to here such cases.

(5) The commission may, with the previous sanction of the government, make regulating consisting with the previous of this act and the rule made there under for regulating its procedure and the disposal of this business.

(6) The regulation made under sub-section (5) shall be published in Gazette.

CHAPTER - III

INCIDENCE AND LEVY OF TAX

5. Levy of tax on sale or purchase of goods: - (1) Every dealer (other than a casual trader or agent of a non-resident dealer or the Central Government, or Government of Kerala or the Government of any other state or of any Union Territory, or any local authority) whose total turnover for a year is not less than two lakhs rupees and every casual trader or agent of a non-resident dealer, the Central Government, Government of Kerala, the Government of any other state or of any Union Territory, or any local authority whatever be its total turnover for the year in respect of goods included in the Schedule at the rate mentioned against such goods,-

(a) in respect of Petroleum products falling under Sl.No.1 of the Schedule, at the point of sale in the State by an oil company liable to tax under this section, except where the sale is by an oil company to another oil company and at the point of first sale in the State by a dealer liable to tax under this section when the sale is not by an oil company.

(b) in respect of Foreign liquor, at the point of sale by the Kerala State Beverages (Manufacturing and Marketing) Corporation Limited and at the point of first sale in the State by a dealer liable to tax under this section except where the sale is to the Kerala State Beverages (Manufacturing and Marketing) Corporation Limited.

(c) In respect of other goods included in the Schedule, at the point of first sale in the State by a dealer liable to tax under this section.

Explanation: - For the purpose of this section –

(a) “Oil Company” means Kochi Refineries Ltd., Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd., Indo-Burma Petroleum Company Ltd., Bharat Petroleum Corporation Ltd and includes such other company as the Government of Kerala may, by notification in the Gazette, specify in this behalf.

(b) “Foreign liquor” means and includes wine, brandy, champagne, sherry, rum, gin, whisky, beer, cidar, cocoa brandy and all other distilled or spirituous preparations but shall not include medicines and drugs covered by the Kerala Value Added Tax Act, 2003(30 of 2004).

(2) (i) Notwithstanding anything contained in sub-section (1), every dealer in Foreign Liquor, as specified hereunder, shall pay turnover tax on the turnover of foreign liquor at all points of sale in the State, after making such deductions as may be prescribed , namely:-

(a) by a bar attached hotel, at the rate of ten per cent ;
and

(b) by others at the rate of five per cent, on the turnover at all points of sale.

Explanation I Any distillery, brewery, winery or other manufactory established under section 14 of Abkari Act 1 of

1077, shall be liable to pay turnover tax on the turnover including any duty or excise leviable on such liquor at the hands of such person, whether such duty is paid by such person or any subsequent dealer as per the provisions in section 18 of the said Act.

Explanation II: For the removal of doubt, it is hereby clarified that any distillery in the State which sells liquor manufactured by it within the State to the Kerala State Beverages (Manufacturing & Marketing) Corporation shall be liable to pay turnover tax on the turnover of sale of liquor by it to the said Corporation and the turnover for the purpose of this sub-section shall include any duty of excise leviable on such liquor at the hands of such manufacturer whether such duty is paid by the manufacturer or by the said Corporation.

Explanation III: For the purpose of this sub-section bar attached hotel shall mean a hotel, restaurant, club or any other place, which is licensed under the Foreign Liquor Rules, to serve foreign liquor specified under clause (b) of Explanation to sub-section (1).

- (ii) Notwithstanding anything contained in sub-section (1) of Section 22, no dealer shall collect from his purchaser the turnover tax payable by him under this sub-section.
- (3) Notwithstanding anything contained in sub-section (1), every dealer registered under sub-section (3) of Section 7 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), shall whatever be the quantum of his total turnover, pay tax on his taxable turnover for that year in respect of the sale of the goods, with reference to the purchase of which he has furnished a declaration under sub-section (4) of Section 8 of the said Central Act.
- (4) Notwithstanding anything contained in sub-section (1) but subject to sub-section (5), where goods sold are contained in containers or are packed in any packing materials, the rate of tax and the point of levy applicable to such containers or packing materials, as the case may be, shall, whether the price

of the containers or the packing materials is charged separately or not be the same as those applicable to goods contained or packed, and in determining the turnover of the goods, the turnover in respect of the containers or packing materials shall be included therein.

(5) Where the sale or purchases of goods contained in any containers or packed in any packing materials is exempt from tax, then, the sale or purchase of such containers or packing materials shall also be exempt from tax.

Explanation:- For the purposes of sub-section (4) and sub-section (5), the word “containers” includes gunny bags, tins, bottles or any other containers.

5A. Levy of purchase tax: - (1) Every dealer who, in the course of his business, purchases from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under this Act, in circumstances in which no tax is payable, under sub-section (1), (3), (4) or (5) of section 5 and either,

(a) consumes such goods in the manufacture of other goods for sale or otherwise: or

(b) uses or disposes of such goods in any manner other than by way of sale in the state: or

(c) dispatches them to any place outside the state except as a direct result of sale or purchase in the course of inter-State trade or commerce; shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on the taxable turnover relating to such purchase for the year at the rates mentioned in section 5.

(2) Notwithstanding anything contained in sub-section (1), a dealer (other than a casual trader or agent of a non-resident dealer), purchasing goods, the sale of which is liable to tax

under section 5 shall not be liable to pay tax under sub-section (1) if his total turnover for a year is less than two lakh rupees.

5B. Omitted.

5BA. Omitted.

5C. Omitted.

5D. Levy of Additional Sales Tax: - The tax payable under section 5 and section 5A shall be increased by an additional sales tax at the rate of fifteen per cent of the tax payable under the said sections:

Provided that no additional sales tax under this section shall be levied on the tax payable on High Speed Diesel Oil, Petrol falling under sub-entries (ii) and (iv) of Sl. No.1 and Foreign Liquor falling under Sl. No.2 of the Schedule.

5E. Special provision for completion of assessment of tax on lotteries: -Notwithstanding anything contained in this Act or any judgment, decree or order of any court, Tribunal or other authority, any dealer in lottery tickets liable to pay tax under sub-section (1) of Section 5 or section 5BA as it stood before amendment by the Kerala Finance Act, 2005, shall be liable to pay tax on the sale or purchase of lottery tickets at the rates applicable under this Act before such amendment and nothing shall affect the right to initiate and complete any proceedings pending regarding the assessment. Levy, collection and recovery of tax, penalty or other amount chargeable including that of escaped turnover or affect the liability of any person to pay any sum due from him or existing right of refund under this Act or the right to initiate or continue any application, appeal, revision including suo motu revision or other proceedings made or preferred to any officer or authority under this Act.

6. Tax under this Act to be in addition to tax under Central Act 74 of 1956 or other law: - The provisions of this

Act relating to taxation of successive sales or purchases inside the State only at a single point or at one more points, shall apply only to sales or purchases inside the State (other than the sales or purchases in the course of interstate trade or commerce); and the tax under this Act shall be levied in addition to any tax levied under the Central Sales Tax Act, 1956 (Central Act 74 of 1956), or any other law for the time being in force.

7. Payment of tax at compounded rates: – Notwithstanding anything contained in sub-section (2) of section 5, any bar attached hotel, not being a star hotel of and above three star hotel, heritage hotel or club, may, at its option, instead of paying turnover tax on foreign liquor in accordance with the provisions of the said sub-section pay turnover tax on the turnover of foreign liquor calculated,-

(a) at one hundred and forty per cent of the purchase value of such liquor, in the case of those situated within the area of a municipal corporation or a municipal council or a cantonment, and at one hundred and thirty five per cent of the purchase value of such liquor, in the case of those situated in any other place; or

(b) at one hundred and fifteen per cent of the highest turnover tax payable by it as conceded in the return or accounts or the turn over tax paid for any of the previous consecutive three years, whichever is higher.

8. Stage of levy of taxes in respect of imported and exported goods: - Where in the case of any goods tax is leviable at one point in a series of sales or purchases, such series shall, -

(a) in the case of goods imported into the State either from outside the territory of India or from any other State in India, be deemed to commence at the stage of the sale or purchase effected immediately after the import of such goods;

(b) in the case of goods exported out of the State to any place outside the territory of India or to any other State in India, be deemed to conclude at the stage of the sale or purchase effected immediately before the export of such goods.-

9. Omitted.

10. Power of Government to grant exemption and reduction in rate of tax: - (1) The Government may, if they consider it necessary in the public interest, by notification in the Gazette, make an exemption or reduction in rate, either prospectively or retrospectively in respect of any tax payable under this Act,

(i) on the sale or purchase of any specified goods or class of goods, at all points or at a specified point or points in the series of sales or purchases by successive dealers, or

(ii) by any specified class of persons in regard to the whole or any part of their turnover

(2) Any exemption from tax, or reduction in the rate of tax, notified under sub-section (1) -

(a) may extend to the whole State or to any specified area or areas therein,

(b) may be subject to such restrictions and conditions as may be specified in the notification

(3) The Government may by notification in the Gazette, cancel or vary any notification issued under sub-section (1).

11. Liability to tax of persons not observing restrictions and conditions prescribed under Section 9 or notified under Section 10: - If any restriction or condition prescribed under Section 9 or notified under Section 10 is contravened or is not observed by a dealer, the sales or purchases of such dealer may with effect from the commencement of the year in

which such contravention or non-observance took place, be assessed to tax or taxes under the appropriate provisions of this Act as if the provisions of section 9 or section 10, as the case may be, did not apply to such sales or purchases.

12. Burden of proof: - (1) The burden of proving that any transaction of dealer is not liable to tax under this Act shall lie on such dealer.

(2) The burden of proving that the dealer has not received fair market price on any transaction shall lie on such dealer.

(3) The burden of proving the genuineness of the transport of goods using the documents prescribed in Section 29 shall lie on such dealer.

CHAPTER IV

REGISTRATION AND PERMIT

13. Registration of dealers: - (1) Every dealer whose total turnover in any year is not less than one lakh rupees shall, and any other dealer may, get himself registered under this Act.

(2) Omitted.

(3) Notwithstanding anything contained in sub-section (1)

(i) every casual trader;

(ii) every dealer registered under sub-section (3) of Section 7 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).

(ii-a) every dealer liable to pay tax under Section 5A.

(ii-b) every dealer in bullion or specie or in jewellery of gold, silver or platinum group of metals

- (iii) every dealer residing outside the State, but carrying on business in the State;
 - (iv) every agent of a non-resident dealer; and
 - (v) every commission agent, broker, delcredere agent, auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal; shall get himself registered under this Act, irrespective of the quantum of his total turnover in such goods.
- (4) Nothing contained in this section shall apply to any State Government, the Central Government, or any local authority.
- (5) Notwithstanding anything contained in the foregoing subsections, an authorized retail or wholesale distributor dealing exclusively in palomino and rationed articles (rice, wheat, sugar and kerosene) under the Kerala Rationing Order, 1966, shall not be liable to get himself registered under this Act 33 or a person who starts business with loans taken from financial institutions under the self employment scheme whose total turnover does not exceed rupees two lakhs and has no interstate sales, shall not be liable to get himself registered under this Act for a period of two years from the date of commencement of such business.

13A. Registration of Industrial Units: -

- (1) Any person who intends to establish an industrial unit may get himself registered under this section.
- (2) Every application for registration of an industrial unit shall be supported by a certificate in the prescribed form issued by the Director of Industries, the Kerala State Industrial Development Corporation or the Kerala Financial Corporation.
- (3) A provisional registration certificate shall be issued to the applicant within seven days from the date of application.

(4) The form of application, the form of provisional registration certificate, the conditions and the authority empowered to issue such certificate shall be such as may be prescribed.

(5) The provisional registration certificate issued under this section shall facilitate the holder for procurement of all materials for construction and establishment of the industrial unit, including raw materials in such quantity as may be specified in such certificate.

(6) Every holder of a provisional registration certificate shall, before starting, commercial production in the industrial unit, get himself registered under Section 13.

14. Procedure for registration: - (1) An application for registration shall be made to such authority, in such manner and within such period as may be prescribed and shall be accompanied by a fee as specified below: -

(a)	Where the total turnover is less than three lakh rupees	Five hundred rupees
(b)	Where the total turnover is Rs.3 lakh and above but is less than 10 lakh	Seven hundred and fifty rupees
(c)	Where the total turnover is ten lakhs rupees and above but less than 50 lakh rupees	Rs.1750/-plus Rs.25/-for each lakh or part thereof above ten lakh rupees
(d)	Where the total turnover is fifty lakh and above	Rs.2000/-plus fifty rupees for each lakh or part thereof above fifty lakh.
Provided that the total registration fee payable shall in no case exceed twenty thousand rupees.		

Provided that where the dealer is an authorized retail or wholesale distributor of rationed articles (rice, wheat, sugar

and kerosene) under the Kerala Rationing Order, 1966 or palmolien his total turnover for the purpose of this sub-section shall not include the turnover in respect of such goods.

Provided further that in the case of a casual trader, the minimum registration fee to be paid shall be one thousand and five hundred rupees.

(1A) Notwithstanding anything contained in Sub-section (1) every dealer registered under Sub-section (3) of section 7 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) shall in addition to the fee specified in sub-section (1) pay a fee of rupees one hundred.

(2) If the prescribed authority after making such enquiries as it may consider necessary is satisfied, -

(a) that the application is in order;

(b) that the particulars furnished therein are correct; and

(c) that the security, if any, required to be furnished under sub-section (2A) has been furnished, it shall register the applicant and issue to him a certificate in the prescribed form.

(2A) Where it appears necessary to the prescribed authority so to do for the proper realization of the tax payable under this Act, it may, by an order in writing and for reasons to be recorded therein, impose as a condition for the issue of the registration certificate a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security as may be so specified.

(3) Where a dealer has more than one place of business, the registration certificate shall cover all such place of business. The assessing authority shall issue copies of the registration certificate to the dealer for exhibition at each of his places of business and the dealer shall pay a fee of one hundred and fifty rupees for each copy.

(3A) A dealer conducting exhibitions, exchange melas or any prize schemes for sales promotion, shall obtain a written permission from the assessing authority, in whose jurisdiction the dealer is registered under the Act, for conducting the same by remitting the fee of rupees five hundred for each such scheme and the assessing authority shall issue a certificate in the manner prescribed and such certificate shall be exhibited. The dealer to whom the permission is issued shall be exhibited at a conspicuous place where exhibitions or exchange mela or prize schemes are conducted.

