

**ASSAM LEGISLATIVE ASSEMBLY
(BILL NO. XII OF 2003)
(As passed by the Assembly)**

THE ASSAM VALUE ADDED TAX ACT, 2003

**An
Act**

to provide for the imposition and collection of tax on sales or purchases of goods in the State of Assam and for matters connected therewith and incidental thereto.

Preamble. Whereas it is expedient to consolidate the law relating to the imposition and collection of tax on sales or purchases of goods in the State of Assam.

It is hereby enacted in the Fifty-fourth Year of the Republic of India as follows:—

**CHAPTER — I
PRELIMINARY**

**Short title,
extent and
commencement.**

1. (1) This Act may be called The Assam Value Added Tax Act, 2003.
- (2) It extends to the whole of Assam.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette appoint, and different dates may be appointed for different provisions of this Act.

Definitions.

2. In this Act, unless the context otherwise requires,—
 - (1) "**agriculture**" with all its grammatical variations and cognate expressions, includes floriculture, horticulture, the raising of crops, grass or garden produce, and also grazing; but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forests or rearing of seedlings or plants;

Explanation.— For the purposes of this clause and clause (7), the expression "forest" means the forest to which the Indian Forest Act, 1927, in its application to the State of Assam, applies;
 - (2) "**agriculturist**" means a person who cultivates land personally for the purpose of agriculture;
 - (3) "**Appellate Authority**" means a person not below the rank of the Deputy Commissioner of Taxes authorised as such by the State Government under sub-section (4) of section 3 to hear and decide appeals under section 79;
 - (4) "**Appellate Tribunal**" means the Appellate Tribunal constituted under section 4 of this Act;
 - (5) "**appointed day**" in relation to any provision of this Act, means the date on which such provision comes into force;
 - (6) "**assessment**" means the determination of turnover of a dealer to ascertain his tax liability under this Act and includes provisional

**Central Act
16 of 1927**

assessment, self-assessment, audit assessment and reassessment made under this Act;

- (7) **"business"** includes,—
- (a) any trade, commerce or manufacture;
 - (b) any adventure or concern in the nature of trade, commerce or manufacture;
 - (c) any transaction in connection with, or incidental to or ancillary to, trade, commerce, manufacture, adventure or concern;
 - (d) any transfer of property in goods involved in execution of a works contract or transfer of the right to use any goods for any purpose or delivery of goods on hire purchase or by any system of payment by instalments;
 - (e) any occasional transaction in the nature of such trade, commerce, manufacture, adventure or concern whether or not there is volume, frequency, continuity or regularity of such transaction,

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

Explanation.— For the purpose of this clause,—

- (i) the activity of raising of man-made forest or rearing of seedlings or plants shall be deemed to be business;
 - (ii) any transaction of sale or purchase of capital goods pertaining to such trade, commerce, manufacture, adventure, concern or transaction shall be deemed to be a transaction comprised in business;
 - (iii) purchases of any goods, the price of which is debited in the books of accounts and sales of any goods, the proceeds of which is credited shall be deemed to be transactions comprised in business;
 - (iv) any transaction in connection with, or incidental or ancillary to, the business or commencement or closure of business shall be deemed to be a transaction comprised in business;
- (8) **"capital goods"** means plant, machinery, equipment, moulds and dies purchased for the purpose of manufacturing or processing of goods in the State or for use in packing of such goods excluding civil structures, and any other goods as may be notified by the Government, and used in the furtherance of any business and where the purchase thereof has been capitalized;
- (9) **"casual dealer"** means a person who whether as principal, agent or in any other capacity, carries on occasional transactions in the nature of a business involving buying, selling, supplying or distribution of goods or conducting any exhibition-cum-sale in the State, whether for cash or for deferred payment or for commission, remuneration or other valuable considerations;

- (10) "**Commissioner**" means a person appointed to be the Commissioner of Taxes for carrying out the purposes of this Act;
- (11) "**company**" and "**director**" shall have the meanings respectively assigned to them in the Companies Act, 1956;
- (12) "**contractee**" means any person for whom or for whose benefit a works contract is executed;
- (13) "**contractor**" means any person who executes a works contract and includes a sub-contractor;
- (14) "**to cultivate personally**" with all its grammatical variations and cognate expressions means to carry on any agricultural operation on one's own account,—
- (i) by one's own labour; or
 - (ii) by the labour of one's family; or
 - (iii) by servants on wages payable in cash or kind (but not in crop share), or by hired labour under one's personal supervision or the personal supervision of any member of one's family.

**Central Act
1 of 1956**

Explanation I.— A widow or a minor, or a person who is subject to any physical or mental disability or is a serving member of the armed forces of the Union, shall be deemed to cultivate land personally if it is cultivated by her or his servants or by hired labour.

Explanation II.— In the case of a Hindu Undivided Family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family;

- (15) "**dealer**" means any person, who carries on (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, commission agent, del credere agent or any other mercantile agent, by whatever name called, who for the purposes of or in connection with or incidental to or in the course of the business, buys, sells, supplies or distributes goods belonging to any principal or principals, whether disclosed or not;
 - (iii) an auctioneer, who sells or auctions 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 a nominee of the principal.

Explanation I.— Every 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 the 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,

**Central Act
3 of 1930**

shall be deemed to be a dealer for the purposes of this Act.

Explanation II.— Every local branch or office in the State of a firm registered outside the State or a company or other body corporate, the principal office or head quarter whereof is outside the State, shall be deemed to be a dealer for the purposes of this Act;

- (iv) a 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;
- (v) a 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, deferred payment or other valuable consideration;
- (vi) a person who carries on the business of delivery of goods on hire purchase or any system of payment by instalments;
- (vii) a casual dealer;
- (viii) an advertising concern or agency;
- (ix) a department of the Central Government or any State Government or a local authority, Panchayat, Municipality, Development Authority, Cantonment Board or any autonomous or statutory body or an industrial, commercial, banking, insurance or trading undertaking whether or not of the Central Government or any of the State Governments or of a local authority, if it sells, supplies or distributes goods, for cash or for deferred payment or other valuable considerations, whether or not in the course of business;
- (x) a person who, for the purposes of or in connection with or incidental to or in the course of his business disposes of any goods as unclaimed or confiscated, or unserviceable or scrap, surplus, old, obsolete or as discarded material or waste products by way of sale;
- (xi) a person who, under any provisions of this Act, has been presumed to have made sales or purchase of any goods.

Exception I.— An agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally, shall not be deemed to be a dealer in respect of such sales within the meaning of this clause but when the agriculturist is a company, a firm or a body of persons other than a Hindu Undivided Family this exception shall not be applicable.

Exception II.— An educational institution carrying on the activity of manufacturing, buying or selling of goods, in the performance of its functions for achieving its objects, shall not be deemed to be a dealer within the meaning of this clause;

- (16) **"declared goods"** means goods declared from time to time under section 14 of the Central Sales Tax Act, 1956 to be of special importance in course of inter-state trade or commerce; **Central Act 74 of 1956**
- (17) **"document"** means title deeds, writings or inscriptions and includes electronic record and data, computer programmes, computer tapes, computer discs, photographs, video tapes and the like, that furnishes evidence;
- (18) **"earlier law"** means the Assam General Sales Tax Act, 1993, or the Assam Taxation (On Luxuries) Act, 1997 as amended from time to time, and includes enactments which have validated anything done or omitted to be done under the said Acts; **Assam Act XII of 1993**
Assam Act VIII of 1997
- (19) **"firm", "partner" and "partnership"** shall have the meaning respectively assigned to them in the Indian Partnership Act, 1932; **Central Act 9 of 1932**
- (20) **"goods"** means all materials, commodities and articles and all other kinds of movable property, whether tangible or intangible, and includes,—
- (i) livestock;
 - (ii) computer software, subscriber identification module (SIM) cards and the like;
 - (iii) all materials (whether as goods or in some other form) involved in the execution of works contracts, transfer of right to use or hire purchase or payment by instalments, or those to be used in the fitting out, improvement or repair of movable or immovable property;
 - (iv) growing crops, grass, trees, plants and things attached to or forming part of the land which are agreed to be severed before the sale or under the contract of sale,
- but does not include newspapers, electricity, money, actionable claims, stocks, shares and securities;
- (21) **"goods vehicle"** means any kind of vehicle used for carriage of goods either solely or in addition to passengers and includes an auto vehicle, a bicycle, a rickshaw, a push cart including animal driven cart, an animal carrying load or a person carrying goods, a boat or a steamer or a vessel;
- (22) **"Government"** means the Government of Assam;
- (23) **"gross turnover"** means,—
- (i) for the purpose of levy of sales tax, the aggregate of the amount of sale price received or receivable by a dealer whether as principal, agent or in any other capacity in respect of sale of all taxable and tax-free goods, at all places of business in the State, during any prescribed period, including sale price in respect of sales in the course of inter-state trade or commerce or sales outside

the State or sales in the course of import into or export out of the territory of India.

