

Only for Departmental Use

Revised Draft of proposed-

Uttar Pradesh Value Added Tax Act, 2007

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[Sunil Kumar]
Commissioner, Trade Tax,
Uttar Pradesh.

THE UTTAR PRADESH VALUE ADDED TAX BILL, 2007

A

BILL

to provide for introducing Value Added System of taxation for the levy and collection of tax on sale or purchase of goods in the State of Uttar Pradesh and for matters connected therewith and incidental thereto.

IT IS HEREBY enacted in the Fifty-eighth Year of the Republic of India as follows:

CHAPTER I

Preliminary

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| Short title, extent and commencement | <p>1. (1) This Act may be called the Uttar Pradesh Value Added Tax Act, 2007.</p> <p>(2) It extends to the whole of Uttar Pradesh.</p> <p>(3) It shall come into force on such date as the State Government may by notification appoint:</p> <p style="padding-left: 40px;">Provided that the State Government may appoint different dates in respect of different provisions and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.</p> |
| Definitions | <p>2. In this Act, unless there is anything repugnant in the subject or context;</p> <p>(a) "appellate authority" means the authority to whom an appeal lies under section 55;</p> <p>(b) "assessing authority" means any person -</p> <p style="padding-left: 40px;">(i) appointed and posted by the State Government; or</p> <p style="padding-left: 40px;">(ii) appointed by the State Government and posted by the Commissioner; or</p> <p style="padding-left: 40px;">(iii) appointed and posted by the Commissioner, and empowered under rules framed under this Act to perform all or any of the functions of the assessing authority under this Act.</p> <p>(c) "assessment year" means the period of twelve months commencing on the first day of April of a calendar year;</p> <p>(d) "board" means the Uttar Pradesh State Tax Board established under section 78.</p> <p>(e) "business" in relation to business of buying or selling goods includes-</p> <p style="padding-left: 40px;">(i) 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</p> |

- profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern;
- (ii) the execution of any works contract or the transfer of the right to use any goods for any purpose (whether or not for a specified period);
 - (iii) any transaction of buying, selling or supplying plant, machinery, raw materials, processing materials, packing materials, empties, consumable stores, waste or by-products, or any other goods of a similar nature or any unserviceable or obsolete or discarded machinery or any parts or accessories thereof or any waste or scrap or any of them or any other transaction whatsoever, which is ancillary to or is connected with or is incidental to, or results from such trade, commerce, manufacture, adventure or concern, works contract or lease,
- but does not include any activity in the nature of mere service or profession which does not involve the purchase or sale of goods.
- (f) **"capital goods"** means any plant, machine, machinery, equipment, apparatus, tool, appliance or electrical installation used for manufacture or processing of any goods for sale by the dealer and includes:-
- (i) components, spare parts and accessories of such plant, machine, machinery, equipment, apparatus, tool, appliance or electrical installation;
 - (ii) moulds and dies;
 - (iii) storage tank;
 - (iv) pollution control equipment;
 - (v) refractory and refractory materials;
 - (vi) tubes and pipes and fittings thereof,
 - (vii) lab equipments, instruments and accessories,
 - (viii) machinery, loader, equipment for lifting or moving goods within factory premises, or
 - (ix) generator and boiler
- used in manufacture of goods for sale by him but for the purpose of section 13 of this Act, does not include:-
- (i) air-conditioning units or air conditioners, refrigerators, air coolers, fans, and air circulators if not connected with manufacturing process;
 - (ii) an automobile including commercial vehicles, and two or three wheelers, and parts, components and accessories for repair and maintenance thereof;
 - (iii) goods purchased and accounted for in business but utilised for the purpose of providing facility to the employees.
 - (iv) vehicle used for transporting goods or passengers or both;
 - (v) capital goods used in the execution of a works contract; and
 - (vi) captive power plant used for generation of electrical energy and its parts, components and accessories for repair and maintenance thereof;
- (g) **"Commissioner"** means the person appointed by the State Government as the Commissioner of Commercial Taxes and includes a Special Commissioner of Commercial Taxes, an

Additional Commissioner of Commercial Taxes and a Joint Commissioner of Commercial Taxes.

- (h) **"dealer"** means any person who carries on in Uttar Pradesh (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods directly or indirectly, for cash or deferred payment or for commission, remuneration or other valuable consideration and includes, -
- (i) a local authority, body corporate, company, any co-operative society or other society, club, firm, Hindu undivided family or other association of persons which carries on such business;
 - (ii) a factor, broker, arhati, commission agent, del credere agent, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or distributing goods belonging to any principal, whether disclosed or not;
 - (iii) an auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not, and whether the offer of the intending purchaser is accepted by him or by the principal or nominee of the principal;
 - (iv) a Government which, whether in the course of business or otherwise, buys, sells, supplies or distributes goods, directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration;
 - (v) any person who acts within the State as an agent of a dealer residing outside the State, and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as-
 - (A) a mercantile agent as defined in Sale of Goods Act, 1930 or
 - (B) an agent for handling of goods or documents of title relating to goods; or
 - (C) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or such payment;
 - (vi) a firm or a company or other body corporate, the principal office or head quarter whereof is situated outside the State, having a branch or office in the State, in respect of purchases or sales, supplies or distribution of goods through such branch or office;
 - (vii) any person who carries on the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
 - (viii) any person who carries on the business of transfer of the right to use any goods for any purpose (whether

- or not for a specified period) for cash or for deferred payment or other valuable consideration;
- (ix) railway container contractor, transporter or any other carrier or a forwarding agent of goods including owner of a cold storage who fails to disclose the complete address of consigner or consignee or if disclosed name and address of consigner or consignee is bogus, forged or not verifiable;
 - (x) an owner or person in-charge of a godown or warehouse who stores commercial goods;
- Provided that a person who, not being a body corporate, sells agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant, lessee or otherwise, or who sells poultry or dairy products from fowls or animals kept by him shall not, in respect of such goods, be treated as a dealer;
- (i) **"declared goods"** means goods declared under section 14 of the Central Sales Tax Act, 1956, to be of special importance in the inter-State trade or commerce;
 - (j) **"document"** means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used for the purpose of recording that matter and includes-
 - (i) an electronic document including data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche; and
 - (ii) such other document as may be notified by the State Government.
 - (k) **"erstwhile Act"** means the Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. 15 of 1948)
 - (l) **"exempt goods"** means any of the goods mentioned or described in column (2) of the Schedule-I of this Act;
 - (m) **"goods"** means every kind or class of movable property and includes all materials, commodities and articles involved in the execution of a works contract, and growing crops, grass, trees and things attached to, or fastened to anything permanently attached to the earth which, under the contract of sale, are agreed to be severed, but does not include actionable claims, stocks, shares or securities;
 - (n) **"import"** In relation to any goods, means to bring or receive any goods at any place within the State from any place situated outside the State where journey of such goods originates from such place outside the State and terminates at any place within the State;
 - (o) **"importer"** means a dealer who brings or receives any goods into the State from any place outside the State and includes a dealer –
 - (i) who makes first sale of any goods brought or received into the State from any place outside the State; or

- (ii) who receives any goods into the State on behalf of any other person from any place outside the State; or
- (iii) on whose behalf any goods are received into the State from any place outside the State by any other person;
- (p) **"input tax"**, in relation to a registered dealer who has purchased any goods from within the State, means the aggregate of the amounts of tax, -
 - (i) paid or payable by such registered dealer to the registered selling dealer of such goods in respect of purchase of such goods; and
 - (ii) paid directly to the State Government by the purchasing dealer himself in respect of purchase of such goods where such purchasing dealer is liable to pay tax under this Act on the turnover of purchase of such goods;
- (q) **"lease"** means any agreement or arrangement whereby the right to use any goods for any purpose is transferred by one person to another (whether or not for a specified period) for cash, deferred payment or other valuable consideration without the transfer of ownership and includes a sub-lease but does not include any transfer on hire purchase or any system of payment by installments;
- (r) **"lessee"** means any person to whom the right to use goods for any purpose is transferred under a lease;
- (s) **"lessor"** means any person by whom the right to use any goods for any purpose is transferred under a lease;
- (t) **"manufacture"** means producing, making, mining, collecting, extracting, mixing, blending, altering, ornamenting, finishing, or otherwise processing, treating or adapting any goods; but does not include such manufacture or manufacturing processes as may be prescribed;
- (u) **"manufacturer"** in relation to any goods mentioned or described in column (2) of Schedule IV of this Act, means a dealer who, by application of any process of manufacture, after manufacture of a new commercial commodity inside the State, makes first sale of such new commercial commodity within the State, whether directly or otherwise; and includes a selling agent who makes sale of such new commodity on behalf of the person who has manufactured it;
- (v) **"non-vat goods"** means any of the goods mentioned or described in column (2) of the Schedule-IV of this Act;
- (w) **"officer-in-charge of a check-post or barrier"** includes an officer not below the rank of assessing authority posted at a check post or barrier,
- (x) **"place of business"** means any place where a dealer carries on business and includes-
 - (i) any shop, ware-house, godown or other place where a dealer stores his goods;
 - (ii) any place where a dealer produces or manufactures goods;
 - (iii) any place where a dealer keeps his books of accounts and documents;

- (iv) any place where a dealer executes the works contract or where the right to use goods is exercised;
- (v) in a case of a dealer who carries on business through an agent (by whatever name called), the place of business of such agent;
- (y) **"purchase price"** means the amount payable by a purchaser to a seller as consideration for the purchase of any goods made by or through him after deducting the amount, if any refunded to the purchaser by the seller in respect of any goods returned to such seller within such period as may be prescribed.

Explanation: Purchase price does not include:

- (i) the amount representing the cost of outward freight or cost of installation, charged by the seller to the purchaser of goods if such amount has been shown separately on sale invoice or tax invoice issued by the seller;
- (ii) amount of tax if such amount is shown separately on the sale invoice or tax invoice.
- (z) **"registered dealer"** means a dealer registered under section 17 or section 18;
- (aa) **"registering authority"** means the officer empowered under the rules framed under this Act to deal with issue, suspension, cancellation of registration certificate or any other matter related to registration under this Act and includes an assessing authority;
- (ab) **"re-sale"** means a sale by any person, of any goods in the same form and condition in which such goods were purchased by such person;
- (ac) **"sale"** with its grammatical variations and cognate expressions, means any transfer of property in goods (otherwise than by way of a mortgage, hypothecation, charge or pledge) by one person to another, for cash or for deferred payment or for any other valuable consideration and includes, -
 - (i) a transfer, otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;
 - (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
 - (iii) the delivery of goods on hire purchase or any other system of payment by installments;
 - (iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
 - (v) the supply of goods by an association or body of persons (whether incorporated or not) to a member thereof for cash, deferred payment or other valuable consideration;
 - (vi) the supply, by way of or as part of any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration

and such delivery, transfer or supply of any goods under sub-clause (i) to sub-clause (vi) above shall be deemed to be sale of those goods by the person making the delivery, transfer or supply and a purchase of those goods by the person to whom such delivery, transfer or supply is made.

- (ad) **"sale price"** means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of goods at the time of or before the delivery of such goods, other than cost of outward freight or delivery or cost of installation in cases where such cost is separately charged;

Explanation:

- (i) In a case in which any amount of any duty payable by a dealer is deferred for a period or in a case in which point of payment of any duty is shifted, amount of such duty shall be deemed part of the sale price;
 - (ii) The price of packing material in which any goods are packed shall be deemed part of sale price of goods sold.
 - (iii) Sale price of goods in relation to transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, shall be determined after deducting the aggregate of actual amount incurred towards labour and services, amount of profit relating to supply of labour and services and such other amounts as may be prescribed from the total amount received or receivable in respect of such works contract;
 - (iv) In respect of transfer of right to use goods, any goods for any purpose (whether or not for a specified period) sale price means the valuable consideration received or receivable in respect of such transfer of right to use goods but does not include any sum payable as a penalty or as compensation or damages for breach of contract;
- (ae) **"Schedule"** means any of the Schedule appended to this Act;
- (af) **"Settlement Commission"** means the Commission constituted under section 62;
- (ag) **"tax"** means a tax leviable under this Act, on the sale or purchase of goods other than newspapers; and shall include, –
- (a) tax or lump sum, as the case may be, payable, in lieu of actual amount of tax due on turnover of sales, in accordance with provisions of section 6; or
 - (b) amount of reverse input tax credit;
- (ah) **"taxable dealer"** means a dealer who is liable to pay tax in accordance with provisions of sub-section 2 of section 3 read with provisions of sub-section 5 of the said section;
- (ai) **"taxable goods"** means any goods except goods mentioned or described in column (2) of Schedule I of this Act;
- (aj) **"tax invoice"** means a bill or a cash memo issued in the prescribed form and manner by a registered selling dealer to a registered purchasing dealer or to a person or body referred to in clauses (ii),

- (iii, (iv) and (v) of sub-section (1) of section 22 in respect of sale of any goods except exempt goods and non-vat goods;
- (ak) **"tax period"** means period for which a dealer is liable to submit a tax return of turnover and tax under section 24 and where a dealer either commences or discontinues his business during any tax period, tax period includes part of such tax period during which business of the dealer has remained in existence;
- (al) **"tax return"** means any return of turnover and tax prescribed or required to be furnished under this Act or the rules made thereunder;
- (am) **"taxable turnover of purchase"** means turnover obtained after deducting from the gross turnover of purchase such amounts as may be prescribed;
- (an) **"taxable turnover of sale"** means turnover obtained after deducting from the gross turnover of sale such amounts as may be prescribed;
- (ao) **"Tribunal"** means the Tribunal constituted under section 57;
- (ap) **"turnover of purchase"** with its cognate expressions means the aggregate of the amounts of purchase prices paid or payable in respect of purchase of goods made by a dealer either directly or through another dealer, whether on his own account or on account of others, after deducting the amount, if any, refunded by the seller in respect of any goods returned to such seller within such period as may be prescribed;
- (aq) **"turnover of sale"** means the aggregate of amount of sale prices of goods, sold or supplied or distributed by way of sale by a dealer, either directly or through another, whether on his own account or on account of others;
- (ar) **"vehicle"** means any kind of mode of transportation used for carriage of goods including motor vehicle constructed or adapted for the carriage of goods, or any other motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers including every wheeled conveyance, pull or push cart including animal drawn cart, animal, trailer, trolley, bicycle, tricycle, carrier and such other mode of transportation as may be specified in the notification issued by the State Government in this behalf;
- (as) **"vessel"** includes any container, ship, barge, boat, raft, timber, bamboo or floating materials propelled in any manner;
- (at) **"Web Site"** means World Wide Web of the Uttar Pradesh Commercial Tax Department with such domain "tradetax.nic.in" and with address "http://tradetax.nic.in" or any other website as may be notified by the State Government.
- (au) **"works contract"** includes any agreement for carrying out, for cash, deferred payment or other valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.

CHAPTER – II

Incidence, Levy and Rate of Tax

Incidence and levy of tax

3. (1) Subject to the other provisions contained in this Act, every dealer shall be liable to pay tax under this Act, for each assessment year, on his taxable turnover of sale or purchase or both, as the case may be, of taxable goods, at such rates and at such point of sale or purchase as provided under section 4 or section 5:

Provided that tax shall be levied on and charged from every dealer on such sales and purchases as are made on or after the date on which the dealer becomes liable for payment of tax in accordance with provisions of sub-section (3) or sub-section (5), as the case may be.

- (2) Where a dealer carries on business for part of any assessment year he shall, subject to the other provisions contained in this Act, be liable to pay tax on the taxable turnover of sale or purchase or both, as the case may be, of taxable goods, at such rates and at such point of sale or purchase as provided under section 4 or section 5, where such sales or purchases are affected during the period in which he is liable for payment of tax in accordance with the provisions of sub-section (3) or sub-section (5).
- (3) Dealers, of the class mentioned in column (2) against the serial no. mentioned in column (1), shall be liable to pay tax on sales or purchases or both, as the case may be, where such sales or purchases of goods are made by them on or after the date mentioned in column (3) against the same serial no. of the table below:

Serial No.	Class of dealers		Date
(1)	(2)		(3)
1.	(i)	Dealers whose registration certificate, under this Act, is effective on the date of the commencement of this Act	Date of the commencement of this Act
	(ii)	Dealers whose registration certificate, issued under the Central Sales Tax Act, 1956, is valid on the date of the commencement of this Act	
	(iii)	Dealers who hold any imported taxable goods in opening stock on the date of the commencement of this Act	
	(iv)	Dealers who hold any taxable goods in opening stock on the date of the commencement of this Act where such goods have been manufactured, processed or packed by using or consuming of any imported goods	

	(v)	Dealers who hold any taxable goods in opening stock on the date of the commencement of this Act where such goods have been manufactured, processed or packed by using or consuming any goods purchased after furnishing to the selling dealer any form of declaration or certificate prescribed under the erstwhile Act or the rules framed thereunder.	
	(vi)	Dealers who hold any goods in opening stock on the date of the commencement of this Act where such goods have been purchased after furnishing to the selling dealer any form of declaration or certificate prescribed under the erstwhile Act or the rules framed thereunder	
	(vii)	Dealers who, in the assessment year of commencement of this Act, have commenced exclusive business of purchase of any goods from within the State or sale of any goods within the State or both, as the case may be, on any date before the date of commencement of this Act and- (a) whose aggregate, of the turnover of such purchase and turnover of such sale, of all goods, as defined hereunder, during the assessment year of commencement of this Act, from first day of the business during such assessment year, has, on or before the date of the commencement of this Act, exceeded the taxable quantum as provided in sub-section (4); and (b) who have not made any change in the nature of their business before their aggregate of turnovers as stated in clause (a) has exceeded the taxable quantum as provided in sub-section (4)	
	(viii)	Dealers who have been carrying on exclusive business of purchase of any goods from within the State or sale of any goods within the State or both, as the case may be, of any goods during the assessment year immediately preceding first assessment year under this Act and whose aggregate, of the turnover of such purchase and turnover of such sale, of all goods, as defined hereunder, during such preceding assessment year had exceeded the taxable quantum as provided in sub-section (4)	

	(ix)	Dealers who, in the year of commencement of this Act, have, before the date of commencement of this Act,- (a) made an inter-state sale of any taxable goods; or (b) made a sale in the course of the export of the goods out of the territory of India; or (c) consigned any taxable goods outside the State except by reason of a sale and such goods are delivered in the other State without a sale; or (d) brought or received any taxable goods from any place outside the State;	
2.		Dealers, who with or without any other kind of business, import any taxable goods on or after the date of commencement of this Act	Date on which a dealer receives taxable goods for the first time
3.		Dealers who obtain registration certificate under the Central Sales tax Act, 1956 on or after the date of commencement of this Act	Date from which registration certificate is effective
4.		Dealers, who, with or without any other kind of business, make sale of any taxable goods in the course of inter-State trade or commerce on or after date of the commencement of this Act	Date on which a dealer makes first sale of any taxable goods in the course of inter-State trade or commerce
5.		Dealers, who, with or without any other kind of business, on or after the date of commencement of this Act, make a sale, in the course of export of the goods out of the territory of India, of any taxable goods or make such sale of any exempt goods where in manufacture, processing or packing of such exempt goods any taxable goods have been used, consumed or utilized	Date on which a dealer makes first sale of the goods in the course of export of the goods
6.		Dealers, who, with or without any other kind of business, consign any taxable goods on or after the date of commencement of this Act at any place outside the State except by reason of a sale and such goods are delivered in the other State without a sale	Date on which a dealer for the first time consigns any taxable goods outside the State

7.	Dealers who have been carrying on exclusive business of purchase of any goods from within the State or sale of any goods within the State or both, as the case may be, of any goods from a date prior to the date of commencement of this Act or dealers who commence such business on or after the date of commencement of this Act and- (i) whose aggregate, of the turnover of such purchase and turnover of such sale, of all goods, as defined hereunder, in any assessment year including assessment year of the commencement of this Act, from first day of business during such assessment year, exceeds the taxable quantum as provided in sub-section (4) of this section on any date after the date of the commencement of this Act; and (ii) who do not make any change in the nature of their business before their aggregate of the turnovers as stated in clause (a) exceeds the taxable quantum as provided in sub-section (4) of this section	Date on which aggregate of the turnovers of purchase from within the State and turnover of sale within the State or both, as the case may be, of all goods of a dealer, as defined hereunder, for the first time in any assessment year exceeds the taxable quantum
8	Transporter or any other carrier or a forwarding agent or railway container contractor of goods where such transporter, carrier or forwarding agent or railway container contractor fails to disclose the name and address of the consignee or consigner in Uttar Pradesh or if disclosed name and address of consigner or consignee is bogus, forged or not verifiable or fails to furnish copy of invoice, challan, transport receipt or consignment note or document of like nature in respect of any taxable goods, which are held in possession or custody or carried in his vehicle; or An owner or person in-charge, of a godown or cold storage or warehouse who fails to disclose the name and address of the owner of any taxable goods stored in such godown, cold storage or warehouse.	First date on which any taxable goods are found in the possession or custody,
9.	Dealers who do not fall in any of the classes mentioned against serial no. 1 to 8 above and who obtain registration certificate voluntarily under section 18.	Date from which registration certificate is effective

Provided that a dealer who exclusively deals in purchase or sale, or both, as the case may be, of exempt goods, shall not be liable to pay tax under this Act.

Explanation (1) — For the purposes of this sub-section and sub-section (5) the expression "aggregate of turnover of purchase from within the State and turnover of sale within the State or both, as the case may be, of all goods" shall mean the aggregate of the turnover of-

- (a) purchase of all taxable goods where such purchases are made by the dealer from within the State from persons other than registered dealers; and
- (b) sale of all goods except goods included in clause (a) where such sales are made by the dealer within the State

Explanation (2) — Where a dealer falls in more than one category, mentioned in column (2) of the table given above, then he shall be liable for payment of tax with effect from the earliest date of all dates mentioned in column (3) of the table referred to above.

- (4) Taxable quantum referred to in sub-section (3) shall be five lakh rupees.
- (5) Every dealer who has once become liable for payment of tax shall continue to be so liable till the date on which he discontinues his business:

Provided that a dealer, who carries on exclusive business of purchase or sale or both, as the case may be, of any goods, shall cease to be liable for payment of tax after the end of a period of three consecutive assessment years if his aggregate of the turnover of purchases and sales, of all goods for each such assessment year has remained below five Lakh rupees:

Provided further that where a dealer, to whom aforesaid proviso applies, shall again become liable for payment of tax, in the assessment year in which his aggregate of the turnover of purchases and sales, of all goods from beginning of such assessment year, exceeds five Lakh rupees, on the turnover of all sales or purchases or both, as the case may be, affected on or after the date on which his such aggregate of turnover so exceeds.