(4) The prescribed authority shall have power for good and sufficient reasons to demand from any dealer, who has been registered or has applied for renewal of registration security, or if the dealer has already furnished any security in pursuance of an order under sub-section (2A) additional security, for the proper payment of tax by him for an amount not exceeding one half of the tax, payable on the turnover of the dealer for the year as estimated by the prescribed authority or three months' compounded rate in the case of applicants who have opted to pay tax under Section 7.

Provided that the assessing authority shall have power to demand at any time additional security if such authority has reason to believe that the turnover estimated under this sub-section was too low.

(5) A certificate issued under sub-section (2) shall be valid for a year and shall be renewed from year to year on payment of the fee specified in sub-section (1) and continues to be valid on such renewal.

(5A). A certificate issued under sub-section (2) shall be valid for a period of one year and shall be renewed annually on payment of the fees as specified below: -

- | | | |
|-----|--|--------------------------------------|
| (a) | dealers registered under the Kerala General Sales Tax Act, 1963. | Rs.500(Rupees five hundred)per year. |
| (b) | dealers registered under the Kerala General Sales Tax | Rs.1500/-(Rupees One thousand and |

Act, 1963 and the Central Sales Tax Act, 1956. (five hundred) per year.

(5B) Every registered dealer shall be issued an electronic identity card subject to such conditions as may be notified by Government in this behalf.

(6) A dealer registered under sub-section (1) or sub-section (2) of section 13 shall be entitled to have his registration cancelled if he is able to prove to the satisfaction of the prescribed authority that his turnover in each of the two consecutive years immediately preceding the application was less than the limits mentioned in the respective sub-sections.

(7) The prescribed authority shall have power, for good and sufficient reasons, to cancel, modify or amend any registration certificate issued it.

(8) No application for registration and no renewal under this section shall be refused and no order under sub-section (4) or sub-section (7) shall be made, unless the dealer concerned has been given an opportunity of being heard.

(9) When a dealer has ceased to do business in any year, and gives notice of that fact to the prescribed authority, he shall not be liable to pay any registration fee from the commencement of the following year unless he resumes business.

(10) The dealer shall exhibit the certificate of registration granted under sub-section (2) at the place of business mentioned in the certificate. Where the dealer has more than one place of business, he shall exhibit the certificate of registration at the principal place of business mentioned in the certificate and a copy of such certificate granted under sub-section (3) at every other place of business within the State mentioned in the certificate.

(11) The prescribed authority shall dispose of the application for registration received under sub-section (1), within six weeks from the date of receipt of the application.

14A. Suspension of registration in certain cases: - Notwithstanding anything contained in any other provisions of this Act, the Deputy Commissioner may, if he is satisfied that any dealer has violated the condition of a registration certificate issued to such dealer or that he has violated any of the provisions of this Act or the rules made there under or has prevented or obstructed or abetted the prevention or obstruction of any inspection, entry, search or seizure by an officer empowered under this Act, without prejudice to any other action that may be taken against him under this Act, by order, suspend the registration of such dealer for such period as may be specified in the order.

15. Issue of permits: - (1) Every registered dealer who transacts business at places other than his registered place or places of business or employs a traveling salesman or representative to transact business as aforesaid, shall obtain a permit issued under this Act authorizing himself or permitting him to authorize, the traveling salesman or representative so to do.

(2) The entire turnover of business carried on under the permit shall be included and accounted for by the registered dealer in his accounts and returns and shall be dealt with as if it were the turnover of business done by the registered dealer himself at the registered place of business.

(3) Every permit holder shall carry the permit with him and shall produce it on demand by any officer of the Sales Tax Department empowered by the Government in this behalf. He shall maintain and produce on demand to any such officer a true and correct account of all the transactions carried on under the permit and also a stock book showing the quantities of goods held by him, the quantities disposed of from day to day by sale or otherwise and the balance on hand at the end of each day.

(4) An application for the permit referred to in sub-section (1) shall be made to such authority, in such manner and within such period as may be prescribed and shall be accompanied by a fee of one hundred and fifty rupees.

Explanation: - A dealer may make a single application for all the permits required by him together with the fee for each permit applied for.

(5) If the prescribed authority is satisfied that the application is in order, and that the particulars furnished therein are correct, it shall issue the permit in the prescribed form.

(6) A permit issued under sub-section (5) shall be valid for a year and shall be renewed from year to year on receipt of an application from the registered dealer accompanied by a fee of one hundred and fifty rupees.

(7) The prescribed authority shall cancel a permit, -

(a) on requisition made in writing by the registered dealer, or

(b) on the cancellation of the certificate of registration.

(8) The prescribed authority may cancel a permit if the permit holder has contravened any of the terms or conditions of the permit or any of the provisions of this Act or the rules made thereunder.

(9) No permit shall be cancelled under sub-section (8) unless the person affected has been given a reasonable opportunity of being heard.

Chapter V

ASSESSMENT, COLLECTION AND PENALTY

16. Assessment of tax: - (1) The tax under this Act shall be assessed, levied and collected in such manner as may be prescribed.

(2) In case of a dealer with more than one place of business, the aggregate turnover of all such places of business shall be taken as the turnover of the business for the purposes of this Act.

(3) Notwithstanding anything contained in sub-section (2) or any of the other provisions of this Act, the Board of Revenue may, with the consent of the dealer, treat each of such places of business as a separate unit for the purposes of levy, assessment and collection of tax, and thereupon all the provisions of this Act regarding registration, filling of returns, assessment and collection of tax shall apply as if each of such places of business is a separate unit.

(4) Where any order is passed by the Board of Revenue under sub-Section (3), the turnover of each of such places of business shall be liable to tax irrespective of such turnover being below the minimum turnover mentioned in section 5.

Provided that the total turnover in respect of all such places of business together is not less than the minimum turnover mentioned in section 5.

17. Procedure to be followed by the assessing authority: -

(1) Every registered dealer and every dealer liable to take out registration under this Act shall submit such return or returns relating to his turnover in such manner and within such period as may be prescribed.

(2) If the assessing authority is satisfied that any return submitted under sub-section (1) is correct and complete, it shall assess the dealer on the basis thereof.

(3) If no return is submitted by the dealer under sub-section (1) within the prescribed period, or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such enquiry as it may consider necessary and after taking into account all relevant materials gathered by it, assess the dealer to the best of its judgment:

Provided that before taking action under this sub-section the dealer shall be given a reasonable opportunity of being heard and, where a return has been submitted to prove the correctness or completeness of such return.

(4) Notwithstanding anything to the contrary contained in sub-sections (3) and (4A) the assessing authority may accept the return for any year, the assessment relating to which has not been completed along with the statements prescribed, which are in accordance with the provisions of the Act and rules made there under, submitted by a dealer, having dealings in goods coming under the Third Schedule to the Act, irrespective of any limit in turnover, or by a dealer whose total turnover specified in the return submitted by him for the year for which the assessment relates does not exceed rupees fifteen lakhs or by a dealer having dealings only at non-taxable points of goods coming in the First, Second or Fifth Schedules and whose total turnover specified in the return does not exceed rupees forty lakhs or by a dealer the tax payable by whom for the said year does not exceed rupees five thousand and assess the dealer on the basis of such return:

Provided that every year out of the assessments relating to the preceding year to be completed under this sub-section, the Deputy Commissioner may select twenty per cent by following such procedure as may be specified by the Commissioner, for detailed scrutiny of the accounts and other records and if the dealer is found to have not accounted any purchases or sales or otherwise attempted to evade payment of tax, the assessment of the dealer for the previous five years may be reopened and escaped turnover shall be assessed or levy of tax be made after following the procedure prescribed in sub-section (3) and the limitation prescribed under any of the provisions of the Act shall not apply to such cases.

Provided further that where the return filed by any dealer falling under any of the categories referred to in this sub-section is not accompanied by any statement required by this Act or the rules made there under in support of any claim or

exemption from, or reduction in, the rate of tax, the assessing authority shall, after due notice to the dealer, complete the assessment on the basis of the turnover conceded in the return, disallowing the claim for such exemption or reduction to the extent to which it is not proved.

Provided also that where any evasion of tax is detected against any dealer whose assessments have been completed under this sub-section, the dealer shall cease to be eligible for assessment under this sub-section for any subsequent period.

(4A) Notwithstanding anything to the contrary contained in sub-section (3) in the case of a co-operative society registered or deemed to be registered under the Kerala Co-operative Societies Act 1969 (21 of 1969), the assessing authority shall make the final assessment for the year 1980-81 and for every subsequent year on the basis of the return furnished by that society, if such return is duly supported by the audit report of such society issued by the Registrar of Co-operative Societies;

Provided that the provisions of this sub-section shall not apply if the audit report of the co-operative society issued by the Registrar of Co-operative Societies is not furnished within a period of three years from the expiry of the year to which it relates:

Provided further that the provisions of this sub-section shall not apply in the case of a co-operative society, which has been punished, or on which a penalty has been imposed or from which a sum of money has been accepted under section 47 for evasion of tax for the year for which the return has been furnished.

(4B) Notwithstanding anything to the contrary contained in section 5 or in the foregoing provisions of this section, in respect of works contracts, the assessing authority may, on the application of the works contractor, complete the assessment in relation to such works contract for the period prior to 1st day of April, 1999, in one block, and the provisions of this Act and the rules made there under other than those

relating to rate of tax, shall apply to such assessment as if it were an assessment for the year 1998-99. The rate of tax applicable to each works contract shall be the lowest rate applicable to such type of works contract during any year of the block period in respect of such works contract:

Provided that no refund of any tax already paid shall be allowed.

(5) For the removal of doubt it is hereby clarified that nothing contained in sub-section (4) shall be deemed to exclude the operation of section 19, section 19B, section 19C or section 27 in the case of a dealer assessed under that sub-section.

(5A) Where on reopening of an assessment completed under sub-section (4), in respect of any dealer, it is found that the amount of tax, if any, paid by such dealer is less than the amount of tax which he is liable to pay on such fresh assessment, the assessing authority shall direct such dealer to pay the difference between the amount of tax already paid by him and that arrived at on such fresh assessment, together with thrice the amount of such difference as penalty.

(6) Any assessment under this Section shall be completed within a period of four years from the expiry of the year to which the assessment relates:

Provided that this time limit shall not apply in the case of dealers who, being liable to get themselves registered as provided for under the Act and the Rules made there under have failed to do so or have done business as benamidars or through benamies.

Provided further that the assessment relating to the year 1994-1995 shall be completed on or before 31st March 2000.

Provided also that any assessment, other than an assessment falling under sub-section (4) or sub-section (4A), shall be completed within four months from the last date of checking of the books of accounts for the purpose of

assessment for the year or within six months from such date with the permission of the next higher authority:

Provided also that the assessment relating to the years upto and including the year 2001-02 pending as on 31st March, 2006 shall be completed on or before the 31st day of March, 2007.

(7) Notwithstanding anything contained in sub-section (6), in cases where any investigation or inquiry is pending under this Act or any other law or where any assessment cannot be completed within the period specified under the said sub-section, the Deputy Commissioner may, for good and sufficient reasons, extend the period of completion of the assessment beyond the period specified in that sub-section.

(8) Any assessment or reassessment in pursuance of an order of an appellate or revisional authority shall, be completed within a period of four years from the expiry of the year in which the order was received.

Provided that all such assessments or re-assessments pending as on the 31st day of March, 2006 shall be completed on or before the 31st day of March, 2007.

Provided further that any modified assessment or modified re-assessment in pursuance of an order of the appellate or revisional authority shall be completed within a period of one year from the expiry of the year in which the order was received.

Provided also that all such modified assessments or modified re-assessments or remanded assessments pending as on the 31st day of March, 2006 shall be completed on or before the 31st day of March, 2007.

(8A) Notwithstanding anything contained in sub-section (8) in case of any investigation or enquiry is pending under this Act or any other law, where any assessment can not be completed within the period specified under the said sub-section, the

Commissioner may, for good and sufficient reasons, extend the period of completion of the assessment not exceeding a period of six months from the period specified in that sub-section.

(9) In computing the period for the completion of an assessment under this section the time during which the proceedings for assessment remained stayed under the orders of a court or other competent authority shall be excluded.

17A. Self Assessment: - Notwithstanding anything contained in section 17, where the return submitted under the said section by any dealer, other than a dealer licenced under the Foreign Liquor rules to serve liquor falling under the schedule to this Act, is in the prescribed manner and accompanied by the prescribed documents, the return shall, subject to the provisions of section 18 and 19 be deemed to have been accepted as and when the assessing authority acknowledges the receipt of the return in such manner as may be prescribed.

17B. Special provision for completion of assessment: - Notwithstanding contained in this Act, a dealer who had purchased any goods falling under serial numbers 12 to 32 of item (iv) or sub-clause 18 of clause 3 of the Kerala Finance Bill, 2005 during the period from the first day of April, 2004 to the 27th day of July 2004, from any registered dealer after paying tax at the rates showing column (4) against the said serial numbers, such dealer shall pay tax on the re-sale or such goods at the rates mentioned in column (6) against such goods and the assessing authority shall complete the assessment under section 17 of the Act.

17C. Assessment in certain cases treated as completed.-

(1) Notwithstanding anything contained in section 17, the assessment for the period upto the 31st day of March, 2005 in respect of any registered dealer, who falls under any of the categories mentioned in sub-section (4) of the said section as it stood on the 31st day of March, 2005 and who has filed returns and paid tax in accordance with the provisions

thereof, pending on the 1st day of April, 2006 shall, subject to the provisions of sub-section (2), be treated as completed.

(2) Notwithstanding anything contained in sub-section (1) where the Commissioner or the Deputy Commissioner, as the case may be, is satisfied on information or otherwise, that a registered dealer,-

(a) has concealed any sale or purchase; or

(b) has furnished incorrect statement of his turnover or incorrect particulars of his sales, in the return submitted under section 17 or otherwise, relating to an assessment made under sub-section (1), which has resulted in reduction of the amount of tax payable by him under this Act in respect of any of the periods, the Commissioner or the Deputy Commissioner, as the case may be, shall, within five years from the 1st day of April, 2006, direct the assessing authority to reopen the assessment for such period after giving such dealer a reasonable opportunity of being heard and to make fresh assessments following the procedure under sub-section (3) of section 17, for that period to the best of his judgment and the time limit specified under section 19 shall not apply to such fresh assessment.