Explanation.— The amount received by a dealer on account of price variation or price escalation in respect of sale or supply of goods shall be deemed to form part of Gross Turnover of the financial year during which it is actually received;

- (ii) for the purpose of levy of purchase tax, the aggregate of the amounts of purchase price paid and payable by a dealer in respect of all purchases of goods made by him during any prescribed period;
- (24) "**import**" means bringing or receiving of goods in the State, whether from other State or Union Territory in the country or from outside the country, as a result of purchase or otherwise;
- (25) "**importer**" means a dealer who makes first sale of any goods after the import of such goods in the State;
- (26) "**input tax**" means the amount paid or payable by way of tax under this Act by a purchasing registered dealer to a selling registered dealer on the purchase of goods in the course of his business;
- (27) "**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 of goods and includes a sub-lease but does not include any transfer on hire purchase or any system of payment by instalments;
- (28) "**lessee**" means any person to whom the right to use any goods for any purpose is transferred under a lease;
- (29) "**lessor**" means any person by whom the right to use any goods for any purpose is transferred under a lease;
- (30) "**manufacture**" with all its grammatical variations and cognate expressions means producing, making, extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods, but does not include any such process or mode of manufacture as may be prescribed;
- (31) "**manufacturer**" means the dealer who makes first sale of any goods after manufacture of such goods inside the State;
- (32) "**month**" means a month reckoned according to the English calendar;
- (33) "**output tax**" in relation to a registered dealer means the tax charged or chargeable under this Act in respect of the goods sold by that dealer;
- (34) "**person**" includes,—
 - (i) an individual;
 - (ii) a Hindu Undivided Family (HUF);

- (iii) an association of persons or body of individuals, whether incorporated or not;
 - (iv) a firm;
 - (v) a company;
 - (vi) the Central Government or any State Government or any Union Territory in India;
 - (vii) any local authority or any autonomous or statutory body; and
 - (viii) every artificial juridical person not falling within any of the preceding sub-clauses;
- (35) **“place of business”** means any place where a dealer carries on the 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;
 - (iv) in any case where a dealer carries on business through an agent (by whatever name called), the place of business of such agent; and
 - (v) any vehicle or vessel or any other carrier wherein the goods are stored or which is used for transporting the goods;
- (36) **“prescribed”** means prescribed by the rules made under this Act;
- (37) **“Prescribed Authority”** means any person appointed to assist the Commissioner under sub-section (2) of section 3 to whom all or any of the powers of the Commissioner for the levy and collection of tax conferred by or under this Act or rules framed thereunder has been delegated by the Commissioner under sub-section (9) of that section;
- (38) **“raw materials”** means goods used as an ingredient in the manufacture of any other goods or any article consumed in the process of manufacture which has a direct nexus with the finished product or to which the finished product can directly be attributed but it does not include stores, fuel and lubricants required in the process of manufacture;
- (39) **“registered dealer”** means a dealer registered under this Act;
- (40) **“resale”** means a sale of purchased goods,—
- (i) in the same form in which they were purchased; or
 - (ii) without using them in the manufacture of any goods; or
 - (iii) without doing anything to them which amounts to, or results in a manufacture, and the word “re-sell” shall be construed accordingly;

- (41) **“reverse input tax”** means that portion of input tax of the goods for which credit has been availed of but such goods are used subsequently for any purpose other than resale or manufacture of taxable goods or use as containers or use as packing materials of taxable goods within the State;
- (42) **“Rules”** means the rules made under this Act;
- (43) **"sale"** with all its grammatical variations and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another for cash or for deferred payment or 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) a delivery of goods on hire purchase or any system of payment by instalments;
 - (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) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
 - (vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration;
 - (vii) a transfer of property in goods by the Central Government or the State Government or any local authority or autonomous or statutory body for cash or for deferred payment or for any other valuable consideration, whether or not in the course of business,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made and the words “sell” and “buy” shall be construed accordingly.

Explanation I.— Where there is a single contract of sale or purchase in respect of goods situated in the State as well as in places outside the State, the provisions of this explanation shall apply as if there were separate contracts of sale or purchase in respect of the goods situated at each of such places.

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

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

if the agent is found in either of the cases aforesaid,—

- (i) to have sold the goods at one rate and passed on the sale proceeds to his principal at another rate; or
 - (ii) to have purchased the goods at one rate and passed them to his principal at another rate; or
 - (iii) not to have accounted to his principal for the entire collection or deduction made by him, in the sales or purchases effected by him on behalf of his principal; or
 - (iv) to have acted for a fictitious or non-existent principal;
- (44) **“sale price”** means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the dealer in respect of goods at the time of or before delivery of the goods other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged.

Explanation I.— For the purpose of this clause ‘sale price’ includes,—

- (i) the amount of duties or fees levied or leviable on the goods under the Central Excise and Salt Act, 1944 or the Customs Act, 1962 or the Assam Excise Act, 1910 or under any other enactment whether such duties or fees are paid or payable by or on behalf of the seller or the purchaser or any other person;
- (ii) in relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract, such amount received or receivable as consideration;
- (iii) in relation to the delivery of goods on hire purchase or any system of payment by instalments, the amount of valuable consideration payable to a person for such delivery;
- (iv) in relation to transfer of the right to use any goods for any purpose (whether or not for a specified period) the valuable consideration received or receivable for such transfer; and
- (v) the amount received by the seller by way of deposit whether refundable or not, which has been received whether by way of a separate

Central Act
1 of 1944
Central Act
52 of 1962
Assam Act
1 of 1910

agreement or not, in connection with or incidental or ancillary to, the said sale of goods.

Explanation II.— For the purpose of this clause, ‘sale price’ does not include,—

- (i) tax charged or chargeable under this Act;
 - (ii) any amount allowed by seller of goods to the purchaser as cash discount or commission or trade discount at the time of sale of goods according to the practice normally prevailing in the trade;
- (45) **“Schedule”** means the schedule appended to this Act;
- (46) **“State”** means the State of Assam;
- (47) **“State Representative”** means any person appointed by the Government under sub-section (21) of section 4 to be the State Representative and includes an officer not below the rank of Deputy Commissioner of Taxes empowered by the Commissioner to receive on his behalf notices issued by the Tribunal and generally to appear, act and plead on his behalf in all proceedings before the Tribunal and includes an officer appointed to act on his behalf in his absence;
- (48) **“tax”** means a tax on a sale or purchase as the case may be, payable under this Act and includes any amount payable by way of composite tax;
- (49) **“tax fraction”** means the fraction calculated in accordance with the formula $r / r + 100$ where “r” is the rate of tax applicable to the sale;
- (50) **“tax-free goods”** means goods against which the rate of sales tax is shown to be NIL in the First Schedule;
- (51) **“tax invoice”** means a document listing goods sold with price, quantity, tax involved and other details as may be specified in this Act or prescribed by Rules ;
- (52) **“tax period”** means a calendar month, a quarter or a year, as the case may be, as may be prescribed;
- (53) **“taxable goods”** means goods other than tax-free goods;
- (54) **“taxable turnover”** means the turnover on which a dealer is liable to pay tax as determined after making such deductions from his gross turnover and in such manner as may be prescribed;
- (55) **“transporter”** means any person who, for the purposes of or in connection with or incidental to or in the course of his business transports or causes to transport goods, or holds goods in custody for delivery to any person after transportation and includes railway, shipping company, air cargo terminal, postal service and courier service;
- (56) **“Value Added Tax”** means a tax on sale of any goods at every point in the series of sales made by the registered dealer with the provisions of credit of input tax paid at the points of previous purchases thereof;

- (57) **“works contract”** includes any agreement for carrying out for cash, deferred payment or other payment or other valuable consideration, the building, construction, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property;
- (58) **“year”** means the financial year beginning from 1st April and ending with 31st March;
- (59) **“Zero-rated sales”** mean the sales which are subject to tax as per provisions of this Act but on which no tax is charged and credit for Input Tax paid in the State is allowable.

CHAPTER — II

TAX AUTHORITIES AND APPELLATE TRIBUNAL

Taxing authorities.

3. (1) The Government may, for carrying out the purposes of this Act, appoint a person to be the Commissioner and as many other officers as mentioned in sub-section (2) to assist him as it thinks fit.
- (2) There shall be the following taxing authorities to assist the Commissioner:—
- (a) Additional Commissioner of Taxes;
 - (b) Joint Commissioner of Taxes;
 - (c) Deputy Commissioner of Taxes;
 - (d) Assistant Commissioner of Taxes;
 - (e) Superintendent of Taxes;
 - (f) Inspector of Taxes;
 - (g) any other person appointed as such by the Government.
- (3) The Commissioner shall perform his functions in respect of the whole of the State of Assam and the other officers shall perform their functions in respect of such area or areas or of such dealers or classes of dealers or of such cases or classes of cases as the Commissioner may, by notification in the Official Gazette, direct:
- Provided that the Commissioner may, by notification in the Official Gazette, entrust all the cases of dealers dealing in a particular commodity in any area to any officer and such officer shall perform his functions in respect of such dealers.
- (4) The Government may authorise an officer not below the rank of the Deputy Commissioner of Taxes to exercise the power and perform the functions of the Appellate Authority under section 79 of this Act.
- (5) The Commissioner shall have superintendence over all officers and persons employed in the execution of this Act and he may,—
- (a) make and issue general rules and specify forms for regulating the practice and proceedings of such officers and persons;

- (b) issue such orders, instructions and directions to such officers and persons as it may deem fit, for the proper administration of this Act.
- (6) All officers and persons employed for the execution of this Act shall observe and follow the orders, instructions and directions of the officers superior to them:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Deputy Commissioner of Taxes (Appeals) in the exercise of his appellate functions.

- (7) The Commissioner may, by an order in writing, transfer any case or matter relating to any dealer from himself to any other officer and he may likewise transfer any case or matters from any officer appointed under sub-section (2) to assist him to any other officer so appointed or to himself, whether such other officer has jurisdiction over the area to which the case or matter relates or not, provided he is otherwise competent to deal with such case or matter in exercise or performance of the powers or duties referred to in sub-section (3).

Where any case is transferred to an authority, such authority may deal with the case either *de novo* or from the stage at which it was transferred.

- (8) Whenever in respect of any proceedings under this Act the Commissioner or any person appointed under sub-section (2) to assist him, ceases to exercise jurisdiction and is succeeded by another person who has and exercises jurisdiction, the person so succeeding may continue the proceedings from the stage at which the proceedings was left by his predecessor:

Provided that the dealer concerned may demand that before the proceedings is so continued, the previous proceedings or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.

- (9) Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by notification in the Official Gazette, delegate any of his powers under this Act and the rules framed thereunder to any officer and any such officer shall thereupon exercise the said powers.
- (10) No person shall be entitled to call in question in any proceedings, the jurisdiction of any tax authority appointed under this section, after the expiry of thirty days from the date of receipt by that person of any notice issued by such tax authority under this Act. Any objection as to the jurisdiction of any such tax authority may be raised within the period aforesaid by submitting a memorandum to the authority concerned who shall refer the question to the Commissioner. The Commissioner shall, after giving the person raising the objection a reasonable opportunity of being heard, make an order determining the question of jurisdiction and his decision in this behalf shall be final.

Appellate Tribunal.

4. (1) The Government shall, by notification with effect from a date specified therein, constitute an Appellate Tribunal to exercise the powers and perform the functions conferred on the Tribunal by or under this Act.