- (6) For the purposes of this Act, following shall be determined in the prescribed manner:-
 - (a) Turnover of sale of goods-
 - (i) involved in the execution of works contract in which property in goods is transferred; or
 - (ii) in cases of transfer of right to use any goods;
 - (b) Taxable turnover of sale; and
 - (c) Taxable turnover of purchase.
- (7) Where in respect of transfer of property in goods involved in the execution of a works contract, the contractor does not maintain proper accounts or the accounts maintained by him are not found by the assessing authority to be worthy of credence and the amount actually incurred towards charges for labour and other services and profit relating to supply of labour and services are not ascertainable, for the purpose of determining turnover of sale of goods under sub-clause (i) of clause (a) of sub-section (6) such charges for labour and other services and such profits, may be determined on the basis of deduction of such percentage of the value of works contract as may be prescribed and different percentages may be prescribed for different types of works contract.
- (8) Amount of tax, for which a dealer is liable for payment under any provision of this Act, shall be paid in the prescribed manner.
- (9) Notwithstanding anything to the contrary in this Act, where any goods are sold or purchased together with any packing material, sale or purchase of packing material shall, notwithstanding the fact that contracts of sale or purchase of such goods and such packing material have been made separately or price of sale or purchase, as the case may be, of the goods and the packing material has been shown separately,-

- (a) be liable to tax under this Act at the rate applicable to sale or purchase of the goods sold or purchased together with such packing material;
 - (b) not be liable to any tax under this Act if the sale or purchase of such goods is exempt from tax at the hands of the dealer.
- (10) Where tax is payable, and has been so paid by a commission agent on any turnover of sale or turnover of purchase or both, as the case may be, of any goods on behalf of his principal, the principal shall not be liable to pay tax in respect of such turnover.

Explanation: For the purposes of this Act, the dissolution of a firm or association of persons or partition of a Hindu Undivided Family or transfer by a dealer of his business shall be deemed to be cessation or discontinuance of business.

Levy of tax on turnover of sale

4. (1) The tax, payable on sale of goods under this Act, shall be levied and paid on the taxable turnover of sale of –
- (a) goods named or described in column (2) of the Schedule II, at every point of sale and at the rate of four percent;
 - (b) goods named or described in column (2) of the Schedule III at every point of sale and at the rate of one percent;
 - (c) goods named or described in column (2) of the Schedule IV at the point of sale mentioned in column (3) and at the rate of tax mentioned in column (4) of the Schedule against such goods;
 - (d) goods named or described in column (2) of the Schedule V at every point of sale and at the rate of twelve and half percent;
- Provided that in respect of goods mentioned in column (2) of Schedule IV, the State Government may, by notification, declare different rates of tax, not exceeding fifty percent, in respect of different goods or class of goods.
- Provided further that turnover of sale of textile and sugar except khandsari sugar, mentioned or described in column (2) of Schedule II, shall be liable to tax from such date and at such rate, not exceeding four percent, as may be notified by the State Government.
- (2) In respect of any entry of any Schedule of this Act, explanation or clarification, if any, given in footnotes of such Schedule, shall be deemed to be a part of such entry of such Schedule.
- (3) Where a dealer, selling any goods, is not entitled to realise amount of tax, payable by him on the turnover of sale of such goods, separately on tax invoice, sale invoice, cash memo or bill from the purchaser of the goods, amount of tax payable by him on the turnover of such sale shall be computed using the formula-

$$\text{Amount of tax payable} = \frac{\text{Rate of tax X aggregate of sale prices}}{100 + \text{Rate of tax}}$$

- (4) The State Government may, by notification in the Gazette, amend any entry of any Schedule, add any new entry in any of the Schedule and in the like manner omit any entry of any Schedule.

- (5) Every notification made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature, while it is in session, for a total period of not less than fourteen days, extending in its one session or more than one successive sessions, and shall, unless some later date is appointed take effect from the date of its publication in Gazette subject to such modifications or annulments as the two Houses of the Legislature may during the said period agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder except that any imposition, assessment, levy or collection of tax or penalty shall be subject to the said modification or annulment.

**Levy of
Tax on
turnover of
purchase**

5. (1) Every dealer, who, in the course of business, makes purchase of any taxable goods -
 (i) other than non-vat goods from a person other than a registered dealer;
 or
 (ii) non-vat goods, the earlier sale or purchase of which has not suffered levy of tax either under the provisions of the erstwhile Act or under the provisions of this Act,
 shall be liable to pay tax on the turnover of purchase of such taxable goods except non-vat goods or turnover of purchase of non-vat goods or both, as the case may be.
- (2) Tax on the turnover of purchase of taxable goods referred to in clause (i) or clause (ii) of sub-section (1) shall be levied at the same rate at which turnover of sale of such goods is liable to tax in accordance with the provisions of section 4.

**Composition
of tax
liability**

6. (1) Notwithstanding anything contained in any other provision of this Act, but subject to other provisions of this section and the directions of the State Government, the assessing authority may agree to accept a composition money either in lump sum or at an agreed rate on his turnover of sale in lieu of tax that may be payable by a dealer in respect of such goods or class of goods and for such period as may be agreed upon:

Provided that in case of a dealer who carries on exclusive business of re-sale of goods within the State after their purchase from within the State and whose turnover of sale of such goods, for any assessment year, is neither likely to exceed fifty lakh rupees nor his such turnover, for the assessment year preceding such assessment year, has exceeded fifty lakh rupees, the State Government may notify a rate percent on sale of such goods. Different rates may be notified for different goods.

Provided further that any change in the rate of tax which may come into force after the date of such agreement shall have the effect of making a proportionate change in the lump sum or the rate agreed upon in relation to that part of the period of assessment during which the changed rate remains in force.

- (2) Any dealer, who opts for payment of lump sum under this section, shall not be entitled to claim credit of input tax under section 13 in respect of purchase of goods which are re-sold by him during the period in which he is liable to pay tax or lump sum, as the case may be, under this section or in respect of purchase of goods which have been used, consumed or utilized in

manufacture or processing of goods which are sold by him during such period and where the dealer has claimed credit of input tax in respect of any such goods, the same shall stand reversed and the dealer shall pay such amount of reverse input tax credit in accordance with provisions of section 14.

- (3) Any dealer who opts for payment of tax or a lump sum, as the case may be, under this section shall not issue any tax invoice and shall not realise any amount from the purchaser of goods by way of tax or by giving it a different name or colour.
- (4) A dealer who makes purchase of any goods from a dealer, who has opted for payment of tax or a lump sum, as the case may be, under this section, shall not be entitled to claim credit of input tax in respect of goods purchased from such dealer.

Tax not to be levied on certain sales and purchases. -

7. No tax under this Act shall be levied and paid on the turnover of—
 - (a) sale or purchase where such sale or purchase takes place -
 - (i) in the course of inter-state trade or commerce; or
 - (ii) outside the State; or
 - (iii) in the course of the export out of or in the course of the import into, the territory of India;
 - (b) sale or purchase of any goods named or described in column (2) of the Schedule I of this Act or;
 - (c) such sale or purchase; or sale or purchase of such goods by such class of dealers, as may be specified in the notification issued by the State Government in this behalf:

Provided that while issuing notification under clause (c), the State Government may impose such conditions and restrictions as may be specified.

Explanation: For the purposes of this Act, sections 3, 4 and 5 of the Central Sales Tax Act, 1956, shall apply respectively for determining whether or not a particular sale or purchase of any goods falls under any of the sub-clauses (i), (ii) and (iii) of clause (a).

Liability on fraudulent issuance and procurement of tax invoice and sale invoice

8. Notwithstanding anything to the contrary contained in any other provision of this Act and without prejudice to the provisions of section 54, where it is found that any dealer has issued tax invoice or sale invoice without making actual sale of goods shown in such invoice then the selling dealer and the purchasing dealer who has received such invoice, jointly and severally, be liable for payment of an amount equal to amount of tax shown to have been charged in such invoice:

Provided that before taking any action under this section, persons concerned shall be given an opportunity of being heard.

Liability of firm, association of persons and Hindu undivided family

9. (1) Subject to the provisions of this Act, where the dealer is a firm or association of persons or a Hindu Undivided Family -
 - (a) such firm or association and every person who is a partner of such firm or a member of such association or Hindu undivided family shall be liable jointly and severally for the payment of tax

assessed and penalty imposed or any amount due under this Act and is payable by such firm or association or Hindu Undivided Family; and

(b) where such firm or association or Hindu Undivided Family has discontinued its business, -

(i) tax, including penalty payable under this Act by such firm or association or Hindu Undivided Family up to the date of such discontinuance may be assessed and determined as if no such discontinuance had taken place ; and

(ii) every person who was at the time of such discontinuance a partner of such firm or a member of such association or Hindu Undivided Family shall, notwithstanding such discontinuance, be liable jointly and severally for the payment of tax assessed and penalty imposed and payable by such firm or association or Hindu Undivided Family whether such assessment is made or penalty is imposed prior to or after such discontinuance, and, subject to as aforesaid, the provisions of this Act shall apply as if every such person or partner were himself a dealer:

Provided that where it is found that a change has occurred in the constitution of the firm or association, the firm or association as reconstituted as well as partners or members of the firm or association, as it existed before re-constitution, shall jointly and severally be liable to pay tax including penalty, if any, due from such firm or association for any period before its reconstitution.

(2) Where the ownership of the business of any dealer, liable to pay, tax is transferred, the transferor and transferee shall jointly and severally be liable to pay the tax including penalty, if any, payable in respect of such business till the time of such transfer, whether the assessment is made or the penalty is imposed prior to or after such transfer.

(3) Where a tax including penalty, if any, is recovered from a reconstituted firm or association under the proviso to sub-section (1) or from a transferee under sub-section (2), such firm or association or a transferee shall be entitled to recover the same from the person who was originally liable to pay the tax.

**Tax due from
deceased
person payable
by his
representatives**

10. (1) 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 -

(a) in respect of any liability of the deceased, his executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hand;

(b) any proceeding including the proceeding for recovery may be continued from the stage at which it was pending at the time of the death of the dealer.

(2) The provisions of sub-section (1) shall *mutatis mutandis* apply to a dealer being a partnership firm, which may stand dissolved in consequence of the death of any partner.

Tax liability in case of minor or incapacitated person

11. In the case of any guardian, trustee or agent of any minor or other incapacitated person, carrying on business on behalf of and for the benefit of such minor or other incapacitated person, the tax shall be, levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be leviable upon and recoverable from any such person or other incapacitated person, if he were of full age and sound mind and if he were conducting the business himself; and all the provisions of the Act and the rules made thereunder shall apply accordingly.

Liability in case of court of wards

12. In the case of business owned by a dealer 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 (including any person whatever his designation, who in fact manages the business on behalf of the dealer) appointed by him or under any order of a court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator General, Official Trustee, Receiver or Manager, in like manner and in the same terms as it would be leviable upon and recoverable from the dealer, as if he were conducting the business himself, and all the provisions of the Act and the rules made thereunder shall apply accordingly.

Input tax credit

13. (1) Subject to provisions of this Act, dealers referred to in the following clauses and holding valid registration certificate under this Act, shall, in respect of taxable goods purchased from within the State and mentioned in such clauses, subject to conditions given therein and such other conditions and restrictions as may be prescribed, be allowed credit of an amount, as input tax credit, to the extent provided by or under the relevant clause:

(a) Subject to conditions given in column (2), every dealer liable to pay tax, shall, in respect of all taxable goods except non-vat goods, capital goods and captive power plant, where such taxable goods are purchased on or after the date of commencement of this Act, be allowed credit of the amount, as input tax credit, to the extent provided in column (3) of the table below:

Table

Serial No.	Conditions	Extent of amount of input tax credit
(1)	(2)	(3)
1	If purchased goods are re-sold- (i) inside the State, or (ii) in the course of inter-state trade or commerce; or (iii) in the course of the export of the goods out of the territory of India.	Full amount of input tax

2	If purchased goods are used in manufacture of - (i) any goods except non-vat goods and where such manufactured goods are sold in the course of the export of the goods out of the territory of India; or (ii) any taxable goods except non-vat goods and where such manufactured goods are sold either inside the State or in the course of inter-state trade or commerce	Full amount of input tax
3	If purchased goods are – (i) transferred or consigned outside the State otherwise than as a result of a sale; or (ii) used in manufacture of any taxable goods except non-vat goods and such manufactured goods are transferred or consigned outside the State otherwise than as a result of a sale.	Partial amount of input tax, which is in excess of rate prescribed under sub-section(1) of section-8 of the Central Sales Tax Act, 1956 of the purchase price on which the dealer has paid tax either to the registered selling dealer or to the State Government

(b) Input tax credit of full amount of input tax shall be allowed to every dealer, liable to pay tax, in respect of capital goods purchased on or after the date on which dealer becomes liable for payment of tax under this Act, if such goods are to be used in manufacture of any –

(b.1) taxable goods except non-vat goods and where such manufactured goods are -

- (i) sold within the State, in the course of inter-state trade or commerce or in the course of the export of the goods out of the territory of India; or
- (ii) transferred or consigned outside the State otherwise than as a result of a sale;

(b.2) exempt goods except non-vat goods and where such manufactured goods are sold in the course of export of the goods out of the territory of India.

(c) Subject to conditions mentioned in column (2) of the table under clause (a), every dealer, who is liable to pay tax on the date of commencement of this Act shall, in respect of all taxable goods except non-vat goods, capital goods and captive power plant, where such goods have been purchased within a period of six months ending on the date of commencement of this Act and where such goods-

- (i) are held in opening stock on the date of commencement of this Act in the same form and condition in which they were purchased; or
- (ii) have been used in manufacture of finished or semi-finished goods (in the process of manufacture of taxable goods except

- non-vat goods) or finished taxable goods, except non-vat goods and such finished or semi-finished goods are held in opening stock on the date of commencement of this Act; and
- (iii) have suffered levy of tax under the erstwhile Act, be allowed credit of partial or full, as provided in column (3) against relevant entry of the said table, amount of input tax as input tax credit and for this purpose amount of input tax shall be computed in the prescribed manner.
- (d) Subject to conditions mentioned in column (2) of the table under clause (a), every dealer, who becomes liable to pay tax on a date after the date of commencement of this Act, shall, in respect of all taxable goods, except non-vat goods, capital goods and captive power plant, where such taxable goods have been purchased on or after the date of commencement of this Act but within a period of six months ending on the day preceding the date on which such dealer has become liable to pay tax and -
- (i) are held in opening stock, on the date on which the dealer has become liable to pay tax, in the same form and condition in which they were purchased;
 - (ii) have been used in manufacture of semi-finished goods (in the process of manufacture of taxable goods except non-vat goods) or finished taxable goods, except non-vat goods and such semi-finished or finished goods as are held in opening stock on the date on which the dealer has become liable to pay tax; or
 - (iii) have been purchased from a registered dealer after obtaining sale invoice bearing name and address of purchasing dealer,
- be allowed credit of partial or full, as provided in column (3) against relevant entry of the said table, amount of input tax as input tax credit and for this purpose amount of input tax shall be computed in the prescribed manner.
- (e) Every dealer who is liable to pay tax and who opts for payment of tax or lump sum under provisions of section 6, shall, in respect of all taxable goods, except non-vat goods, capital goods and captive power plant, which are held in stock at the end of the period during which provisions of section 6 remain applicable, be allowed credit of full or partial amount of input tax or deemed input tax, as the case may be, in accordance with provisions of clauses (a) to (d) above, as may be applicable:

Provided that unless the State Government, in exercise of its powers under second proviso of sub-section (1) of section 4, issues notification prescribing rate of tax and point of tax in respect of sale of sugar or textile referred to therein, no facility of input tax credit, in respect of goods purchased for use in manufacture of said goods, shall be allowed under any of the aforesaid clauses.

Explanation: For the purposes of this sub-section, -

- (a) for entry against serial no. (1) of the table under clause (a), re-sale of goods includes transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
 - (b) goods, required for use in manufacture of any goods, do not include captive power plant, or parts, components and accessories of a captive power plant or any other goods required for running or maintenance of a captive power plant.
- (2) Notwithstanding anything to the contrary in any provision of sub-section (1) of this section, credit of full or partial amount of input tax, in respect of all taxable goods, may be allowed to developer, co-developer and units

established in Special Economic Zone for authorized operations subject to such conditions as may be specified in the notification issued by the state government.

Explanation - For the purposes of this sub-section the word "co-developer" or "developer" and expressions "Special Economic Zone" or "authorized operations" shall have the meanings assigned to them in the Special Economic Zones Act, 2005.

- (3) Where purchased goods are to be used or disposed of partially for the purposes specified in clause (a) of sub-section (1), the input tax credit shall be claimed and allowed proportionate to the extent they are used or disposed of for the purposes specified in such clause.
- (4) Except as provided otherwise in any provision of this Act or the rules framed thereunder, in respect of purchase of any goods in respect of which facility of input tax credit is admissible, input tax credit of the full amount of input tax can provisionally be claimed on the date on which tax invoice related to such goods is received by the dealer and where dealer himself is liable to pay tax in respect of purchase of any goods, on the date on which amount of tax payable is accounted for by the dealer in the account of tax payable by him.
- (5) Where a dealer has claimed input tax credit in respect of any goods under sub-section (4), but such goods; or goods manufactured by using such goods; or goods packed by using or consuming such goods, are consigned outside the State or disposed of or dispossessed in a manner for which facility of input tax credit is not admissible or such facility is admissible for partial amount of input tax, the amount which is the difference, of the full amount of input tax and admissible amount of input tax credit, shall be deducted from the amount of the input tax credit, already claimed by the dealer by debiting such amount into the account of input tax credit maintained by him.

Provided that before debiting the amount of input tax credit reasonable opportunity of being heard shall be given to the dealer.

- (6) In the circumstances referred to in sub-section (5), the amount of difference of full amount of input tax and admissible amount of input tax credit, shall be debited by the dealer into the account of input tax credit maintained by him on the day on which –
 - (i) goods, in respect of which credit of full amount of input tax was claimed; or
 - (ii) goods, manufactured by using goods in respect of which credit of full amount of input tax was claimed; or
 - (iii) where goods, in respect of which credit of full amount of input tax was claimed, are used or consumed in packing of any goods, such packed goods, are consigned outside the State; or disposed of or dispossessed by the dealer in a manner for which facility of input tax credit is not admissible or such facility is admissible for partial amount of input tax:

Provided that where the dealer discontinues his business, full amount of input tax, which was claimed under sub-section (4), in respect of-

- (i) goods held by the dealer in the same form and condition in which those were purchased; or

- (ii) goods which have been used in manufacture of any goods held by the dealer, (whether in semi-manufactured or manufactured state);
 - (iii) goods which have been used or consumed in packing of any goods held by the dealer,
- in closing stock on the day on which he has discontinued business, shall, before end of the tax period prescribed for submission of the tax return for the tax period in which business is discontinued, shall be debited by the dealer into the account of input tax credit maintained by him.
- (7) Except where-
- (a) purchased goods; or
 - (b) manufactured goods which are manufactured by using purchased goods; or
 - (c) packed goods which are packed by using or consuming purchased goods
- are to be sold in the course of the export of the goods out of the territory of India, no credit of any amount of input tax shall be claimed by a dealer under sub section (4) and no facility of input tax credit shall be allowed to a dealer in respect of purchase of any goods where -
- (i) sale of such goods by the dealer is exempt from payment of tax under clause (c) of section 7; or
 - (ii) such goods are to be used or consumed in manufacture or packing of any goods and sale of such manufactured or packed goods by the dealer is exempt from payment of tax either under clause (b) or clause (c) of section 7.
- (8) Amount of admissible input tax credit for a tax period and for an assessment year shall be computed in the prescribed manner and shall be claimed and allowed within such time and in such manner as may be prescribed.
- (9) Where any goods, purchased from within the State, are sold by a principal through a selling agent or where any goods are purchased by a purchasing agent on behalf of a principal, input tax credit, in respect of purchase of such goods, shall be claimed by and be allowed to the principal in such manner as may be prescribed.
- (10) Every dealer, who claims input tax credit under this section, shall, in respect of input tax, input tax credit and inventory of goods, maintain such records and furnish such statements as may be prescribed.
- (11) Where it appears to the assessing authority that amount of input tax or amount of input tax credit shown in any statement furnished by any dealer is incorrect or is not worthy of credence, it may, after giving reasonable opportunity of being heard to such dealer and after making such inquiry as it may deem fit, determine the amount of input tax or amount of input tax credit, as the case may be, by making an order in writing:
- Provided that where matter relates to any tax return submitted under section 24 or in any assessment proceedings under any section of this Act, proceedings shall be completed in accordance with provisions of relevant sections.

Explanation (1) For the purposes of this section, –

- (i) goods for use in manufacture of any goods includes goods required for use, consumption or utilization in manufacture or

- (ii) processing of such goods or goods required for use in packing of such manufactured or processed goods;
- (ii) manufacture of any goods includes processing of such goods and packing of such manufactured or processed goods; and
- (iii) where during the process of manufacture of any taxable goods any exempt goods are produced as by-product or waste-product, it shall be deemed that purchased goods have been used in the manufacture of taxable goods. Conversely, where during the process of manufacture of any exempt goods any taxable goods are produced as by-product or waste-product; it shall be deemed that purchased goods have been used in the manufacture of exempt goods.

Reverse input tax credit

- 14.** (1) Consistent with the provisions of this Act, the State Government may prescribe the circumstances in which and the goods in respect of which input tax credit shall be neither claimed nor allowed.
- (2) Where, in respect of any goods, a dealer has already claimed input tax credit against the provisions of this Act or the rules framed thereunder or has wrongly claimed input tax credit in respect of any goods, benefit of input tax credit to the extent it is not admissible, shall stand reversed and such amount of reverse input tax credit shall be deducted from the amount of input tax credit already claimed by the dealer in the tax period in which event giving rise to reverse input tax credit has occurred:

Provided that where event, giving rise to reverse input tax credit, comes to the notice of the dealer after the tax return, for the tax period in which such event has occurred, has been submitted, the dealer shall be liable to pay such amount of reverse input tax credit within thirty days after the event comes to the notice of the dealer, along with simple interest at a rate of fifteen percent per annum for the period commencing on the date following the last date prescribed for submitting tax return of the tax period in which event has occurred and ending on the date on which amount has been deposited.