(3) Where on reopening of an assessment under sub-section (2), it is found that the amount of tax, if any, paid by a dealer is less than the amount of tax, which he is liable to pay on such fresh assessment, the assessing authority shall direct such dealer to pay the difference between the amount of tax already paid and that arrived at on such fresh assessment, together with thrice the amount of such difference as penalty:

Provided that no penalty shall be imposed under this sub-section on a registered dealer, in respect of such period, where such dealer voluntarily discovers omissions or errors or other facts resulting in short payment of tax due from him according to books of accounts and furnishes revised return, together with proof of payment of the balance amount of tax and interest under sub-section (3) of section 23, which is found to be payable, on or before the 31st day of December, 2006.

18. Vist to dealer's premises and audit of accounts and other records to designated officers and audit assessment :

-(1) The Commissioner may designate any officer not below the rank of a Deputy Commissioner to conduct audit visit at the business place of any dealer and audit the books of accounts, any other records or stock statements and goods relating to the business, either by himself or through audit officers, following such procedures as may be prescribed.

(2) Notwithstanding anything contained in any other provisions of this Act, if any dealer,-

(a) is found on audit of his books of accounts, other records or otherwise to have submitted incorrect or incomplete return for any period or

(b) fails to make available any accounts or other accounts or other records required by the designated officer or audit officer for audit in the business place of the dealer.

(c) fails to prove the claim of any exemption or reduction in rate of tax claimed by him in the return, the audit officer or other Officer authorized by the designated officer, may, after conducting such enquiry as he may deem necessary reject the return and complete the assessments to the best of his judgment.

(3) Notwithstanding anything contained in sub-section (2), the designated officer may, on his own motion or on a reference being made to him by the assessing authority or on application by the assessee, call for and examine the records of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary so to do, he may issue such directions as he thinks fit for the guidance of the assessing authority to enable him to complete the assessment, and such directions shall be binding on the assessing authority.

Provided that no direction, which is prejudicial to the assessee, shall be issued before an opportunity is given to the assessee of being heard.

19. Assessment of escaped turnover: - (1) Where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax in any year or has been under assessed or has been assessed at a rate lower than the rate at which it is assessable or any deduction has been wrongly made there from, the assessing authority may, at any time within five years from the expiry of the year to which the tax relates, proceed to determine to the best of its judgment the turnover which has escaped assessment to tax or has been under assessed or has been assessed at a rate lower than the rate at which it is assessable or the deduction that has been wrongly made and assess the tax payable on such turnover after issuing a notice on the dealer and after making such enquiry as it may consider necessary:

Provided that before making an assessment under this sub-section the dealer shall be given a reasonable opportunity of being heard.

Provided further that the time limit mentioned in this sub-section shall not apply where the turnover which escaped assessment relates to any business done by such dealer as benamidar or through a benami or where it relates to dealer, who being liable to get himself registered under this Act and the rules made there under has failed to do so.

(2) In making an assessment under sub-section (1), the assessing authority may, if it is satisfied that the escape from assessment is due to willful non-disclosure of assessable turnover by the dealer, direct the dealer to pay, in addition to the tax assessed under sub-section (1) a penalty as provided in section 45A.

Provided that no such penalty shall be imposed unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

Explanation: - Notwithstanding anything contained in the Indian Evidence Act, 1872, the burden of proving that the

escape from assessment was not due to willful non-disclosure of assessable turnover by the dealer shall be on the dealer.

(3) The powers under sub-section (1) may be exercised by the assessing authority even though the original order of assessment, if any, passed in the matter, has been the subject matter of an appeal or revision.

(4) In computing the period of limitation for the purposes of this section, the time during which the proceedings for assessment remained stayed under the orders of a Civil court or other competent authority shall be excluded.

19A. Assessment in cases of price variation: - Notwithstanding anything contained in sub-section (1) of section 19: -

(a) if a dealer receives in any year any amount due to price variations, which would have been included in his turnover for any previous year if it had been received by him in that year, he shall within thirty days from the end of the year in which such amount is received, submit a return in the prescribed form to the assessing authority and thereupon the assessing authority shall proceed to assess the tax payable on such amount;

(b) if the assessing authority is satisfied that any return submitted under clause (a) is correct and complete, it shall assess the dealer on the basis thereof;

(c) if the return submitted by a dealer under clause (a) appears to the assessing authority to be incorrect or incomplete, the assessing authority shall, after making such inquiry as it may consider necessary and after taking into account all relevant materials gathered by it, assess the dealer to the best of its judgment.

Provided that before taking action under this clause the dealer shall be given a reasonable opportunity to prove the correctness and completeness of the return.

(d) if no return is submitted by the dealer under clause (a), the assessing authority may within four years from the expiry of the period within which such return ought to have been submitted proceed to assess the tax payable on the amount referred to in the said clause:

Provided that before making any assessment under this clause, the assessing authority shall give the dealer an opportunity of being heard and make such other inquiry, as it considers necessary.

19B. Assessment in case of under valuation: - (1) If the assessing authority is satisfied that a dealer has, with a view to evade the payment of tax, shown in his accounts, sale or purchase of any goods at prices lower than the prevailing market price of such goods, it may estimate the value of each goods, on the basis of the prevailing market price and assess or reassess the dealer to the best of its judgment, after making such enquiry as it may consider necessary and after affording the dealer a reasonable opportunity of being heard.

(2) The provisions of sub-sections (2) to (4) of sec 19 shall apply to the assessment or reassessment under subsection (1).

19C. Protective assessment: - Notwithstanding anything to the contrary contained in any judgment, decree, order, direction or decision of any Court, Tribunal or other Authority, where the assessing authority has reason to believe that any person is, or was carrying on business in the name of, or in association with any other person, either directly, or indirectly, whether as agent, employee, manager, power of attorney holder, guarantor or in any other capacity, such person and the person in whose name the registration certificate, if any, is taken, shall jointly and severally, be liable for the payment of the taxes, penalty or other amount due under this Act which shall be assessed, levied and recovered from all or any of such person or persons as if such person or persons are dealers:

Provided that before taking action under this section, the persons concerned shall be given a reasonable opportunity of being heard.

20. Assessment of legal representatives: - Where a dealer dies, his executor, administrator, or other legal representative shall be deemed to be the dealer for the purposes of this Act, and the provisions of this Act shall apply to him in respect of the business of the said deceased dealer, provided that, in respect of any tax, fee or other amount assessed as payable by any such dealer or levied on him or any tax, fee or other amount which would have been payable by him under this Act if he had not died, the executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hands.

21. Liability of firms:-(1) Where any firm is liable to pay any tax, fee or other amount under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.

(2) Where a partner of a firm liable to pay any tax, fee or other amount under this Act retires, he shall, notwithstanding any contract to the contrary, be liable to pay the tax, fee or other amount remaining unpaid at the time of his retirement and any tax, fee or other amount due up to the date of retirement, though unassessed.

21A. Firm dissolved or business discontinued: - (1) Where any business carried on by a firm is discontinued or where a firm is dissolved, the assessing authority shall make an assessment of the taxable turnover of, and determine the tax payable by, the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to levy of penalty or any other amount payable under any provisions of this Act, shall apply, so far as may be, to such assessment and determination.

(2) Without prejudice to the generality of sub-section (1), if the assessing authority in the course of any proceedings under

Section 49 in respect of any such firm as is referred to in that sub-section is satisfied that the firm was guilty of willful non-disclosure of assessable turnover, it may direct payment of a penalty in accordance with the provisions of sub-section (2) of that section.

(3) Every person who was, at the time of such discontinuance or dissolution a partner of the firm and the legal representative of any such person who is deceased, shall be jointly and severally liable, for the amount of tax, penalty or other amount payable, and all the provisions of this Act shall apply, so far as may be, to any such assessment or direction for payment of penalty or other amount.

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of any year have commenced, the proceedings may be continued against the persons referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in this section shall effect the provisions of section 20.

22. Collection of tax by dealers: - (1) A registered dealer may, subject to the provisions of sub-section (2), collect the tax payable by him on the sale of any goods from the person to whom he sells the goods and pay over the same after giving set off to the entry tax, if any already paid to the Government in the manner prescribed.

(2) No registered dealer shall collect any sum purporting to be by way of tax: -

(a) on the sale of any goods:

(i) in respect of which he is not liable to pay tax; or

(ii) at a rate exceeding the rate at which he is liable to pay tax; or

(b) in respect of the purchase of any goods, whether or not he is liable to pay tax on such purchase.

Provided that nothing contained in this sub-section shall apply to the collection of an amount by a registered dealer towards the amount of tax already paid under this Act in respect of goods, the sale or purchase price of which is controlled by any law in force and the retail price fixed for such goods under such law is not inclusive of such tax.

(3) No person other than a registered dealer shall collect any sum by way of, or purporting to be by way of tax under this Act.

(4) Where any dealer fails to pay any tax collected by him under sub-section (1) to the Government, any person or persons responsible for such collection on behalf of the dealer including a Director, Manager, Secretary or other officers of a company shall be jointly and severally liable for payment of such amounts to the Government forthwith as if it were a tax due from him.

Explanation: - For the purposes of this section:
(a) "company" means any body corporate and includes a firm or other association of individuals, or a Co-operative society; and

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

(5) The Central Government, Government of Kerala, the Government of any other States or any Union Territory (including departments of Central and State Governments) and local authorities shall collect tax at the rate or rates specified in the Schedule to the Act in respect of any sale of goods effected by them and the tax so collected shall be

remitted to Government in the Commercial Taxes Department on or before the 10th day of the succeeding month.

(6) If any officer responsible for collection of tax fails to do so or fails to remit the tax so collected under sub-section (5) such officer shall be personally liable to Government for such amount together with interest and such amounts shall be liable to be recovered from him as if it were arrears of revenue due on land recoverable from him.

23. Payment and recovery of tax: - (1) The tax assessed or any other amount demanded under this Act shall be paid in such manner and in such installments, if any, and within such time, as may be specified in the notice of demand, not being less than twenty-one days from the date of service of the notice. If default is made in paying according to the notice of demand, the whole of the amount outstanding on the date of the default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or other amount under this Act:

Provided that the time limit of twenty-one days for a notice under this sub-section shall not apply to casual traders.

(2) Any tax assessed or any other amount due under this Act from a dealer or other person may, without prejudice to any other mode of recovery, be recovered,

(a) as if it were an arrear of land revenue:

(b) on application to any Magistrate, by such Magistrate, as if it were a fine imposed by him:

Provided that no proceedings for such recovery shall be taken or continued as long as such dealer or other person has, in regard to the payment of such tax or other amount, as the case may be complied with an order by any of the authorities to whom he has appealed or applied for revision, under the provisions of this Act.

(3) If the tax or any other amount assessed or due under this Act is not paid by any dealer or other person within the time prescribed therefore in this Act or in any rule made there under and in other cases within the time specified therefore in the notice of demand, the dealer or other person, shall pay simple interest at the rate of twelve per cent per annum on the tax or other amount defaulted.

(3A) Where any dealer has failed to include any turnover or taxable turnover of his business or to pay the tax due thereon the taxable turnover in any return filed or where any turnover has escaped assessment, interest under sub-section (3) shall accrue on the tax due on such turnover with effect from such date on which the tax would have fallen due for payment had the dealer included the same in the return relating to the period to which the turnover or tax, as the case may be relates.

(3B) (i) Where, as a result of any order in appeal or revision or in any other proceedings, the tax or any other amount due under this Act is finally settled, the interest leviable under sub-section (3) shall be on the amount as finally settled and the period during which the collection of tax or other amount is stayed by any Court or any other authority shall not be excluded in computing the period for calculating interest under the said sub-section.

(ii) For the removal of doubt it is hereby clarified that the provisions of clause (i) of this sub-section shall apply to all tax and other amount pending payment as on the 1st day of April 1994.

(4) Where, as a result of any order in appeal or revision or any rectification under Section 43, any dealer or other person is not liable to pay the tax assessed or any other amount, the levy of interest for the non-payment of such tax or other amount shall be cancelled and if any amount of such interest has been collected, it shall be refunded to the dealer or other person as the case may be.

(5) Where, as a result of any order in appeal or revision or any rectification under section 43, any tax assessed or any other amount due from any dealer or other persons has been reduced, the interest levied for the non-payment of such tax or other amount shall be proportionately reduced and if any amount of interest in excess of such reduced interest has been collected, such excess shall be refunded to the dealer or other person as the case may be.

(6) The provisions of sub sections (4) and (5) shall so far as may be, apply, in respect of interest levied for the non-payment of tax provisionally assessed which has been reduced in part or in full as a result of final assessment.

(7) The provisions of the Kerala Taxation Laws (Continuation and Validation of Recovery Proceedings) Act 1967 (23 of 1967), shall apply for all proceedings in relation to the recovery of any amount due under this Act.

23A. Omitted.

23AA. Special powers of Inspecting Assistant Commissioners under Revenue Recovery Act: - (1) The Government may, by notification in the Gazette, appoint any Inspecting Assistant Commissioner appointed under Section 3 to exercise the functions of a Collector under the Kerala Revenue Recovery Act, 1968 (15 of 1968) for the recovery of arrears due under this Act.

(2) Notwithstanding anything contained in any other law for the time being in force, an officer appointed under sub-section (1) shall be deemed to be a Collector within the meaning of clause (c) of Section 2 of the Kerala Revenue Recovery Act, 1968 (15 of 1968).

24. Recovery of penalty: - Penalty payable under this Act shall be deemed to be tax under this Act for the purpose of collection and recovery and shall be recoverable without prejudice to the institution of any proceeding for an offence under this Act.

25. Further mode of recovery: - (1) 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 to the assessing authority) require any court or any officer of the Central Government or of the Government of any State or Union Territory or any other person (other than an individual) who holds or may subsequently hold money for or on account of the dealer, to pay to the assessing authority, either forthwith if the money has become due or is so held 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 due by the dealer in respect of arrears of tax, fee or penalty or the whole of the money when it is equal to or less than the arrears of tax, fee or penalty.

(2) The assessing authority may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(3) Any court, officer or other person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the dealer and the receipt by the assessing authority shall constitute a good and sufficient discharge of the liability of such court, officer or other person to the extent of the amount referred to in the receipt.