- (2) Pending constitution of the Tribunal and till the date specified in the notification under sub-section (1), the Assam Board of Revenue shall act as Tribunal for the purpose of this Act and on the date aforementioned all proceedings pending before the Assam Board of Revenue, acting as Tribunal shall stand transferred to the Tribunal constituted under sub-section (1).
- (3) The Tribunal shall consist of a Chairperson and as many other members as the Government may, from time to time, think it necessary to perform the functions assigned to the Appellate Tribunal by or under this Act.
- (4) The Chairperson shall be a person who is or has been a Judicial Officer not below the rank of a District Judge and the other members shall possess such qualifications as may be prescribed.
- (5) The Chairperson and the Judicial Members of the Tribunal shall be appointed by the Government in consultation with the Chief Justice of the High Court of the State. Other members shall be appointed by the Government from the serving or retired officers of the Assam Taxation Service who hold or had held a post not below the rank of a Joint Commissioner of Taxes.
- (6) The members of the Tribunal shall be so appointed as to make the strength of members from the State Judicial Service and the State Taxation Service, as far as possible, equal.
- (7) The conditions of service and tenure of the members constituting the Tribunal shall be such as may be prescribed.
- (8) No decision or action of the Tribunal shall be called in question merely on the ground of any vacancy in the Tribunal.
- (9) Any vacancy in the office of a member of the Appellate Tribunal shall be filled by the Government.
- (10) The functions of the Appellate Tribunal may be performed,—
 - (i) by a Bench consisting of the Chairperson and any other member; or
 - (ii) by a Bench consisting of the Chairperson and two other members; or
 - (iii) by a Bench consisting of two or more members other than the Chairperson;
 - (iv) by a Bench consisting of the Chairperson and all members.
- (11) If any case which comes up before a Bench of which the Chairperson is not a member, involves a question of law, the Bench shall reserve such case for decision of the Bench to be constituted under sub-section (12), of which the Chairperson shall be a member.
- (12) The Bench or Benches of the Appellate Tribunal shall be constituted by the Chairperson in accordance with the provisions of this Act and the rules made thereunder.
- (13) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, but if the members are equally divided, they shall state the point

or points on which they differ, and such point or points shall be heard,—

- (i) when the Chairperson is not a member of that Bench, either by the Chairperson or by the Chairperson and any other member or members as the Chairperson may direct; and
- (ii) when the Chairperson is a member of that Bench, by any other member or members to whom the case is referred by the Chairperson,

and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

- (14) Any member who had previously dealt with any case coming up before the Appellate Tribunal in any other capacity or is personally interested in any case coming up before the Appellate Tribunal shall be disqualified to hear that case.
- (15) Where any case is heard by a Bench consisting of two members and the members are divided in their opinion on any point and the other member or members of the Tribunal are disqualified under sub-section (14) to hear the case, the Government may appoint a person qualified to be appointed as a member of the Appellate Tribunal as an additional member of the Tribunal and the point shall be decided in accordance with the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.
- (16) The additional member appointed under sub-section (15) shall cease to hold office on the disposal of the case for which he was appointed.
- (17) The Tribunal shall have, for the purpose of discharging functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—
 - (a) enforcing the attendance of any person and examining him on oath or affirmation;
 - (b) compelling the production of documents and impounding or detaining them;
 - (c) issuing commissions for the examination of witnesses;
 - (d) requiring or accepting proof of facts by affidavits;
 - (e) such other matters as may be prescribed,

**Central Act
5 of 1908**

and any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 and for the purpose of section 196 of the Indian Penal Code, 1860. The Tribunal shall also be deemed to be the Civil Court for all the purposes of section 195 and chapter XXVI of the Code of Criminal Procedure, 1973.

**Central Act
45 of 1860**

**Central Act
2 of 1974**

- (18) The Tribunal shall have a separate establishment consisting of such staff and officers as may be specified by the Government from time to time.

- (19) The Tribunal shall have the power to award costs in any matter decided by it for such amount as it may consider reasonably justified in the facts and circumstances of the case.

The amount of cost awarded by the Tribunal against a dealer shall be recoverable from him as if it were a tax due from him under this Act and, in case of default by him, such dues shall be recovered as an arrear of land revenue.

- (20) Subject to the previous sanction of the Government, the Tribunal shall, for the purpose of regulating its procedure (including the place or places at which the Tribunal, the Benches or the members thereof shall sit) and for providing the rules of business, make regulations consistent with the provisions of this Act and the rules made thereunder:

Provided that the regulations so made shall be published in the Official Gazette.

- (21) The Government may appoint an Advocate or a Chartered Accountant as a State Representative. The Commissioner may, subject to the prior approval of the Government, empower an officer not below the rank of a Deputy Commissioner of Taxes to be the State Representative.

In proceedings before the Appellate Tribunal, such State Representative shall be competent,—

- (a) to prepare and sign applications, appeals and other documents;
- (b) to appear, represent and plead;
- (c) to receive notices and other processes; and
- (d) to do all other acts connected with such proceedings on behalf of the Government or any officer appointed under this Act.

**Constitution of
Vigilance Cell.**

5. (1) The Commissioner may, by notification in the Official Gazette, constitute a Vigilance Cell with officers appointed to assist him under sub-section (2) of section 3, for discharging the functions specified in sub-section (2), and one of the officers constituting the Cell shall be declared the Chief Officer of the Cell.
- (2) The Vigilance Cell, on information or of its own motion or when the Commissioner so directs, shall carry out investigation or hold inquiry into any case of alleged or suspected evasion of tax as well as malpractices connected therewith and send a report thereof to the Commissioner.
- (3) The Vigilance Cell for the purpose of holding investigation or inquiry under sub-section (2) shall exercise all the powers under section 61, 73, 74, 75, 76, 77, 78, 95 and 96 and any other power under this Act as the Commissioner may invest upon it.
- (4) The Commissioner, on receipt of the report under sub-section (2), may require the Vigilance Cell to transfer to any officer appointed to assist him under sub-section (2) of section 3 any accounts, registers or documents relating to the said report, seized by the Vigilance Cell and on such transfer, such accounts,

registers or documents shall be retained by such officer and shall be dealt with by him subject to the provisions of section 74.

- (5) The Vigilance Cell, with the prior approval of the Commissioner, may require any officer appointed to assist the Commissioner under sub-section (2) of section 3, to transfer to it any accounts, registers or documents seized by him from any person or persons under section 74 and on transfer, such accounts, registers or documents subject to the provisions of section 74 shall be retained and dealt with by the Vigilance Cell for the purposes specified in sub-section (2) and sub-section (6).
- (6) The Vigilance Cell, after a case has been investigated or inquired into, assess or reassess tax, impose penalty or interest in respect of such case under this Act, provided it is so directed by the Commissioner.
- (7) The Commissioner may assign such other functions to any officer of the Vigilance Cell as he may consider necessary and may also assign any of the functions of the Vigilance Cell to any officer appointed to assist him under sub-section (2) of section 3, as he may consider necessary.
- (8) The Vigilance Cell shall have, for carrying out the purposes of this section, the same powers as are provided under section 97 of this Act.
- (9) The officers of the Vigilance Cell may exercise the powers under this section jointly by all officers, or by some of the officers or individually by any officer of the Cell subject to superintendence and guidance of the Chief Officer of the Cell.
- (10) The Vigilance Cell shall have jurisdiction throughout the State of Assam or in any area as may be specified by the Commissioner.

Persons appointed under section 3 and members of Appellate Tribunal to be public servants.

6. The Commissioner and all officers appointed under section 3 and the Chairperson and members of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

**Central Act
45 of 1860**

CHAPTER — III

THE INCIDENCE AND LEVY OF TAX

Incidence of tax.

7. (1) Subject to other provisions of this Act, every dealer who has been liable immediately before the appointed day to pay tax under the Assam General Sales Tax Act, 1993, shall, with effect from the appointed day for the purpose of this section, be liable to pay tax in accordance with the provisions of this Act.
- (2) Subject to other provisions of this Act, every dealer to whom sub-section (1) does not apply, and whose turnover of sales or purchases calculated from the commencement of any year after the appointed day first exceeds the taxable quantum within such year, shall, with effect from the date immediately following the day on which his turnover exceeds the taxable quantum, be liable to pay tax in accordance with the provisions of this Act.
- (3) A dealer registered under the Central Sales Tax Act, 1956, who is not liable to pay tax under sub-section (1) or sub-section (2), shall nevertheless be liable to pay tax on his sale, made inside

**Assam Act
XII of 1993**

**Central Act
74 of 1956**

the State, of any goods in respect of which he has furnished a declaration under sub-section (4) of section 8 of the said Act, or on the sale of any goods in the manufacture of which such goods have been used and every such dealer who is liable to pay tax shall be deemed to be a registered dealer.

- (4) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three years during which his gross turnover has failed to exceed the taxable quantum and on the expiry of this period his liability to pay tax under this Act shall cease.
- (5) Every dealer who has ceased to be liable to pay tax under sub-section (4) shall be again liable to pay tax with effect from the first day of April of the year during which his gross turnover again exceeds the taxable quantum.
- (6) For the purposes of this Act, "taxable quantum" means in relation to any dealer who,—
 - (a) is an importer or a manufacturer or a casual dealer or a contractor or a lessor or a non-resident dealer or an agent of a non-resident dealer or has more than one place of business in the State – NIL;
 - (b) is engaged in any business other than those specified in clause (a) – Rs.3,00,000/-.
- (7) For the purpose of calculating gross turnover to determine the liability to pay tax under this Act,—
 - (a) except as otherwise expressly provided, the turnover of all the sales or the purchases, as the case may be, effected by a dealer shall be taken into account whether such sales or purchases are taxable under this Act or not; and
 - (b) the turnover shall include all sales or purchases made by a dealer on his own account and also on behalf of principals whether disclosed or not.
- (8) Where, by any order passed under this Act, it is found that any person registered as a dealer ought not to have been so registered, then, notwithstanding anything contained in this Act, such person shall be liable to pay tax for the period commencing with the date of his registration and ending with the date of such order, as if he were a dealer.

Certain sales and purchase not liable to tax.

8. (1) Nothing contained in this Act or the rules made thereunder shall be deemed to impose, or authorise the imposition of a tax on any sale or purchase of any goods when such sale or purchase takes place,—
 - (a) in the course of inter-state trade or commerce; or
 - (b) outside the State; or
 - (c) in the course of import of the goods into or export of the goods out of the territory of India.