Net amount of tax payable and treatment of input tax credit exceeding tax liability

- 15.** (1) For any tax period, net amount of tax payable shall be computed using the following equation:
- Net amount of tax payable for any period = Gross amount of tax payable for such period – Gross amount of admissible input tax credit for the period**
- Where-
- [a] gross amount of tax payable for the period is the aggregate of amounts of-
 - (i) tax payable on the turnover of sale of goods made during the tax period;
 - (ii) tax payable on turnover of purchase of goods made during the tax period;
 - (iii) tax on the turnover of sale made during the period or any installment of lump sum falling due during the period, as the case may be, payable under the provisions of section 6;
 - (iv) any other amount of tax payable; and
 - [b] gross amount of admissible input tax credit for the period is the aggregate of amounts of-

- (i) input tax credit claimed in respect of purchase of goods made during the period less amount of reverse input tax credit, if any;
- (ii) input tax credit carried forward from the immediately preceding tax period;
- (iii) any installment of input tax credit in respect of goods held in opening stock on the date from which dealer has become liable to pay tax or in respect of purchase of capital goods;
- (iv) input tax credit in respect of goods held in opening stock on the date on which, in case of a dealer who has opted for payment of tax or a lump sum under section 6 of this Act, provisions of section 6 cease to apply and the dealer continues his business:

Provided that where a dealer has been allowed moratorium for payment of tax under section 42, gross amount of tax payable for the period shall not include amount in respect of which facility of moratorium is applicable. Amount for which facility of moratorium is applicable shall be paid by the dealer separately in accordance with provisions of section 42.

- (2) If, for any tax period, gross amount of admissible input tax credit under sub-section (1) exceeds the differential amount of gross amount of tax payable under that sub-section and the aggregate of amounts of tax paid by the dealer towards tax for such tax period, the excess amount of admissible input tax credit may be adjusted by the dealer against amount of tax payable in the tax return of the corresponding tax period under the Central Sales Tax Act, 1956 and where gross amount of such admissible input tax credit is a negative figure, the dealer, while computing net amount of tax payable under sub-section (1), shall add such amount to gross amount of tax payable by the dealer.

Explanation: For the purpose of this sub-section, expression "aggregate of amounts of tax paid by the dealer towards tax of such tax period" shall mean the aggregate of amounts of-

- (a) tax deposited by the dealer towards tax of such tax period;
- (b) tax deducted at source under provisions of section 34 in respect of any sale of goods where such sale is made during such tax period; and
- (c) refund adjusted towards tax of such tax period:

Provided that amount under clause (a), (b) or (c) shall not be included in the aggregate of amounts of tax paid by the dealer towards tax of such tax period unless the dealer furnishes adequate documentary proof in respect thereof alongwith tax return of such tax period.

- (3) Any excess amount of input tax credit left over after adjustment as provided in sub-section (2) shall be carried forward and be added to the amount of input tax credit for the next tax period:

Provided that in case of a dealer whose main business is to sell goods in the course of the export of the goods out of the territory of India, subject to provision of section 41, assessing authority shall, on the application of the dealer, along with the proof of export, allow provisional refund of excess amount of input tax credit for any tax period, after the dealer has

submitted return for such tax period, within thirty days from the last date prescribed for submission of tax return or from the date of submission of tax return, whichever is later.

- (4) Where a dealer has submitted returns for all tax periods of an assessment year, and if any amount of excess admissible input tax credit still exists according to the tax return of the last tax period, such excess amount of admissible input tax credit, subject to provisions of sections 40, shall be refunded to the dealer within thirty days after the last date prescribed or allowed for submission of the return of last tax period of such assessment year.

Provided that excess amount of admissible input tax credit remaining in balance on the last day of the assessment year in which dealer has become liable for payment of tax, shall, subject to provision of sub-section (3), be carried forward to the first tax return of the next assessment year and any excess amount of input tax credit according to the tax return of the last tax period of later assessment year shall be refunded to the dealer within thirty days after the last date prescribed or allowed for submission of return of the last tax period of the such later assessment year.

- (5) Notwithstanding anything contained in sub-section (4) where a dealer discontinues business, refund of any excess amount of admissible input tax credit relating to last tax period of the assessment year during which business has been discontinued shall be allowed within Ninety days after the date of passing of assessment order for such assessment year.
- (6) Where tax return for any tax period of any assessment year has not been submitted by the last date prescribed or allowed for submission of tax return of the last tax period of the assessment year, excess amount of admissible input tax credit, if any, for such assessment year, subject to provisions of sections 40 shall be refunded to the dealer within a period of Ninety days after the assessment order in respect of such assessment year has been passed.
- (7) Notwithstanding anything contained contrary to in sub-section (3) and sub-section (4), any excess amount of admissible input tax credit left over in the tax return of the last tax period of any assessment year, at the option of the dealer, may be carried forward to the tax return of the first tax period of the succeeding assessment year.

- Burden of proof** 16. In any assessment proceedings where any fact is specially within the knowledge of the assessee, the burden of proving that fact shall lie upon him, and in particular, the burden of proving the existence of the circumstances bringing the case within any of the exemptions, exceptions or reliefs under any provisions of this Act including claim of any amount as input tax credit, shall lie upon him and assessing authority shall presume the absence of such circumstances.

Chapter III

Registration, Security and Maintenance of Accounts

- Registration of dealers** 17. (1) Every dealer liable to pay tax under this Act shall obtain registration certificate issued by the prescribed registering authority in the prescribed form.

- (2) Except as provided under sub-sections (3), (4) and (5), every dealer liable to pay tax shall, for issue of registration certificate, apply to the registering authority within a period of thirty days from the date on which such dealer has become so liable, in the prescribed form and manner along with proof of deposit of registration fee of one hundred rupees:

Provided that a dealer who fails to apply for issue of registration certificate within the time prescribed, without prejudice to any other liability under this Act, may apply after depositing late fee at the rate of rupees one hundred for every month or part thereof for the period of delay.

- (3) Every dealer who has held immediately before the commencement of this Act a registration certificate or a provisional registration certificate issued under the erstwhile Act and is liable to pay tax under this Act from the date of commencement of this Act, shall be deemed a registered dealer with effect from the date of commencement of this Act:

Provided that where a dealer was required to pay any fee for renewal of the registration certificate under the provisions of the erstwhile Act, if the same has not been paid, the registration certificate shall not be deemed valid unless such dealer deposits renewal fee along with late fee of one hundred rupees within a period of thirty days from the date of commencement of this Act.

- (4) In the case of a dealer, who is liable for payment of tax under this Act from the date of commencement of this Act and whose application for issue of registration certificate under the erstwhile Act, is pending on the date of commencement of this Act, shall be deemed a registered dealer under this Act with effect from the date of commencement of this Act if –

(i) registration certificate is issued to him under the erstwhile Act; and

(ii) the dealer deposits renewal fee payable under the erstwhile Act and late fee payable under this Act, if any, within thirty days from the date on which registration certificate is issued to him under the erstwhile Act.

- (5) Every dealer who holds a registration certificate issued under the erstwhile Act shall present it before the registering authority or the assessing authority, as the case may be, for necessary endorsement by such authority relating to validity of such certificate under this Act, within sixty days of the date of commencement of this Act or date on which registration certificate is issued under the erstwhile Act, whichever is later in such form as may be prescribed.

- (6) (a) No transporter, carrier or transport agent or railway container contractor shall operate its transport business in the State relating to taxable goods without being registered with the registering authority in such manner as may be prescribed.

(b) A transporter or carrier or transporting agent or railway container contractor already operating transport business in the State relating to taxable goods shall, within a period of thirty days from the date of commencement of this Act, apply to registering authority for registration in the prescribed manner.

- (c) If a transporter or carrier or transporting agent or railway container contractor carries or transports any taxable goods in contravention of the provisions of this Act or the rules made thereunder, his registration shall be liable to be cancelled or suspended for such period as may be determined by the registering authority after giving him a reasonable opportunity of being heard.
- (d) Every transporter or carrier or transporting agent or railway container contractor operating its transport business shall maintain such records as may be prescribed.
- (e) No taxable goods shall be delivered by the transporter or carrier or transporting agent or railway container contractor unless the prescribed requirements have been complied with.
- (7) Where the registering authority is satisfied that -
- (a) the application for issue of registration certificate is in order;
 - (b) the information furnished is correct and complete; and
 - (c) any requisite fee has been deposited and security where needed is furnished,
- the registering authority may, after making such inquiry as it may deem necessary, cause the dealer to be registered and issue registration certificate in the prescribed form and prescribed time.
- (8) If the dealer who has applied for issue of registration certificate does not fulfill any of the conditions mentioned in this section, or if any person having interest in the business is a defaulter in payment of any dues, relating to any other business, under this Act or under the Central Sales Tax Act, 1956 or under the erstwhile Act, the registering authority, shall, after giving a reasonable opportunity of being heard to the applicant, reject the application by an order in writing.
- (9) Registration certificate issued under the erstwhile Act and validly held under this Act shall be valid with effect from such date as may be prescribed.
- (10) Subject to provisions of sub-section (9), every registration certificate shall remain in force till the date of discontinuance of business:
- (11) The registering authority, after giving reasonable opportunity of being heard to the dealer, may cancel the registration certificate with effect from the date -
- (a) on which dealers' liability for payment of tax has ceased; or
 - (b) on which the dealer has discontinued the business; or
 - (c) of order of cancellation where-
 - (i) the dealer has obtained registration certificate by fraud or by mis-representation of facts; or
 - (ii) the dealer has failed to furnish security or additional security, as the case may be; or
 - (iii) the dealer has transferred any prescribed form of declaration or certificate obtained by him to any person against provisions of this Act or the rules made thereunder; or
 - (iv) the dealer has permitted some other person to carry on business in his name; or

- (v) the dealer has issued any tax invoice to a dealer without making actual sale of goods; or
 - (vi) where a transporter or carrier or transporting agent or railway container contractor fails to file return or otherwise acts in contravention of the provisions of this Act or rules made thereunder;
 - (vii) a person acts in contravention of provisions of section 43;
 - (viii) where a dealer has failed to pay the tax, penalty or other dues within three months of the date such tax, penalty or other dues become payable.
 - (ix) registration certificate has been cancelled for any other sufficient cause.
- (12) During cancellation proceedings under sub-section (11), where the registering authority is satisfied that the dealer will succeed in causing revenue loss, pending action for cancellation under sub-section (11), it may, after assigning reasons therefore, suspend the registration certificate by passing an order in writing, for the period during which the proceedings are pending:
- Provided that if the dealer, by furnishing adequate security to the satisfaction of the registering authority, satisfies that revenue loss, if any, shall be made up by him, the registering authority may revoke the suspension of registration certificate.
- (13) During the period of suspension of registration certificate under sub-section (12), the dealer shall be treated as unregistered dealer.
- (14) The registering authority, after considering any information furnished or otherwise received and after making such inquiry as it may deem fit, amend from time to time any certificate of registration which shall take effect:
- (a) in the case of change in the name, ownership or place of business, or opening of a new place of business, from the date of the event necessitating the amendment whether or not information in that behalf is furnished within the time prescribed under section 75.
 - (b) in case of any addition or modification in the description of any goods or class of goods in the certificate of registration, from the date of event necessitating the amendment if information in that behalf is furnished within the time prescribed under section 75 and in any other case, from the date of receipt of request for such addition or modification by the registering authority or the assessing authority, as the case may be;
 - (c) in case of deletion of any goods or class of goods, from the date of order of deletion.

Provided that where in consequence of a change in the ownership of a business, liability for payment of tax of any dealer ceases, the amendment of the certificate of registration shall take effect from the date on which information in respect of such change is furnished under section 75.

Explanation (I) - Any amendment of a certificate of registration under this sub-section shall be without prejudice to any liability for

tax or penalty imposable, or for any prosecution for an offence under this Act.

Explanation (II)-For the removal of doubts, it is hereby declared that where a registered dealer-

- (a) affects a change in the name of his business; or
- (b) is a firm and there is change in the constitution of the firm without dissolution thereof; or
- (c) is a trustee of a trust and there is a change in the trustees thereof; or
- (d) is a guardian of the ward and there is a change in the guardian; or
- (e) is a "Hindu Undivided Family" and the business of such family is converted into a partnership business with all or any of the coparceners as partners thereof,

then merely by reason of any of the circumstances aforesaid, it shall not be necessary for the dealer or the firm the constitution whereof is changed, or the new trustees, or the new guardian or, as the case may be, the partners of such partnership business, to apply for a fresh certificate of registration, and on information being furnished in the manner required by section 75, the certificate of registration shall be amended.

(15) The registration certificate shall not be cancelled or amended by the registering authority on its own motion unless the dealer has been given reasonable opportunity of being heard.

Voluntary Registration

18.(1) On the commencement of this Act, a dealer, who is otherwise not liable to pay tax, and if such dealer either carries on business or intends to carry on business, may apply at any time on or after the commencement of this Act for issue of registration certificate in the form and manner prescribed under sub-section (2) of section 17 alongwith proof of deposit of fee prescribed under that sub-section.

(2) Every other dealer who has held immediately before the commencement of this Act a registration certificate under the erstwhile Act but otherwise is not liable to pay tax under this Act, shall be deemed a voluntarily registered dealer under this Act provided he informs the registering authority within a period of thirty days from the date of commencement of this Act in the form prescribed under sub-section (5) of section 17, of his intention to remain registered dealer under this Act:

Provided that where a dealer was required to pay any fee for renewal of the registration certificate under the provisions of the erstwhile Act, if the same has not been paid, the registration certificate shall not be deemed valid unless such dealer deposits renewal fee along with late fee of one hundred rupees within a period of thirty days from the date of the commencement of this Act.

(3) A dealer to whom registration certificate is issued under the erstwhile Act after commencement of this Act and where such dealer is not otherwise liable to pay tax under this Act from the date of commencement of this Act, shall be deemed a registered dealer if such dealer, after depositing renewal fee and late fee, if any, informs the registering authority or the assessing authority, as the case may

be, in the prescribed form, within thirty days from the date on which registration certificate is issued to him, of his intention to retain registration certificate voluntarily.

- (4) Provisions of sub-sections (5) and (7) to (14) of section 17 shall mutatis mutandis apply to every registration certificate issued or held under this section.

**Security in
the interest of
revenue**

19. (1) Where it appears necessary to the registering authority so to do -
- (a) for the proper realisation of any tax, penalty or other sums due or payable under this Act; or
 - (b) for the proper custody or use of forms prescribed under this Act or the rules framed thereunder; or
 - (c) as a condition for the grant or, as the case may be, the continuance in effect of registration certificate,
- it may, by an order in writing and for reasons to be recorded therein, direct, before the grant or as the case may be, at any time while such certificate is in force, that the dealer or the person concerned shall furnish, in the prescribed manner and within such time as may be specified in the order such security or, if dealer or person concerned has already furnished such security, additional security of any nature, as may be specified, for all or any of the aforesaid purposes:

Provided that a valid security or an additional valid security, furnished for any of the aforesaid purposes under the provisions of the erstwhile Act, shall also be deemed valid for such purpose under this Act, if the dealer informs his assessing authority or the registering authority, as the case may be, of his intention to continue in effect such security or additional security alongwith undertaking from the sureties on the stamp paper of proper face value and denomination.

- (2) No dealer or the person concerned shall be required to furnish any security or additional security under sub-section (1) by the registering authority unless he has been given an opportunity of being heard, and the amount of such security or additional security that may be required to be furnished by any dealer shall also in no case exceed the tax payable, in accordance with the estimate of such authority on the turnover of the dealer for the assessment year in which such security is required to be furnished.
- (3) Notwithstanding anything contained in sub-section (1) or sub-section (2) the Commissioner may, in respect of any goods notified by the Government in this behalf, by a general order in writing, direct that a cash security of such amount as may be specified in such order shall be required to be furnished by a dealer or person requiring any of the forms prescribed under this Act.
- (4) Where the security furnished by a dealer or person concerned under sub-section (1) is in the form of a surety bond and any surety dies or becomes insolvent, the dealer or the person concerned shall, within thirty days of the occurrence of any of the aforesaid events, inform the authority granting the certificate under section 17 or section 18 or the authority issuing the forms referred to in clause (b) of sub-section (1), as the case may be, and shall within sixty days of such

occurrence furnish a fresh surety bond or furnish in the prescribed manner other security for the amount of the bond.

- (5) The assessing authority may, by order and for good and sufficient cause, forfeit the whole or any part of the security furnished by a dealer or the person concerned -

- (a) for realising any amount of tax, penalty or other amount payable by the dealer or the person concerned; or
- (b) if any dealer or person concerned is found to have misused any of the forms referred to in sub-section (1) or to have failed to keep them in proper custody;

Provided that no order shall be passed under this sub-section without giving the dealer or the person concerned an opportunity of being heard.

- (6) Where by reason of an order under sub-section (5) the security furnished by any dealer or the person concerned is rendered insufficient, he shall make up the deficiency in such manner and within such time as may be directed by the assessing authority.

- (7) The registering authority may -

- (a) refuse to grant registration certificate; or
- (b) suspend any registration certificate already issued; or
- (c) refuse to issue any of the forms referred to in sub-section (1) or sub-section (3),

to any dealer or the person concerned, who has failed to comply with an order under sub-section (1) or sub-section (3), or with the provisions of sub-section (4) or sub-section (6), until the dealer or the person concerned has complied with such order or such provisions, as the case may be:

Provided that no order, under clause (a) or clause (b) above, shall be passed without giving the dealer or the person concerned an opportunity of being heard.

- (8) The registering authority may, on application by the dealer or the person concerned, order the discharge of the surety or refund any amount or part thereof deposited by way of security by the dealer or the person concerned under this section or under any other section if it is not required for the purpose of this Act.

- (9) An appeal under section 55 shall lie against an order passed under this section.

- (10) Any person aggrieved by an order of the appellate authority may, within ninety days of the service of the order on him but after furnishing the security, file an appeal before the Tribunal under section 57.

- (11) The provisions of this section shall mutatis mutandis, apply in relation to security required to be furnished under the order of any authority under this Act or the Court.

Quoting of Taxpayers' Identification Number

20. (1) Every registered dealer shall quote his Taxpayers' identification number, allotted to him on his registration certificate, on all correspondence made, statement and return submitted, information furnished and documents issued by him and on each copy of treasury challan while depositing amount of tax, fee or any other dues under this Act.

- (2) While making sale of any taxable goods, if purchaser of such goods demands, the selling dealer shall show his registration certificate.
- (3) While making purchases of any taxable goods, every purchasing dealer shall give his name, address and Taxpayers' Identification Number, to the selling dealer and the selling dealer shall mention such particulars on tax invoice, sale invoice, transport memo, challan or transfer invoice, as the case may be, issued by him.
- (4) Every registered dealer shall present registration certificate issued to him before an officer or official authorized by the State Government whenever required by such officer or official in connection with any proceedings under this Act.
- (5) Every dealer who possesses Permanent Account Number allotted under the Income-Tax Act, 1961, shall mention such number on annual return of turnover and tax and shall furnish such number whenever required by any authority under this Act.

Accounts and documents to be maintained by dealers

- 21.** (1) Every taxable dealer shall keep and maintain a true and correct account showing the value of the goods sold and bought by him, and in case the accounts maintained in the ordinary course do not show the same in an intelligible form, he shall maintain true and correct account in such form, as may be prescribed in this behalf.
- (2) A manufacturer liable to pay tax under this Act shall, in addition to the accounts referred to in other sub-sections, maintain stock books in respect of goods used or consumed in manufacture as well as the products obtained at every stage of production.
- Provided that in the case of any class of manufacturers, the aggregate of whose turnover, in an assessment year does not exceed twenty five lakh rupees, the Commissioner, or in any other case the State Government, may relax the requirements of this sub-section subject to such conditions and restrictions as may be deemed fit to be specified.
- (3) The accounts, documents and the stock books required to be maintained under this section shall be preserved by the dealer for such period as may be prescribed.
- (4) Every registered dealer who consigns or delivers any goods or class of goods specified in the rules made thereunder or such other goods or class of goods, as the State Government may, by notification in the Gazette, specify in this behalf, of such quantity, measure or value as may be notified, to a dealer whether by reason of sale or otherwise, shall issue to the purchaser or consignee person of goods, a transport-memo in prescribed manner and in prescribed form obtained from the assessing authority having jurisdiction over the area in which principal place of business of such dealer is situated.
- (5) Except as provided in sub-section (4) every dealer liable to pay tax while consigning or delivering any taxable goods to another dealer whether as a result of sale or otherwise, shall issue to the purchaser or consignee of goods, a legible challan or transfer invoice in the prescribed manner containing such particulars, as may be prescribed,.

- (6) Where any goods are transported by road, original copy of transport memo referred to in sub-section (4), challan or transfer invoice referred to in sub-section (5), as the case may be, completed in all respects shall accompany the goods during journey of goods.
- (7) Person transporting the goods for delivery to the consignee shall fill in the particulars in the relevant columns provided on transport memo, challan or transfer invoice, as the case may be, and shall deliver such transport memo, challan or transfer invoice to the consignee dealer along with goods.
- (8) Every dealer who receives any form of declaration or certificate prescribed under this Act or rules made thereunder, from its assessing authority or from any other person, shall use them in the prescribed manner and shall keep an account, in the prescribed manner, of all such used and unused forms of declaration or certificates including forms of declaration or certificates received from other persons.
- (9) No dealer shall transfer to any person and no person shall receive from any person any certificate or any form of declaration prescribed under the rules made under this Act except as provided under this Act or the rules made thereunder.
- (10) Where a dealer disposes of taxable goods in more than one of the following ways:
 - (i) makes sale of goods inside the State; or
 - (ii) consigns goods to other dealers for sale inside the State; or
 - (iii) makes sale of goods in the course of inter-state trade or commerce; or
 - (iv) makes sale of goods in the course of the export of the goods out of or in the course of the import of the goods into, the territory of India; or
 - (v) consigns goods out side the State otherwise than as a result of sale,
 shall, as far as possible, keep separate account of purchase, sale, receipt and dispatch of goods for each such purpose.
- (11) A dealer who claims input tax credit under section 13 shall maintain a register in respect of tax period wise computations of amount of input tax credit.
- (12) A dealer who maintains or keeps books, accounts or documents in a computer, shall also maintain day to day print out of all such books, accounts and documents.
- (13) Every dealer liable to pay tax shall prepare an inventory of all goods held in stock, as mentioned hereunder, along with their purchase value, on following dates:
 - (a) goods held in opening stock on the date on which the dealer becomes liable to pay tax;
 - (b) goods held in closing stock on the last date of each assessment year;
 - (c) goods held in closing stock on the date of discontinuance of business;

- (d) in case of a dealer who has opted for payment of tax or lump sum under section 6, goods held in opening stock on the date from which provisions of section 6 cease to apply:

Provided that a manufacturer shall also prepare a list of goods used or consumed in manufacture, processing or packing of any manufactured or semi-manufactured goods held in stock on the aforesaid dates along with their purchase value.