(4) Any court or person other than an officer of the Government making any payment to the dealer after receipt of the notice referred to in this section shall be liable to the assessing authority to the extent of the payment made or to the extent of the liability of the dealer for the amount due under this Act, whichever is less.

(5) Where any court or person other than, an officer of the Government to which or to whom a notice under this Section is sent objects to it on the ground that the sum demanded or any part thereof is not due by it or him to the dealer or that such court or person does not hold any money for or on account of the dealer, then nothing contained in this Section

shall be deemed to require such court or person to pay the sum demanded or any part thereof to the assessing authority.

(6) Any amount which a court or person other than any officer of the Government is required to pay the assessing authority or for which it or he is liable to the assessing authority under this section shall, if it remains unpaid, be a charge on the properties of such court or person, as the case may be, and may be recovered as if it were an arrear of public revenue due on land.

Explanation: - For the purposes of this section, the amount due to a dealer or money held for or on account of a dealer by any court, officer or other person shall be computed after taking into account such claims if any, as may have fallen due for payment by such court, officer or other person, as the case may be, and as may be, lawfully subsisting.

26. Recovery of tax when business is transferred: - Where the ownership of the business of a dealer liable to pay tax or other amount is transferred, any tax or other amount payable under this Act in respect of such business and remaining unpaid at the time of the transfer and any tax or other amount due up to the date of transfer, though unassessed may, without prejudice to any action that may be taken for its recovery from the transferor, be recovered from the transferee as if he were the dealer liable to pay such tax or other amount:

Provided that the recovery from the transferee of the arrears of tax due for the period prior to the date of the transfer shall be limited to the value of the assets he obtained by transfer.

26A. Certain transfers to be void: - (1) Where, during the pendency of any proceedings under this Act or after the completion thereof, any assessee 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 person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee under this Act.

26B. Tax payable to be first charge on the property: - Notwithstanding anything to the contrary contained in any other law for the time being in force, any amount of tax, penalty, interest and any other amount, if any, payable by a dealer or any another person under this Act, shall be the first charge on the property of the dealer, or such person.

26C. Liability of Directors of a Private Company: - Subject to the provisions of the Companies Act, 1956 (Central Act 1 of 1956) where any tax or other amount recoverable under this Act from any private company, whether existing or wound up or under liquidation, cannot be recovered for any reason whatsoever, every person who was a director of such company at any time during the period for which the tax or other amount is due under this Act shall be jointly and severally liable for the payment of such tax or other amount.

Chapter VI

INSPECTION OF BUSINESS PLACES AND ACCOUNTS AND ESTABLISHMENT OF CHECK POSTS

27. Maintenance of true and correct accounts by dealers. -

(1) Every person registered under this Act, every dealer liable to get himself registered under this Act and every other dealer who is required so to do by the prescribed authority by notice served in the prescribed manner shall keep and maintain true and correct accounts and such other records as may be prescribed in Malayalam, Tamil, Kannada, Gujarati or English relating to his business, showing such particulars as may be prescribed. Different particulars may be prescribed for different classes of dealers.

(2) every dealer shall issue bill or purchase bill and every buyer shall demand bill from the dealer for the purchase made by him.

27A. Audit of accounts: - Every dealer whose total turnover in a year exceeds rupees forty lakhs shall get his accounts audited by a Chartered Accountant and shall submit copy of the

audited statement of accounts and certificate in the manner prescribed.

28. Power to order production of accounts and powers of entry, Inspection etc.- (1) An officer not below the rank of an assessing authority may, for the purposes of this Act, by notice, require any dealer,-

(a) to produce or cause to be produced before him any accounts, registers, records or other documents; or

(b) to furnish or cause to be furnished any other information, relating to his business, and such dealer shall comply with such requisition.

(2) Any officer, not below the rank of an assessing authority may, at any reasonable time.

(a) enter any place of business or any vessel or vehicle of any dealer; and

(b) inspect any accounts, registers, records or other documents relating to his business and the goods in his possession:

Provided that where the tax paid by a dealer registers an increase of 25% over the tax paid during the immediate preceding year, entry and inspection referred to in this sub-section shall be made only the previous permission in writing of the Deputy commissioner.

(3) If any officer not below the rank of an assessing authority has reason to believe that a dealer is trying to evade any tax under this Act, he may, for reasons to be recorded, enter and search, -

(a) the place of business of the dealer; or

(b) any other place where the dealer is keeping or is reasonably believed to be keeping any goods, accounts,

registers, records or other documents relating to his business:

Provided that no residential accommodation (not being a shop-cum residence) shall be entered into or searched unless such officer is specially authorised in writing by the Board of Revenue to search that accommodation.

Explanation: - For the purposes of clause (b), “place” includes any go down, building, vessel, vehicle, box or receptacle.

(4) All searches under this section shall, so far as may be, be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(5) The officer making the inspections or search may seize such accounts, registers, records or other documents as he considers necessary and on such seizure shall grant the dealer a receipt of the things seized.

(6) The accounts, registers, records or other documents seized under sub-section (5) shall not be retained by the officer seizing them beyond a period of thirty days from the date of the seizure except with the permission of the next higher authority, unless they are required for any prosecution under this Act:

Provided that the next higher authority shall not give permission to retain such accounts, registers records or other documents beyond a period of sixty days from the date of the seizures.

(7) The power conferred by sub-section (3) and (5) shall include:-

(a) the power to break open any box or receptacle or place or the door of any premises, in which any goods or any accounts, registers, records or other documents of the dealer are, or are reasonably believed to be kept;

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises fails or refuses to open the door on being called upon to do so.

(b) the power to seal any box or receptacle, go down or building, where any goods or any accounts, registers, records or other documents are, or are reasonably believed to be kept, if the owner or any other person in occupation leaves the premises or refuses to open the box or receptacle, go down or building, or is not available, and then to break open such box, receptacle, go down or building on the authority of an authorization in writing by the Board of Revenue.

(c) the power to search any person who has got out of, or is about to get into or is in, any place referred to in clause (a) or clause (b) of sub section (3) or any vessel or vehicle of any dealer, if the officer has reasons to suspect that such person has secreted about his person any goods or any accounts, registers, records or other documents.

(8) If any officer while inspecting any place of business under subsection (2) or searching any place under sub-section (3) finds there in any goods not accounted for by the dealer in his accounts and other records required under section 27 to be kept and maintained by him such officer may, after giving the dealer a reasonable opportunity to being heard, by order, direct the payment of a penalty, not exceeding fifty percent of the value of the goods not accounted for, as may be fixed by such officer.

(8A) If any officer, during the course of any inspection or search of any business place, building go down or any other place finds that any goods not accounted for by any dealer in this accounts or other records required to be maintained under this Act and not claimed by any dealer or any other person, are stored in any business place, building, go down other place, such officer may seize the same by giving the owner of such business place, building, godown or other place

a receipt of the goods seized and after giving him a reasonable opportunity of being heard, sell the same in public auction in the manner as may be prescribed.

28A. Purchase of goods to prevent under valuation: - (1)

The assessing authority or any other Officer empowered in this behalf by the Government is satisfied that any dealer with a view to evade payment of tax, shows in his accounts, sale or purchase of any goods at prices lower than the prevailing market price of such goods, shall have the power to purchase such goods at a price at ten per cent above the purchase value or the value disclosed by any principal or agent in the case of goods received on consignment basis plus transporting charges and entrust such goods for sale to the Kerala State Civil Supplies Corporation Ltd. or Kerala State marketing Federation Limited or to any such public distribution system or sell such goods in public auction.

(2) Any person aggrieved by a decision taken by any officer under sub-section (1) may file an appeal before the Deputy Commissioner within thirty days from the date of receipt by him of the decision in such form and in such manner as may be prescribed and shall be accompanied, by a fee of one hundred rupees.

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

29. Establishment of check post and inspection of goods in transit: - (1)

If the Government consider that with a view to prevent or check evasion of tax under this Act in any place or places in the State it is necessary so to do, they may by notification in the Gazette direct setting up of check posts at such place or places, and define the boundaries of such check posts and notify the area of the check posts included within such boundaries, hereinafter, referred to as the notified area, and demarcate such boundaries by means of barriers nor

otherwise for the purpose of regulating the passage of goods across the notified area.

(2) No person shall transport within the State across or beyond the notified area any consignment of goods exceeding such quantity or value as may be prescribed by any vehicle or vessel, unless he is in possession of.-

(a) either a bill of sale or delivery notice or way bill or certificate of ownership containing such particulars as may be prescribed, and

(b) a declaration in such form and containing such particulars as may be prescribed when the vehicle or vessel enters or leaves the State limits.

Explanation I - The term “goods” referred to in this sub-section shall not include luggage of persons who cross the notified area.

Explanation II - For the purposes of this Act transport of goods commerce at the time of delivery of goods to a carrier or bailee for transmission and terminates at the time when delivery is taken from such carrier or bailee.

(2A) Notwithstanding anything contained in sub-section (2), no person shall transport within the State across or beyond the notified area or within two kilometers from the border area, by head load, or by animal load, any consignment of cashew, rubber, cardamom, pepper or ginger exceeding such quantity as may be prescribed, unless he is in possession of the documents specified in sub-section (2).

(3) At any place within the notified area or at any other place when so required by any officer empowered by the Government in this behalf, the driver or any other person in charge of any vehicle or vessel shall stop the vehicle or vessel and keep the vehicle or vessel, as the case may be, stationary as long as may be required by the officer in charge of the notified area or the officer empowered as aforesaid and allow and enable such

officer to inspect the goods under transport and to examine the bill of sale or delivery note or way bill or certificate of ownership relating to the goods, which are in the possession of such driver or person in charge of the goods, who shall, if so required, give his name and address the name and address of the owner of vehicle or vessel and the name and address of the owner of the goods and in the case of a vehicle or vessel entering or leaving the State limits the declaration also.

(4) Where the goods transported exceed the quantity or value prescribed under sub-section (2), the officer in charge of the notified area or the officer empowered in the preceding sub-section shall have power to detain or seize and confiscate the goods.

(a) which are being transported by a vehicle or vessel and not covered by a bill of sale or delivery note or way bill or certificate of ownership and where the vehicle or vessel enters or leaves the State limits, the declaration referred to in clause (b) of sub-section (2) also, or

(b) where the declaration is false or is reasonably suspected to be false in respect of the particulars furnished therein:

Provided that before taking action for the confiscation of goods under this section, the officer shall give the person in charge of the goods and the owner, if ascertainable, an opportunity of being heard and make an enquiry in the manner prescribed.

(5) Whenever confiscation is authorized by this section the officer adjudging it shall give the owner or the person in charge of the goods an option to pay, in lieu of confiscation, a penalty not exceeding double the amount of tax calculated at the rates applicable to the goods liable to confiscation:

Provided that the officer may release the goods on cash security being furnished by the person concerned to the extent of the penalty leviable if, in the opinion of the officer, further

time is required to arrive at a correct finding as to whether a penalty is to be imposed or not and that the security so furnished shall be adjusted towards the penalty in case it is payable or returned to the part if otherwise.

(6) Nothing contained in sub-section (4) or sub-section (5) shall apply in the case of goods transported, which are exempted, from tax under any of the provisions of this Act without any condition or restriction.

29A. Procedure for inspection of goods in transit through notified areas.

- (1) The driver or other person in charge of a vehicle or vessel shall stop the vehicle or vessel and any person referred to in sub-section (2A) of section 29 shall stop or, the case may be stop the animal at any place within a notified area when so required by the officer in charge of that notified area, or at any other place when so required by any officer empowered by the Government in that behalf, for the purpose of enabling such officer to verify the documents required by sub-section (2) of Section 29 to be in the possession of the person transporting the goods and to satisfy himself that there is no evasion of tax.

(2) If such officer has reason to suspect that the goods under transport are not covered by proper and genuine documents (in cases where such documents are necessary) or that any person transporting the goods is attempting to evade payment of the tax due under this Act, he may, for reasons to be recorded in writing, detain the goods and shall allow the same to be transported only on the owner of the goods, or his representative or the driver or other person in charge of the vehicle or vessel on behalf of the owner of the goods, furnishing security for double the amount of tax likely to be evaded: as may be estimated by such officer;

Provided that such officer may, if he deems fit, having regard to the nature of the carrier or the goods and other relevant matters, allow such goods to be transported on the owner of the goods or his representative or the driver or other

person in charge of the vehicle or vessel executing a bond with or without sureties for securing the amount due as security.

Provided further that where the documents produced in support of the transport of goods evidence defects of a minor or technical nature only and the goods are owned by a dealer registered under this Act, such officer may allow the goods to be transported after realizing the tax on the turnover of the goods under transport.

(2A) Where the owner, driver or person in charge of the vehicle or vessel carrying the goods detained under sub-section (2) is found in collusion for such carrying of goods, the vehicle or vessel shall also be detained and seized by the officer empowered under sub-section (1) and such vehicle or vessel shall be released only on the owner, driver or person in charge of it furnishing the security provided in sub-section (2). In case of failure to furnish the security as above, the officer detaining and seizing the vehicle shall have the power to order the vehicle or vessel being taken to the nearest Police Station or to any Check Post or office of the Agricultural Income Tax and Sales Tax Department for safe custody of the goods or the vehicle or the vessel or both:

Provided that where the owner, driver or person in charge of a vehicle or vessel carrying goods is found guilty of the offence under this sub-section for a second or a subsequent time, such vehicle or vessel may be detained for a period not exceeding 30 days from the date of furnishing the security.

(2B) If such officer has reason to believe that the tax exigible on the sale or purchase of goods under transport is not paid, or the dealer whose goods are transported is in default of payment of any tax or other amount due under this Act for any period, such officer may, notwithstanding anything to the contrary contained in this Act or the rules made thereunder allow the goods to be transported after realizing the tax in respect of the goods transported. If the driver or the person in charge of the goods or the dealer whose goods are under transport refuses to pay such tax, the goods shall be detained

by such officer and shall be dealt within the manner provided in this section as if the transport of goods were an attempt to evade payment of tax due under this Act.

(3) The officer detaining the goods shall record the statements, if any, given by the owner of the goods or his representative or the driver or other person in charge of the vehicle or vessel and shall submit the proceedings along with the connected records to such officer not below the rank of Sales Tax Officer as may be authorized in that behalf by the Government, for conducting necessary inquiry in the manner.

Provided that where tax is collected under the second proviso to sub-section (2) or under sub-section (2B), no enquiry under this sub-section shall be necessary and the officer detaining the goods shall submit the proceedings along with the connected records to the concerned assessing authority.