Explanation.— For the purpose of this Act, for determining whether or not a particular sale or purchase takes place in the manner indicated in clause (a), clause (b) and clause (c), the

provisions of sections 3, 4 and 5 of the Central Sales Tax Act, 1956 respectively, shall apply.

**Central Act
74 of 1956**

**Exemptions
and zero rating**

9. (1) The sale of goods listed in the First Schedule shall be exempt from tax subject to conditions and exceptions, if any, set out therein.
- (2) The sales of goods in the course of export out of the territory of India falling within the scope of Section 5 of the Central Sales Tax Act, 1956 shall be zero-rated.
- (3) Any sale of goods made by a registered dealer from a Domestic Tariff Area (DTA) to a unit located in a Special Economic Zone (SEZ) shall be zero-rated.
- (4) Any sale of goods made by a registered dealer from a Domestic Tariff Area (DTA) to an Export Oriented Unit (EOU) shall be zero-rated.
- (5) Any sale of goods made by a unit located in a Special Economic Zone (SEZ) or an Export Oriented Unit (EOU) to another unit located in another Special Economic Zone (SEZ) or to another export oriented unit, shall be exempt from payment of tax.

Explanation.— For the purpose of sub-section (3), sub-section (4) and sub-section (5), the expressions “Domestic Tariff Area”, “Special Economic Zone” and “Export-Oriented Unit” shall have the meanings as assigned to them under the Central Excise Act, 1944.

**Central Act
I of 1944**

**Levy of tax on
sales.**

10. (1) Every dealer, who is liable to pay tax for any year under section 7, shall pay output tax on his taxable turnover for such year,—
- (a) in respect of goods specified in the Second, Third and Fifth Schedule, at every point of sale of such goods within the State, at the rate or rates specified therein; and
- (b) in respect of goods specified in the Fourth Schedule, at the first point of sale of such goods within the State, at the rate or rates specified therein:

Provided that, subject to such conditions as may be prescribed, the sale of goods specified in the Fourth Schedule other than crude oil, by one oil company to another oil company for the purpose of re-sale by the latter, shall not be deemed to be the first point of sale in the State but the sale by the latter company to another person not being an oil company shall be deemed to be the first point of sale in the State for the purpose of levy of tax under this clause.

If, in any case, after purchase of such goods for resale within the State, the Purchasing Oil Company despatches any portion of the goods to a place out side the State except as a direct result of sale or purchase in the course of inter-state trade or commerce, then notwithstanding anything contained in this Act, for that portion of the goods the Purchasing Oil Company shall be deemed to be last purchaser within the State and it shall be liable to pay tax on such portion of goods at the

rate of four paise in the rupee on the gross turnover of purchases of such goods.

Explanation.— For the purpose of this proviso, the expression “oil company” means, namely:—

- (i) Oil India Limited;
- (ii) Oil and Natural Gas Corporation Limited;
- (iii) Gas Authority of India Limited;
- (iv) Indian Oil Corporation Limited;
- (v) Bharat Petroleum Corporation Limited;
- (vi) Hindusthan Petroleum Corporation Limited;
- (vii) Bongaigaon Refinery and Petro-Chemicals Limited;
- (viii) Indian Oil Corporation-Assam Oil Division;
- (ix) Indo-Burma Petroleum Company (IBP Co. Ltd.);
- (x) Numaligarh Refinery Limited; and
- (xi) Assam Gas Company Limited;
- (xii) Any other oil company notified in this behalf by the Government.

- (2) Notwithstanding anything contained in this section, where goods packed in any container or packing materials are sold, the containers or materials in which the goods are so packed shall be deemed to have been sold along with the goods and the tax shall be leviable on such sale of the container and packing materials at the rate of tax, if any, as applicable to the sales of the goods themselves:

Provided that where the goods contained in container or packed in packing materials are tax free, the sale of such container or packing materials shall also be exempt from tax.

- (3) Notwithstanding anything contained in this Act, a tax shall be payable at the rate of two paise in a rupee in respect of all teas sold in auction at Guwahati Tea Auction Centre. The tax under this sub-section shall be payable by the broker through whom the tea is sold in auction as if such broker were the dealer within the meaning of this Act in respect of the tea so sold and the provisions of this Act applicable to a dealer shall, so far as may be, apply accordingly. Such broker shall not be entitled to get any input tax credit. But the dealer purchasing tea from such broker shall be entitled to claim input tax credit.

Taxable turnover.

- 11.** For the purpose of this Act, “taxable turnover” in relation to a dealer liable to pay tax on sale of goods means that part of the dealer’s gross turnover during the prescribed period, which remains after deducting therefrom,—
- (a) the turnover of sales of goods specified to be exempt from tax in the First Schedule;
 - (b) the turnover of sales of goods which are shown to the satisfaction of the Prescribed Authority to have taken place,—
 - (i) in the course of inter-state trade or commerce; or
 - (ii) outside the State; or

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

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

**Central Act
74 of 1956**

- (c) the charges towards labour, services and other like charges, subject to such conditions as may be prescribed, in case of turnover of sales in relation to works contract, in addition to the deductions available under clause (b):

Provided that where the contractor does not maintain proper accounts or the amount actually incurred towards charges for labour and other services and profit relating to supply of labour and services are not ascertainable from the accounts maintained by him, the amount of such charges for labour and services and such profit may, for the purposes of deductions, be determined on the basis of such percentage of the value of the works contract as specified in the Sixth Schedule;

- (d) the turnover of such other sales or such other amount, as may be prescribed.

Levy of tax on purchases.

12. Every dealer who in the course of his business purchases any taxable goods from any person, in the circumstances in which no tax under section 10 is leviable on the sale price of such goods, shall be liable to pay tax on the gross turnover of purchase of such goods, if after such purchase, the goods are,—

- (i) used or disposed of in any manner other than by way of sale in the State; or
- (ii) consumed or used in the manufacture of tax free goods specified in the First Schedule; or
- (iii) consumed or used in the manufacture of taxable goods, and such manufactured goods are disposed of otherwise than by way of sale in the State or in the course of inter-state trade and commerce or export out of the territory of India; or
- (iv) despatched to a place outside the State other than as a result of sale in the course of inter-state trade or commerce or export out of the territory of India,

and such tax shall be levied at the same rate at which tax under section 10 would have been levied on the sale of such goods within the state on the date of such purchase.

Adjustments in output tax.

13. (1) Adjustments as provided under this section shall be made where, in relation to a sale of taxable goods by any registered dealer,—

- (a) the sale has been cancelled; or
- (b) the nature of that sale has been fundamentally varied or altered, resulting in a change in the rate of tax applicable to that sale; or

- (c) the previously agreed consideration for that sale has been altered by agreement with the recipient, whether due to the offer of a discount or for any other reason; or
- (d) the goods or part of the goods sold have been returned to the seller within six months from the date of sale,

and as a result of the occurrence of any one or more of the above-mentioned events, if,—

- (i) the amount of tax shown as charged in the tax invoice issued by a seller in respect of such sale, becomes incorrect in relation to the amount of tax properly chargeable on that sale; or
- (ii) the amount of output tax as accounted for and disclosed in the return filed by the dealer in respect of such sale, becomes incorrect in relation to the amount of tax properly chargeable on that sale.

- (2) Where a seller has accounted for either in the tax invoice or in the return an incorrect amount of output tax as contemplated in sub-section (1), such seller shall make an adjustment in calculating the tax payable by him in the return for the tax period during which it has become apparent that the output tax is incorrect. Such adjustment shall be made in the following manner, namely:—

- (a) if the output tax properly chargeable in relation to that sale exceeds the output tax actually accounted for by the seller, the amount of that excess shall be deemed to be tax charged by such seller in relation to a taxable sale attributable to the tax period in which the event referred to in sub-section (1) occurred, and shall not be attributable to any prior tax period; or
- (b) if the output tax actually accounted for exceeds the output tax properly chargeable in relation to that sale, such seller shall reduce the amount of output tax, attributable to the tax period in which the event referred to in sub-section (1) occurred, in terms of section 10 by that excess amount of tax:

Provided that the said deduction shall not be made where the excess tax has been borne by a purchaser of goods, and unless the amount of the excess tax has been repaid by the seller to the purchaser, whether in cash or by way of a credit against any amount owing to the seller by the purchaser.

Input tax credit.

14. (1) Subject to the other provisions of this section, any registered dealer who makes purchases from another registered dealer of taxable goods other than the goods specified in the Fourth Schedule within the State, shall be eligible for input tax credit.
- (2) The dealer availing of the input tax credit shall maintain the register and the books of accounts in the manner as may be prescribed.
 - (3) The input tax credit shall be allowed to the extent of the amount of tax paid by the purchasing dealer on his purchase of taxable goods other than the goods specified in the Fourth Schedule, made in the State, from a registered dealer holding a valid

certificate of registration, which are intended for the purpose of,—

- (a) sale or re-sale by him in the State; or
- (b) sale in the course of inter-state trade or commerce; or
- (c) sale in the course of export out of the territory of India; or
- (d) use as raw material or as capital goods in the manufacture and processing of taxable goods other than the goods specified in the Fourth Schedule, intended for sale of the nature referred to in clauses (a), (b) and (c); or
- (e) use as containers or materials for packing of taxable goods other than the goods specified in the Fourth Schedule, intended for sale of the nature referred to in clauses (a), (b) and (c):

Provided that if purchases are used partially for the purposes specified in this sub-section, the input tax credit shall be allowed proportionate to the extent they are used for the purposes specified in this sub-section.

- (4) The input tax credit shall not be claimed by the dealer until the tax period in which he receives from a registered dealer from whom he has purchased the goods, a tax invoice in the prescribed form (in original) evidencing the amount of input tax, expires:

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

- (5) Input tax credit on capital goods as admissible under this section shall commence from the date of commencement of commercial production and shall be adjusted against tax payable on output over a period of three years:

Provided that in case of closure of business before the period specified above, no further input tax credit shall be allowed and input tax credit carried forward, if any, shall be forfeited:

Provided further that no person shall be entitled to input tax credit on capital goods if such person is the second or subsequent purchaser of such capital goods.