- (14) Where in any tax invoice, issued by the registered selling dealer to the registered purchasing dealer, in respect of sale of any goods, amount shown as tax exceeds the amount of tax payable on such sale under this Act, such selling dealer, within 30 days from the date of issue of tax invoice, shall provide such purchasing dealer with a credit note of excess amount realized as tax and the purchasing dealer shall provide to the selling dealer with a debit note of such amount containing such requisite particulars as may be prescribed.
- (15) Where in respect of sale of any goods, amount of tax payable under this Act exceeds amount shown as tax in the tax invoice issued by the registered selling dealer to the registered purchasing dealer, such selling dealer, within 30 days from the date of issue of tax invoice, shall provide to such purchasing dealer with a debit note of differential amount of tax and the purchasing dealer shall provide to the registered selling dealer a credit note containing such requisite particulars as may be prescribed.
- (16) In case of goods returned or rejected by the purchaser, a credit note shall be issued by the selling dealer to the purchasing dealer and debit note shall be issued by the purchasing dealer to the selling dealer containing such requisite particulars as may be prescribed:

Provided that where any goods sold in any assessment year are returned or rejected in the succeeding assessment year within six months from the date of sale, the amount of sale price of goods returned or rejected and amount of tax relating to such goods which have been shown to have been realized by selling dealer from purchasing dealer and shown in the debit note or credit note, as the case may be, shall be adjusted with the turnover of sales or the turnover of purchases, as the case may be, in the assessment year in which goods are returned or rejected.

- (17) If in respect of any particular assessment year, gross turnover of purchase or sale or both, as the case may be, of any dealer exceeds rupees one crore, then such dealer shall get his accounts verified and audited by a specified authority within six months from end of that assessment year and obtain within that period a report of such audit in the prescribed form duly signed and verified by such specified authority alongwith such particulars as may be prescribed. A true copy of such report shall be furnished by such dealer to the assessing authority within such period as may be prescribed.

Explanation: For the purpose of this section, expression "specified authority" means-

- (i) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1940 and includes persons by virtue of provisions of sub-section (2) of section 226 of the

Companies Act, 1956, is entitled to be appointed to act as an auditor of companies;

(ii) a Cost Accountant within the meaning of the Cost and Works Accountant Act, 1959;

(iii) any other authority specified by the State Government.

(18) If any dealer liable to get his accounts audited under sub-section (1) fails to furnish copy of such report within the prescribed time, the assessing authority shall, after giving the dealer a reasonable opportunity of being heard, impose on him in addition to tax payable, a sum by way of penalty not exceeding ten thousand rupees, as he may determine.

Tax invoice, sale invoice and purchase invoice to be issued by a dealer

22. (1) In respect of all taxable goods, except non-vat goods, in the circumstances mentioned below, every registered dealer except a dealer who opts for payment of tax or a lump sum under section 6, where such dealer is liable for payment of tax on sale of any such goods, shall, while making sale of the goods, issue to the purchaser, a tax invoice in the prescribed form and manner containing such particulars as may be prescribed, and shall charge separately on such tax invoice the amount of tax payable by him, where such goods are sold to -

(i) a registered dealer; or

(ii) an official or personnel of any foreign diplomatic mission or consulate in India; or

(iii) the United Nations or any other similar International body, entitled to privileges under any convention to which India is a party or under any other law for the time being in force; or

(iv) any consulate or diplomatic agent of any mission, the United Nations or other body referred to in clause (ii) or clause (iii); or

(v) any developer or co-developer of any Special Economic Zone, for use or consumption in the authorized operations:

Provided that the State Government may prescribe different forms of tax invoice for different class of dealers or for different goods or class of goods:

Provided further that where the State Government does not prescribe the format of tax invoice, the selling dealer shall, in the cases referred to as aforesaid, issue tax invoice in the manner prescribed and containing such particulars, including name and complete address and Taxpayer's Identification Number, if any, of the person purchasing the goods, as may be prescribed.

(2) The dealer selling the goods referred to in sub-section (1) shall prepare tax invoice referred to in sub-section (1) in three copies marked original, duplicate and office copy and shall deliver copies marked original and duplicate to the person purchasing the goods. Copy of tax invoice marked as duplicate shall accompany the goods during transportation of such goods.

(3) Every registered dealer, who is liable for payment of tax on sale of any -

- (a) non-vat goods and who realises tax from the purchaser, shall, while making sale of such goods, issue to the purchaser, a sale invoice in the prescribed manner containing such particulars as may be prescribed, and shall charge separately on such sale invoice the amount of tax; or
 - (b) taxable goods except non-vat goods and makes sale of such goods to a dealer other than a registered dealer, shall, while making sale of such goods to such dealer, issue a sale invoice after mentioning name, complete address of purchasing dealer and such other particulars as may be prescribed.
- (4) Subject to provisions of sub-section (1) and sub-section (3), every taxable dealer shall, in respect of sale of all goods, where—
- (i) sale value of single sale exceeds the amount prescribed in this behalf; or
 - (ii) purchaser of goods demands a cash memo or bill; or
 - (iii) any other law prescribes for issue of a bill or cash memo in respect of sale of any goods; or
 - (iv) selling dealer as a practice issues a bill or cash memo in respect of sales made by him,
- issue to the purchaser a cash memo or bill in the prescribed manner containing such particulars as may be prescribed.
- (5) Every dealer referred to in sub-section (1) or clause (a) of sub-section (3) shall charge amount of tax separately on every tax invoice or sale invoice, as the case may be.
- (6) Office copy of tax invoice, sale invoice, cash memo or bill, as the case may be, prepared by the selling dealer and copies of tax invoice, sale invoice, cash memo or bill, as the case may be, received by the purchasing dealer shall be preserved by them for the period prescribed under sub-section (3) of section 21.
- (7) Every dealer, while making purchase of any goods from a registered dealer, shall give his name, address and taxpayers' identification number, if any, to the selling dealer.
- (8) The dealer, making sale of goods to any purchaser referred to in sub-section (1), shall not issue tax invoice to such purchaser unless the purchaser has furnished his name, complete address and taxpayer's identification number.
- (9) Where a dealer liable to pay tax makes purchase of any taxable goods from a person other than a registered dealer and if the person selling such goods does not issue cash memo or bill, the purchasing dealer shall issue to the person selling the goods a purchase invoice in respect of such purchase in the prescribed manner containing such particulars as may be prescribed and shall obtain signature or thumb impression of the person selling the goods.
- (10) The purchasing dealer referred to in sub-section (9) shall prepare purchase invoice in two copies marked as original copy and office copy. The purchasing dealer shall deliver original copy of such purchase invoice to the person selling the goods and shall preserve office copy of such purchase invoice for the period prescribed under sub-section (3) of section 21.

- Realisation of tax on sale or purchase of goods**
- 23.** (1) Except as provided in section 22, no person shall, in respect of a sale or purchase of any goods, realise any amount either in the name of tax or by giving it a different name or colour.
- (2) Where –
- (i) the amount of tax charged in tax invoice or sale invoice, as the case may be, exceeds the amount of tax payable; or
 - (ii) the amount of tax payable in respect of a sale exceeds the amount of tax charged in a tax invoice or a sale invoice, as the case may be, or
 - (iii) a tax invoice or sale invoice has been issued by the selling dealer to the purchasing dealer in respect of any goods but such goods or any part of such goods is returned or rejected by such purchasing dealer,
- debit note and credit note, of the amount of tax involved in each case, shall be issued in accordance with provisions of sub-sections (14), (15) and (16) of section 21.
- (3) Except as provided in section 34, no person shall deduct any amount as tax from the amount payable to the person selling the goods.

CHAPTER – IV

Assessments, Payment, Recovery and Collection of Tax

- Submission of tax returns**
- 24.** (1) Every taxable dealer including a dealer from whom any amount of tax has been deducted at source under section 34, shall, for such tax period and within such time, as may be prescribed, submit tax return of his self assessed turnover and tax, in such form and verified in such manner as may be prescribed, but the assessing authority may in its discretion and for reasons to be recorded, extend the date for submission of the return by any dealer or class of dealers:
- Provided that every taxable dealer, including a dealer who claims input tax credit, shall also submit along with tax return a list of-
- (i) purchases of goods made from registered dealer in respect of which the dealer has received tax invoices;
 - (ii) sales of goods made to registered dealers in respect of which the dealer has issued tax invoices; and
 - (iii) sale made to dealers to whom sale invoices have been issued in the names of such dealers,
- containing such particulars as may be prescribed:
- (2) Before submitting the tax return under sub-section (1), the dealer shall, in the manner prescribed, deposit the net amount of tax payable shown in such tax return alongwith amount, if any, realized in excess of amount of tax due under this Act from purchasers of goods during the tax period.
 - (3) Every person or dealer to whom provisions of section 34 apply, shall, in respect of dealers from whom any amount of tax has been

deducted, submit such statement within such time as may be prescribed.

- (4) Where as a consequence of the date for the submission of return being extended under sub-section (1) on the application of the dealer, the deposit of tax under sub-section (2) is deferred, there shall be payable simple interest at the rate of one and quarter percent per men sum on such deposit for the period commencing on the last date prescribed for submission of the tax return and ending with the date of deposit of such amount.
- (5) If any dealer discovers any omission or other error in any tax return submitted by him, he may, at any time before the expiry of the time prescribed for submitting the next tax return, submit a revised tax return. If the revised tax return shows a greater amount of tax to be due than was shown in the original return, the dealer shall also deposit separately the difference of tax due and the interest payable under sub-section (4) as if the time for submitting the original tax return had been extended on the application of the dealer to the date of submission of the revised tax return. If, the revised tax return shows lesser amount of tax to be due than was shown in the original tax return the dealer may adjust the excess amount towards the tax due for the subsequent tax periods.
- (6) If goods sold by a dealer are returned to him by the purchaser within six months of the date of sale, and assessment of the selling dealer for the year to which such sale relates is as yet to be made, the selling dealer, and where goods purchased by a dealer are returned to the seller within six months of the date of purchase, and assessment of the purchasing dealer for the year to which such purchase relates is as yet to be made, the purchasing dealer, may, within thirty days of the expiry of the month in which such goods are returned, submit for that purpose only a revised return for the tax period during which such sale or purchase, as the case may be, was made.
- (7) Every taxable dealer, including a dealer who has carried on business during part of an assessment year, shall, for such assessment year or for part of such assessment year, as the case may be, submit annual tax return of turnover and tax within such time and in such form and manner, as may be prescribed.

Provided that on the application of the dealer, in an appropriate case, the assessing authority may extend the period for submitting annual tax return but such extended period shall not exceed ninety days beyond the time prescribed for submitting such tax return.

- (8) Every person to whom provisions of section 34 apply, shall, for each assessment year, in respect of a dealer from whom amount of tax has been deducted, submit such details, in such form and manner and within such time as may be prescribed.
- (9) Every person transporting any goods by any public service motor vehicle or by any vessel and every forwarding agent shall submit to the assessing authority of the area from which the goods are dispatched such returns, as may be prescribed of all goods transported or forwarded by him. 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 transporter or agent with a view to verifying the correctness of the returns submitted and the transporter and agent shall be bound to furnish the books of account or other documents when so called for.

**Assessment of
tax for a tax
period**

25. (1) Where in respect of any tax period of an assessment year-
- (i) any dealer has not submitted tax return within the time prescribed or within the time extended by the assessing authority, or if tax return has been submitted without payment of tax shown payable in such return; or
 - (ii) preliminary examination of tax return, by the assessing authority, reveals that computations shown in the tax return are wrong or amount of input tax credit claimed or tax payable shown is incorrect; or
 - (iii) on the basis of material available on records with the assessing authority, it appears to the assessing authority that the turnover of sales or purchases or both, disclosed by the dealer is not worthy of credence;
- the assessing authority may, after making such inquiry as it may deem fit and after giving a reasonable opportunity of being heard to the dealer, determine -
- (i) to the best of its judgment the turnover, amount of tax payable and amount of input tax credit admissible, where the dealer has not submitted tax return or if the tax return has been submitted, the assessing authority is of the opinion that turnover disclosed by the dealer in such return is not worthy of credence; or
 - (ii) the amount of tax payable and amount of input tax credit admissible, in any other case,
- by passing a provisional order of assessment for such tax period.
- (2) No provisional order of assessment, under sub-section (1), for any tax period of an assessment year, shall be made after the dealer has submitted annual return of turnover and tax, and where such annual return has not been submitted by the dealer, after expiration of the time prescribed or extended by the assessing authority, for submission of annual return.
- (3) Amount of tax, assessed under sub-section (1) in excess of the amount of tax deposited by the dealer, shall be paid by the dealer in the prescribed manner and within a period of thirty days from the date of service of the order of assessment and prescribed notice of demand on him.

**Assessment of
tax for an
assessment
year**

26. Subject to provisions of this Act, in respect of every taxable dealer, for each assessment year, there shall be an assessment of tax payable by him and amount of input tax credit admissible to him:
- Provided that where the dealer has carried on business during a part of the assessment year, such assessment shall be for such part of the assessment year:
- Provided further that in case of person who –

- (i) has obtained authorization for transit of goods through the State and there is presumption that such goods have been sold within the State; and
- (ii) being a dealer other than a registered dealer brings any taxable goods from outside the State,

the assessing authority may make separate assessments for each such authorisation for transit of goods or receipt of goods by the dealer, as the case may be.

Self assessment

27. (1) Subject to provisions of section 28, every dealer, who has submitted annual return of turnover and tax, in the prescribed form and manner, shall be deemed to have been **assessed** to an amount of tax admittedly payable on the turnover of purchase or sale or both, as the case may be, disclosed in such return, and to an amount of input tax credit shown admissible in the return.

(2) For all purposes under this Act and rules made thereunder –

- (a) annual return of turnover and tax, referred to in sub-section (7) of section 24, submitted by a dealer, shall be deemed to be an assessment order and facts disclosed or figures mentioned in such return shall be deemed part of such assessment order; and
- (b) last date of the assessment year succeeding the assessment year in which the date prescribed for submission of such annual return falls, shall be deemed to be the date of such assessment order.

Assessment of tax after examination of Records

28. (1) In following types of cases or dealers, the assessing authority, after detailed examination of books, accounts and documents kept by the dealer in relation to his business and other relevant records, if any, and after making such inquiry as it may deem fit, subject to provision of sub-section (9), shall pass an assessment order for an assessment year in the manner provided in this section: -

- (a) in cases of such dealers as are specified or selected for tax audit by the Commissioner or any other officer, not below the rank of a Joint Commissioner, authorized by the Commissioner in this behalf; in such manner and within such time as may be prescribed.
- (b) in case of a dealer falling in any of the categories below,
 - (i) dealer who has not submitted annual return of turnover and tax within the time prescribed or extended; or
 - (ii) dealer by whom tax return for one or more tax periods of the assessment year have not been submitted; or
 - (iii) dealer in whose case assessing authority has passed provisional assessment order under section 25 in respect of one or more tax periods to the best of its judgment; or

- (iv) dealer in whose case, on the basis of material available on records, if the assessing authority is satisfied that the turnover of sales or purchases or both, as the case may be, and amount of tax shown payable as disclosed by the dealer in annual return of turnover and tax are not worthy of credence or tax shown payable in the return has not been deposited by the dealer, or the amount of input tax credit claimed is wrong or the amount of tax payable shown is incorrect; or
 - (v) dealer who has prevented or obstructed an officer empowered to make audit, survey, inspection, search or seizure under the provisions of this Act; or
 - (vi) person against whom there is presumption that goods, for which authorization for transit of goods through the State was obtained, have been sold within the State.
- (2) Where after examination of books, accounts, documents and other records referred to in sub-section (1), -
- (i) the assessing authority is satisfied about correctness of turnover of sale or purchase or both, as the case may be, disclosed by the dealer, it may assess the amount of tax payable by the dealer on such turnover and determine the amount of input tax credit admissible to the dealer or amount of reverse input tax credit payable by the dealer; and
 - (ii) where assessing authority is of the opinion that turnover of sale or purchase or both, as the case may be, disclosed by the dealer is not worthy of credence, it may determine to the best of its judgment the turnover of sale or purchase or both, as the case may be, and assess the tax payable on such turnover and determine admissible amount of input tax credit and reverse input tax credit payable by the dealer.
- (3) Before making an assessment under sub-section (2), dealer shall -
- (i) be required to furnish annual return of turnover and tax referred to in sub-section (7) of section 24, if he has not already submitted such return;
 - (ii) be given reasonable opportunity of being heard; and
 - (iii) be served with a notice to show cause, where determination of turnover, input tax credit or reverse input tax credit, or assessment of tax, all or any one of them, as the case may be, are to be made to the best of the judgment of the assessing authority.
- (4) The show cause notice referred to in sub-section (3) shall contain all such reasons on which the assessing authority has formed its opinion about incorrectness of the turnover of sale or purchase or both, as the case may be, amount of tax, amount of input tax credit or amount of reverse input tax credit:

- (5) Order of assessment shall be in writing and copy of assessment order alongwith prescribed notice of demand of the balance amount of tax, if any, to be deposited by the dealer, shall be served on the dealer.
- (6) Dealer shall deposit amount of tax assessed in excess of amount of tax deposited by him for the assessment year, within a period of thirty days after the date of service of the assessment order and notice of demand.
- (7) Where the amount of tax deposited by the dealer is found in excess of tax assessed, the same shall be refunded to the dealer according to the provisions of this Act.
- (8) Assessing authority shall not be precluded from making assessment order under this section on the ground of passing of any provisional assessment order in respect of any tax period under section 25 and such provisional assessment order, if any, shall stand merged in the assessment order passed under this section.
- (9) Notwithstanding anything to the contrary to in any other provision of this Act, in following categories of cases, such number of assessments as mentioned against them, may be made for the same assessment year:
 - (i) cases relating to issue of authorization for transit of goods through the State, separate assessment relating to each such authorization;
 - (ii) where an unregistered dealer brings any taxable goods from outside the State more than once during an assessment year, separate assessment relating to goods brought on each occasion.
- (10) All provisions of this Act shall apply to each assessment order passed under sub-section (9) as they apply to an order passed under sub-section (2).
- (11) Dealers under sub-section (9) shall not be required to furnish annual return of turnover and tax and in cases of such dealers assessment under sub-section (9) may be made even before the expiry of the assessment year.
- (12) Provisions of sub-sections (5), (6) and (7) shall, mutatis mutandis, apply to every assessment order passed under any provisions of this Act.

Assessment of tax of turnover escaped from assessment

- 29.** (1) If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer, for any assessment year or part thereof, has escaped assessment to tax or has been under assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or re-assess the dealer to tax according to law :
- Provided that the tax shall be charged at the rate at which it would have been charged had the turnover not escaped assessment or full assessment as the case may be.

- Explanation I: - Nothing in this sub-section shall be deemed to prevent the assessing authority from making an assessment to the best of its judgment.
- Explanation II: - For the purpose of this section and of section 31, "assessing authority" means the officer or authority who passed the earlier assessment order, if any, and includes the officer or authority having jurisdiction for the time being to assess the dealer.
- Explanation III: - Notwithstanding the issuance of notice under this sub-section, where an order of assessment or re-assessment is in existence from before the issuance of such notice it shall continue to be effective as such, until varied by an order of assessment or re-assessment made under this section in pursuance of such notice.
- (2) Assessment order for any tax period of an assessment year may be made within the time prescribed under section 25.
 - (3) Except as otherwise provided in this section or elsewhere in this Act, no order of assessment or re-assessment under any provision of this Act for any assessment year shall be made after the expiration of three years from the end of such assessment year:
 - (4) Where the notice under sub-section (1) for any assessment year has been served within a period of three years after expiry of the assessment year to which assessment or re-assessment relates, the assessment or re-assessment may be made within a period of three years and six months after the expiry of such assessment year.
 - (5) Where appellate authority, revising authority, Tribunal, High Court, Commissioner or the State Government has -
 - (a) set aside an order of assessment or re-assessment and has remanded the case to the assessing authority; or
 - (b) for want of reasonable opportunity of being heard, set-aside or has directed the assessing authority to set aside an ex parte order of assessment or re-assessment; or
 - (c) quashed any order of assessment or re-assessment for want of jurisdiction or for want of notice,
 the assessing authority may make order of assessment or re-assessment before expiry of the assessment year succeeding the assessment year in which such order or direction is received by the assessing authority by due process:

Provided that where any assessment or re-assessment order is quashed by any authority or Court, for want of notice or for want of jurisdiction, the order of assessment or re-assessment may be made, within the time mentioned above in this sub-section, by the competent assessing authority after serving notice on the dealer.
 - (6) Where an order of assessment or re-assessment has been set aside by the assessing authority himself under section 32, a fresh order of assessment or re-assessment may be made before expiry of the assessment year in which such order of assessment or re-assessment has been set aside:

Provided that if an order of assessment or re-assessment made ex parte is set aside on or after first day of October in any assessment year, fresh order of assessment or re-assessment may be made on or before thirtieth day of September of the assessment year succeeding the assessment year in which such ex parte order of assessment or re-assessment was set aside.

Provided further that where second or subsequent time any order of assessment or reassessment is made ex parte and where such second or subsequent ex parte order of assessment or reassessment is to be set aside and a fresh order of assessment or reassessment may be made within the time aforementioned when the first ex parte order is set aside.

- (7) Where the Commissioner, on his own or on the basis of reasons recorded by the assessing authority, is satisfied that it is just and expedient so to do, authorises the assessing authority in that behalf, such assessment or re-assessment may be made within a period of eight years after expiry of assessment year to which such assessment or re-assessment relates notwithstanding such assessment or re-assessment may involve a change of opinion:

Provided that it shall not be necessary for the Commissioner to hear the dealer before authorising the assessing authority.

- (8) Where the proceedings for assessment or re-assessment for any assessment year remain stayed under the order of any court or authority, the period commencing on the date of stay order and ending with the date of receipt by the assessing authority concerned of the order vacating stay, shall be excluded in computing the period of limitation provided in this section:

Provided that if in computing the limitation as aforesaid, the last date for passing an assessment or re-assessment falls on any date before first day of October in any assessment year, assessment or re-assessment may be made before the expiry of such assessment year and in a case in which such date falls after thirtieth day of September of any assessment year, order of assessment or re-assessment may be made before the expiry of the assessment year subsequent to assessment year in which such date falls.

- (9) Where in the assessment or re-assessment of a dealer for any assessment year, any assessing authority, -
- (a) has included any turnover and any superior authority or Court has, in exercise of the powers lawfully vested in it, held such turnover to relate to the assessment of-
 - (i) such dealer for any other assessment year, or
 - (ii) such dealer under the Central Sales Tax Act, 1956, or
 - (iii) any other dealer, whether under this Act, or under the Central Sales Tax Act, 1956,
 - (b) has not included any turnover on the ground that it relates to assessment under the Central Sales Tax Act, 1956 and any superior Authority or Court has, in exercise of the powers lawfully vested in it, held such turnover to relate to the assessment of that dealer under this Act, whether for such assessment year or any other assessment year,

then nothing contained in this section limiting the time shall apply to assessment or re-assessment whether under this Act or under the Central Sales Tax Act, 1956 of such dealer or such other dealer, relating to such assessment year or such other assessment year, as the case may be.