(4) The officer authorized under sub-section (3) shall, before conducting the inquiry, serve notice on the owner of the goods and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to evade the tax due under this Act, he shall, by order, impose on the owner of the goods a penalty not exceeding twice the amount of tax attempted to be evaded, as may be estimated by such officer.

(5) No action under sub-section (2) or sub-section (3) or sub-section (4) shall be taken in respect of goods already subjected to the proceedings under those sub-sections.

(6) If the owner of the goods or his representative or the driver or other person in charge of the vehicle or vessel does not furnish security or execute the bond as required under sub-section (2) within fourteen days from the date of stopping the vehicle or vessel under sub-section (1), the officer referred to in that sub-section may, by order, seize the goods, and in the event of the owner of the goods not paying the penalty imposed under sub section (4) within thirty days from the date of the

order imposing the penalty, the goods seized shall be liable to be sold for the realization of the penalty in the manner provided in sub-section (9).

(7) When any goods are seized under sub-section (6), the officer seizing the goods shall issue to the owner of the goods if present or, if the owner of the goods is not present to his representative or the driver or other person in charge of the vehicle or vessel, a receipt specifying the description and quantity of the goods so seized and obtain an acknowledgment from such person or, if such person refuses to give an acknowledgment, record the fact of refusal in the presence of two witnesses.

(8) The notice under sub-section (4) to be served on the owner of the goods shall be given to the address as furnished in any of the documents referred to in sub-section (1) or to the address furnished by the driver or other person in charge of the vehicle or vessel, and if there are no such documents or if the address is not furnished, a notice giving the description of the goods, the approximate value thereof, the number and description of the vehicle or vessel in which the goods were carried and the date and time of detention and also indicating the provisions of the Act and the rules there under which have been violated shall be -

(a) displayed on the notice board of the officer authorized under sub-section (3); and

(b) published in not more than two daily newspapers having wide circulation in the area in which the goods were detained, before conducting the inquiry under sub-section (4).

(9) The goods seized under sub-section (6) shall be sold by the officer who imposed the penalty, by public auction to the highest bidder and the sale proceeds shall be remitted in the Government treasury.

(10) If the goods seized are of a perishable nature or subject to speedy and natural decay, or when the expenses of keeping them in custody are likely to exceed their value, the officer in charge of the notified area or the other officer empowered under sub-section (1), as the case may be, shall immediately sell such goods or otherwise dispose of them and remit the sale proceeds of such goods, or the amount obtained by the disposal of such goods otherwise than by sale, in the Government treasury.

(11) If the order of imposition of penalty under sub-section (4) or of seizure of goods under sub-section (6) is set aside or modified in appeal or other proceedings, the appropriate authority shall also pass consequential orders for giving effect to the order in such appeal or other proceedings, as the case may be.

(12) the owner of the goods sold or otherwise disposed of under this section shall be liable to pay the expenses and other incidental charges for keeping the goods seized in custody until the sale or other disposal and the charges for publication in newspapers of the notice under sub-section (8).

(13) If the sale proceeds of any goods sold or the amount obtained on the disposal of any goods otherwise than by sale under provisions hereinbefore contained exceeds the penalty imposed in respect of such goods, such excess amount after deducting the expenses, incidental charges and charges for publication referred to in sub-section (12) shall be returned by the officer who conducted the sale or otherwise disposed of the goods to the owner of the goods on his establishing the ownership thereof.

(14). Notwithstanding anything contained in the foregoing provisions where any officer referred to in sub-section (1) finds on inspection of any goods under transport that such goods are transported or attempted to be transported in the name of bogus or unidentifiable person or under cover of bogus documents, such officer may, after giving notice to the owner or any person in charge of the vehicle, carrier or bailee in

writing and after following such procedure as may be prescribed, seize the goods and sell the same in the public auction and the sale proceeds shall be remitted to Government.

30. Regulation of transport of notified goods: - (1) No person shall transport from or to any railway station or steamer station or any other place of similar nature notified in this behalf by the Government any consignment of such goods as may be notified by the Government in the Gazette exceeding such quantity or value as may be prescribed, except in accordance with such conditions as may be prescribed Such conditions shall be prescribed with a view to ensure that there is no evasion of the tax imposed by this Act.

(2) Any officer authorized by the Government in this behalf shall have power, subject to such restrictions as may be prescribed, -

(a) to intercept and search any vehicle or vessel for the purpose of verifying whether any goods are being transported in contravention of sub-sec.(1);

(b) to seize and confiscate any goods which he has reason to believe are being transported in contravention of sub -section(1):

Provided that before taking action for the confiscation of goods under this section the officer shall give the person in charge of the goods and the owner, if ascertainable, an opportunity of being heard and make an enquiry in the manner prescribed.

(3) Whenever confiscation is authorized by this section, the officer adjudging it shall give the owner or the person in charge of the goods an option to pay, in lieu of confiscation, a penalty not exceeding double the amount of tax calculated at the rates applicable to the goods liable to confiscation:

Provided that the officer may release the goods on cash security being furnished by the person concerned to the extent of the penalty leviable if, in the opinion of the officer, further time is required to arrive at a correct finding as to whether a penalty is to be imposed or not and that the security so furnished shall be adjusted towards the penalty in case it is payable or returned to the party, if otherwise.

(4) Nothing contained in sub-section (2) or sub-section (3) shall apply in the case of goods transported, which are exempted from tax under any of the provisions of this Act without any condition or restriction.

30A. Procedure for transport of notified goods: - (1) The driver or other person in charge of a vehicle or vessel shall stop the vehicle or vessel at any place when so required by any officer, authorized by the Government in this behalf, for the purpose of enabling such officer to verify whether the goods are being transported in contravention of sub-section (1) of section 30.

(2) If, on verification, such officer has reasons to suspect that the goods are being transported in contravention of sub-section (1) of section 30, he may, for reasons to be recorded in writing, detain the goods and shall proceed in accordance with the provisions of section 29A.

30B. Transit of goods through the State and issue of transit pass: - (1) When a vehicle or vessel carrying goods from any place outside the State and bound for any place outside the State passes through the State, the owner or driver or person in charge of such vehicle or vessel shall obtain a transit pass in the prescribed form for such goods from the officer-in-charge of the first check post after his entry into the State and deliver it to the officer-in-charge of the last check post before his exit from the State.

(2) If the owner or driver or person in charge of such vehicle or vessel fails to deliver the transit pass for such goods referred to in sub-section (1) to the last check post, it shall be

presumed that such goods, which are liable to tax under this Act, have been delivered within the State for sale:

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

(3) Where it is presumed under sub-section (2) that the goods carried in a vehicle or vessel have been delivered within the State for sale by the owner or driver or person in charge of the vehicle or vessel, such owner or driver or person in charge of the vehicle or vessel shall be jointly or severally liable to pay tax which shall be assessed and recovered in accordance with the relevant provisions of this Act, irrespective of the limit of any turnover together with an amount of penalty not exceeding twice the amount of such tax as may be assessed, after having given to the person or persons aforesaid an opportunity of being heard by the assessing authority under whose jurisdiction the check post is situate.

(4) Where any person consigns any goods or transports any goods liable to tax under this Act from another State into the State without any records as provided for under sub-section (2) of section 29 or where the particulars furnished in the documents accompanying the goods are false or the consignor or purchaser stated therein is found to be bogus or non-existent or is not traceable or where the transporter fails to prove the bonafides of the transport ,it shall be presumed that such goods have been sold in the state by the consignor or the owner of the goods or the transporter or the owner or person in charge of the vehicle or the person in charge of the goods or all of them jointly and they shall be jointly or severally liable to pay tax on such sales which shall be assessed and recovered in the manner provided in sub-section (3).

(5) For the purpose of this section, the owner or driver or person in charge of the vehicle or vessel shall, unless he is a

registered dealer under this Act, be deemed to be a registered dealer for assessment of tax under this Act

(6)Where the goods enter the state by way import from foreign countries through any air or sea-port and the goods are transport to a place outside the state through a vehicle or vessel, the transit pass shall be obtain from the first check post or from the office of the Commercial Taxes Department near to the airport or sea port, as the case may be, and the provision in the subsection (1) to (5) shall apply accordingly.

30C. Omitted.

30D. Omitted.

30E. Confiscation by authorised officers of notified goods, vessel or vehicle in case of smuggling. - (1) Notwithstanding anything contained in this Act, the owner or other person in charge of a vehicle or vessel while transporting into or out of the State, any notified goods, the value of which exceeds rupees two thousand and five hundred or such amount as notified by the Government from time to time shall carry with him in addition to the documents prescribed under Section 29 of the Act, a permit issued by the officer empowered in this behalf or the assessing authority as the case may be, in the prescribed from.

Note:- If the transport of notified goods is not accompanied by the documents specified in sub-section (1) above, it shall be deemed to be smuggling of the notified goods for the purposes of the Act.

(2) Any officer authorized by the Government this behalf shall have the power to intercept and search the vehicle or vessel or any conveyance referred to in sub-section (1) at any place within the State for the purpose of enabling such officer to verify whether any notified goods are being transported in contravention of sub-section(1).

(3) If no verification, such officer has reason to suspect that the notified goods are being transported in contravention of the provisions of sub-section (1) he may without any unreasonable delay, produce the goods and the vehicle before such officer authorized by the Government, by notification in the Gazette, not below the rank of an inspecting Assistant Commissioner.

(4) Where the authorized officer is satisfied that the driver or other persons in charge to the vehicle or vessel transported the notified goods in contravention of sub-section (1) or the documents produced are false or reasonably suspected to be false in respect of the particulars furnished therein the authorized officer shall have the power to seize and detain the notified goods along with vehicle or vessel:

Provided that before taking action of seizure and detention, the authorized officer shall give the person in charge of the notified goods and the owner of the notified goods, if ascertainable and to the owner of the vehicle or vessel a notice in writing informing him the reason for the seizure and detention and an opportunity of being heard:

Provided further that the authorized officer may release the notified goods and the vehicle or vessel seized and detained. If the owner or the person in charge of the notified goods or owner or person in charge of the vehicle or vessel files an option to pay in lieu of seizure and detention, a redemption fee equal to thrice the amount of tax due at the an amount of rupees fifty thousand whichever is higher for the release of the vehicle in lieu of detention:

Provided also that if the owner of the vehicle of vessel produces the permit prescribed in sub-section (1) and the owner of the notified goods proves the bonfires of the transport of goods within seven days of the o seizure and detention, the authorized officer shall release the goods and the vehicle.

(5) Notwithstanding anything contained in the foregoing provisions, if the owner or person in charge of the notified

goods or the owner or person in charge of the vehicle fails to prove the genuineness of the transport of the notified goods or to remit the redemption fee as specified in second proviso to sub-section (3), within thirty days from the date of seizure and detention of goods and the authorized officer has reason to believe that the owner or the person in charge of the vehicle or the driver has transported the notified goods to evade payment of tax with the knowledge or connivance of the owner of the goods, the officer may confiscate the vehicle or vessel along with the goods.

Provided that the authorized officer shall serve notice to the owner of the vehicle or the person in charge of the vehicle or the owner of the notified goods, if ascertainable, intimating the reason for the confiscation of the vehicle or vessel and affording him an opportunity of being heard. The officer shall also afford an opportunity to any of such persons to pay a penalty equal to thrice the amount of tax attempted to be evaded in lieu of confiscation of the notified goods and an amount equal to thrice the amount of such tax or rupees one lakh whichever is higher in lieu of confiscation of the vehicle or vessel.

(6) No order confiscating any vehicle or vessel shall be made under sub-section (4), if the owner or the person in charge of the vehicle or vessel proves to the satisfaction of the authorized officer that it was used for carry the notified goods without the knowledge or connivance of the owner himself, his agent, if any, or the person in charge of such vehicle or vessel and that each of them have taken all reasonable and necessary precautions against such use.

(7) The permit referred to in this section shall be obtained either from the officer empowered to in this behalf in the border check post or from the assessing authority, as the case may be, for the transport of notified goods into or out of the State.

(8) Any person aggrieved by an order under sub-section (6) may, within thirty days from the date of communication to him of such order, file an application for revision, in such manner and in such form, as may be prescribed and accompanied by a fee of rupees five hundred before the Deputy Commissioner and the Deputy Commissioner may pass such orders thereon as he thinks fit.

Provided the Deputy Commissioner may admit an application for revision filed after the expiry of the said period, if he is satisfied that the applicant had sufficient cause for not filing the revision within the said period.

(9) Any person aggrieved by an order under sub-section (8) may within thirty days from the date of communication to him of such order, file a revision in such manner and in such form as may be prescribed and accompanied by a fee of rupees seven hundred before the Commissioner and the decision of the Commissioner shall be final.

Provided that the Commissioner may admit an application for revision filed after the expiry of the said period, if he is satisfied that the applicant had sufficient cause for not filing the application within the said period.

(10) Where an order of confiscation under this section has become final in respect of any goods, vehicle or vessel, such goods, vehicle or vessel, as the case may be, shall vest in the Government free from all encumbrances.

(11) The award of confiscation under this section shall not prevent the infliction of any punishment to which the person affected thereby is liable under the Act.

30F.Procedure as to perishable goods seized under Section

30E: -(1) Notwithstanding anything contained in Section 30E, the authorized officer may direct the sale of any goods seized under that section which is subject to speedy and natural decay and remit the sale proceeds into the Government Treasury.

(2) The authorized officer may deal with the proceeds of the sale of goods under sub-section (1) in the same manner as he might have dealt with the goods, if it had not been sold.

30G. Police Assistance for inspection, search and seizure: -

An officer authorized under the provisions of this Act to conduct inspection, search or seizure of any vehicle or vessel, goods, business place, residential accommodation or any other place, if such officer feels necessary to have police assistance for the effective conduct of such inspection, search or seizure may seek police assistance from the officer in charge of the police station or from his superior officer having jurisdiction over the area where inspection, search or seizure is to be conducted or is being conducted and thereupon such police officer shall render such assistance to the officer as may be required for the conduct of such inspection, search or seizure.