- (6) No input tax credit shall be claimed by a registered dealer or shall be allowed to him for,—
 - (a) tax paid on the purchases of goods used in the manufacture or processing or packing of goods specified in the First and the Fourth Schedule;
 - (b) purchases made in the course of interstate trade and commerce or in the course of import from outside the country or from outside the State in respect of tax paid in the other country or other state;

- (c) purchases of goods made in the State from an unregistered dealer or from a dealer provisionally registered or from a dealer whose certificate of registration has been suspended or from a registered dealer who has given an option to pay lump sum amount in lieu of tax by way of composition or for purchases of goods made in the State by a dealer opting for such lump sum tax;
- (d) purchases of goods used as free samples or gift, or for personal consumption, and if a dealer has already taken any input tax credit against purchases of such goods there shall be a reverse tax credit at the end of the month in which such goods are used as such;
- (e) goods purchased for the use specified under sub-section (3) but not sold because of any theft, loss or destruction or any reason including natural calamity and if a dealer has already taken any input tax credit against purchases of such goods there shall be a reverse tax credit at the end of the month in which such goods are stolen, lost or destroyed;
- (f) purchases of capital goods other than those directly and exclusively used for manufacturing or processing of taxable goods or packing of such goods or in the furtherance of business as mentioned in sub-section (8) of section 2;
- (g) stock of goods remaining unsold at the time of closure of business and if a dealer has already taken any input tax credit against purchases of such stock of goods, there shall be a reverse tax credit on the date of stoppage or closure of such business;
- (h) tax paid on purchases of goods despatched to a place outside the State not as a direct result of sale in the course of inter-state trade:

Provided that the input tax credit may be allowed for the tax paid in excess of the amount of tax that would have been leviable had the goods been sold in the course of inter-state trade or commerce to a registered dealer;

- (i) tax paid on purchases of goods used as raw material for manufacture of goods despatched outside the State otherwise than by way of sale:

Provided that the input tax credit may be allowed for the tax paid on the raw materials in excess of the amount of tax that would have been leviable had the finished goods made from such raw materials been sold in the course of inter-state trade or commerce to a registered dealer;

- (j) tax paid on purchases of goods specified in the Fourth Schedule;
- (k) purchases of goods which are used as fuel in generation of energy;
- (l) purchases where,—

- (i) tax invoice is not available with the dealer; or
 - (ii) there is evidence that the same has not been issued by the selling dealer from whom the goods are purported to have been purchased; or
 - (iii) the original invoice does not contain the details of tax charged separately by the selling dealer from whom the purchasing dealer has purchased the goods;
- (m) automobiles of any type including commercial vehicles, two and three wheelers, and spare parts for repair and maintenance thereof, unless, the dealer is in the business of dealing in such automobiles or spare parts;
- (n) food, beverages and tobacco products, unless the dealer is in the business of providing food, beverages and tobacco products;
- (o) air-conditioning units unless the dealer is in the business of dealing in such units;
- (p) goods purchased and accounted for in business but utilised for the purpose of providing facility to the employees including any residential accommodation; and
- (q) purchases of goods, if the tax payable to the Government by the purchaser himself in respect of purchase of such goods has not been paid.
- (7) The Government may, by notification in the Official Gazette, specify any goods in respect of which input tax credit shall not be allowed in part or in full or specify the class of dealers who shall not be entitled to input tax credit in part or in full.
- (8) If the goods purchased were intended for the purposes specified under sub-section (3) and are subsequently used fully or partly for purposes other than those specified under the said sub-section or are used fully or partly in the circumstances described in sub-section (6), the input tax credit, if availed of, shall be reduced on account of such use, from the tax credit being claimed for the tax period during which such use has taken place; and such reduction shall be done in the manner as may be prescribed.
- (9) Without prejudice to the generality of the provisions of sub-section (8), input tax credit already availed of shall stand reversed in the following circumstances,—
- (a) if the dealer discontinues his business and he holds the stock of taxable goods at the time of such discontinuance; or
 - (b) if the registration certificate granted to a dealer is cancelled and at the time of such cancellation, he holds the stock of taxable goods; or
 - (c) if the purchased goods or the goods manufactured out of the goods purchased or the packing materials are stolen or destroyed or lost or disposed of or dispossessed of otherwise than in the course of business; or

- (d) where excess input tax credit has been claimed; or
- (e) if the purchased goods are returned to the selling dealer; or
- (f) if the goods purchased inside the State are despatched to a place outside the State not as a direct result of sale in the course of inter-state trade; but it shall be subject to the provisions of clause (h) of sub-section (6); or
- (g) if the credit note has been received from the selling dealer for the amount of tax charged in excess of the tax due according to the provisions of this Act,

The dealer shall be liable to pay such amount of reverse input tax credit along with simple interest of one and half percent per month from the date immediately succeeding the last date prescribed for filing of return of such period for which such input tax credit was claimed till the date of its payment.

- (10) Where any purchaser, being a registered dealer, has been issued with a credit note or debit note or if he returns or rejects goods purchased, as a consequence of which the input tax credit availed of by him in any period in respect of which the purchase of goods relates, becomes either short or excess, he shall compensate such shortfall or excess by adjusting the amount of tax credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned, subject to such conditions as may be prescribed.
- (11) A registered dealer may avail of the amount of net tax credit, which shall be determined in the following manner, namely:—

$$\text{Net Tax Credit} = A + B - C$$

Where,—

"A" represents the amount of input tax credit the dealer is entitled to,

"B" represents outstanding credit brought forward from the previous tax period, and

"C" represents reverse input tax credit as determined under sub-section (8) or sub-section (9).

- (12) The methods that are used by a registered dealer in a year to determine the extent to which the goods are sold, used, consumed or supplied, or intended to be sold, used, consumed or supplied in the course of making taxable sales shall be fair and reasonable:

Provided that the Commissioner may, after giving the dealer a reasonable opportunity of being heard and for the reasons to be recorded in writing, reject the method adopted by the dealer and calculate the amount of tax credit.

- (13) Where a registered dealer without entering into a transaction of sale, issues to another registered dealer tax invoice, retail invoice, bill or cash memorandum with the intention of defrauding the Government of its revenue or with the intention that the Government may be defrauded of its revenue, the

Commissioner may, after making such inquiry as he thinks fit and after giving the dealer a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealers issuing or accepting such tax invoice, retail invoice, bill or cash memorandum either prospectively or retrospectively from such date as the Commissioner may, having regard to the circumstances of the case, fix.

Input tax credit exceeding tax liability.—

15. (1) If the input tax credit of a registered dealer other than an exporter selling goods outside the territory of India determined under this Act for a period exceeds the tax liability for that period, the excess credit shall be set off against any outstanding tax, penalty or interest under this Act.
- (2) The excess input tax credit after adjustment under sub-section (1) may be carried over as an input tax credit to the subsequent period or periods.
- (3) In case where input tax credit is carried forward, a quarterly credit statement may be forwarded to the dealer concerned and the claims be reconciled accordingly.

Tax payable.

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

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

where 'O' denotes the output tax payable for any tax period as determined under section 10, 'P' denotes the purchase tax paid by a registered dealer for any tax period as determined under section 12 and 'I' denotes the input tax paid or payable for the said tax period as determined under section 14.

- (2) The net tax payable by a dealer liable to pay tax, but not registered under this Act, for a tax period, shall be equal to the output tax payable for the said tax period as determined under section 10.
- (3) If the amount calculated under sub-section (1) is a negative quantum,—
- (a) the same shall be adjusted at the option of the dealer against the tax liability, if any, of the dealer under the Central Sales Tax Act, 1956 for the said tax period and only the remaining amount of the Central Sales Tax shall be payable; or
- (b) any amount of credit remaining after such adjustment shall be carried forward to the next tax period.

Powers of Government to amend Schedules.

17. The Government may, by notification in the Official Gazette, add to or omit from any Schedule any entry or entries or transpose any entry or part of entry from one Schedule to another or vary any entry or entries or the rate or rates or the point or points of levy or otherwise amend or modify any Schedule, prospectively or retrospectively, and thereupon the Schedule shall be deemed to have been amended accordingly:

**Central Act
74 of 1956**

Provided that the Government shall not vary the rate of tax so as to enhance it, in any case, exceeding forty paise in a rupee.

Time and place of sale of goods.	<p>18. (1) Notwithstanding anything contained in the Sale of Goods Act, 1930, for the purpose of this Act, the time of sale of goods shall be deemed to be the earliest of the following,—</p> <p>(a) issue of the tax invoice;</p> <p>(b) receipt of payment, in full or in part;</p> <p>(c) transfer of title or possession of the goods or incorporation of the goods in the course of execution of any works contract.</p> <p>(2) For the purpose of the clause (43) of section 2, a sale or purchase shall be deemed to have taken place in the State,—</p> <p>(a) in a case falling under sub-clause (ii) of the said clause, if the goods are in the State at the time of transfer of property in such goods (whether as goods or in some other form) involved in the execution of the works contract, notwithstanding that the agreement for the works contract has been wholly or in part entered into outside the State;</p> <p>(b) in a case falling under sub-clause (iv) of the said clause, if the contract for the lease has been executed inside the State; or</p> <p>(c) in any other case, if the goods are within the State,—</p> <p>(i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and</p> <p>(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior to or subsequent to such appropriation.</p>	Central Act 3 of 1930
Burden of proof.	<p>19. In respect of any sale or purchase effected by a dealer the burden of proving that he is not liable to pay tax under section 10 or section 12 or that he is eligible to input tax credit under section 14 shall be on him.</p>	
Composition of tax liability.	<p>20. (1) (a) Notwithstanding anything contained in this Act, the Government may, by notification published in the Official Gazette and subject to such conditions and restrictions, if any, as it may specify therein, permit any dealer, whose gross turnover calculated from the commencement of any year first exceeds within such year the threshold of such turnover but does not exceed fifteen lakhs rupees, to pay at his option, in lieu of the amount of tax payable under the provisions of this Act, an amount by way of composition calculated at the rate as may be fixed by the Government in the said notification but not exceeding five percentum of such gross turnover.</p>	

- (b) If on the basis of evidences reasonable grounds exist to believe that the dealer was not eligible to pay tax at a rate fixed under this sub-section, the Prescribed Authority may, impose a penalty equivalent to three times of the amount of tax arrived at after applying the rate notified under this sub-section to the gross turnover of the dealer computed on the basis of evidence available in this regard:
- Provided that no order under this sub-section shall be passed without giving the dealer a reasonable opportunity of being heard.
- (2) Notwithstanding anything contained in this Act, the Government may, by notification published in the Official Gazette and subject to such conditions and restrictions, if any, as may be specified therein, permit any dealer liable to pay tax on sales effected by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, to pay, at his option, in lieu of the amount of tax payable by him under this Act, an amount by way of composition at the rate specified in the said notification but not exceeding five percentum of the total contract value of the works contract.
- (3) Notwithstanding anything contained in this Act, the Government may, by notification published in the Official Gazette and subject to such conditions and restrictions as may be specified therein, permit any class of dealers, to pay in lieu of the tax payable under this Act, for any period, an amount, linked with the production capacity or the extent of business, or calculated at a fixed rate of gross receipts of business or some such other thing, to be determined by the Government by way of composition and to be paid at such intervals and in such manner, as may be prescribed, and the Government for the purpose of this Act may, in respect of such class of dealers, prescribe simplified system of maintenance of accounts and filing of returns which shall remain in force during the period of such composition.
- (4) A dealer in whose case composition under this section is in force, shall not,—
- (i) be entitled to any claim of input tax credit in respect of purchase of any goods by him in the State;
- (ii) charge any tax in the invoices in respect of sales of goods made by him; and
- (iii) issue tax invoice to any dealer who has purchased the goods from him.
- (5) The option so exercised under this section shall be final for that year and shall continue for subsequent years until the dealer becomes ineligible, or withdraws his option in writing.