- (10) Where the assessing authority has reason to believe that any person with a view to evade payment of tax or in order to claim any input tax credit or rebate which he otherwise is not eligible for or was carrying on business in the name of, or in association with any other person either directly or indirectly, whether as an agent, employee, manager, partner or power of attorney holder or guarantor, relative or sister concern or in any other capacity, such person and the person in whose name the registration certificate is taken, shall be liable severally and jointly for payment of tax, interest or penalty which shall be assessed, levied and recovered from all or any such person as if such person or persons are dealers under this Act. However, before taking any action, the person concerned shall be given an opportunity of being heard.
- (11) Where the State Government is of the opinion that due to any extra-ordinary circumstances prevalent in any assessment year in the State or any part of it, it will be difficult to complete assessment or re-assessment in any case or class of cases in respect of which limitation for passing assessment or re-assessment expires in such assessment year, for the purpose of making assessment or re-assessment in such a case or class of cases, it may, by notification in the Gazette, extend the time limit up to one year beyond the time limit prescribed under this section.
- (12) Where in an agreement between seller and purchaser it is agreed upon that sale price of goods due to price escalation shall be settled on a later date and in the circumstances such date falls in any assessment year subsequent to the assessment year in which such goods were sold, amount receivable due to price settlement, for all purposes under this Act, shall be deemed part of the turnover of the assessment year in which sale was made and where limitation for assessment of tax on such turnover, as prescribed in section 28, has expired, such part of turnover may be assessed before the expiry of the assessment year succeeding the assessment year in which such settlement is made, but the tax on such turnover of sale shall be charged at the rate prevalent at the time of sale.

**Rounding off
of turnover
and tax**

30. (1) The amount of turnover, determined in the prescribed manner shall if such amount is not in the multiple of ten, be rounded off to the nearest multiple of ten rupees, that is to say, a part of ten rupees which is less than five rupees shall be ignored and any other part shall be counted as ten rupees. The amount so rounded off shall be deemed to be the turnover of the assessee for the purpose of assessment of tax under this Act.
- (2) The amount of tax, fee, interest, penalty or any other sum payable or the amount of refund due under the provisions of this Act shall, where such amount contains part of a rupee, be rounded off to the nearest rupees, that is to say, a part of a rupee which is less than

fifty paise shall be ignored and any other part shall be counted as one rupee.

**Rectification
of mistakes**

- 31. (1)** Any officer, authority, the Tribunal or the High Court may on its own motion or on the application of the dealer or any other interested person rectify any mistake apparent on the face of record, in any order passed by him under this Act, within three years from the date of the order sought to be rectified:

Provided that where an application under this sub-section has been made within such period of three years, it may be disposed of even beyond such period:

Provided further that no rectification which has the effect of enhancing the assessment, penalty, fees or other dues, shall be made unless reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement.

- (2) Where such rectification has the effect of enhancing the assessment, the assessing authority shall serve on the dealer a revised notice of demand in the prescribed form and therefrom all the provisions of the Act shall apply as if such notice had been served in the first instance.

**Power to set
aside exparte
order of
assessment
or penalty**

- 32. (1)** In any case in which an order of assessment or re-assessment or rejection of application for registration or order of penalty is passed exparte, the dealer may apply to the assessing authority within thirty days of the service of the order to set aside such order and re-open the case; and if such authority is satisfied that the applicant did not receive notice or was prevented by sufficient cause from appearing on the date fixed, it may set aside the order and reopen the case for hearing:

Provided that no such application for setting aside an exparte assessment order shall be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax to be due under this Act on the turnover of sales or purchases, or both, as the case may be, admitted by the dealer in the returns filed by him or at any stage in any proceeding under this Act, whichever is greater.

- (2) Where an assessment order under sub-section (1) of section 25 is passed, exparte, the dealer may apply to the Assessing Authority within thirty days of the service of the order, to set aside such order and if such authority is satisfied that the dealer has filed the tax return and deposited the tax due according to the tax return within thirty days from the last day prescribed for filing such tax return, it may modify or set aside such order and also the demand notice, if any, issued thereunder.
- (3) In any case in which any assessment or re-assessment has been made ex parte and –
- (a) appeal under section 55 against such order has been dismissed as barred by time;
 - (b) in appeal before the Tribunal under section 57, order, passed by the Appellate Authority under section 55, has been confirmed; and

(c) Commissioner or Additional Commissioner designated by the Commissioner, after giving reasonable opportunity of being heard to the dealer, is satisfied that-

- (i) dealer, at any stage during the period of assessment or reassessment proceedings, had no notice of initiation of such proceedings;
- (ii) as a result of ex parte assessment or reassessment, without proper basis amount of tax has been levied;
- (iii) undue hardship will be caused to the dealer if such assessed tax is realized from him; and
- (iv) if, after giving reasonable opportunity of being heard to the dealer, tax is reassessed, demand created by earlier order of assessment or reassessment may stand reduced to a large extent,

he may direct the assessing authority to set aside such ex parte order of assessment or reassessment and to make assessment or reassessment after affording reasonable opportunity to the dealer, if the dealer presents an application before the Commissioner within a period of sixty days from the date on which dealer receives the order passed by the Tribunal under section 57.

Payment and recovery of tax

33. (1) Any amount of tax or fee or penalty or any other amount, which a dealer or other person is liable to pay under this Act, shall be deposited by the dealer or such other person in the prescribed manner.
- (2) Subject to provisions of section 42, the tax admittedly payable, shall be deposited within the time prescribed, failing which simple interest at the rate of one and quarter percent per mensem shall become due and be payable on unpaid amount with effect from the day immediately following the last date prescribed till the date of payment of such amount and nothing contained in section 24 shall prevent or have the effect of postponing liability to pay such interest:
Explanation: For the purposes of this sub-section, the tax admittedly payable for a tax period or an assessment year, as the case may be, shall be computed in accordance with provisions of section 15.
- (3) Subject to other provisions of this Act, the amount of tax assessed under this Act in excess of amount of tax already deposited, the amount of interest payable thereon, any amount imposed by way of penalty and any other amount determined payable under this Act shall be deposited in the manner specified, within thirty days of the service of the order-
- (a) of assessment and notice of demand in case of tax assessed and interest payable;
 - (b) imposing penalty or determining any other amount payable, as the case may be.
- (4) If the tax {other than the tax admittedly payable to which sub-section (2) applies} assessed, re-assessed or enhanced by any authority or court remains unpaid after expiration of the period specified in the notice of assessment and demand, simple interest at the rate of one

percent per mensem on the unpaid amount calculated from the date of such expiration shall become due and be payable:

- (5) The amount of interest payable under this section shall be without prejudice to any other liability or penalty that the dealer may incur under this Act or under any other law for the time being in force, and shall be added to the amount of tax and be also deemed for all purposes to be part of the tax.
- (6) Where realisation of any tax remained stayed by any order of any court or authority and such order of stay is subsequently vacated, the interest shall be payable also for any period during which such order remained in operation.
- (7) Notwithstanding anything contained in any other law or contract to the contrary, the assessing authority may, at any time or from time to time, by notice in writing a copy of which shall be forwarded to the dealer at his last address known to the assessing authority, require -
 - (a) any person from whom any amount is due or may become due to the dealer; or
 - (b) any person who holds or may subsequently hold money for or on account of the dealer;
to pay to the assessing authority -
 - (i) forthwith upon the money becoming due or being held; or
 - (ii) at or within the time specified in the notice not being before the money becomes due or is held,

so much of the money as is sufficient to pay the amount due by the dealer in respect of arrears of tax and other dues under this Act, or the whole of the money when it is equal to or less than that amount:

Provided that the assessing authority may at any time or from time to time revoke or amend such notice.

Explanation - For the purposes of this sub-section, the amount due to a dealer or money held for or on account of a dealer by any person shall be computed after taking into account such claim, if any, as may have fallen due for payment by such dealer to such person and as may be legally subsisting.

- (8) Any person making any payment in compliance with notice under sub-section (7) shall be deemed to have made the payment under the authority of the dealer and the receipt of the assessing authority shall constitute a good and sufficient discharge of the liability of such person to the dealer to the extent the amount referred to in the receipt.
- (9) Any person discharging any liability to the dealer after receipt of the notice referred to in sub-section (7) shall be personally liable to the assessing authority to the extent of the liability discharged or to the extent of the amount mentioned in such notice, whichever is less.
- (10) Where a person, to whom a notice under sub-section (7) is sent, proves to the satisfaction of the assessing authority that sum demanded or any part thereof is not due to the dealer, or that he does not hold any money for or on account of the dealer, then nothing contained in this section shall be deemed to require such person to pay the sum demanded or any part thereof, as the case may be, to the assessing authority.

(11) Any tax or other dues payable to the State Government under this Act, any amount of money which a person is required to pay to the assessing authority under sub-section (7) or for which he is personally liable to the assessing authority under sub section (9) shall, notwithstanding anything contained in any other law for the time being in force and subject to any special or general order of the State Government, be recoverable as arrears of Land Revenue, or in the prescribed manner by the assessing authority or any other officer authorised by the State Government in that behalf and such authority or officer shall, for the purposes of such recovery -

(a) have all the powers which a Civil Court has under the Code of Civil Procedure, 1908 for the purpose of recovery of an amount due under a decree;

(b) have the power to require the assessing authority or such authorised officer, having jurisdiction in any other area to make such recovery if the defaulter is or has property within the area of such other assessing authority or officer, and thereupon such other assessing authority or officer shall proceed to make recovery in prescribed manner;

(12) In respect of any sum recoverable under this Act as arrears of land revenue, the assessing authority may forward to the Collector a certificate under his signature specifying the sum due. Such certificate shall be conclusive evidence of the existence of the liability of its amount and of the person who is liable and the Collector on receipt of the certificate shall proceed to recover from such person the amount specified therein as if it were an arrear of land revenue:

Provided that without prejudice to the powers conferred by this section the Collector shall, for the purpose of recovering the amount specified in the certificate, have also all the powers which -

(a) a Collector has under the Revenue Recovery Act 1890; and

(b) a Civil Court has under the Code of Civil Procedure, 1908, for the purpose of recovery of an amount due under a decree.

Explanation: - The expression Collector includes an Additional Collector or any other officer authorised to exercise the powers of a Collector under the law relating to land revenue for the time being in force in the State.

(13) Notwithstanding anything contained in sub-section (2) and sub-section (3) and notwithstanding any judgment, decree or order of any Court, Tribunal or other authority, where any notice of assessment and demand in respect of any tax or other dues under this Act, is served upon a dealer by an assessing authority and an appeal, revision or other proceeding is filed in respect of such tax or dues then-

(a) where as a result of such appeal, revision or other proceeding the amount of such tax or other dues is enhanced, the assessing authority shall serve upon the dealer a fresh notice only in respect of the amount by which such tax or other dues are enhanced, and any proceeding in relation to the amount specified in the notice already served

upon him before the disposal of such appeal, revision or other proceeding may be continued from the stage at which it stood immediately before such disposal;

(b) where as result of such appeal, revision or other proceeding the amount of such tax or other dues is reduced -

(i) it shall not be necessary to serve upon the dealer a fresh notice but only the reduced amount shall be realized;

(ii) if any recovery proceedings are pending before any officer or authority other than the Assessing authority, the Assessing Authority shall intimate such reduction to such officer or authority;

(iii) any proceeding initiated on the basis of the notice or notices served upon the dealer before the disposal of such appeal, revision or other proceedings, including any recovery proceeding, may be continued in relation to the amount so reduced from the stage at which it stood immediately before such disposal.

(c) No fresh notice shall be necessary in any case where amount of the tax or other dues is not enhanced (with reference to the amount assessed by the Assessing authority) as a result of such appeal, revision or other proceedings.

(14) Any amount paid or deposited by, or recovered from, or refundable to a dealer, shall first be adjusted towards the principal amount of tax, fee, penalty or other dues outstanding against him and the excess if any, shall then be adjusted towards the interest, if any, due from him.

(15) Where any amount of tax assessed, interest payable or penalty imposed is recoverable from an owner of a vehicle and for realization of such amount of tax, interest or penalty, recovery certificate has been issued by the assessing authority, the officer competent to execute the recovery certificate may take assistance of police and other officer or official of the State Government in locating such vehicle or other vehicles of the same owner. If so required by the officer executing the recovery certificate, such other officer or official shall be empowered to detain such vehicle. Whenever any officer or official detains any such vehicle, he shall give the cause of detention in writing to the person in charge of the vehicle at the time of detention and shall immediately inform the officer executing the recovery certificate. Officer executing the recovery certificate shall proceed in accordance with law to realise such amount of tax or penalty:

Provided that if the owner or person in charge of the vehicle proves to the satisfaction of such officer or official that amount shown recoverable has already been paid, the vehicle shall be set free:

Provided further that if at the time of detention of vehicle, if some goods are loaded on it and owner of such goods is a person other than the owner of the vehicle, the owner or the person in

charge of the goods shall be allowed to remove such goods from such vehicle if he desires so.

- (16) During the period of detention of vehicle under sub-section (15), the person-in-charge of the vehicle at the time of detention shall take all necessary measures for safety of goods and vehicle and officer or official detaining the vehicle shall not be responsible for any loss or damage to goods or vehicle.

**Tax deduction
at source**

34. (1) Without prejudice to any other mode of recovery, payment or collection of tax under this Act, the State Government may, by notification in the Gazette, direct that, in a specified case and in the specified circumstances but subject to such conditions as may be specified, every specified person responsible for making payment to the selling dealer, for discharge of liability on account of valuable consideration payable on sale of goods in such cases as may be specified, shall, at the time of making such payment to the seller, either by credit or in cash or in any other manner, towards satisfaction of tax payable by the dealer on account of sale of any taxable goods, deduct an amount determined in the manner specified:

Provided that where in case of a works contract, the contractor has awarded a sub-contract and the notification provides for deduction of amount by the contractee from the payments made to contractor, the contractor responsible for making any payment or discharge of any liability to any sub-contractor, in pursuance of a contract with the sub-contractor, shall, while making payment to the sub-contractor, deduct amount of tax referred to above.

Provided further that where in case of a works contract, the contractor has already made deduction from the payments made to his sub-contractor, the amount of such payments shall be deducted from the amount on which deduction is to be made by the contractee to the contractor.

- (2) Upon issue of a notification under sub-section (1), where-

(a) a dealer, who makes sale of any taxable goods and in whose case notification referred to in sub-section (1) applies, for any reason claims that he either is not liable to pay tax on such sale or is liable to pay as tax an amount lesser than amount of deduction computed in the manner provided; or

(b) the person responsible for making payments to the dealer selling the goods is unable to ascertain the turnover of any goods sold,

the person responsible for making payment shall require the selling dealer to produce direction issued in this behalf by the assessing authority of the selling dealer and shall act according to such direction of the assessing authority.

(3) Where purchasing dealer himself is liable to pay tax on turnover of purchase of any goods by virtue of any provision of this Act, he shall not deduct any amount in respect of turnover of such goods.

(4) In the circumstances under sub-section (2), the dealer selling goods may, for issue of direction to the purchaser to deduct an amount lesser than the proposed amount of tax or not to deduct any amount as tax, apply to the assessing authority having jurisdiction over the principal place of his business or if he has no fixed place of business, to the assessing authority in whose jurisdiction he ordinarily resides.

(5) The assessing authority referred to in sub-section (4), after examining the liability of payment of tax of the dealer in respect of sale of goods made and

after giving reasonable opportunity of being heard to the dealer, shall by an order in writing direct the purchaser of the goods accordingly.

(6) The amount deducted under sub-section (1) shall be deposited into the Government Treasury by the person making such deduction before the expiry of the 20th day of the month following that in which deduction is made:

Provided that where the purchaser of goods referred to in sub-section (1) is a registered dealer, he shall deposit the amount of deduction in the manner and within the time in which amount of tax for the tax period in which purchase has been made, is payable and such dealer shall be entitled to claim input tax credit in accordance with provisions of section 13 in respect of such purchase.

(7) The person making deductions under sub-section (1) shall, at the time of payment or discharge, furnish to the selling dealer a certificate of amount deducted in such form and manner and within such period as may be prescribed and shall submit such statement of all such purchases, payments and deductions made and certificates issued by him, in such manner and within such time, as may be prescribed.

(8) If any person referred to in sub-section (1) fails to make the deduction or after making deduction fails to deposit the amount so deducted as required by sub-section (6), the assessing authority may, after giving to such person an opportunity of being heard, by order in writing, direct that such person shall pay, by way of penalty, a sum not exceeding twice the amount deductible under this section but not so deducted and, if deducted, not so deposited into the Government Treasury.

(9) Without prejudice to the provisions of sub-section (8), if any such person, after deducting, fails to deposit the amount so deducted, he shall be liable to pay simple interest at the rate of fifteen percent per annum on the amount not so deposited from the date on which such amount was deducted to the date on which such amount is actually deposited.

(10) Where the amount has not been deposited after deduction, such amount together with interest referred to in sub-section (9) shall be recovered as arrears of land revenue from the person who has deducted and such amount shall be a charge upon all the assets of the person concerned.

(11) Nothing contained in this section shall prevent the assessing authority from making an assessment of tax payable by the dealer in accordance with other provisions of the Act and the dealer shall be liable to pay tax in accordance with other provisions of this Act.

Provided that any deduction made in accordance with the provisions of this section shall be treated as a payment of tax on behalf of the selling dealer, and credit shall be given to him for the amount so deducted on the production of the certificate, referred to in sub-section (9) in the tax return of the relevant period or the assessment made, as the case may be, and any amount found in excess of tax due shall be refunded to the selling dealer.

(12) No deduction of any amount shall be made under this section if the person selling the goods is not a dealer, but the onus to prove that goods have been purchased from a person other than a dealer shall lie on the person responsible for making payment, failing which it shall be deemed that goods have been purchased from a dealer.

(13) Where person responsible for making deduction in respect of a sale under a works contract is unable to ascertain the amount of deduction and the contractor or the sub-contractor, as the case may be, does not produce direction referred to in sub-section (2) from its assessing authority, the person

responsible for making deduction shall deduct an amount which shall be four percent of the gross amount of payment.

Explanation: - For the purposes of this section, assessing authority in relation to person responsible for making payments to the selling dealer means the officer having jurisdiction over the place where the principal place of business of such person inside the State is located and where such person has no such place, the place where the residence of such person inside the State is located.

Allotment of tax deduction number to a person responsible for making tax deduction at source.-

35. (1) Every person responsible for making tax deduction at source in accordance with provisions of section 34, if he is not a registered dealer, shall apply to the assessing authority for allotment of tax deduction number and the application shall be disposed of in such time and manner as may be prescribed.

(2) Tax deduction number shall be referred to in all the documents pertaining to deposit of tax and returns filed.

(3) No person other than a registered dealer can make tax deduction under sub-section (1) of section 34 unless he has applied for such tax deduction number.

(4) If any person referred to in sub-section (1) fails to apply for tax deduction number, the assessing authority may, after giving reasonable opportunity of being heard, by order in writing, direct that such person shall pay, by way of penalty, a sum not exceeding twice the amount deductible under section 34.

Recovery or refund of petty amounts to be ignored

36. Notwithstanding anything contained in any other provisions of this Act, no tax, fee, interest or penalty under this Act shall be recovered and no refund shall be allowed if the amount involved for any assessment year is less than one hundred rupees.

Recovery of tax in case of a company under liquidation

37. (1) Every person who -

(a) is the liquidator of a company which is being wound up, whether under orders of a Court or otherwise; or

(b) has been appointed the receiver of any assets of a company {hereinafter referred to as the liquidator},

shall within thirty days after he has become such liquidator, inform the assessing authority of his appointment as such.

(2) The assessing authority shall after making such inquiry or calling for such information as it may deem fit, notify the liquidator within three months from the date on which he receives information of the appointment of the liquidator the amount which in the opinion of the assessing authority would be sufficient to provide for any tax which is then or likely thereafter to become, payable by the company.

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

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties in compliance with any order of a Court or for the purpose of the payment of tax payable by the company under this Act or for making any payment over debts due to Government on the date of liquidation or for meeting such costs or expenses of the winding up

of the company as are in the opinion of the assessing authority reasonable.

- (4) If the liquidator fails to give the information in accordance with sub-section (1) or fails to set aside the amount as required by, or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of sub-section (3), he shall be personally liable for the payment of the tax which the company would be liable to pay:

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

- (5) Where there are more than one liquidator, the liquidations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.
- (6) The provision of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

Explanation- Company has the meanings assigned to it by clause (i) of sub-section (1) of section 3 of the Companies Act, 1956 (Act No. 1 of 1956).

Liability of director of limited company in liquidation

38. Notwithstanding anything contained in the Companies Act, 1956, when any limited company is wound up and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, can not be recovered, then every person who was a director of the limited company at any time during the period for which the tax is due shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Power to grant installment

39. (1) Subject to such conditions and restrictions, including the conditions regarding furnishing security to the satisfaction of the assessing authority, as may be deemed fit to be imposed-
- (a) the State Government may permit any dealer or other person, against whom any amount of tax, penalty or other dues is outstanding, either under this Act or under the erstwhile Act, to pay the amount in such number of monthly installments not exceeding twenty four; and
- (b) the Commissioner may likewise permit any dealer or other person, against whom any amount of tax, penalty or other dues, payable either under this Act or under the erstwhile Act, aggregating not more than five lakh rupees is outstanding, to pay the amount in such number of monthly installments, not exceeding twelve.
- (2) Where such dealer or other person fails to furnish, within sixty days of the order referred to in sub-section (1), adequate security to the satisfaction of the assessing authority concerned for payment of the outstanding amount, or fails to comply with the conditions or

restrictions imposed in such order, the amount due shall be recoverable at once.

CHAPTER –V

Refund and Adjustment

Refund and adjustment

40. (1) Subject to other provisions of this Act, the assessing authority shall in the manner prescribed, refund to the dealer an amount of tax, fee, or other dues paid in excess of the amount due from him under this Act.

Provided that amount found to be refundable shall first be adjusted towards tax or any other amount outstanding against the dealer under this Act or under The Central Sales Tax Act 1956 or under the erstwhile Act and only the balance if any shall be refunded.

Provided further that refund, of excess amount of input tax credit, shall, without prejudice to other conditions, be subject to conditions and restrictions of section 15.

- (2) Where amount found refundable in accordance with the provisions under sub-section (1), is not refunded within thirty days from the date of order of refund passed by the assessing authority or where order giving rise to refund is passed by any other authority or court, from the date of receipt of such order by the assessing authority by due process, the dealer shall be entitled to simple interest on such amount at the rate of twelve percent per annum from the date of such order passed by the assessing authority or from the date of receipt of the order giving rise to refund passed by any other authority or Court, till the date refund is made.