31. Possession and submission of certain records by owners etc., of vehicle and vessels. - The owner or other person in charge of a vehicle or vessel shall, while transporting any consignment of goods exceeding such quantity or value as may be prescribed under sub-section (2) of section 29, carry with him, -

(i) a bill of sale, delivery note, way bill or certificate of ownership, and

(ii) such other documents as may be prescribed, relating to the goods under transport and containing such particulars as may be prescribed, and shall submit to the prescribed authority, having jurisdiction over the area in which the goods are delivered, the documents aforesaid or copies thereof within such time as may be prescribed,

(iii) any person who undertakes to transport or delivery any consignment of notified goods in any vehicle or vessel or any other conveyance exceeding the value of rupees two thousand and five hundred or such amount as notified by the Government from time to time shall have a

permit obtained from the authority as prescribed in sub-section (7) of Section 30E.

32. Forwarding agency, etc., to submit returns: - Every clearing or forwarding house or agency, transporting agency, shipping agency, shipping out agency, steamer agency or courier services in the State shall submit to the assessing authority of the area such returns as may be prescribed of all goods cleared, forwarded, transported, or shipped by it. The assessing authority concerned shall have the power to call for and examine the books of account or other documents in the possession of such agency with a view to verify the correctness of the returns submitted, and the agency shall be bound to furnish the books of account or other documents when so called for.

33. Banks to submit returns: -Every bank, including any branch of a bank or any banking institution in the State, shall submit every month to the assessing authority of the area a return in the prescribed form of all bills relating to goods discounted, cleared or negotiated by or through it during the preceding month, in such manner as may be prescribed.

33A. Warehousemen to submit returns: - Every warehouseman, shall, if so required by an officer not below the rank of an assessing authority, furnish such particular as he may require in respect of goods deposited in his warehouse by any dealer, for the purpose of verifying the correctness of the returns submitted and the accounts maintained by such dealer.

CHAPTER VII

APPEALS, REVISIONS AND REFUNDS

34. Appeals to the Appellate Assistant Commissioner: - (1) Any person objecting to an order affecting him passed by an appropriate authority under sub-section (6) or sub-section (7) of section 14, sub-section (2), sub-section (3) or sub-section (4) or sub-section (4A) of section 17, sub-section (1) or sub-

section (2) of section 19, section 19A, Section 19B, section 19C section 26, section 29, section 29A section 30 or section 30A or an order passed by a lower authority under section 43 may, within a period of thirty days from the date on which the order was served on him, appeal against such order to the Appellate Assistant Commissioner:

Provided that where the order to be appealed against involves only a question of law which has been settled by a decision of the High Court or the Supreme Court the appeal may be filed before the Appellate Tribunal.

Provided further that the Appellate Assistant Commissioner may admit an appeal presented after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period.

Provided also that in the case of an order under sub-section (2) or sub-section (3) or sub-section (4) or sub-section (4A) of section 17, or sub-section (1) or sub-section (2) of Section 19, or section 19B no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax or other amounts admitted by the appellant to be due or of such installment thereof as might have become payable, as the case may be.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner, and be accompanied by a fee of three hundred rupees.

(3) In disposing of an appeal, the Appellate Assistant Commissioner may, after giving the appellant a reasonable opportunity of being heard, -

- (a) in the case of an order of assessment or penalty, confirm, reduce, enhance or annul the assessment or the penalty or both; or
 - (i) confirm, reduce, enhance or annul the assessment or the penalty or both; or

- (ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed; or
- (iii) pass such other orders as he may think fit; or

(b) in the case of any other order, confirm, cancel or vary such order:

Provided that, at the hearing of any appeal against an order of the assessing authority, the assessing authority shall have the right to be heard either in person or by a representative.

(3A) The order of the Appellate Assistant Commissioner disposing of an appeal shall state the point for determination, the decision thereon and the reason for arriving at such decision.

(4) Where as a result of the appeal any change becomes necessary in the order appealed against, the Appellate Assistant Commissioner may direct the assessing authority to amend such order accordingly and on such amendment being made, any amount overpaid by the appellant shall be refunded to him or the further amount of tax, if any, due from him shall be collected in accordance with the provisions of this Act, as the case may be.

(5) Notwithstanding that an appeal has been preferred under sub-section (4), the tax or other amounts shall be paid in accordance with the order against which the appeal has been preferred.

Provided that the Appellate Assistant Commissioner may, in his discretion, give such directions as he thinks fit in regard to the payment of the tax before the disposal of the appeal, if

the appellant furnishes sufficient security to his satisfaction in such form and in such manner as may be prescribed.

35. Powers of revision of the Deputy Commissioner suo motu - (1) The Deputy Commissioner may, of his own motion, call for and examine any order passed or proceedings recorded under this Act by any officer or authority subordinate to him other than an Appellate Assistant Commissioner which in its opinion is prejudicial to revenue and may make such enquiry or cause such enquiry to be made and, subject to the provisions of this act, may pass such order thereon as he thinks fit.

(2) The Deputy Commissioner shall not pass any order under sub-section (1) if,

(a) the time for appeal against the order has not expired;

(b) the order has been made the subject of an appeal to the Appellate Assistant Commissioner or the Appellate Tribunal or of a revision in the High Court; or

(c) more than four years have expired after the passing of the order referred to therein.

2A. Notwithstanding anything contained in sub-section (2), the Deputy Commissioner may pass an order under sub-section (1) on any point which has not been decided in an appeal or revision referred to in clause (b) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or revision or before the expiry of the period of four years referred to in clause (c) of that sub-section, whichever is later.

(3) Not order under this Section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

36. Power of revision of Deputy Commissioner on application: - (1) Any person objecting to an order passed 0or

proceeding recorded under this Act for which an appeal has not been provided for in section 34 or section 39 may, within a period of thirty days from the date on which a copy of the order or proceeding was served on him in the manner prescribed, file an application for revision of such order or proceeding to the Deputy Commissioner:

Provided that the Deputy Commissioner may admit an application for revision presented after the expiration of the said period, if he is satisfied that the applicant had sufficient cause for not presenting the application within the said period.

(2) An application for revision shall be in the prescribed form and shall be verified in the prescribed manner, and be accompanied by a fee of three hundred rupees.

(3) On admitting an application for revision, the Deputy Commissioner may call for and examine the record of the order or proceeding against which the application has been preferred and may make such enquiry or cause such enquiry to be made and subject to the provisions of the Act pass such order thereon as he thinks fit.

(4) Notwithstanding that an application has been preferred under sub-section (1), the tax, fee or other amount shall be paid in accordance with the order or proceeding against which the application has been preferred:

Provided that the Deputy Commissioner may, in his discretion, give such directions as he thinks fit in regard to the payment of such tax, fee or other amount, if the applicant furnishes sufficient security to his satisfaction in such form and in such manner as may be prescribed.

(5) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

37. Powers of revision of the Board of Revenue suo-motu: -

(1) The Board of Revenue may suo motu call for and examine

any order passed or proceeding recorded under this Act by any officer or authority, subordinate to it other than an Appellate Assistant Commissioner which in its opinion is prejudicial to revenue and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act may pass such order thereon as it thinks fit.

(2) The Board of Revenue shall not pass any order under sub-sec.(1) if -

(a) the time for appeal against that order has not expired;

(b) the order has been made the subject matter of an appeal to the Appellate Assistant Commissioner or the Appellate Tribunal or of a revision in the High Court; or

(c) more than four years have expired after the passing of the order referred to therein.

(2A) Notwithstanding anything contained in sub-section (2), the Board of Revenue may pass an order under sub-section (1) on any point which has not been decided in an appeal or revision referred to in clause (b) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or revision or before the expiry of a period of four years referred in clause (c) of that sub-section, whichever is later.

(3) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

38. Powers of revision of the Board of Revenue on application: - (1) Any person objecting to an order passed by the Deputy Commissioner under Section 14A or under sub-section (1) of section 35 or sub-section (3) of section 36 may, within a period of thirty days from the date on which a copy of the order was served on him in the manner prescribed, file an application for revision of such order to the Board of Revenue:

Provided that the Board of Revenue may admit an application presented after the expiry of the said period, if it is satisfied that the applicant has sufficient cause for not presenting the application within the said period.

(2) Such application for revision shall be in the prescribed form and shall be verified in the prescribed manner and be accompanied by a fee of seven hundred rupees.

(3) On admitting an application for revision, the Board of Revenue may call for and examine the record of the order against which the application has been preferred and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act pass such order thereon as it thinks fit.

(4) Notwithstanding that an application has been preferred under sub-section (1), the tax, fee or other amount shall be paid in accordance with the order against which the application has been preferred:

Provided that the Board of Revenue may in its discretion, give such directions as it thinks fit in regard to the payment of such tax fee, or other amount, if the applicant furnishes sufficient security to its satisfaction in such manner as may be prescribed.

(5) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

39. Appeal to the Appellate Tribunal:- (1) Any person objecting to an order referred to in the first proviso to sub-section (1) of section 34 or any officer empowered by the Government in this behalf] or any other person objecting to an order passed by the Appellate Assistant Commissioner under sub-section (3) of section 34 and any person objecting to an order passed by the Deputy Commissioner under sub-section (1) of section 35 may, within a period of sixty days from the date on which the order was served on him in the manner

prescribed, appeal against such order to the Appellate Tribunal:

Provided that the Appellate Tribunal may admit an appeal presented after the expiration of the said period if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period.

(2) The officer authorized under sub-section (1) or the person against whom an appeal has been preferred, as the case may be, on receipt of notice that an appeal against the order of the Appellate Assistant Commissioner has been preferred under sub-section (1) by the other party, may, notwithstanding that he has not appealed against such order or any part thereof, file within thirty days of the receipt of the notice, a memorandum of cross objections, verified in the prescribed manner, against any part of the order of the Appellate Assistant Commissioner, and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-sec.(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 the case of an appeal preferred by any person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of seven hundred rupees.

(4) In disposing of an appeal, the Appellate Tribunal may after giving the parties a reasonable opportunity of being heard either in person or by a representative.

(a) in the case of an order of assessment or penalty, -

(i) confirm, reduce, enhance or annul the assessment or penalty or both;

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed; or

(iii) pass such other orders as it may think fit; or

(b) in the case of any other order, confirm, cancel or vary such order;

Provided that, if the appeal involves a question of law on which the Appellate Tribunal has previously given its decision in another appeal and either a revision petition in the High Court against such decision or an appeal in the Supreme Court against the order of the High Court thereon is pending, the Appellate Tribunal may defer the hearing of the appeal before it, till such revision petition in the High Court or the appeal in the Supreme Court is disposed of,

(5) Where as a result of the appeal any change becomes necessary in the order appealed against, the Appellate Tribunal may authorize the assessing authority to amend such order accordingly and on such amendment being made any amount overpaid by the appellant shall be refunded to him or the further amount of tax, if any, due from him shall be collected in accordance with the provisions of this Act.

(6) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that the Appellate Tribunal may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

Provided further that where the Appellate Tribunal has passed an order of stay in an appeal it shall dispose of the appeal within a period of one hundred and eighty days from the date of such order:

Provide also that if such appeal is not so disposed of within the period specified in the second proviso the stay order shall stand vacated after the expiry of the said period.

Explanation. - For the purpose of the second and third proviso, an order of stay in an appeal passed prior to the 23rd day of July 2001 shall be deemed to have been passed on the 23rd day of July 2001.

(7) (a) The appellant or the respondent may apply for review of any order passed by the Appellate Tribunal under sub-section (4) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within his knowledge or could not be produced by him when the order was made.

Provided that no such application shall be preferred more than once in respect of the same order.

(b) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed, and where the application is preferred by any person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by such a fee of rupees two hundred and fifty.

(8) Every order passed by the Appellate Tribunal under sub-section (4) or sub-section (7) shall be communicated in the manner prescribed to the appellant, the respondent, the authority from whose order the appeal was preferred the Deputy Commissioner concerned if he is not such authority and the Board of Revenue. -

39A. Filing of application for settlement of cases: - (1) Notwithstanding anything contrary contained in this Act an assessment may, at any stage of an appeal or revision pending before any authority under this section or High Court, make an application in such form and in such manner as may be prescribed, containing a full and true disclosure of his

turnover which had not been disclosed before the Assessing Officer, including the additional amount of tax payable of such turnover and such other particulars as may be prescribed, to the settlement Commission to have the case settled and any such application shall be disposed of in the manner herein after provided:

Provided that no such application shall be made unless the assessee has furnished the return of turnover which he is or was required to furnish under any of the provisions under this Act:

Provide further that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard.

(2) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

(4) On receipt of an application under sub-section (1) the Settlement Commission shall call a report from the Deputy Commissioner and of the basis of the materials contained in such report and having regard to the nature and circumstance of the case or complexity of investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded, with or reject the application:

Provided that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard.

Provided further that the Deputy Commissioner shall furnish the report within a period of forty-five days of the receipt of commission from the Settlement Commission, and if the Deputy Commissioner fails to furnish the report within the said period, the settlement commission may make the order without such report.

(5) A copy of every order under sub-section (4) shall be sent to the applicant and to the Deputy Commissioner.

(6) Subject to the provision of sub-section (7), the assessee shall, within thirty five days of the receipt of a copy of the order under sub-section (4) allowing the applications to be proceeded with, pay additional amount of tax or other amount payable on the turnover disclosed in the application and shall furnish proof of such payment to the Settlement Commission.

(7) Where the additional amount of tax or other amount referred to in sub-section (6) is not paid by the assessee within the time specified under that sub section, the Settlement Commission may, as it discretion, permit the assessee to pay the amount within a period not exceeding fifteen days.

(8) Where an application is allowed to be proceeded with under sub-section (4), the Settlement Commission may call for the relevant report from the Deputy Commissioners and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Deputy Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matter covered by the application and any other matter relating to the case.

(9) After examination of the records and the matter of the Deputy Commissioner received under sub-sections (4) or (8) and after giving an opportunity to the applicant and to the Deputy Commissioner to be heard, either in person or through a representative duly authorised in this behalf and after examining such further evidences as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on this matters covered by the application and any other matter relating to the case not covered by the application, but referred to it in the report of the Deputy Commissioner under sub-section (4) or sub-section (8).

Provided that the Settlement Commission shall pass such order within a period of one hundred and eighty days from the date of allowing the application.

(10) Every order passes under sub-section (9) shall provide for the term of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

(11) Where any tax payable in pursuance of an order under sub-section (9) is not paid by the assessee within thirty five days of the receipt of a copy of the order by him, the assessee shall be liable to pay interest at the rate of one per cent for each month or part thereof, for the first three months after the date specified for its payment; and at the rate of two per cent for each month or part thereof; subsequent to the first three months aforesaid, on the amount remaining unpaid from the date of expiry of the period of thirty-five days.