CHAPTER — IV

REGISTRATION OF DEALERS, AMENDMENT AND CANCELLATION OF REGISTRATION CERTIFICATES

**Compulsory
registration of
dealers.**

21. (1) No dealer shall, while being liable to pay tax, carry on business as a dealer unless he has been registered and possesses a certificate of registration:

Provided that a dealer liable to pay tax shall apply for registration within thirty days from the date on which he is first liable to pay such tax:

Provided further that a dealer dealing exclusively in tax-free goods shall not be liable for registration.

- (2) Every dealer required by sub-section (1) to be registered shall make an application in the prescribed manner to the Prescribed Authority.
- (3) (a) The Prescribed Authority may conduct such inquiry as he deems fit and may call for such evidence and information as he may deem necessary and after the inquiry, if any, and after considering the evidence and information, if any, he is satisfied that the application for registration made under this section is in order, he shall register the applicant and issue to him a certificate of registration in the prescribed form which shall specify the class or classes of goods dealt in or manufactured by him. The certificate of registration so granted shall not be transferable.
- (b) If the Prescribed Authority is satisfied that the particulars contained in the application are not correct or complete or that any evidence or information prescribed for registering the applicant is not furnished, the Prescribed Authority may, after giving the applicant a reasonable opportunity of being heard, reject the application for reasons to be recorded in writing.
- (4) For the purposes of identification of a registered dealer liable to pay tax the Prescribed Authority shall issue a registration number known as Taxpayer Identification Number (TIN).
- (5) The registration shall take effect from the date of liability where the application for registration is made within the prescribed period of thirty days.
- (6) Where the application for registration is not made within the prescribed time, the Prescribed Authority shall grant the certificate of registration from the date of filing such application, but the dealer shall remain liable to pay tax as an unregistered dealer for the period from the date of liability to the date preceding the date of effect of registration.

**Registration by
Prescribed
Authority.**

22. (1) If the Prescribed Authority, upon the information which has come into his possession, is satisfied that any dealer liable to pay tax, has failed to get himself registered, the Prescribed Authority shall, in addition to taking any other action under the provisions of this Act, register him as if an application for registration had been made:

Provided that no action under this section shall be taken unless the Prescribed Authority has given notice to the dealer of his intention so to do and allowed him a reasonable opportunity of being heard.

- (2) The registration shall take effect from the date of the issue of the certificate of registration, but the dealer shall remain liable to pay tax as an unregistered dealer, for the period from the date of

liability to the date preceding the date of issue of certificate of registration.

Voluntary registration of dealers.

23. (1) Subject to such conditions and restrictions as may be prescribed, any dealer who desires to get himself registered voluntarily, notwithstanding that he is not liable to pay tax, may apply in the prescribed manner to the Prescribed Authority for registration under this Act.
- (2) The provision of sub-section (3) of section 21 shall apply in respect of application for registration under sub-section (1).
- (3) The registration shall take effect from the date of receipt of the application for registration.
- (4) Every dealer who has been registered on application made under this section shall, for so long as his registration remains in force, be liable to pay tax under this Act.
- (5) The registration of a dealer on application made under this section shall be in force for a period of not more than three complete years and shall be deemed to have been cancelled on the expiry of the said three years unless the Prescribed Authority on an application made by the dealer is satisfied that the provisions of section 21 have since become applicable to him.
- (6) Subject to the provisions of sub-section (5), a dealer registered on application made under this section may apply in the prescribed manner, not less than six months before the end of a year, to the Prescribed Authority for the cancellation of such registration to take effect at the end of the year in which the application for such cancellation is made, and the said authority shall, unless the dealer is liable to pay tax under this Act, cancel the registration accordingly.

Provisional registration.

24. (1) Any person who intends to manufacture any taxable goods but is otherwise not liable for registration, may make an application in the prescribed manner to the Prescribed Authority for provisional registration. A dealer who is liable to be registered under section 21 shall not be eligible for a provisional certificate.
- (2) The provisions of sub-section (3) of section 21 shall apply in respect of application for registration under sub-section (1).
- (3) The registration shall take effect from the date of receipt of the application for registration.
- (4) The registration of a dealer on application made under this section shall be in force for a period of not more than three complete years and shall be deemed to have been cancelled on the expiry of the said three years unless the Prescribed Authority on an application made by the dealer is satisfied that the provisions of section 21 have since become applicable to him.

Security to be furnished in certain cases.

25. (1) Where it appears to the Prescribed Authority to be necessary so to do for the proper realisation of the tax payable under this Act or for the proper custody and use of the forms, he may, by an order in writing and for reasons to be recorded therein, impose as a condition for the issue of a certificate of registration a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security as may be so specified, for all or any of the aforesaid purposes.

- (2) Where it appears to the Prescribed Authority granting a certificate of registration to be necessary so to do for the proper realisation of tax payable under this Act or for the proper custody and use of the forms, he may, at any time while such certificate is in force, by an order in writing and for reasons to be recorded therein, require the dealer, to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner such security, or, if the dealer has already furnished any security in pursuance of an order under this sub-section or sub-section (1), such additional security, as may be specified in the order, for all or any of the aforesaid purposes.
- (3) The Prescribed Authority may, by an order in writing and for good or sufficient reason to be recorded therein, demand from any person other than a registered dealer who imports into the State any consignment of goods, a reasonable security for ensuring that there is no evasion of tax.
- (4) No dealer shall be required to furnish any security under sub-section (1) or any security or additional security under sub-section (2) or any security under sub-section (3) unless he has been given a reasonable opportunity of being heard.
- (5) The amount of security which a dealer may be required to furnish under sub-section (1) or sub-section (2) or the aggregate of the amount of such security and the amount of additional security which he may be required to furnish under sub-section (2) or the amount of security which he may be required to furnish under sub-section (3), by the Prescribed Authority, shall not exceed, the sum equal to the tax payable under this Act, in accordance with the estimate of such authority, on the turnover of such dealer for a tax period of the year in which such security or, as the case may be, additional security is required to be furnished.
- (6) If the Prescribed Authority is satisfied that any dealer has been carrying on business without furnishing the security demanded under this section, it may, after such enquiry, if any, as it may deem necessary, direct that such dealer shall pay, by way of penalty in addition to the tax, if any, payable by him a sum of one hundred rupees for each month or part thereof for default during the first three months and five hundred rupees for every month or part thereof after first three months during which the default continues:

Provided that no order shall be passed under this sub-section without giving the dealer a reasonable opportunity of being heard.
- (7) The Prescribed Authority may, by an order in writing and for good and sufficient reasons to be recorded therein, forfeit the whole or any part of the security or additional security, furnished by a dealer, for,—
 - (a) realising or recovery of tax or any other sum due; or
 - (b) recovery of any financial loss caused to the Government due to negligence or default in making proper use of statutory forms or in keeping in safe custody, blank or unused statutory forms:

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

- (8) Where, by reason of the order of the forfeiture of the security, the security furnished by a dealer is rendered, insufficient, such dealer shall, on demand by an order of the Prescribed Authority, furnish fresh or further security of the requisite amount or shall make up the deficiency, as the case may be, in such manner and within such period as may be specified by the Prescribed Authority.
- (9) The Prescribed Authority may, on application by a dealer, who has furnished security as required, refund in the prescribed manner any amount of security or part thereof if such security is not required for the purposes for which it was furnished.

Imposition of penalty for failure to get registered.

26. (1) If a dealer, fails to apply for registration within thirty days from the date on which he is first liable to pay tax, he shall be liable to pay a penalty which shall be one hundred rupees for each day of default and such dealer shall, before filing the application for registration, deposit the penalty for the period from the day next to the date of expiry of thirty days to the date immediately preceding the date of application. If, after considering the evidence and information under clause (a) of sub-section (3) of section 21, it appears to the Prescribed Authority that,—

- (a) the date of liability as disclosed in the application form is later than actual date of liability resulting into short payment of penalty by the dealer or where the dealer has failed to apply for registration on being asked so to do or where the dealer has filed the application for registration but has failed to deposit the amount of penalty before filing such application, he may, after giving the dealer a reasonable opportunity of being heard, by an order impose by way of penalty a sum not less than one hundred rupees and not exceeding three hundred rupees, for every day of default:

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

- (b) the date of liability as disclosed in the application form is prior to the actual date of liability and the amount of penalty deposited by the dealer is more than the amount of penalty leviable under the provision of sub-section (1), he shall, by an order in writing, adjust such excess against any sum payable by the dealer under this Act, or, if there is no sum so payable, refund it to the dealer.
- (2) If any penalty is imposed under sub-section (1), the Prescribed Authority shall issue a notice in the prescribed form directing the dealer to pay such penalty by such date as may be specified in the notice, and the date to be specified shall not be less than fifteen days from the date of service of such notice and the penalty so imposed shall be paid by the dealer into the Government account by the date so prescribed.