Provided that where refund relating to excess amount of input tax credit due on the basis of returns filed by the dealer, is not allowed within the time prescribed under section 15, the dealer shall be entitled to simple interest on such amount at the rate of twelve percent per annum from the date on which refund becomes due and till the date refund is made.

- (3) Notwithstanding any judgment, decree or order of any Court or authority, no refund shall be allowed of any tax or fee due under this Act on the turnover of sales or purchases or both, as the case may be, admitted by the dealer in the returns filed by him or at any stage in any proceedings under this Act, whichever is higher.
- (4) Where a dealer has requested the assessing authority for withholding any amount refundable to him for adjustment towards his future liabilities either under this Act or under the Central Sales Tax Act, 1956, the dealer shall not be entitled for interest.
- (5) Where any amount of tax has been deducted from any dealer under section 34 as tax payable by him for any assessment year, for the purpose of sub-section (3), amount deducted shall be deemed to be tax due under this Act and shall not be refunded to the dealer where the dealer -

- (a) has neither submitted returns of turnover and tax for all tax periods nor has submitted annual return for the assessment year in which sales are made; and
 - (b) has been assessed *exparte* for the assessment year in which sales are made.
- (6) Where in respect of sale of any goods, any amount of tax has been realized by a registered dealer from -
- (a) any official or personnel of-
 - (i) any foreign diplomatic mission or consulate in India; or
 - (ii) the United Nations or any other similar International body, entitled to privileges under any convention to which India is a party or any other law for the time being in force; or
 - (b) any consular or diplomatic agent of any mission, the United Nations or any other body referred to in sub-clause (i) or sub-clause (ii) of clause (a),
- and where such official, personnel, consulate or agent has purchased goods for himself or for the purpose of such mission, United Nations, or any other body, then if such official, personnel, agent, United Nations or body, after producing tax invoice referred to in sub-section (1) of section 22 or the sale invoice referred to in sub-section (3) of the said section, as may be applicable, in the prescribed manner, claims refund of the amount of tax realised from him, the Commissioner or the officer authorised by him in this behalf, shall refund such amount to such official, personnel, consular or agent of such mission, United Nations or body, as the case may be.
- (7) Refund, under any provisions of this Act, may be given by refund voucher or cheque:

Provided that where a dealer submits e-tax return, refund of any amount found refundable to him may be allowed through e-cheque.

Explanation: For the purposes of this Act, prescribed date shall be deemed to be the date of refund.

Provisional refund

- 41.** (1) Notwithstanding anything contained in section 40, in case of a dealer, whose main business is to sell goods in the course of the export of the goods out of the territory of India, the assessing authority, upon receiving the return for a tax period and application for provisional refund, pending audit and investigation to establish the correctness of the claim and consequent assessment, shall, allow provisional refund of excess amount of input tax credit for such tax period on account of sale in the course of the export of the goods out of the territory of India, within thirty days from the last date prescribed for submission of return or from the date *on* which return is submitted, whichever is later:

Provided that if any amount of tax, fee or penalty or any other amount either under this Act or under the Central Sales Tax Act, 1956 or under the erstwhile Act is due against such dealer, amount found refundable first shall be adjusted towards such amount of tax or

fee or penalty, as the case may be, and excess, if any, shall be refunded to the dealer:

Provided further that, before granting refund, the assessing authority may require the dealer to furnish security of amount equivalent to amount of refund to its satisfaction.

- (2) If, on assessment, the provisional refund granted under sub-section (1) is found to be in excess, then the excess amount of refund shall be recovered from the dealer along with interest at the rate of fifteen percent per annum and for the period commencing on the date of grant of provisional refund and ending on the date of payment of the amount, as tax due from the dealer.

Tax deferment 42. (1) Notwithstanding anything contained in this Act any industrial unit availing tax exemption or reduction in the rate of tax on the date of commencement of this Act or an industrial unit which is granted the facility of exemption or reduction in the rate of tax under the erstwhile Act shall be treated as a unit availing tax deferment.

A unit availing tax deferment under the erstwhile Act on the commencement of this Act or a unit, which is granted benefit of tax deferment under the erstwhile Act, shall continue to avail the said facility subject to such conditions as may be specified.

(2) The unit availing the tax deferment as specified in sub-section (1) or a unit availing deferment facility under the erstwhile Act shall be eligible to issue tax invoices and to claim input tax credit subject to provisions of section 13 of this Act.

(3) The period of eligibility, the method of debiting eligibility amount, the repayment and any other benefits for all units availing tax deferment shall be in such manner as may be prescribed.

Procedure for disbursement of amount wrongly realised by dealers as tax

43. (1) Where any amount has been realized from any person by any dealer, purporting to do so by way of realisation of tax on the sale or purchase of goods, in contravention of provisions of sections 22 and 23, such dealer shall, subject to provisions of sub-section 14 of section 21, deposit the entire amount so realised in the manner and within the period prescribed under section 24.

(2) Any amount deposited by any dealer under sub-section (1) shall to the extent it is not due as tax, be held by the State Government in trust for the person on whom such liability has been passed ultimately in respect of goods on the sale or purchase whereof such excess amount has been charged.

(3) Where any amount is deposited by any dealer under sub-section (1) such amount or any part thereof shall on a claim being made in that behalf be refunded in such manner as may be prescribed to the person on whom liability of such amount has been passed ultimately.

Provided that no such claim shall be entertained after expiry of three years from the date of order of assessment or one year

from the date of the final order on appeal, revision or reference if any, in respect thereof, which ever is later.

- (4) Where any amount has been deposited by any dealer in accordance with provisions under sub-section (1), the dealer shall, subject to provisions of sub-section (14) of section 21, not be entitled to allow refund of such amount to the purchaser of goods.

Explanation: - The expression "Final order on appeal revision or reference" includes an order passed by the High Court or by the Supreme Court.

CHAPTER – VI

Tax Audit, Inspection, Search and Seizure

- Tax Audit 44.** (1) For the purpose of examining the correctness of tax return or returns filed by a dealer or class of dealers and to verify admissibility of various claims including claim of input tax credit made by a dealer or class of dealers, tax audit shall be made of such number of dealers as may be prescribed.
- (2) Any officer, not below the rank of an assessing authority, appointed by the State Government or the Commissioner and posted in the audit wing of the department administering this Act or any other officer authorised by the Commissioner in this behalf may, undertake tax audit of the records, stock in trade and the related documents of the dealers, who are specified or selected in the manner prescribed under sub-section (1):

Provided that no audit shall be undertaken for any assessment year after expiry of a period of three years after the end of such assessment year:

Provided further that where the officer making audit in respect of any assessment year is satisfied that the dealer has willfully suppressed any material fact leading to evasion of tax or has wrongly claimed any benefit, he may make audit for three consecutive assessment years prior to the assessment year in which audit is being conducted.

- (3) For the purpose of the tax audit, officer referred to in sub-section (1) may require the dealer to produce before him records and other documents in his office.

Provided that where it is convenient, the officer may take up tax audit in the office, business premises or warehouse of the dealer.

- (4) After completion of the tax audit, the officer making the audit shall send audit report prepared by him to the assessing authority of the dealer.

**Power to order
production of
accounts
documents and
power of entry,
inspection,
search and
seizure**

45. (1). Any officer empowered by the State Government in this behalf (hereinafter in this section referred to as the authorized officer), may for the purposes of this Act, require any dealer to produce before him any book, document or account relating to his business and may inspect, examine and copy the same and make such enquiries from the dealer as may be necessary.

Provided that books, accounts and documents of a period more than five years prior to the assessment year shall not be so required, unless in any special case, for reasons to be recorded, such officer considers it necessary.

- (2) The authorised officer may, at all reasonable times, enter and search any place of business or vehicle, vessel or other building or place where he has reason to believe that the dealer keeps or is for the time being keeping any book, register, document, account or goods relating to his business:

Provided that no residential accommodation (not being a place of business cum residence) shall be entered into, inspected or searched by such officer unless specially authorised in this behalf by the Commissioner in writing.

- (3) All books, documents, and accounts maintained by a dealer in the ordinary course of business, the goods in his possession and his place of business, vessel or vehicle shall be open to search and inspection at all reasonable times by the authorised officer.

- (4) If the authorised officer while examining any books, accounts or documents or conducting search or inspection has reason to believe that any dealer is trying to evade liability of payment of tax or other dues under this Act and that anything necessary for the purpose of an investigation into his liability may be found in any account, register or document, he may seize such account, register or document as may be necessary. The authorised officer shall forthwith grant a receipt for the same and shall return them to the dealer or the person from whose custody they were seized, within a period of ninety days from the date of seizure after having such copies or extracts taken therefrom as may be considered necessary, provided the dealer or the aforesaid person gives a receipt in writing for the account, register or document returned to him. The officer may, before returning the account, register or documents, affix his signature and his official seal at one or more places thereon, and in such case the dealer or the aforesaid person will be required to mention in the receipt given by him the number of places where the signature and seal of such officer have been affixed on each account, register or documents:

Provided that where a dealer has maintained any document on magnetic media or electronic media, the authorized officer, after preparing hard copies of the document and CD in duplicate and after putting his signature at various places on such hard copy and CD, return such media alongwith one copy of the hard copy and the CD:

Provided further that where intimation, for receiving seized account, register or document back, has been sent to the dealer or the person concerned and the dealer or such person, in spite of

receipt of such intimation, does not appear on the date fixed for return of such documents and consequently, where seized account, register or document is returned to the dealer or the person concerned after expiry of the period of ninety days, it shall be deemed that such account, register or document has been returned within the period of ninety days.

- (5) Notwithstanding anything contained in sub- section (4), the officer seizing any account, register or other document under that sub-section may, for reasons to be recorded by him in writing and with the prior approval of the Commissioner, retain such account, register or document for such period not extending beyond thirty days from the date of completion of all the proceedings under this Act in respect of the year for which they are relevant, as he deems necessary.
- (6) An authorised officer -
- (i) shall have the power to seal the place of business, vehicle, any box, almirah or other receptacle found on such place of business or vehicle in which he has reason to believe that any account, register or other documents or goods are kept or contained, if the owner or other person in occupation or in-charge of such office, shop, godown, vessel, vehicle, box, almirah or other receptacle leaves the place or is not available or fails or refuses to open it when called upon to do so;
 - (ii) where the owner or other person in occupation or in charge of the office, shop, godown, vessel or vehicle or the box almirah or other receptacle found in the place of business, or vehicle is present but leaves the place or after an opportunity having been given to him to do so, fails to open, as the case may be, such office, shop, godown, vessel or vehicle or the box, almirah or other receptacle, may break open the same and prepare a list of the goods and documents found therein.
- (7) No person shall tamper with any seal put under sub-section (6).
- (8) Any authorized officer while making search or inspection under this section may require any dealer or the other person to give any information likely to be in his possession or knowledge in respect of such books, documents, accounts or goods as are found at the time of search, inspection or seizure under this section.
- (9) The authorised officer who has made inspection, search or seizure of any books, accounts or documents or has investigated into the liability of tax of a dealer shall, on the basis of facts found and enquiry made, prepare a report in respect of such inspection, search, seizure or investigation and where the officer preparing the report is an officer different from the assessing authority, he shall forward a copy of such report to the assessing authority of the dealer.
- (10) Where the officer preparing the report referred to in sub-section (9), is of the opinion that liability of payment of tax by the dealer in

addition to liability of payment of tax admitted by such dealer may exceed rupees one lakh, he shall, before forwarding copy of report referred to in sub-section (9), serve the dealer with a notice stating facts to show cause why adverse inference should not be drawn on the basis of such facts. The dealer on receipt of such notice shall submit his reply to such officer in two copies. Thereafter the officer shall forward to the assessing authority a copy of report, a copy of show cause notice issued and a copy of reply received from the dealer, if submitted by the dealer, along with its comments on the reply submitted by the dealer.

(11) The provisions of section 100 and 165 of Code of Criminal Procedure, 1973 shall, as far as may be, apply in relation to any entry, or search or inspection under this section, as they apply in relation to any inspection or search under the said code.

Explanation: In calculating the period specified in sub-section (4) the period, during which proceedings under this Act remain stayed under the orders of any Court or authority, shall be excluded.

Power of search, inspection and seizure in case of a person other than dealer

46. Where a person carries on any activity ancillary or incidental to or in connection with business of a dealer, any officer authorized under sub-section (1) of section 45, for the purpose of investigation into tax liability of a dealer, subject to provision of sub-section (11) of section 45, may exercise powers under sub-section (1) to sub-section (10) of the said section.

Explanation: For the purposes of this section, following persons shall be deemed to carry on activities ancillary or incidental to or in connection with the business of a dealer:

- (i) broker or canvassing agent who acts as mediator between purchaser and seller of goods; or
- (ii) transporter or any other carrier or a forwarding agent of goods; or
- (iii) person who fabricates or manufactures any goods for a dealer; or
- (iv) person who takes delivery of goods or who dispatches goods on behalf of a dealer; or
- (v) person who holds in custody any goods belonging to a dealer; or
- (vi) person who handles goods of a dealer in any other capacity.

Power to seek information and to issue summons

47. (1) Any officer, not being an officer below the rank of an assessing authority, may require any dealer or other person to furnish any information which may be, or is in his knowledge or possession.

(2) An officer under this Act shall have the same powers as are vested in a court under the Civil Procedure Code 1908, when trying a suit in respect of following matters, namely -

- (a) Enforcing the attendance of any person and examining him on oath or affirmation;
- (b) Compelling the production of documents; and

- (c) Issuing commission for the examination of witness;
and any proceeding before any of the officers aforesaid shall be judicial proceeding within the meaning of section 193 and 228 and for the purpose of section 196 of the Indian Penal Code.
- (3) Summons for the production of documents or the attendance of any person shall be issued in the prescribed form.

**Power to
seize goods**

48. (1) An officer authorised under sub-section (1) of section 45 shall have the powers to seize any goods -
- (i) which are found in a dealer's place of business, vehicle, vessel or any other building or place; or
 - (ii) which, such officer has reason to believe to belong to the dealer and which are found in any place of business, vehicle, vessel or any other building or place, but are not accounted for by the dealer in his accounts, registers or other documents maintained in the ordinary course of his business.
- Provided that a list of all the goods seized under this sub-section shall be prepared by such officer and be signed by the officer and not less than two witnesses.
- (2) Where any officer referred to in sub-section (1) has reason to believe that the goods found in any vehicle, vessel, building or place are not traced to any bonafide dealer or that it is doubtful if such goods are properly accounted for by any dealer in his accounts, registers or other documents, maintained in the ordinary course of his business, he shall have power to seize such goods, and the remaining provisions of this section shall mutatis mutandis apply in relation to such seizure.
 - (3) An officer seizing the goods under sub-section (1) shall take all the measures necessary for their safe custody and forward the list, referred to in the proviso to sub-section (1), along with other documents relating to the seizure to the assessing authority concerned.
 - (4) The said assessing authority shall serve on the dealer or, as the case may be, the person in charge of the goods at the time of seizure (hereinafter in this section referred to as the person in charge) a notice in writing requiring him to show cause, why a penalty should not be imposed.
 - (5) If such authority, after taking into consideration the explanation, if any, of the dealer or, as the case may be, the person in charge and giving him an opportunity of being heard, is satisfied that the said goods were omitted from being shown in the accounts, registers and other documents referred to in sub-section (1), it shall pass an order imposing a penalty not exceeding forty per cent of the value of such goods, as he deems fit.
 - (6) A copy of the order imposing penalty under sub-section (5) shall be served on the dealer or, as the case may be, the person in charge.
 - (7) The officer seizing the goods shall serve on the dealer or, as the case may be, the person in charge an order in writing mentioning the fact of such seizure and indicating the amount, not exceeding such amount as would be sufficient to cover the penalty likely to be

imposed, on deposit whereof in cash, the goods so seized may be released in favour of the dealer or, as the case may be, the person in charge:

Provided that the Commissioner or such other officer, not below the rank of a Deputy Commissioner, as may be authorised in this behalf by the Commissioner, may, for sufficient reasons to be recorded in writing, direct that the goods be released without any deposit or on depositing such lesser amount, or furnishing security in such form other than cash or indemnity bond, as he may deem fit:

Provided further that in case of a person, who is not a registered dealer and against whom penalty order referred to in sub-section (7) has been passed, filing of return by such person and assessment of tax on him may not be necessary.

- (8) The penalty or such part thereof as remains after adjustment of any amount deposited under sub-section (7) shall be deposited in the prescribed manner within thirty days of the date of service of the copy of the order imposing the penalty. In default, the assessing authority shall cause the goods to be sold in such manner as may be prescribed and apply the sale proceeds thereof towards the penalty imposed, and subject to the provisions of section 40, refund the balance, if any, to the dealer or, as the case may be, to the person-in-charge.
- (9) Where the officer seizing the goods, before forwarding the list and other documents referred to in sub-section (3), or the assessing authority at any time thereafter, is of the opinion that the goods are subject to speedy and natural decay or where the tax assessed or penalty imposed, as the case may be, is not deposited in accordance with the provisions of this Act, the officer seizing the goods or the assessing authority, as the case may be, may, without prejudice to any other action that may be taken in accordance with other provisions of this Act, cause the goods to be sold by public auction in the prescribed manner. The sale proceeds of such goods shall be adjusted towards the expenses of tax assessed or penalty imposed. The balance, if any, shall be refunded to the dealer or, as the case may be, the person in-charge in accordance with the provisions of sub-section (8).
- (10) If the amount deposited under sub-section (7) is more than the amount of penalty imposed under sub-section (5), the excess amount so deposited shall be refunded to the dealer or, as the case may be, the person in-charge by the authority with whom it was so deposited, in accordance with the provisions of section 40.

CHAPTER- VII

Check-Post

Establishment of check-posts and barriers

49. (1) The State Government, if it is of opinion that it is necessary so to do with a view to preventing evasion of tax or other dues payable under this Act in respect of -
- (i) sale of goods brought or received from outside the State;

- (ii) sale of goods processed or manufactured by using goods brought or received from outside the State; or
- (iii) sale or purchase of goods produced or manufactured within the State,

may by notification in the Gazette, direct the establishment of check-posts or barriers at such places within the State, as may be specified in the notification.

- (2) Check-posts or barriers established under the erstwhile Act shall, on commencement of this Act, be deemed to be check-posts and barriers established under this Act.

Import of goods into the state by road against declaration

- 50.** (1) Any person (hereinafter in this section referred to as the importer) who intends to bring, import or otherwise receive, into the State from any place outside the State any goods other than the goods named and described in schedule-I in such quantity or measure or of such value, as may be notified by the State Government in this behalf, in connection with business, shall obtain the prescribed form of declaration, in the prescribed manner from the assessing authority having jurisdiction over the area, where his principal place of business is situated or, in case there is no such place, where he ordinarily resides:

Provided that where the importer intends to bring, import or otherwise receive such goods otherwise than in connection with business, he may, at his option, in the like manner obtain the prescribed form of certificate.

- (2) (a) where such goods are imported, brought or otherwise received into the state by registered dealer, he shall carry such declarations or documents as may be prescribed.
- (b) where the goods are imported, brought or otherwise received into the state by a person otherwise than in connection with business, he may likewise carry such certificates and documents as may be prescribed.
- (3) The driver or other person in-charge of any vehicle carrying any goods referred to in the preceding sub-sections shall stop the vehicle at every such check-post or barrier or, when so required by an officer authorised under sub-section (1) of section 45 or sub-section (1) of section 48, at any other place, and keep it stationary for so long as may be considered necessary by the officer in-charge of the check-post or barrier or the officer authorised under sub-section (1) of section 45 or sub-section (1) of section 48, as the case may be, and allow him to search the vehicle and inspect the goods and all documents referred to in the preceding sub-sections and shall, if so required, give his name and address and the names and addresses of the owner of the vehicle and of the consignor and the consignee of the goods.
- (4) Where the officer making the search or inspection under this section finds any person transporting or attempting or abetting to transport any goods to which this section applies without being covered by the proper and genuine documents referred to in the preceding sub-sections and if, for reason to be recorded, he is satisfied after giving such person an opportunity of being heard that such goods were

being so transported in an attempt to evade assessment or payment of tax due or likely to be due under this Act, he may order detention of such goods

- (5) The provisions of sub-sections (3), (7), (8), (9) and (10) of section 48 shall mutatis mutandis apply to goods detained under sub-section (6), as they apply to goods seized under that section.

**Import of
goods into the
state by rail,
air, post, river
or rope way**

51. (1)(a) Where any taxable goods are consigned by rail, air or post from a place outside the State for delivery to a dealer inside the State, the concerned authority shall not deliver the goods to the dealer or consignee unless he furnishes or causes to be furnished to such authority a declaration in prescribed form along with the other documents as may be prescribed.

(b) where a taxable goods are consigned by river or rope way from a place outside the state for delivery to a dealer inside the state the receiving dealer shall not obtain or cause to be obtained delivery thereof unless he furnishes or causes to be furnished to such officer, as may be authorized in this behalf by the Commissioner, prescribed declaration and documents.

(c) after taking delivery, shall not carry goods away or cause the goods to be carried away from the railway station, air port, post office, steamer or terminal of rope way, as the case may be, unless a copy of the declaration and document as aforesaid is carried with goods:

Provided that where any courier service transports any goods by rail, river, air or post, such courier shall not obtain or cause to be obtained delivery thereof unless the dealer, importing goods, furnishes or causes to be furnished to such officer, as may be authorized in this behalf by the Commissioner, a declaration in the prescribed form referred to in clause (a) of sub-section (2) of section 50, in duplicate duly filled in and signed by him for endorsement by such officer. The courier service, after taking delivery of goods from rail, river, air or postal authority, shall carry such duplicate copy of form of declaration alongwith goods and shall deliver to the dealer alongwith goods.

- (2) Where any taxable goods are brought into the State by rail, river or air as personal luggage, the person bringing them shall carry with him the prescribed form of declaration duly filled in and signed by the importer, and the importer shall submit the same for endorsement by the officer authorised under sub-section (1) by the next working day.
- (3) Where any person intends to bring, or receive into the State, from any place outside the State by rail, river, air or post any taxable goods otherwise than in connection with business and obtains the form of certificate prescribed under sub-section (2) of section 50, the provision of sub-section (1) and (2) shall mutatis-mutandis apply as if word "Certificate" is substituted for the word declaration used therein.
- (4) Where an officer authorised under sub-section (1) of section 45 or an officer referred to in sub-section (1) of section 48 or section 50 while making inspection or search finds any taxable goods, in

respect of which declaration before the officer authorised under sub-section (1) has not been made or goods being carried as personal luggage are not accompanied by the form of declaration referred to in clause (a) of sub-section (1) and where after giving reasonable opportunity of being heard to the person in charge of the goods at the time of inspection of goods or the owner of the goods, as the case may be, such officer (officer making inspection or search) is satisfied that such taxable goods are being imported in an attempt to evade payment of tax under this Act, he may, after recording such reasons, detain the goods.