(12) Where a settlement become void as provide under sub-section (10), the proceedings with respect of the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the authority concerned may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void.

(13) If the matter is settled under the provisions of this section the Deputy Commissioner shall intimate the fact of such settlement to the Appellate Tribunal or the High Court as the case may be.

40. Appeal to the High Court:- (1) Any person objecting to an order affecting him passed under section 37 or section 59A

may, within a period of ninety days from the date on which a copy of the order was served on him in the manner prescribed, appeal against such order to the High Court:

Provided that the High Court may admit an appeal preferred after the period of ninety days aforesaid if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of two hundred and fifty rupees.

(3) In disposing of an appeal, the High Court may, after giving the parties a reasonable opportunity of being heard either in person or by a representative,

(a) in the case of an order of assessment or penalty,-

(i) confirm, reduce, enhance or annul the assessment or penalty or both;

(ii) set aside the assessment and direct that a fresh assessment may be made after such further enquiry as may be directed; or

(iii) pass such other orders as it may think fit; or

(b) in the case of any other order, confirm, cancel or vary such order

(4) Where as a result of the appeal any change becomes necessary in the order appealed against, the High Court may authorize the Board of Revenue to amend such order accordingly and, on such amendment being made, any amount over paid by the appellant shall be refunded to him or the further amount of tax, if any due from him, shall be collected in accordance with the provisions of this Act, as the case may be.

(5) Every order passed in appeal under this section shall be final.

(6) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that the High Court may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction in such form and such manner as may be prescribed.

(7) (a) The High Court may, on the application of the appellant or the Board of Revenue review any order passed by it under sub-section (3) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within the knowledge of the appellant or the Board of Revenue or could not be produced by him or it, when the order was made.

(b) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed and shall, where it is preferred by any person other than the Board of Revenue, be accompanied by a fee of two hundred and fifty rupees.

8. The cost of an appeal under sub-section (1) or of a review under sub-section (7) shall be in the discretion of the High Court.

41. Revision by the High Court: - (1) Any officer empowered by the Government in this behalf or any other person who objects to an order passed by Appellate Tribunal under sub-section (4) or sub-section (7) of section 39 may, within ninety days from the date on which a copy of such order is served on him in the manner prescribed, prefer a petition to the High

Court on the ground that the Appellate Tribunal has either decided erroneously or failed to decide any question of law:

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

(2) The petition shall be in the prescribed form and shall be verified in the prescribed manner and where a person prefers it other than an officer empowered by the Government under sub-section (1) it shall be accompanied by a fee of two hundred and fifty rupees.

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

Provided that no petition shall be dismissed unless the petitioner has had a reasonable opportunity of being heard.

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

(b) Where the High Court remits the matter under clause (a) with its opinion on the question of law raised, the Appellate Tribunal 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 it necessary so to do, remit the petition to the Appellate Tribunal, and direct it to return the petition with its finding on any specific question or issue.

(6) Notwithstanding that a petition has been preferred under sub-section (1), the tax shall be paid in accordance with the order against which the revision has been preferred.

Provided that the High Court may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the petition, if the petitioner furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

(7) (a) The High Court may, on the application of any party to a revision under this section, review any order passed by it on the basis of the discovery of new and important facts which after the exercise of due diligence were not within the knowledge of the applicant or could not be produced by him when the order was made.

(b) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed and, where it is preferred by a person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of two hundred and fifty rupees.

(8) If, as a result of the revision or review, any change becomes necessary in any assessment, the High Court may direct the assessing authority to amend the assessment accordingly, and on such amendment being made any amount overpaid by any person shall be refunded to him, or the further amount of tax due from him shall be collected in accordance with the provisions of this Act, as the case may be.

(9) The cost of a revision under sub-section (1) or of a review under sub-section (7) shall be in the discretion of the High Court.

42. Appeals, petitions and applications to the High Court to be heard by a Bench of not less than two judges: - Every

appeal preferred to the High Court under section 40, every petition under section 41 and every application under section 40 or section 41 shall be heard by a Bench of not less than two judges, and in respect of such appeal, petition or application, the provisions of section 98 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) shall, so far as may be, apply.

42A. Fee for interlocutory petitions: - Every interlocutory application prescribed by the Government and filed before the authorities under this Act specified below, other than those filed by officers empowered by Government, shall be accompanied by the following fees, namely:-

(a) Before the Appellate Assistant

Commissioner or the Deputy

Commissioner:

One hundred rupees

(b) Before the Commissioner or

The Appellate Tribunal:
rupees

Two hundred & fifty

43. Power to rectify any error apparent on the face of the record: - (1) an assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, on application or otherwise, at any time within three years from the date of any order passed by it, rectify any error apparent on the face of the record.

Provided that no such rectification, which has the effect of enhancing an assessment or any penalty, shall be made unless such authority has given notice to the person affected and has allowed him a reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund to the person entitled thereto.

(3) Where any such rectification has the effect of enhancing an assessment or penalty, the assessing authority shall give the dealer or other person a revised notice of assessment or penalty, and thereupon the provisions of this Act and the rules made there under shall apply as such notice had been given in the first instance.

Explanation: - The liability to pay the tax or other amount will arise only from the date specified in the revised notice.

44. Refund: - (1) When a assessing authority finds, at the time of final assessment, that the dealer has paid tax in excess of what is due from him, it shall refund the excess to the dealer.

(2) When the assessing authority receives an order from any appellate or revisional authority to make refund of tax or penalty paid by a dealer it shall effect the refund.

(3) Notwithstanding anything contained in sub-section (1) and (2), the assessing authority shall have power to adjust the amount due to the refunded under sub-section (1) or sub-section (2), towards the recovery of any amount due under this Act or under the Central Sales Tax Act, 1956 or under the Kerala Value Added Tax Act, 2003, on the date of adjustment from the dealer.

(4) In case refund under sub-section (1) or sub-section (2) or adjustment under sub-section (3) is not made within ninety days of the date of final assessment or, as the case may be, within ninety days of the date of receipt of the order in appeal or revision or the date of expiry of the time for preferring appeal or revision, the dealer shall be entitled to claim interest at the rate of ten per cent per annum on the amount due to him from the date of expiry of the said period up to the date of payment or adjustment.

45. Omitted

CHAPTER VIII

OFFENCE & PENALTIES

45A. Imposition of penalty by officers and authorities: - (1) Notwithstanding anything contained in section 46 if the assessing authority or the Appellate Assistant Commissioner is satisfied that any person,-

- (a) being a person required to register himself as dealer under this Act, did not get himself registered; or
- (b) has failed to keep true and complete accounts; or
- (c) has failed to submit any return as required by the provisions of this Act or the rules made there under; or
- (d) has submitted an untrue or incorrect return; or
- (e) has failed to comply with all or any of the terms of any notice or summons issued to him by or under the provisions of this Act or the rules made thereunder; or
- (f) after purchasing any goods in respect of which he has made a declaration under proviso to sub-section (3) of section 5, has failed to make use of the goods for the declared purpose; or
- (g) has acted in contravention of any of the provisions of this Act or any rule made there under, for the contravention of which no express provision for payment of penalty or for punishment is made by this Act;
- (h) or has abetted the commission of any of the above offences.

Such authority or officer may direct that such person shall pay, by way of penalty, an amount not exceeding twice the amount of Sales Tax or other amount evaded or sought to be evaded where it is practicable to quantify the evasion or an amount not exceeding ten thousand rupees in any other case.

Explanation I: - The burden of proving that any person is not liable to the penalty under this section shall be on such person.

Explanation II: - for the purposes of this sub-section the expression “assessing authority” includes any officer not below the rank of Sales Tax Officer specified by the Government in this behalf by notification in the Gazette.

(2) No order under sub-section (1) shall be passed unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter.

(3) The Deputy Commissioner may, on application by any person on whom a penalty is imposed under sub-section (1) within thirty days from the date of receipt by him of the order imposing such penalty, for reasons to be recorded in writing confirm, reduce or waive such penalty or remand the case to the assessing authority or Appellate Assistant Commissioner, as the case may be, for reconsideration.

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

(4) An order of the Deputy Commissioner under sub-section (3) shall, subject to the provisions of sub-section (5), be final.

(5) The Board of Revenue may, either suo-motu or on application, call for and examine the record of any order passed under sub-section (1) or sub-section (3) and make such order as it thinks fit.

Provided that the Board of Revenue shall not admit an application made after the expiry of thirty days from the date of receipt by the applicant of the order under sub-section (1) or sub-section (3), as the case may be, unless it is satisfied that the applicant had sufficient cause for not making the application within the said period.

Provided further that no order enhancing a penalty or canceling the waiver of a penalty shall be passed unless the person affected thereby is given an opportunity of being heard in the matter.

(5A) An application under sub-section (3) shall be accompanied by a fee of rupees three hundred and that under sub-section (5) by a fee of rupees seven hundred.

(6) An order of the Board of Revenue under sub-section (5) shall be final.

45AA. Penalty for default of payment of tax: - (1) Where an assessee makes default in payment of tax or any other amount due under this Act within the time specified in the notice of demand, he shall, in addition to the tax or other amount in arrears and the amount of interest payable under sub-section (3) of section 23, be liable to pay, by way of penalty such amount and in the case of a continuing default, amount at such rate for every day during which the default continues, as the assessing authority may direct, so, however, that the total amount of penalty shall not exceed the amount of tax or other amount in arrears.

(2) No penalty under sub section (1) shall be imposed without giving the assessee a reasonable opportunity of being heard.

45B. Penalty for transport of goods without records: - (1) If any officer empowered under sub-section (1) of section 29A finds on inspection of any vehicle or vessel that any transporting agency or contract carriage transporting any goods without the documents required under sub-section (2) of section 29, such officer may without prejudice to any action that may be taken under section 29A, impose by an order in writing on such transporting agency, or contract carriage, or the owner of the vehicle a penalty equal to twice the amount of the tax due on such goods subject to a minimum of five thousand rupees.

(2) Where a transporting agency or contract carriage or the owner of the vehicle or vessel is subsequently guilty of the offence under sub-section (1) for more than one occasion, the officer referred to in that sub-section may, in addition to the penalty that may be imposed under the said sub-section, by an order in writing detain the vehicle or vessel for a period of 30 days from the date of inspection of the vehicle or vessel, whether the vehicle or vessel used for the Commission of the offence on subsequent occasion is the same or not.

(3) The vehicle or vessel detained under sub-section (2) shall be kept in safe custody by the officer detaining the vehicle on a place notified by the Government.

(4) No order under sub-section (1) or sub-section (2) shall be passed unless such person affected by such order shall be given an opportunity of being heard.

(5) The vehicle or vessel detained under this section shall after the expiry of thirty days from the date of detention be released to the person from whom it was detained.

Explanation: - Transporting agency for the purposes of the section shall include parcel agency.

46. Penalty for submitting untrue return etc.: (1) Any person who: -

(a) knowingly submits an untrue return or fails to submit return as required by the provisions of this Act or the rules made there under or

(b) omitted.

(c) fails to keep true and complete accounts, or

(d) dishonestly objects to or fails to comply with the terms of a notice issued to him under sub-section (1) of section 25, of

(e) being a person obliged to register himself as a dealer under this Act does not get himself registered, or

(f) willfully acts in contravention of any of the provisions of this Act or the rules made there under, for the contravention of which no express provision for punishment is made by this Act.

(g) or abets the commission of any of the above offences, shall, on conviction by a Magistrate be liable to fine which may extend to twenty five thousand rupees.

(2) Any person who,-

(a) prevents or obstructs inspection, entry, search or seizure by an officer empowered under this Act, or

(b) prevents or obstructs inspection of any vehicle or vessel or goods transported, otherwise or seizure of goods by an officer in charge of a check post or barrier or any officer empowered under this Act, or

(c) fraudulently evades the payment of tax, fee or other amount due from him under this Act, or

(d) after purchasing any goods in respect of which he has made a declaration under the proviso to sub-section (3) of section 5 fails without reasonable excuse to make use of the goods for the declared purpose, or

(e) carries on business as a dealer without furnishing the security demanded under sub-section (4) of section 14, shall, on conviction by a Magistrate be liable to simple imprisonment which may extend to six months or to fine not less than the tax or other amounts due but not exceeding fifty thousand rupees, or to both.

46A. Penalty for illegal collection of tax: - (1) If any person collects any sum by way of tax or purporting to be by way of tax in contravention of sub-section (2) or sub-section (3) of

section 22, he shall be liable to pay penalty not exceeding five thousand rupees and any sum collected by the person by way of tax or purporting to be by way of tax in contravention of sub-section (2) or sub-section (3) of section 22 shall be liable to be forfeited to the Government by an order issued by the assessing authority after giving such person an opportunity to show cause why penalty or forfeiture shall not be ordered.

Provided that no penalty or forfeiture shall be ordered under this sub-section if the assessing authority is satisfied that the sum so collected has been returned to the person from whom it was collected.

(2) Where any sum is forfeited to the Government under sub-section (1), any person from whom the amount was collected in contravention of the provisions of sub-section (2) or sub-section (3) of section 22 may apply to the assessing authority for reimbursement of such sum and the amount shall be reimbursed to such person in the prescribed manner.

(3) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed or forfeiture has been ordered under this section.

47. Composition of offences: - The assessing authority or other officer or authority authorized by the Government in this behalf may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act, by way of composition of such offence,

(a) Where the offence consists of the evasion of any tax payable under this Act, in addition to the tax so payable, a sum of money equal to the amount of tax so payable subject to a minimum of rupees one hundred and maximum of rupees two lakhs and

(b) in other cases a sum of money not exceeding ten thousand rupees;

Provided that the Board of Revenue may by order authorize any Officer to compound the offence under this section on payment of a reduced amount.

48. Offences by Companies: - (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence 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 if he proves that the offence was committed without his knowledge or that he exercised all 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 that the commission of the offence is attributable to any neglect on the part of, any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or any 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 purposes of this section-

(a) “company” means anybody corporate and includes a firm or other association of individuals; and

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

CHAPTER IX

MISCELLANEOUS

49. Courts not to set aside or modify assessments except as provided in this Act: - No suit or other proceeding shall except as expressly provided in this Act, be instituted in any court to set aside or modify any assessment made under this Act or any proceedings under this Act for the recovery of any tax or other amount due under this Act or to stay any such proceedings or recovery.