**Amendment,
suspension
and
cancellation of
certificate of
registration.**

27. (1) Any registered dealer, who—
- (a) sells or otherwise disposes of his business or any part of his business or effects any change in the ownership of his business or comes to know of any such change or discontinues his business or changes his place of business or opens a new place of business; or
 - (b) discontinues or changes his warehouse or opens a new warehouse or changes the name or nature of his business or effects any change in the class or classes of goods in which he carries on his business and which is or are specified in his certificate of registration; or
 - (c) being a company, effects any change in the constitution of its board of directors; or
 - (d) effects any change in the particulars furnished in an application for registration; or
 - (e) applies for or has an application made against him for insolvency or liquidation,

shall, within the prescribed time and in the prescribed manner, submit an application to the Prescribed Authority together with the certificate of registration for the purpose of having such certificate of registration amended and if any such dealer dies, his legal representative shall, in the like manner, apply for the same.

- (2) If a dealer fails without sufficient cause to comply with the provisions of sub-section (1), the Prescribed Authority may after giving the dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty a sum of one hundred rupees per day of default subject to a maximum of rupees five thousand.
- (3) The Prescribed Authority may, either on the application of the dealer to whom a certificate of registration has been granted or, where no such application has been made, after due notice to the dealer and after making such enquiry as he may deem fit, amend any such certificate of registration if he is satisfied that by reason of the occurrence of any event specified in sub-section (1) or for any other reason the certificate of registration granted to the dealer is required to be amended.
- (4) An amendment of the certificate of registration made under sub-section (3) shall take effect from the date of contingency which necessitates the amendment whether or not information in that behalf is furnished within the time prescribed under sub-section (1):

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

- (5) Any amendment of a certificate of registration under this section shall be without prejudice to any liability for payment of any tax or penalty imposed or imposable or for any liability for prosecution for an offence under this Act.

- (6) Notwithstanding anything contained in any other sub-section where a registered dealer,—
- (a) effects a change in the name of his business; or
 - (b) is a firm and there is a change in the constitution of the firm without dissolution thereof; or
 - (c) is a trust and there is a change in the trustees thereof; or
 - (d) is a Hindu Undivided Family and the business of such family is converted into a partnership business with all or any of the co-partners as partners thereof; or
 - (e) is a firm or a company or a trust or any other set up and change in the management of such firm, company, trust or other set up takes place,

then merely by reason of the circumstances aforesaid, it shall not be necessary for the dealer to apply for a fresh certificate of registration and on information being furnished in the manner required by this section, the certificate of registration shall be amended.

- (7) Where,—
- (a) any business in respect of which a certificate of registration has been granted to a dealer on an application made by him, has been discontinued; or
 - (b) there is transfer of business by a dealer and the transferee already holds a certificate of registration under this Act; or
 - (c) a dealer has ceased to be liable to pay tax; or
 - (d) an incorporated body is closed down or if it otherwise has ceased to exist; or
 - (e) the owner of an ownership business has died leaving no successor to carry on business; or
 - (f) a firm or association of persons has been dissolved,

the dealer shall apply for cancellation of his registration to the Prescribed Authority, in the prescribed manner and within the time prescribed and surrender the certificate of registration along with the application for cancellation.

- (8) On receipt of such application or where no such application has been made, after due notice to the dealer and after making such enquiry as he may deem fit, if the Prescribed Authority is satisfied, he may cancel any such certificate of registration.
- (9) The certificate of registration shall be deemed to be inoperative,—
- (a) in case of clause (a) or clause (b) of sub-section (7) with effect from the date of discontinuance or transfer of the business as the case may be;

- (b) in case of clauses (c), (d), (e) and (f) of sub-section (7) from the date on which the dealer's liability to pay tax has ceased,

notwithstanding the fact that the order of cancellation is passed or that the particulars of the dealer regarding cancellation are published, as required under sub-section (15), in the Official Gazette after the aforesaid date.

(10) If a dealer,—

- (a) has failed to file three consecutive returns under this Act, within the time prescribed; or
- (b) knowingly furnishes incomplete or incorrect particulars in his returns; or
- (c) has failed to pay any tax due from him under the provisions of this Act; or
- (d) having issued tax invoices or retail invoices, has failed to account for the said invoices in his books of account; or
- (e) holds or accepts or furnishes or causes to be furnished a declaration, which he knows or has reason to believe to be false; or
- (f) who has been required to furnish security under the provisions of section 25, but has failed to furnish such security; or
- (g) contravenes or has contravened any of the provisions of this Act; or
- (h) has been convicted of an offence under this Act; or
- (i) discontinues his business and has failed to furnish information regarding such discontinuation; or
- (j) without entering into a transaction of sale issues to another dealer tax invoice, retail invoice, bill or cash memorandum with the intention of defrauding the Government of its revenue or with the intention that the Government may be defrauded of its revenue,

the Prescribed Authority may at any time, for reasons to be recorded in writing and after giving the dealer a reasonable opportunity of being heard, cancel his certificate of registration from such date as he may specify.

- (11) Every dealer who applies for cancellation of his registration shall surrender with his application the certificate of registration granted to him and every dealer whose registration is cancelled otherwise than on the basis of his application shall surrender the certificate of registration within fourteen days of the date of communication to him of the order of cancellation:

Provided that if a dealer is unable to surrender the certificate of registration on account of loss, destruction or defacement of such certificate, such dealer shall intimate the Prescribed Authority accordingly within seven days from the date of communication of order of cancellation of registration.

- (12) If a dealer fails without sufficient cause to comply with the provisions of sub-section (7) or fails to surrender his certificate of registration under sub-section (11), the Prescribed Authority may, by an order in writing and after giving the dealer a reasonable opportunity of being heard, direct that the dealer shall pay, by way of penalty, a sum not exceeding one hundred rupees for every day of default.
- (13) When any dealer to whom a certificate of registration is granted, has failed to pay any tax, interest, penalty or any other sum payable under this Act or has failed to furnish return, the certificate of registration of such dealer may be suspended by the Prescribed Authority in the manner as may be prescribed:

Provided that the certificate of registration of a dealer shall not be suspended if he has furnished return or returns within the date prescribed in the notice and has paid tax, penalty or interest payable under this Act within that date or by such date, as the Prescribed Authority may extend upon an application filed by the dealer within 15 days from the date by which he is required to file such return or returns or make payments of tax, interest or penalty, as the case may be.

- (14) Suspension of certificate of registration shall be withdrawn and the certificate of registration shall be restored on an application made by the dealer on furnishing evidence of payment of all taxes and on furnishing of overdue return or returns within 45 days from the date of suspension.
- (15) If the certificate of registration of a dealer is suspended or cancelled or if the suspension is withdrawn, the information may be made public through publication in the Official Gazette and insertion of notice in newspapers.
- (16) The cancellation of a certificate of registration shall not affect the liability of any dealer to pay tax due for any period till the date of such cancellation, that remained unpaid or is assessed after the date of cancellation, notwithstanding that he is not liable to pay tax under this Act after such cancellation of the certificate of registration.

Liability to obtain registration and to furnish information by transporter.

28. (1) Every transporter engaged in the business of transporting taxable goods in the State shall,—
- (a) get itself or himself registered within such time and in such manner as may be prescribed; and
- (b) submit to the Prescribed Authority, such statements or returns as may be prescribed of all taxable goods cleared, forwarded, transported or shipped by it or him.
- (2) The Prescribed Authority shall have the power to call for and examine the books of account or other documents in the possession of such transporter or his agent with a view to verifying the correctness of the statements or returns submitted.
- (3) Nothing contained in this section shall apply to any State Government or the Central Government or any public sector undertaking.
- (4) Where any transporter fails to get himself registered as per provision of clause (a) of sub-section (1), the Prescribed Authority may, after giving him a reasonable opportunity of

being heard, direct him to pay by way of penalty an amount not exceeding five thousand rupees for the first offence and if the offence is a continuing one with a fine not exceeding five hundred rupees for every day during which the offence continues.

- (5) Where any transporter fails to comply with the provision of clause (b) of sub-section (1), the Prescribed Authority may, after giving him a reasonable opportunity of being heard, direct him to pay by way of penalty an amount not exceeding one thousand rupees for the first offence and if the offence is a continuing one with a fine not exceeding one hundred rupees for every day during which the offence continues.

CHAPTER — V

RETURNS, ASSESSMENT, RECOVERY AND REFUND OF TAX

**Periodical
returns and
payment of
tax.**

29. (1) Every registered dealer and every dealer liable to pay tax shall furnish a correct and complete tax return in such form for such period, by such dates and to such authority, as may be prescribed:

Provided that different periods may be prescribed for different classes of dealers for the purpose of filing tax return.

- (2) Every registered dealer and every dealer liable to pay tax shall furnish, in addition to the tax return, if any, furnished under sub-section (1), a correct and complete annual return in the prescribed form within such time as may be prescribed.
- (3) If the Prescribed Authority has reason to believe that the turnover of sales or the turnover of purchases of any dealer has exceeded the taxable limit as specified in sub-section (6) of section 7, so as to render him liable to pay tax under this Act for any year or part thereof, he may, by notice served in the prescribed manner, require such dealer to furnish tax return under sub-section (1) and an annual return under sub-section (2) as if he were a registered dealer.
- (4) If any dealer having furnished a tax return or an annual return under this section, discovers any omission or any other error in the return so filed, he may without prejudice to the charge of any interest, furnish revised tax return or revised annual return, as the case may be, in the prescribed manner and within the prescribed time.
- (5) Every dealer required to file return under this section shall pay the full amount of tax, interest and any other sum payable by him according to such return or the differential tax payable according to the revised return furnished, if any, and shall furnish along with the return or revised return, as the case may be, a receipt showing full payment of such amount into the Government account.
- (6) Every return under this section shall be signed and verified,—
- (a) in case of an individual, by the individual himself, and where the individual is absent by some person duly authorised by him in this behalf;

- (b) in the case of a Hindu Undivided family, by the Karta;
- (c) in the case of a company or local authority, by the principal officer or Chief Executive or authorised signatory thereof;
- (d) in the case of a firm, by any partner thereof not being a minor or by a manager;
- (e) in the case of any other association, by the person competent to act on behalf of the association.