- (5) Provisions of sub-sections (3), (7), (8), (9) and (10) of section 48 shall mutatis mutandis apply to such detention of goods as they apply to goods seized under that section.
- (6) Notwithstanding anything contained in sections 50 and this section, the State Government may, in public interest and for sufficient reasons, relax the requirement of furnishing of declaration or certificate referred to in aforesaid sections to such extent as it may notify.

Issue of authorisation for transit of goods through the state

52. (1). When a vehicle coming from any place outside the state and bound for any other place outside the state, and carrying goods referred to in sub-section (1) of section 51, passes through the state, the driver or other person in charge of such vehicle shall obtain in the prescribed manner an authorisation for transit of goods from the officer in charge of the first check post or barrier after his entry into the state and deliver it to the officer in charge of the last check post or barrier before his exit from the state, failing which it shall be presumed that the goods carried thereby have been sold within the state by the owner or person in charge of the vehicle;

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

Explanation - For the purpose of this section, the hirer of the vehicle shall also be deemed to be the owner of the vehicle.

Power to seek assistance from police

53. An officer exercising powers under the provisions of sections 45, 48, 50, 51, or 52 may take the assistance of police or other officers or officials of the State.

CHAPTER –VIII

Penalty

Penalties in certain cases

- 54-(1) The assessing authority, if he is satisfied that any dealer or other person, as the case may, has committed the wrong described in column-(2) of the table below, it may, after such inquiry, if any, as it may deem necessary and after giving dealer or person reasonable opportunity of being heard, direct that such dealer or

person shall, in addition to the tax, if any, payable by him, pay by way of penalty, a sum as provided in column (3) against the same serial no. of the said table:

Sl.no.	Wrong	Amount of penalty
(1)	(2)	(3)
1	The dealer has without reasonable cause failed to deposit the tax due for any tax period or failed to submit the tax return for any tax period in the prescribed manner; or within the time prescribed or extended;	20 % of tax payable
2	The dealer has concealed particular of his turnover or has deliberately furnished inaccurate particulars of such turnover; or submits a false tax return under this Act or evades payment of tax which he is liable to pay under this Act	three times of amount of tax concealed or avoided
3	(i) The dealer has maintained or produced false accounts, registers or documents ; (ii) Being dealer or any other person who is required to maintain any book, account or other document, does not maintain such book, account or document as prescribed;	three times of amount of tax concealed or avoided
4	The dealer has without reasonable cause failed, to pay, within the time allowed, the tax assessed ;	20 % of tax assessed
5	The dealer has failed to issue a tax invoice or sale invoice in accordance with the provisions of this Act ;	40% of the value of goods
6	The dealer has failed to issue a challan, transfer invoice or transport memo in respect of dispatch or delivery of goods in accordance with the provisions of this Act ;	40% of the value of goods
7	Where the dealer,- (i) being liable for registration under this Act has failed to apply in the prescribed manner and within the specified time; or (ii) being liable for registration carries on or continues to carry on business – (a) after his application for registration has been rejected; or (b) after his registration certificate has been cancelled; or (c) without furnishing the security demanded for grant or continuation of registration;	Rupees one hundred per day during which business is carried
8	On demand by the officer empowered under this Act, to inspect, examine and obtain copy, the dealer or other person, as the case may be, refuses or neglects - (i) to produce any book, document or account; or (ii) to operate his computer used in connection with business; or (iii) to allow copies or print outs etc.;	A sum of rupees five thousand and five times thereof if act is repeated
9	the dealer or other person, as the case may be, obstructs or prevents an officer empowered under section 45 or section 48 or an officer in-charge of a check-post or barrier from performing any of his functions under this Act ;	A sum of rupees five thousand in case of registered dealer and five

		times thereof in case of others
10	The dealer or other person, as the case may be, refuses or neglects to furnish any information, which is in his knowledge or possession or furnishes false information ;	A sum of rupees five thousand in case of registered dealer and five times thereof in case of others
11	Where the dealer or other person, as the case may be,- (i) issues or furnishes a false or wrong certificate or form of declaration prescribed under this Act, by reason of which a tax on sale or purchase, ceases to be leviable, whether in full or in part; or (ii) issues a tax invoice or sale-invoice without actual sale of goods ; or (iii) issues a transport memo, challan or transfer invoice without actual dispatch or delivery of goods ; or (iv) receives a tax invoice or sale-invoice without actual purchase of goods; or (v) receives a transport memo, challan or transfer invoice without actual receipt of goods; or (vi) issues or furnishes a false tax invoice, sale invoice , certificate or declaration, by a reason of which a tax on sale or purchase ceases to be leviable under this Act or rules made thereunder	50 % of disclosed value of goods
12	Where a dealer or other person, as the case may be,- (i) makes use of a prescribed form of declaration or certificate which has not been obtained by him or by his principal or agent in accordance with the provisions under this Act ; or (ii) transfers a prescribed form of declaration or certificate to any other person except for lawful purposes; or (iii) possesses a prescribed form of declaration or certificate which has not been obtained by him in accordance with the provisions of this Act ;	50 % of disclosed value of goods
13	Where the dealer or other person, as the case may be,- (i) closes or leaves place of business with an intention of avoiding inspection under this Act; or. (ii) being a driver or person in-charge of vehicle leaves the vehicle with an intention of avoiding inspection of goods and documents; or (iii) willfully does not stop the vehicle carrying taxable goods required by an officer empowered to inspect goods;	A sum of rupees five thousand in case of registered dealer and five times thereof in case of others
14	Where the dealer or any other person, as the case may be, - (i) imports or attempts to import or abets the import of	40% of disclosed

		input tax credit
20	Being transporter, carrier or other transport agent carries or transports goods without filling relevant columns on a transport memo, challan or transfer invoice;	Rupees five thousands
21	Dealer or any other person, as the case may be, tampers with any seal put under sub-section 6 of section 45	Rupees twenty five thousands
22	Dealer or any other person who, otherwise acts in contravention of the provisions of this Act or rules made thereunder,	Rupees ten thousands

EXPLANATION – For the purposes of this section -

- (I) the assessing authority includes an officer not below the rank of an officer appointed and posted by the Commissioner at a check-post or an officer empowered to exercise powers under sections 45, 46, 47, 48, 50, 51 and 52 of this Act;
 - (II) where amount of penalty is to be determined on the basis of turnover of goods, value of goods shown or determined whichever is higher, shall be deemed to be turnover of taxable goods and relating to taxable sale or purchase.
 - (III) for the purposes of this section value of goods written on such documents and if value is not written then estimated market value prevalent at the relevant time in local market, shall be deemed to be the turnover of sales or purchases of taxable goods relating to taxable sale or purchase.
- (2) A copy of the order passed under sub-section (1) shall be served on the dealer or person concerned and the amount imposed by way of penalty shall be deposited by such dealer or person in such manner as may be prescribed within thirty days of such service, failing which it may be recovered in the manner provided under section 33.
 - (3) Where any penalty order passed by assessing authority either under this section or any other section, is quashed by any authority or court in exercise of powers vested in it on the ground that show cause notice issued to dealer or any other person is not in accordance with the provisions of this Act, the assessing authority may pass fresh order of penalty after issuing proper notice within one year from the date of receipt of such order.
 - (4) where in case of a sick unit as referred to in section 71, any penalty order has been passed ex parte and appeal has not been filed against such order, if the State Government issues direction to the assessing authority to set aside such order and to pass fresh order of penalty, assessing authority shall pass such fresh order of penalty within a period of one year from the date on which it receives the order or direction by due process from the State Government.

CHAPTER IX
Appeal, Review and Revision

- Appeal** 55. (1) Any dealer or other person aggrieved by an order made by the assessing authority, other than an order mentioned in sub-section (7) of section 48 may, within thirty days from the date of service of the copy of the order, after serving a copy of appeal memo on the assessing authority or the Commissioner, appeal to such authority (hereinafter referred to as appellate authority), as may be prescribed:

Provided that where due to any reason, any appellant fails to serve a copy of appeal memo on the assessing authority before filing appeal, he may serve copy of such appeal memo within a time of one week from the date on which appeal has been filed or within such further time as the appellate authority may permit.

- (2) Where an appeal has been filed against an order referred to in sub-section (1), the Commissioner may apply to the appellate authority to examine the legality and propriety of such order on such point as may be mentioned in the application. A copy of such application shall be served on the appellant and shall be decided along with the appeal filed by the appellant:

Provided that no application for examination of legality and propriety shall be entertained after the disposal of appeal:

Provided further that where the Commissioner has filed an application, the appellant shall not be entitled to withdraw appeal filed by him.

Explanation - For the purposes of this section Commissioner includes an officer authorised to file appeal on behalf of the Commissioner before the Tribunal under section 57.

- (3) No appeal against an assessment order under this Act shall be entertained unless the appellant has furnished satisfactory proof of the payment of the amount of tax or fee due under this Act on the turnover of sale or purchase, or both, as the case may be, admitted by the appellant in the tax returns filed by him or at any stage in any proceedings under this Act, whichever is greater.
- (4) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.
- (5) The appellate authority may, after calling for and examining the relevant records and after giving a reasonable opportunity of being heard to the appellant and the Commissioner-
- (a) in the case of an order of assessment and penalty.-
- (i) confirm or annul such order ; or
 - (ii) vary such order by reducing or enhancing the amount of assessment or penalty, as the case may be, whether such reduction or enhancement arises from a point raised in the grounds of appeal or otherwise ; or
 - (iii) set aside the order and direct the assessing authority to pass a fresh order after such inquiry as may be specified; or

- (iv) direct the assessing authority to make such inquiry and to submit its report within such time as may be specified in the direction or within such extended time as it may allow from time to time, and on the expiration of such time the appellate authority may, whether the report has been submitted or not decide the appeal in accordance with the provisions of the preceding sub-clauses; or
- (b) in the case of any other order-
 - (i) confirm, cancel or vary such order; or
 - (ii) set aside the order and direct the assessing authority to pass a fresh order after such inquiry as may be specified:

Provided that nothing in this sub-section shall preclude the appellate authority from dismissing the appeal at any stage with such observations as it deems fit where the appellant applies for withdrawal of the same and no request for examination of legality or propriety of order under appeal has been made by the Commissioner.
- (6) The appellate authority, may, on the application of the appellant and after giving the Commissioner a reasonable opportunity of being heard stay, except the operation of order appealed against, the realisation of the disputed amount of tax, fee or penalty payable by the appellant till the disposal of the appeal :

Provided that –

 - (i) where an order under appeal involves dispute about tax, fee or penalty, no stay order shall remain in force after thirty days from the date on which the same has been granted, if the appellant does not furnish security to the satisfaction of the assessing authority for payment of the amount, the realisation whereof has been stayed within the aforesaid period of thirty days;
 - (ii) no such application shall be entertained unless it is filed along with the memorandum of appeal under sub-section (1);
- (7) Section 5 of the Limitation Act, 1963, shall apply to appeals or other applications under this section.
- (8) The appellate authority shall be under the superintendence and control of the Commissioner:

Provided that in the exercise of such superintendence and control, no order, instructions or directions shall be given by the Commissioner so as to interfere with the discretion of the Appellate Authority in the exercise of its appellate functions.
- (9) For the purposes of this section service of an order passed by appellate authority under this section and service of memo of appeal on the State Representative, as defined in the rules framed under this Act, shall be deemed to be service on the Commissioner.
- (10) All appeals arising out of the same cause of action in respect of an assessment year, as far as possible, shall be heard and decided together.

Revision by the Commissioner 56. (1) The Commissioner or such other officer not below the rank of Joint Commissioner, as may be authorised in this behalf by the State Government by notification, may call for and examine the record relating to any order, passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order with respect thereto as he thinks fit.

(2) No order under sub-section (1) affecting the interest of a party adversely shall be passed unless he has been given a reasonable opportunity of being heard.

(3) No order under sub-section (1), shall be passed-

- (a) to revise an order, which is or has been the subject matter of an appeal under section 55, or an order passed by the appellate authority under that section.
- (b) before the expiration of sixty days from the date of the order in question;
- (c) after the expiration of four-years from the date of the order in question.

Explanation- Where the appeal against any order is withdrawn or is dismissed for non-payment of fee payable under section 72 or for non-compliance of sub-section (3) of section 55, the order shall not be deemed to have been the subject-matter of an appeal under section 55;

(4) No dealer or any other person, aggrieved by an order against which appeal lies under section 55, shall be entitled to present an application for review of such order under this section.

Tribunal 57. (1) There shall be a Tribunal consisting of such members including a President as the State Government may, from time to time, deem it necessary to appoint from amongst-

- (a) the persons who are qualified to be the judge of the High Court;
- (b) the persons belonging to the Uttar Pradesh Trade Tax Services or the Uttar Pradesh Commercial Tax Services who hold or have held a post not below the rank of Joint Commissioner:

Provided that-

(i) where the Tribunal consists of one or more persons who is or are member or members of the U.P. Higher Judicial Service, then he or senior most amongst them shall be appointed as the President.

(ii) no person shall be appointed from amongst the advocate unless-

(A) he has paid Income Tax on his income from his legal profession in each of ten consecutive years preceding such appointment;

(B) he has attained the age of fifty years on the date of appointment.

(C) such Members from amongst Advocates shall be appointed for a term of three years from the date of

appointment or till he attains the age of 60 years which ever is earlier.

- (2) The State Government may prescribe such other qualification or conditions for the appointment of the President and the other members of the Tribunal as it may deem fit.
- (3) The provisions of rule 56 of the U.P. Fundamental Rules shall continue to apply to every member of the Tribunal including the President whether appointed under the erstwhile Act or under this Act on or after the date of the commencement of this Act, as they apply to any other Government servant.
- (4) Any person aggrieved by an order passed under section 55, section 56, a decision under section 59 or a direction under the proviso of sub-section (7) of section 48 may, within ninety days from the date of service of the copy of such order, decision or direction on him, prefer an appeal to the Tribunal.

Provided that where order passed by the appellate authority under section 55 is an order in respect of demand of any security, not being security demanded for release of goods seized under any provisions of this Act, appeal under this section may be filed only after furnishing security, fixed by the appellate authority under section 55.

Provided further that where the disputed amount of tax, fee or penalty does not exceed two thousand rupees and no question of law is involved, the appellant may, at his option, request the Tribunal in writing for summary disposal of his appeal, whereupon the Tribunal may decide the appeal accordingly.

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

- (5) The manner and procedure of summary disposal of appeal shall be such as may be prescribed.
- (6) Section 5 of the Limitation Act, 1963 shall apply to appeals or other applications under this section.
- (7) The Tribunal may at any stage, after giving the appellant a reasonable opportunity of being heard, dismiss the appeal.
- (8) The Tribunal may, if it has not already dismissed the appeal under sub-section (7), after calling for and examining the relevant records, and after giving the parties a reasonable opportunity of being heard or, as the case may be, after following the procedure prescribed under sub-section (5):
 - (a) confirm, cancel or vary such order, or
 - (b) set aside the order and direct the assessing or appellate or revising authority or the Commissioner as the case may be, to pass a fresh order after such further enquiry, if any, as may be specified, or
 - (c) order such amount of tax, fee or penalty or other money as may have been realized in excess of the due amount to be refunded according to the provisions of this Act.

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

Provided that-

- (i) where appellate authority under section 55 has set aside an order of assessment or penalty and has remanded the case to the assessing authority, for decision afresh, and the appellant under this section is a person other than the Commissioner or the State Government, for the purpose of this section, disputed amount of tax or penalty shall be deemed to be the same which had been before appellate authority under section 55; and
- (ii) subject to the provision under sub clause (i) where order appealed against does not involve any dispute about quantum of tax, fee or penalty, on the application of the appellant the Tribunal may stay the operation of such order till the disposal of appeal subject to such conditions including a condition of furnishing of a security in cash within the time allowed;

Provided further that-

- (a) no application for stay of recovery of any disputed amount of tax, fee or penalty shall be entertained unless the applicant has furnished satisfactory proof of the payment of not less than one third of such disputed amount in addition to the amount required to be deposited under sub-section (3) of section 55.
 - (b) the Tribunal may, for special and adequate reasons to be recorded in writing, waive or relax the requirement of clause (a) regarding payment of the one-third of such disputed amount.
- (10) Where the Tribunal passes an order under this section for the stay of recovery of any tax, fee or penalty or for the stay of the operation of any order appealed against and such order of the Tribunal results in the stay of recovery of any tax, fee or penalty, such stay order of the Tribunal shall not remain in force for more than thirty days unless the appellant furnishes adequate security to the satisfaction of the assessing authority concerned for the payment of the outstanding amount.
- (11) The members of the Tribunal shall sit in such benches of one, two or more members, as may be constituted from time to time, and do such work of the Tribunal as may, subject to sub-section (12) and the rules framed under this Act, be allotted to them, by order or in accordance with the directions of the President of Tribunal.

- (12) (a) An appeal against the order of appellate authority under section 55 shall be heard and disposed of-
- (i) by a bench of two members, where such order, not being an order passed on the application of the appellant for stay, is passed by an Additional commissioner (Appeals) or the amount of tax, fee or penalty in dispute, exceeds two lakh rupees;
 - (ii) by a single member bench, in any other case.
- (b) An appeal against a direction given under the proviso to sub-section (7) of section 48 shall be heard and disposed of by a -
- (i) bench of two members where such direction under appeal has been given by the Commissioner, Special Commissioner or an Additional Commissioner;
 - (ii) by a single member bench in any other case;
- (c) An appeal against an order under section 56 shall be heard and disposed of by a -
- (i) bench of two members where amount of tax, fee or penalty in dispute exceeds rupees two lakh or where order under appeal has been passed by the Commissioner, Special Commissioner or an Additional Commissioner;
 - (ii) single member bench in any other case;
- (d) An appeal against a decision given under section 59, shall be filed before the President and shall be heard and disposed of by a bench of three members.
- (e) The President may, if he so thinks fit,-
- (i) direct an appeal to be heard and decided by a larger bench;
 - (ii) transfer an appeal from one bench to another bench.
- (f) In a case before a bench consisting of two or more members any order other than an order finally disposing of the case may be passed by any one of the members constituting the bench.

Provided that an appeal against an order passed on an application for stay, may be disposed of finally by a single member bench.

- (13) All appeals arising out of the same cause of action in respect of an assessment year shall, as far as possible, be heard and decided together:

Provided that where anyone or more of such appeals have been heard and decided earlier, if the bench hearing the remaining appeals considers that such decision may be a legal impediment in giving relief in such remaining appeals, it may, if the earlier decision was given-

- (a) by a smaller bench or a bench of equal strength, recall such earlier decision and proceed to decide all the appeals together;
- (b) by a larger bench, refer such remaining appeals to such larger bench having jurisdiction and thereafter such

larger bench may recall such earlier decision and proceed to decide all the appeals together.

(14) The place of sitting and procedure of, and the manner of presenting appeals and other documents to the Tribunal shall, subject to the rules framed under this Act, be such as the Tribunal may deem fit to adopt.

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

- (a) if he was not a member of such bench, give his own opinion or refer the case for the opinion of another member, whereupon the case shall be decided in accordance with such opinions; or
- (b) form a larger bench.

**Revision by
High Court
in special
cases**

58. (1) Any person aggrieved by an order made under sub-section (7) or sub-section (8) of section 57, other than an order under sub-section (4) of that section summarily disposing of the appeal, may, within ninety days from the date of service of such order, apply to the High Court for revision of such order on the ground that the case involves any question of law.

(2) The application for revision under sub-section (1) shall precisely state the question of law involved in the case, and it shall be competent for the High Court to formulate the question of law or to allow any other question of law to be raised.

(3) Where an application under this section is pending, the High Court may, on an application in this behalf, stay recovery of any disputed amount of tax, fee or penalty payable, or refund of any amount due under the order sought to be revised:

Provided that no order for stay or recovery of such disputed amount shall remain in force for more than thirty days unless the applicant furnishes adequate security to the satisfaction of the Assessing Authority concerned.

(4) The High Court shall, after hearing the parties to revision, decide the question, of law involved therein, and where as a result of such decision, the amount of tax, fee or penalty is required to be determined afresh, the High Court may send a copy of the decision to the Tribunal for fresh determination of the amount, and the Tribunal shall thereupon pass such orders as are necessary to dispose of the case in conformity with the said decision.

(5) All applications for revision of orders passed under section 57 in appeals arising out of the same cause of action in respect of an assessment year shall be heard and decided together:

Provided that where any one or more of such applications have been heard and decided earlier, if the High Court, while hearing the remaining applications, considers that the earlier decision may be a legal impediment in giving relief in such remaining applications, it may recall such earlier decision and may thereafter proceed to hear and decide all the applications together.

- (6) The provisions of section 5 of the Limitation Act, 1963, shall *mutatis mutandis*, apply to every application, for revision under this section.
Explanation- For the purpose of this section, the expression "any person" includes the Commissioner and the State Government.

**Determination
of disputed
question by the
Commissioner**

59. (1) If any question arises, otherwise than in a proceedings pending before a Court or before an authority under this Act, whether, for the purposes of this Act-
- (a) any person or association of persons, society, club, firm, company, corporation, undertaking or Government Department is a dealer; or
 - (b) any particular thing done to any goods amounts to or results in the manufacture of goods within the meaning of that term; or
 - (c) any transaction is a sale or purchase and, if so, the sale or purchase price, as the case may be, therefor; or
 - (d) any particular dealer is required to obtain registration; or
 - (e) any tax is payable in respect of any particular sale or purchase and, if so, the rate thereof,
- the person or the dealer concerned may, after depositing the fee specified in section 72, submit an application to the commissioner, along with such documents as may be prescribed.
- (2) The Commissioner shall, after giving the applicant an opportunity of being heard, decide as he deems fit the question so arising:
Provided that, before giving such decision, the Commissioner may, in his discretion, ask an officer subordinate to him to make such inquiries as he considers necessary for the decision of the question.
- (3) No decision of the Commissioner under this section shall affect the validity or operation of any order passed earlier by any assessing authority, appellate authority, revising authority or the Tribunal.
- (4) No question which arises from an order already passed, in the case of applicant, by any authority under this Act or the Tribunal, shall be entertained for determination under this section.
- (5) Except as provided in sub-section (3), a decision given by the Commissioner under this Section shall, subject to the provisions of sections 59 and 60 be final and binding on the applicant, the Assessing Authority and the Appellate Authority.
- (6) A copy of the decision given under this section shall be sent to the applicant and to the assessing authority concerned.