49A. Bar against attachment in certain cases: - Notwithstanding anything contained in any other law in force or in any judgment, decree or order of any court, no court or any other authority shall pass any order attaching any amount from any person, out of the tax collected by such person under the Act and kept with them before it become due to Government.

50. Assessment etc., not to be questioned in prosecution: - (1) Any order of assessment made under this Act shall be conclusive evidence in any prosecution or other proceeding.

(2) The validity of the assessment of any tax, or of the levy of any fee or other amount, made under this Act, or the liability of any person to pay any tax, fee or other amount so assessed or levied, shall not be questioned in any criminal court in any prosecution or other proceeding, whether under this Act or otherwise.

51. Bar of certain proceedings: - (1) No suit, prosecution or other proceeding shall lie against any officer or servant of the Government for any act done or purporting to be done under this Act, without the previous sanction of the Government.

(2) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding, if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed by or under this Act.

52. Limitation for certain suits and prosecutions: - No suit shall be instituted against the Government and no suit,

prosecutions or other proceeding shall be instituted against any officer or servant of the Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of:

Provided that, in computing the period of limitation under this section, the time taken for obtaining sanction under the sub-section (1) of section 51 shall be excluded.

53. Power to summon witnesses and cause production of documents: - An assessing authority or an appellate or revising authority (including the Appellate Tribunal) shall, for the purposes of this Act, have all the powers conferred on a court by the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely, -

- (a) summoning and enforcing the attendance of any person and examining him on oath or affirmation; and
- (b) compelling the production of any document.

54. Prohibition of disclosure of particulars produced before sales tax authorities: - (1) All particulars contained in any statement made, return furnished or accounts, registers or documents produced under the provisions of this Act or in the evidence given or affidavit or deposition made in the course of any proceeding under this Act or in any record of any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential and shall not be disclosed.

(2) Nothing contained in sub-section (1) shall apply to the disclosure of any such particulars, -

- (i) to any officer of the Sales Tax Department of the State;
- (ii) for the purpose of prosecution under the Indian Penal Code (Central Act 45 of 1860), or under this Act in

respect of any such statement, return, accounts, registers, documents, evidence affidavit deposition;

(iii) to any person enforcing the provisions of this act where it is necessary to disclose the same to him for the purposes of this Act;

(iv) occasioned by the lawful employment under this Act] of any process for the recovery of any demand:

(v) to a civil court in any suit to which the Government are party and which relates to any matter arising out of any proceeding under this Act

(vi) occasioned by the lawful exercise by a public servant of his powers under the Kerala Stamp Act, 1959 (Act 17 of 1959), or the Indian Stamp Act, 1899, (Central Act 2 of 1899), to impound an insufficiently stamped document;

(vii) to an officer of the Government of India, or the Government of any State or Union Territory in India, if an agreement for disclosure on a reciprocal basis has been entered into between the Government and the Government of India or the Government of the State or Union Territory, as the case may be.

(viii) to the Director of Statistics or any officer serving under him and authorized by him in this behalf, as may be necessary for conducting statistical survey;

(ix) to an officer of any Department of the Central Government or the Government of Kerala after obtaining.

(a) the permission of the Inspecting Assistant Commissioner of the district, where such particulars are to be furnished by an officer subordinate to the Inspecting Assistant Commissioner; and

(b) the permission of the Board of Revenue, where such particulars are to be furnished by an Inspecting

Assistant Commissioner or an Appellate Assistant Commissioner or a Deputy Commissioner:

Provided that such particulars shall be furnished under clause (ix) only in exceptional cases and that any officer obtaining such particulars shall keep them as confidential and use them only in the lawful exercise of the powers conferred by or under any enactment.

55. Persons entitled to appear before authority: -(1) Any person who is entitled or required to appear before any authority other than the High Court in connection with any proceedings under this Act may be represented before such authority.

(a) by his relative or a person employed by him, if such relative or person is duly authorized by him in writing in this behalf; or

(b) by a legal practitioner; or

(c) by a chartered accountant duly authorized by him in writing in this behalf; or

(d) by a sales tax practitioner possessing the prescribed qualifications and duly authorized by him in writing in this behalf.

(2) The authorisation referred to in sub-section (1) shall be in such form and accompanied by such fee as may be prescribed.

55A. Rounding off of turnover, tax etc.- (1) The amount of taxable turnover computed in accordance with the provisions of this act shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten, and if the last figure is less than five, the amount shall be reduced to the next lower

amount which is a multiple of ten, and the amount so rounded off shall be deemed to be the taxable turnover of the dealer for the purposes of this Act.

(2) The amount of tax or other amount due under this Act shall be rounded off to the nearest rupee and for the purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise, it shall be ignored.

55B. Service of notice: - Any notice required to be served on, or given to, any person under this Act or the rules made thereunder shall be deemed to be duly served or given:

(a) if the notice is addressed to that person and is given or tendered to him; or

(b) where that person cannot be found if it is affixed on some conspicuous part of his last known place of residence or business or is tendered to some adult member of his family; or

(c) if it is sent by registered post to that person at his last known place of residence or business.

55C. Appropriation of payment: - (1) Where any tax or any other amount due or demanded under the Act is paid by any dealer or other person, the payments so made shall be appropriated first towards interest accrued on such tax or other amount under sub-section (3) of section 23 on such date of payment and the balance available shall be appropriated towards principal outstanding, notwithstanding any request to the contrary by the dealer or any person making such payments.

(2) Notwithstanding anything contained in sub-section (1) where any dealer or other person has paid any amount towards tax or any other amount and such payment has been set off towards the principal amount prior to the coming into

effect of this section, no recomputation of such payment shall be made under sub-section (1).

56. Sale or purchase deemed to have taken place inside the State in certain cases:-

(1) Notwithstanding anything contained in this Act, any sale or purchase which took place on or before the 6th day of September, 1955 shall be deemed to have taken place inside the State if the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in the State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State and be subject to tax under this Act accordingly.

(2) The provisions of this section shall not affect the liability to tax of any sale or purchase under any other provision of this Act.

57. Power to make rules: - (1) The Government may, by notification in the Gazette, make rules either prospectively or retrospectively to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may be provided for, -

(a) all matters expressly required or allowed by this Act to be prescribed;

(b) determining the total turnover, taxable turnover or turnover of a dealer for the purposes of this Act;

(c) the assessment to tax under this Act of business which is discontinued or the ownership of which has changed;

(d) the assessment to tax under this Act of business owned by minors and other incapacitated persons or by persons residing outside the state;

- (e) the assessment of a business owned by any person whose estate or any portion of whose estate is under the control of the Court of Wards, the Administrator General, the Official Trustee, or any Receiver or Manager appointed by or under any order of a court;
- (f) the administration of the notified areas and the barriers erected and the check posts set up under this Act and the regulation of the work therein;
- (g) the disposal of goods confiscated under this Act and the proceeds thereof;
- (h) requiring the submission of returns;
- (i) the form in which and the particulars to be contained in any declaration to be given under this Act, the authority from whom, the conditions subject to which and the fees subject to payment of which such form of declaration may be obtained, the manner in which such form shall be kept in custody and records relating thereto maintained, the manner in which any such form may be used and any such declaration may be furnished;
- (j) the duties and powers of officers appointed for the purpose of enforcing the provisions of this act;
- (k) the term of office, and conditions of service of the members of the Appellate Tribunal;
- (l) the circumstances in which and the extent to which, fees paid in pursuance of section 39 may be refunded;
- (m) the issue of bills or cash memoranda, the class or classes of dealers who should maintain counterfoils for the same and the particulars to be shown in and the manner of maintenance of such counterfoils and the time for which they should be preserved;

(n) the maintenance of purchase bills or accounts of purchases and sales by dealers and the time for which they should be preserved;

(o) the issue of delivery notes or way-bills in respect of goods delivered or transferred to retail dealers in pursuance of sales effected to them, the form and manner of their issue and the time for which they should be preserved;

(p) the extent of liability of commission agent, broker, delcredere agent, auctioneer or any other mercantile agent, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;

(q) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act;

(r) any other matter for which there is no provision or on sufficient provision in this Act and for which provision is, in the opinion of the Government necessary for giving affect to the purposes of this Act.

(3) Every rule made under this act shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees that the rule should be either modified or annulled, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rules.

58. Power to amend Schedules: - (1) The Government may, by notification in the Gazette, -

(a) add, omit or amend any entry in the First Schedule or the Second Schedule, but not so as to enhance the rate of tax in any case.

(b) Transpose any entry by deleting it from the First Schedule or the Second schedule and inserting it in or adding it to the other Schedule.

(2) Where a notification has been issued under sub-section (1), there shall, unless the notification is in the meantime rescinded be introduced in the Legislative Assembly, as soon as may be, but in any case during the next session of the Assembly following the date of the issue of the notification a Bill on behalf of the Government, to give effect to the addition, omission, amendment or transposition, as the case may be, of the entries in the Schedules specified in the notification, and the notification, shall cease to have effect when such Bill becomes law, whether with or without modifications, but, without prejudice to the validity of anything previously done there under:

Provided that, if the notification under sub-section (1) is issued when the Legislative Assembly is in session, such a Bill shall be introduced in the Assembly during that session:

Provided further that where for any reason a Bill as aforesaid does not become law within six months from the date of its introduction in the Legislative Assembly, the notification shall cease to have effect on the expiration of the said period of six months.

(3) All references made in this Act to the First Schedule or the Second Schedule shall be construed as references to that Schedule as for the time being amended in exercise of the powers conferred by this Section.

59. Certain transaction deemed to be first sale 85or first purchase: - (1) Notwithstanding anything contained in this Act, the first sale of such of those goods, -

(i) as were not liable to tax only at the point of first sale before the commencement of this Act; and

(ii) as are liable to tax only at the point of first sale under sub-section (1) or sub-section (2) of section 5 of this Act, effected within the State after the commencement of this Act shall be deemed to be the first sale for the purposes of this Act, although any sale of such goods has taken place within the State before such commencement.

(2) Notwithstanding anything contained in this act, where goods, the sale at which is liable to tax at all points of sale, are included in the First Schedule, the first sale of such goods effected within the State after such inclusion shall be deemed to be the first sale in the State for the purposes of this Act although any sale of such goods has taken place within the State before such inclusion.

(3) Notwithstanding anything contained in this Act, where the point of levy of tax in respect of any goods is changed from the point of first sale to the point of first purchase in the State, the value of such goods held in stock by any person on the date of such change of the point of levy of tax and for which tax at the point of first sale in the State has not been levied, shall be deemed to be the taxable turnover in respect of such goods at the point of first purchase under this Act.

(4) Notwithstanding anything contained in this Act, goods which were liable to tax at the point of last purchase in the State under section 5, on the date preceding the date of coming into force of the Kerala Value Added Tax Act, (30 of 2004) and purchased in the State and are held as closing stock on such date, and tax levied at the rate of four per cent.

59A. Power of Commissioner of Commercial Taxes to issue clarification: - (1) If any dispute arises, otherwise than in a proceedings before any appellate or revisional authority or in any court or tribunal, as to whether, for the purpose of this Act, -

- (a) any person is a dealer; or
- (b) any transaction is a sale; or
- (c) any particular dealer is required to be registered; or
- (d) any tax is payable in respect of any sale or purchase, or if tax is payable, the point and the rate thereof; or
- (e) any activity carried out in any goods amounts to or results in the manufacture of goods;

such dispute shall be decided by the Commissioner of Commercial Taxes on application by a dealer or any other person.

(2) The Commissioner of Commercial Taxes shall decide the question after giving the parties to the dispute a reasonable opportunity to put forward their case and produce evidence and after considering such evidence and hearing the parties.

(3) Every application by a dealer or any other person other than an officer acting on behalf of the Government under sub-section (1) shall be in such form as may be prescribed and shall be accompanied by a fee of five hundred rupees.

(4) Where any question arises from any order already passed or any proceedings recorded under this Act, or any earlier law no such question shall be entertained for determination under sub-section (1).

(5) Every order issued by the Commissioner of Commercial Taxes under sub-section (1) shall, subject to the provisions of section 40, be final and binding on the applicant, and all authorities subordinate to the Commissioner including an Appellate Assistant Commissioner.

Provided that the decision of the Commissioner of Commercial Taxes shall not affect the liabilities of any person

under this Act as respects any sale or purchase effected prior to such determination.

(6) The Commissioner may, on application or otherwise, at any time within a period of three years from the date of the orders passed under sub-section (1), rectify any error apparent on the face of the record;

Provided that no such rectification which is prejudicial to a person shall be made, unless the commissioner has given notice to the person affected and has allowed him a reasonable opportunity of being heard.

60. Power to remove difficulties: - (1) If any difficulties arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order, do anything which appears to them necessary for the purpose of removing the difficulty.

(2) All orders made under sub-section (1) shall, as soon as may be after they are made, be laid before the Legislative Assembly for a period of not less than fourteen days and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

61. Repeal: - (1) The General Sales Tax Act, 1125 (Act XI of 1125) is hereby repealed;

Provided that such repeal shall not effect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder and subject thereto anything done or any action taken including any appointment, notification, notice, order, rule, form, regulation, certificate, license or permit, in the exercise of any power conferred by or under the said Act, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken, and all arrears of tax and other amounts due at the

commencement of this Act may be recovered as if they had accrued under this Act.

(2) Notwithstanding anything contained in sub-section (1), any application, appeal, revision or other proceeding made or preferred to any officer or authority under the said Act, and pending at the commencement of this Act,. shall, after such commencement, be transferred to and disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceeding under this Act if it had been in force on the date on which such application, appeal, revision or other proceeding was made or preferred.

THE SCHEDULE

[(Section 5(1)]

Goods in respect of which tax is leviable under Section 5

Sl.No. Rate of tax (per cent)	Sub-entry	Description of goods
1.		Petroleum products:
34	(i)	Aviation turbine fuel
40	(ii)	High Speed Diesel Oil
	(iii)	Motor spirit including Light Diesel Oil but

excluding petrol, naphtha, aviation turbine
fuel and high speed diesel oil.
50

44 (iv) Petrol other than naphtha

2. Foreign Liquor:

60 (i) Beer and wine

90 (ii) Other than Beer and wine

3. Ganja and Opium
85