**Orders against
which no
appeal or
revision shall
lie**

60. No appeal and no application for revision shall lie against-
- (a) an order or notice initiating an inquiry for assessment or re-assessment;
 - (b) any order or action under section 45, sub-sections (1), (2) or (7) of section 48, sub-section (6) of section 50 or an order of seizure of goods; and
 - (c) any direction issued by the Commissioner in exercise of powers as may be prescribed.

**Additional
evidence in
appeal**

61. The assessee shall not be entitled to produce additional evidence, whether oral or documentary, before the appellate authority or the Tribunal except where the evidence sought to be adduced is an evidence, which the assessing authority had wrongly refused to admit or which after exercise of due diligence was not within his knowledge or could not be produced by him before the assessing authority, and in every such case, upon the additional evidence being taken on record, reasonable opportunity for challenge or rebuttal shall be given to the assessing authority.

CHAPTER- X

Settlement Commission

**Constitution of
the Settlement
Commission**

62. (1) There shall be a Settlement Commission consisting of a Chairman and such number of other members as may be determined by the State Government.
Provided that the Commission shall comprise at least one member from each category mentioned in clauses (i) and (ii) of sub-section (4).
- (2) The Commission shall be located at the State headquarter but the Commission for discharge of its functions, may, at its option, hold its camp at any public place anywhere inside the State.
- (3) A person shall not be qualified for appointment as Chairman, unless he -
(i) has been a judge of a High Court, or
(ii) has, for at least one year, held the post of the President of Tribunal under this Act or the erstwhile Act;
- (4) A person shall not be qualified for appointment as member unless he,
(i) has held the post of Member Tribunal or Additional Commissioner under this Act or under the erstwhile Act; or
(ii) he is or has been a member of U.P. Higher Judicial Service.
- (5) The chairman and every other Member shall be appointed by the State Government but the member belonging to Higher Judicial Service shall be appointed after consultation with the Chief Justice of the High Court for which proposal will be initiated by the State Government:
Provided that the Chairman or member shall not assume the office unless he has resigned or retired from, as the case may be, the Judgeship of the High Court, or the Uttar Pradesh Higher Judicial Service or any other service in which he was serving.
- (6) The Chairman and member shall hold office as such for a term of three years from the date he enters upon his office:
Provided that no Chairman or other member shall hold office as such after he has attained.
(a) in the case of Chairman the age of sixty five years, and
(b) in the case of any other Member the age of sixty two years.

- (7) The Chairman or any other member may by notice in writing under his hand addressed to the Governor resign his office.
- (8) The Chairman or any other member shall not be removed from his office except by an order made by the Governor on the ground of proved misbehavior or incapacity after (an inquiry made by the Chief Justice or such Judge of the High Court as may be nominated by the Chief Justice,) in the prescribed manner, in which such Chairman or other member as the case may be, has been informed of the charges against him and given reasonable opportunity of being heard in respect of those charges.
- (9) On ceasing to hold office, the Chairman or other member shall not appear, act or plead before any authority under this Act.
- (11) The salaries and allowances payable to the Chairman and other member and the other conditions of their service shall be such as may be determined by the State Government from time to time.
- (12) Where the Chairman is unable to discharge his functions owing to absence, illness or any other cause, or where any vacancy occurs in the office of the Chairman by reason of his death, resignation or otherwise, the President of Tribunal shall discharge the function of the Chairman until the Chairman resumes his duties or as the case may be, a Chairman appointed in accordance with the provisions of this Act assumes charge of his office.

Staff of the Settlement Commission

- 63.** (1) The State Government shall determine the nature and categories of the officers and other employees required to assist the Settlement Commission (hereinafter referred to as the Commission) in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit.
- (2) The officers and other employees of the Commission shall discharge their function under the general superintendence of the Chairman.
- (3) The salaries and allowances and conditions of service of the officers and other employees of the Commission shall be such as may be prescribed.

Reference of case to the Settlement Commission

- 64.** (1) Any dealer or other person who has been served with a notice –
- (i) under sub-section (10) of section 45 and who is suspected to have evaded payment of tax exceeding one lakh rupees or such larger amount of tax as the State Government may by notification in the Gazette specify; or
 - (ii) for imposition of penalty either under sub-section (4) of section 48 or under entries at serial numbers 2 and 14 of the table under sub-section (1) of section 54 and where the maximum amount of penalty that can be imposed is likely to exceed one lakh rupees,
- may file a petition before the Commission for settlement of amount of tax that may be assessed or amount of penalty that may be imposed or both, as the case may be, within thirty days from the date of receipt of such notice after giving intimation to the authority who has issued such notice.

Provided that the Commission may, in appropriate cases, accept the application after expiry of period of thirty days but before expiry of period of ninety days where the assessing authority has not passed order of assessment or penalty, as the case may be, in pursuance of such notice.

- (2) The petition, in the prescribed form and manner along with such other documents as may be prescribed, shall be addressed to the Chairman of the Commission and shall be submitted in the office of the Commission along with satisfactory proof of deposit of fee of five thousand rupees.

Procedure to be adopted by the Commission

65. (1) The Chairman may from time to time constitute bench of two members for the disposal of the settlement cases received under section 64.

- (2) A bench of two members shall include each category of members mentioned in clauses (i) and (ii) of sub section(4) of section 62.

Provided that Chairman may nominate himself as one of the members of the bench.

- (3) The petition referred to in section 64 shall be placed before the bench to which it has been marked by the Chairman and where the bench, after giving reasonable opportunity of being heard to the petitioner and the representative officer of the Commissioner, is of the opinion that prima facie case for settlement is made out, it shall, subject to provision under sub-section (4), –

(i) order for registration of the case; and

(ii) stay the proceedings before the assessing authority in the case.

- (4) Where after giving reasonable opportunity of being heard as provided under sub-section (3), if the Commission is of the opinion that a case for settlement is not made out, it shall reject the petition.

Provided that where petition presented is incomplete, the Commission shall not reject the petition if the petitioner removes defects within the time allowed by the Commission.

- (5) Where a case for settlement has been registered, the Commission shall order to call for the report in the matter from the authority who has issued notice on the basis of which settlement case has been registered and such officer shall submit its report within thirty days of receipt of the direction from the Commission or within such extended time as the Commission may allow.

- (6) Upon receiving the report referred to in sub-section (5) the Commission after giving reasonable opportunity of hearing to both parties and examining the records shall, by an order in writing, determine the amount of tax or penalty or both, as the case may be, which in its opinion the petitioner is in the facts and circumstances of the case, liable to pay as settlement amount.

- (7) For the purpose of sub-section (6) the Commission may call for any records from the petitioner and the Commissioner relating to the case or such other records which may be helpful in the case.

- (8) In a case of difference of opinion between the two members, the Chairman shall constitute a bench of three members including the members who have heard the case previously. Such bench after

following the procedure under sub-section (6) and sub-section (7) shall, with majority of opinion, pass the order referred to in sub-section (6).

- (9) Copies of order passed by the Commission under sub-section (6) or sub-section (8), as the case may be, shall be sent by the Commission to the officer who has issued the notice to the petitioner, the petitioner through his assessing authority, the assessing authority of the petitioner and the Commissioner and where the order passed by the Commission relates to payment of amount of tax, the assessing authority shall serve the notice of demand for the amount which is to be paid by the petitioner.
- (10) The Commission may grant facility of payment of the amount mentioned in the settlement order along with amount of interest payable, in monthly installments not exceeding twenty four subject to such conditions including condition of furnishing security to the satisfaction of the assessing authority, as it may deem fit.
- (11) Where the petitioner does not deposit the amount or any part of it mentioned in the settlement order, the same shall become recoverable as arrears of land revenue after expiry of a period of thirty days from the date of service of the order on him and the assessing authority shall recover such amount as if such amount is amount of tax assessed or penalty imposed under any other provisions of this Act.
- (12) Provisions relating to payment of interest in respect of amount of tax shall apply to the amount mentioned in the settlement order in the manner the same are applicable in the case of tax levied under any other provisions of this Act.
- (13) For all purposes under this Act, amount determined under this section shall be treated to be tax levied or amount of penalty imposed, as the case may be, and date of order made by the Commission shall be treated to be the date of order of assessment or penalty as the case may be.
- (14) Where petition of the dealer or other person has been rejected by the Commission, the assessing authority shall proceed to assess the tax or to impose the penalty in case of such dealer or other person in accordance with other provisions of this Act.
- (15) Notwithstanding anything contrary to the provisions of section 28 of this Act, where in any case of assessment a petition under this section has been rejected by the Commission, the assessment or re-assessment, as the case may be, may be made by the assessing authority before the expiry of the assessment year succeeding the assessment year in which order passed by the Commission has been received by the assessing authority by due process.
- (16) Where a case of settlement under this section is pending before the Commission, nothing shall preclude the assessing authority from making an assessment or re-assessment pertaining to the assessment years to which settlement case is pending but the assessing authority shall make its order by ignoring the material under the show cause notice before the Commission.
- (17) Where any settlement case relating to evasion of tax is pending for consideration before the Commission, if any additional notice in respect of tax evasion by the same authority or any fresh notice by

- any other authority is issued on any ground not mentioned in the earlier notice, the petitioner or the Commissioner may request the Commission to consider the material set out in such other notice provided the Commission has not made the settlement order.
- (18) The Chairman, during pendency of a case, may -
 - (i) transfer any case from one bench to the other; or
 - (ii) re-constitute the bench.
 - (19) The Commission shall not entertain a petition regarding a matter which has been subject matter of any petition filed earlier by the dealer or other person.
 - (20) No appeal, revision or review shall lie against any proceedings or any order made under this section.

CHAPTER- XI

Miscellaneous

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| Objections relating to jurisdiction | <p>66. (1) No objection as to the territorial or pecuniary jurisdiction of any assessing authority shall be allowed by any appellate or revising authority or the Tribunal, unless such objection was taken before the assessing authority at the earliest possible opportunity and unless, in the opinion of the appellate or revising authority or the Tribunal, as the case may be, a failure of justice has in fact been occasioned thereby.</p> <p>(2) Where any assessment is set aside or quashed merely on the ground of want of territorial or pecuniary jurisdiction of the assessing authority or on any other ground of a like nature not affecting the substance, any tax already paid by the assessee, to the extent of the liability admitted by him shall not be refundable to him, in consequence of the assessment being so set aside or quashed.</p> |
| Indemnity | <p>67. No suit, prosecution or other legal proceedings shall lie against any servant of the Government for anything, which is in good faith done or intended to be done under this Act or the Rules made thereunder.</p> |
| Bar to certain proceedings | <p>68. No assessment made and no order passed under this Act or the rules made thereunder by any authority shall be called in question in any Court, and, save as is provided in this Act, no appeal or application for revision or review shall lie against any such assessment or order.</p> |
| Certain information to be confidential | <p>69. (1) All particulars contained in any statement made, tax return furnished or accounts or documents produced under the provisions of this Act or of the rules made thereunder, or in any evidence given or affidavit or deposition made in the course of any proceedings under this Act or the rules made thereunder, or in any record of any proceedings relating to the recovery of a demand prepared for the purpose of this Act or the rules made thereunder, shall be treated as confidential.</p> |

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

- (a) for the purpose of any investigation of, or prosecution for any offence under this Act or under the Indian Penal Code, 1860, or under any other enactment for the time being in force; or
- (b) to any person acting in the execution of the Act or the rules made thereunder where it is necessary to disclose the same to him for the purposes of this Act or the rules made thereunder; or
- (c) occasioned by the lawful employment under this Act or the rules made thereunder of any process for the recovery of any demand; or
- (d) to a Civil Court in any suit to which the Government or a party, which relates to any matter arising out of any proceedings under this Act or the rules made thereunder; or
- (e) occasioned by the lawful exercise by a public servant of his powers under the Indian Stamps Act, 1899, to impound an insufficient stamped document; or
- (f) to an officer of Central Government or the Government of any State, for the purpose of enabling that Government to levy or realise any tax imposed by it; or
- (g) to an officer of the Central or the State Government for the purposes of making any inquiry against any Government servant; or
- (h) for purposes of audit of public accounts.

**Allotment of
commodity
code**

70. (1) The State Government may, in respect of any entry of any Schedule of this Act, prepare lists of commodities which shall be deemed covered under the said entry of the said Schedule and may, on the basis of Harmonised System of Nomenclature, as adopted by the Government of India under the Central Excise Tariff Act, 1984, allot commodity code to commodities so listed.

(2) The State Government may expand any entry of any Schedule of this Act by providing of commodities, prefixed by commodity code, listed under such entry of such Schedule under sub-section (1) of this section.

**Facility for
sick
industrial
units**

71. (1) Notwithstanding anything contained in sub-section (1) and sub-section (2) of section 33 and section 39, but subject to such conditions, as may be deemed fit to be imposed, the State Government may allow the deferment of payment of any existing or future dues payable by an industrial unit under the provisions of this Act or allow payment of such dues in such number of installments as may be specified, if such industrial unit is declared a sick unit in accordance with the guidelines specified in this behalf by an authorised body constituted by the Central Government or the State Government in connection with the rehabilitation of sick industrial units, and is approved for rehabilitation by an approved agency, appointed by the Central Government or the State Government.

- (2) Notwithstanding anything contained in section 32, the State Government may set aside an order of assessment or penalty passed ex-parte against a sick unit and direct fresh disposal of the case in accordance with the law for the time being in force.

Fees in certain cases

- 72.** (1) Subject to other provisions of this Act, the fee payable on a memorandum of appeal or other applications under this Act filed or moved shall be as follows:
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|-----|---|--|
| (a) | On a memorandum of appeal under section 55. | Two percent of the amount of tax, fee or penalty in dispute, subject to a minimum of one hundred rupees and a maximum of one thousand rupees. |
| (b) | On a memorandum of appeal under section 57. | Seven and a half per cent of the amount of tax, fee or penalty in dispute, subject to a minimum of five hundred rupees and maximum of two thousand one hundred rupees. |
| (c) | On an application under section- 59 | one hundred rupees. |
| (d) | On any other application- | |
| | (i) When addressed to the Commissioner or the Revising Authority or the Tribunal or the Settlement Commission | Twenty rupees |
| | (ii) When addressed to any other officer or authority. | Ten rupees. |
- (2) The fee referred to in this section and in any other provision of this Act shall be payable in the manner prescribed, and proof of deposit of the same shall be attached to the memorandum or application, as the case may be:
- Provided that where the amount of fee payable does not exceed one hundred rupees, the same may be paid in court fee stamps.
- (3) No fee shall be payable in respect of:-
- | | |
|-----|---|
| (a) | an application or a memorandum of appeal presented by the Commissioner or any other officer or authority appointed under this Act or the rules made thereunder. |
| (b) | an application in which only information is sought and in which no specific relief is prayed for ; and |
| (c) | an application under section 59, seeking a decision only as to the rate of tax applicable or the point at which the tax is payable. |

Transfer to defraud revenue void

- 73.** (1) Where, during the pendency of any proceedings under this Act, any person liable to pay any tax or other dues creates a charge on, or transfers any movable or immovable property belonging to him in favour of any other person with the intention of defrauding any such tax or other dues, such charge or transfer shall be void as against

any claim in respect of any tax or other dues payable by such person as a result of the completion of the said proceedings:

Provided that nothing in this section shall impair the rights of a transferee in good faith and for consideration.

- (2) Nothing in sub-section (1) shall apply to a charge or transfer in favour of a banking company as defined in the Banking Regulation Act, 1949 (Act X of 1949) or any other financial institution specified by the State Government by notification in this behalf.

Power to issue notifications

74. Where the State Government is satisfied that it is necessary so to do in the public interest, it may issue notification wherever required under the provision of this Act so as to make it effective from a date not earlier than six months from the date of issue of such notification:

Provided that no notification having the effect of increasing the liability to tax of a dealer shall be issued with retrospective effect under this section.

Information to be furnished regarding change of business

75. If any dealer to whom the provisions of sections 17 and 18 apply:-
- (a) transfers his business or any part thereof by sale, lease, leave, license, hire or in any other manner whatsoever, or otherwise disposes of his business or any part thereof; or
 - (b) acquires any business, whether by purchase or otherwise; or
 - (c) effects or comes to know of any other change in the ownership or constitution of his business; or
 - (d) discontinues his business or changes his place of business or warehouse or opens a new place of business or warehouse; or
 - (e) changes the name, style or nature of his business or effects any change in the class or description of goods in which he carries on his business, as specified in his certificate of registration; or
 - (f) enters into partnership or other association in regard to his business; or
 - (g) starts a new business or joins another business either singly or jointly with other persons; or
 - (h) in the case of a company incorporated under a statute effects any change in the constitution of Board of Directors; or
 - (i) effects any change in the particulars furnished in application for grant of registration certificate under section 17,
- he shall within thirty days of the occurring of any of the events aforesaid, inform the registering authority in the form and manner, as may be prescribed.

Power to collect statistics

76. (1) The Commissioner may, by issuing a circular or by publication in the news paper, direct that statistics be collected relating to any matter under this Act.
- (2) Any officer authorised to collect statistics may, call upon all dealers or class of dealers or a particular dealer to furnish such information,

returns or statements as may be required relating to any matter in respect of which statistics are to be collected.

- (3) Dealer shall be liable to furnish such information within the time allowed.

Tax to be first charge on property

77. Notwithstanding anything to the contrary contained in any other law for the time being in force, any amount payable by a dealer or any other person under this Act on account of tax, fee, penalty or interest, shall be the first charge on the property of the dealer or such person.

Power to remove difficulties

78. (1) If any difficulty arises in giving effect to the provisions of this Act, or by reason of anything contained in this Act to any other enactment for the time being in force, the State Government may, as occasion requires, by notified order direct that this Act shall have effect subject to such adaptations, whether by way of modification, addition or omission, as it may deem to be necessary and expedient.

Provided that no order under this sub section shall be made after the expiration of the period of two years from the date of commencement of this Act.

- (2) Provisions made by any order under sub-section (1) shall have the effect as if effected in this Act and such order may be made so as to be retrospective to any date not earlier than the date of the commencement of this Act.
- (3) Every order made under sub-section (1) shall be laid, as soon as may be, before both the Houses of the State Legislature and the provisions of sub-section (1) of section 23-A of the Uttar Pradesh General Clauses Act, 1904 shall apply as they apply in respect of rules made by the State Government under any Uttar Pradesh Act.

Board of State Taxes

79. (1) The State Government may, by notification, establish with effect from such date as may be specified in the notification, a Board to be known as the Uttar Pradesh State Tax Board to perform the functions conferred on it, by or under this Act or the rules made there under, consisting of the following members:-

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|---|-------------------------|
| (a) The Principal Secretary, Government of Uttar Pradesh in Commercial Tax Department | Chairperson ex. Officio |
| (b) Commissioner Commercial Tax, Uttar Pradesh | Member ex. Officio |
| (c) Additional Commissioner [Vidhi] Commercial Tax, Uttar Pradesh | Member ex. Officio |
| (d) Additional Director [Training], Commercial Tax, Uttar Pradesh | Member ex. Officio |
| (e) a person who has been the member of Higher Judicial Service or a Senior Tax Advocate, appointed by the State Government | Member |
| (f) a person who has been a Professor of Economics of a University, appointed by the | Member |

State Government

- (g) a person who has been Member Tribunal or Additional Commissioner, Commercial Taxes, appointed by the State Government Member
- (h) two persons from amongst tax payers of recognized category nominated by the State Government Members

(2) The members mentioned at serial no (e) to (g) of sub-section(1) shall hold office as such for a period of five years or till attaining the age of 65 years whichever is earlier.

(3) The Board shall be the apex advisory body regarding system of tax collections, changes in the rate of tax, rules and procedures, promulgation of schemes, notifications, orders and such other matters as the State Government may from time to time require from it.

(4) The recruitment and conditions of service of the members other than ex-officio members shall be such as may be prescribed.

(5) The members referred to in clause (e) to (h) of sub-section (1) shall be entitled to get such remuneration as may be determined from time to time by the State Government.

**Power to
make rules**

80. (1) The State Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for-

- (a) all matters expressly required or allowed by this Act to be prescribed;
- (b) the registration of persons engaged in the sales or purchase of goods and the imposing of condition in respect of the sale for the purpose of enforcing the provisions of this Act;
- (c) the determination of the turnover for the purpose of assessment of tax under this Act;
- (d) compelling the submission of tax returns and the production of documents and enforcing the attendance of a person and examining them on oath or affirmation;
- (e) the appointment, duties and powers of the officers appointed for the purpose of enforcing the provisions of this Act;
- (f) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act;
- (g) refunds of amounts deposited under sub-section(1) of Section 40 or 41, the procedure for such refunds and the period within which they may be made;
- (h) the custody of the goods seized under this Act; and
- (i) the matters which are to be or may be prescribed;

(3) The power to make rules conferred by this section shall be subject to condition of the rules being made after previous publication for a period of not less than four weeks:

Provided that if the State Government is satisfied that circumstances exist which render it necessary for it to take immediate action, it may make any rule without such previous publication.

- (4) All rules made under this section shall be published in the Gazette and upon such publication shall have effect immediately as if enacted in this Act.

**Repeal
and saving**

81. (1) The Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. XV of 1948) (hereinafter in this section referred to as the repealed enactment) is hereby repealed.

(2) Notwithstanding such repeal, -

- (a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made, or confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done or any action taken under the repealed enactment, and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made granted, done or taken under the corresponding provisions of this Act.
 - (b) any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act, shall not be affected and manufacturing units enjoying benefit of exemption from payment of tax under section 4-A of the repealed Act or the units enjoying facility of moratorium for payment of tax under section 8 (2-A) of the said Act shall be entitled to claim moratorium for payment of tax in accordance with provisions of section 42.
- (3) Any officer, authorised by the Commissioner under the repealed enactment, to exercise powers under section 10-B and sub-section (6) of section 13-A thereof, shall be deemed to have been authorised by the Commissioner to exercise such powers under section 56 and sub-section (7) of section 48 respectively.
- (4) Any order made or direction issued by the State Government or by the Commissioner under the repealed Act, for carrying out purposes thereof, to the extent the same are not inconsistent with the provisions of this Act, shall be deemed to have been issued under the provisions of this Act.
- (5) Any security or additional security, furnished under the provisions of the repealed Act, shall be deemed valid for the purposes under this Act only upon furnishing an undertaking from the surety to this effect in the prescribed form and manner within thirty days from the date of the commencement of this Act.

Provided that, in appropriate cases, the assessing authority may extend the time for furnishing undertaking from sureties.

- (6) The mention of particular matters in this section shall not be held to prejudice or affect general application of section 6 of the Uttar Pradesh General Clauses Act, 1904, with regard to the effect of repeals.