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

**Central Act
43 of 1961**

**Return
defaults.**

- 30.** (1) If any dealer fails to pay the amount of tax due within the time prescribed for its payment under section 29, such dealer shall, in addition to the tax, be liable to pay simple interest, at the rate of one and half per cent, per month on the amount of tax not so paid or on any less amount thereof remaining unpaid during such period, for the period commencing on the day following the date of expiry of the due date to the date of payment or the date of assessment, whichever is earlier. If any dealer fails to pay interest along with return or revised return in accordance with the provisions of this sub-section, such interest shall be levied by the Prescribed Authority.
- (2) For the purpose of calculating interest;
- (a) ‘month’ shall mean thirty days;
 - (b) where the period of default is in respect of a period of less than one month, the interest shall be computed proportionately.
- (3) If any dealer, without sufficient cause, fails to pay the amount of tax due and interest along with return or revised return in accordance with the provisions of sub-section (1), the Prescribed Authority may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to the tax and the interest payable by him, by way of penalty a sum not exceeding two percent per month of the tax so payable from the first day of the month following the month in which it had become due to the date of its payment or to the date of order of assessment, whichever is earlier.
- (4) If any dealer, without any sufficient cause,—
- (a) fails to furnish a tax return as required under sub-section (1) or an annual return under sub-section (2) of section 29, by the prescribed date; or
 - (b) fails to comply with the requirements of the notice issued under sub-section (3) of section 29; or
 - (c) being required to furnish revised return, fails to furnish the same by the date prescribed under sub-section (4) of section 29; or
 - (d) having paid the tax payable according to a return in time, fails to furnish such return in time or fails to furnish

along with the return proof of payment made in accordance with sub-section (5) of section 29,

the Prescribed Authority may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to any tax, interest and penalty under sub-section (3) payable or paid by him, a penalty of a sum of rupees one hundred per day of default subject to a maximum of rupees ten thousand.

- (5) The penalties specified under this section may be imposed by the Prescribed Authority notwithstanding the fact that the assessment proceedings have not been initiated against the dealer.
- (6) For the purposes of this Act, any return signed by a person who is not authorised under sub-section (6) of section 29 shall be treated as if no return has been filed.

Collection of tax only by registered dealers.

- 31. (1)** No person other than,—
- (a) a registered dealer, or
 - (b) a person required to deduct any amount by way of tax under the provisions of this Act,

shall collect any amount by way of tax under this Act. No collection of tax shall be made by the person specified in clauses (a) and (b) above except in accordance with the provisions of this Act and the rules made thereunder and beyond the rate specified.

- (2) Notwithstanding anything contained in sub-section (1), a registered dealer who has been permitted by the Prescribed Authority to pay tax by way of composition under section 20 shall not collect any sum by way of tax on the sale of goods during the period to which such payment relates.
- (3) Any amount collected by any person in contravention of the provisions of sub-section (1) or any amount collected by any person by way of tax or in any other manner not payable under any provisions of this Act shall be liable to forfeiture to the Government.
- (4) If the Prescribed Authority in the course of any proceedings under this Act or otherwise has reason to believe that any person has become liable to forfeiture of any sum under sub-section (3), he shall serve on such person a notice in the prescribed form requiring him on a date and at a place specified in the notice to attend and show cause as to why the said amount should not be forfeited to the Government and on receipt of the reply, if any, thereto, the Prescribed Authority thereupon shall hold an enquiry and shall make such order including an order of forfeiture as he thinks fit.
- (5) Where the Prescribed Authority has reason to believe that any person has willfully contravened the provision of sub-section (1), the Prescribed Authority may by an order in writing, impose upon such person a penalty of an amount not less than the amount of tax so collected and not exceeding twice the amount of tax so collected by him in contravention of the provision of sub-section (1).
- (6) The sum forfeited under sub-section (4) and the amount of penalty imposed under sub-section (5) shall be paid by the person or the dealer making the unauthorised collection into the

Government account by such date as may specified in a notice issued by the Prescribed Authority for this purpose, being a date not later than thirty days from the date of service of the notice.

- (7) Any sum forfeited or penalty imposed under this section which remains unpaid after the date specified in the notice for payment, shall be recoverable as an arrear of land revenue.
- (8) Where any order of forfeiture is made, the Prescribed Authority shall publish or cause to be published a notice thereof for the information of the persons concerned giving such details and in such manner as may be prescribed.
- (9) On the publication of the notice under sub-section (8), a refund of any such sum or any part thereof may be claimed from the Government by the person from whom it was unauthorisedly realised by way of tax, provided such tax was not passed on by him in any form or manner to some other person and if such tax was passed on to some other person, the claim for refund can be made by such other person only.
- (10) An application for such claim shall be made in writing in the prescribed form to the Prescribed Authority, within one year from the date of the order of the forfeiture.
- (11) On receipt of an application under sub-section (10), the Prescribed Authority shall hold such enquiry as he deems fit, and if the Prescribed Authority is satisfied that the claim is valid and admissible and that the amount so claimed to be refunded was actually paid into the Government account or recovered, and no set off or refund in respect of that amount was granted, he shall refund the sum or any part thereof, which is found due to the person concerned.
- (12) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any sum collected by a person in contravention of sub-section (1) is forfeited to the Government under sub-section (4) and is paid by him or is recovered from him, such payment or recovery shall discharge him of the liability to refund the sum to the person from whom it was so collected.
- (13) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

**Rounding off of
the amount of
tax, interest or
penalty.**

32. (1) For the purpose of calculation of tax, the taxable turnover, and where different portion of taxable turnover are liable to be taxed at different rates, each such portion, shall be rounded off to the nearest multiple of ten rupees and, for this purpose, where such amount contains a part of ten rupees, then, if such part is five rupees or more, it shall be increased to ten rupees and, if such part is less than five rupees, it shall be ignored.
- (2) The amount of tax, interest, penalty or any other sum payable by a dealer under the provisions of this Act or any sum refundable to any dealer shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee, then, if such part is fifty paise or more, it shall be increased to one rupee and, if such part is less than fifty paise, it shall be ignored.

Scrutiny of returns.

33. (1) Every return in relation to any period furnished by a registered dealer or a dealer to whom notice has been issued by the Prescribed Authority under section 29 shall be subject to scrutiny by the Prescribed Authority to verify the correctness of calculation, application of correct rate of tax and interest and input tax credit claimed therein, and full payment of tax and interest payable by the dealer during such period.
- (2) If any mistake is detected as a result of such scrutiny made as per the provisions of sub-section (1), the Prescribed Authority shall serve a notice in the prescribed form on the dealer to cure the defects and to make payment of the extra amount of tax along with the interest as per the provisions of this Act, if it is so payable, by a date specified in the said notice. The dealer shall correct the defects and submit a new correct and complete return within the period specified in the notice with the evidence of payment of the extra amount of tax and interest. The dealer shall be deemed to have submitted a correct and complete return by the date prescribed only if he furnishes the duly corrected return within the period specified in the notice with the evidence of such payment of tax and interest.

Provisional assessment.

34. (1) Where a dealer fails to furnish a tax return before the due date or if the tax return furnished by him appears to the Prescribed Authority to be incorrect and incomplete or if the dealer fails to furnish a correct and complete return with evidence of payment of tax and interest, if any, under sub-section (2) of section 33, the Prescribed Authority shall proceed to assess the dealer provisionally for the period of default to the best of his judgment recording the reason for such assessment and proceed to demand and collect the tax and interest accordingly:

Provided that no provisional assessment under this sub-section shall be made unless the dealer has been given a reasonable opportunity of being heard.

- (2) The provisional assessment under sub-section (1), shall be made on the basis of past returns or past records and where no such returns or records are available, on the basis of information received or collected by the Prescribed Authority and the Prescribed Authority shall direct the dealer to pay the amount of tax assessed in such manner and by such date as may be prescribed.
- (3) If the dealer furnishes return along with evidence showing full payment of tax, interest and penalty, if any, on or before the date of payment specified under sub-section (2), the provisional assessment made under sub-section (1) shall stand revoked to the extent of the tax demanded, interest levied and penalty imposed, on the date on which such return is filed by the dealer.
- (4) Nothing contained in this section shall prevent the Prescribed Authority from making an audit assessment under section 36 or best judgment assessment under section 37 and any tax, interest or penalty paid against provisional assessment shall be adjusted against, tax, interest and penalty payable on such assessment under those sections.

Self assessment.

35. (1) The amount of tax due from a dealer liable to pay tax may be assessed separately for each year during which he is so liable:

Provided that, the Commissioner may, subject to such conditions, if any, as may be prescribed, assess the tax due from any dealer during a part of a year and the other provisions of this section shall be construed accordingly.

- (2) If a dealer has filed all the tax returns and the annual return or revised returns in the prescribed manner and within the prescribed time and has paid the tax payable according to such returns or revised returns and also interest payable if any, the returns or revised returns so filed shall be accepted and his assessment shall be deemed to have been made for the purpose of sub-section (1) subject to adjustment of any arithmetical error apparent on the face of the said return:

Provided that the assessment under this sub-section of every such registered dealer who is required to furnish audit report under section 62 shall be deemed to have been made if such dealer has furnished the audit report along with the annual return.

**Audit
assessment.**

36. (1) Where,—

- (a) a registered dealer is selected for audit assessment by the Prescribed Authority on the basis of any criteria or on random basis; or
- (b) the Prescribed Authority is not satisfied with the correctness of any return filed under section 29; or bona fides of any claim of exemption, deduction, concession, input tax credit or genuineness of any declaration, evidence furnished by a registered dealer in support thereof; or
- (c) the Prescribed Authority has reasons to believe that detailed scrutiny of the case is necessary; or
- (d) a provisional assessment under section 34 has been made,

the Prescribed Authority may, notwithstanding the fact that the dealer may already have been assessed under section 34 or section 35, serve on such dealer in the prescribed manner a notice requiring him to appear on a date and place specified therein, which may be in the business premises or at a place specified in the notice, to either attend and produce or cause to be produced the books of account and all evidence on which the dealer relies in support of his returns including tax invoice, if any, or to produce such evidence as specified in the notice. For this purpose, the Prescribed Authority may also undertake tax audit of stock-in-trade of the dealer.

- (2) The dealer shall provide full co-operation and assistance to the Prescribed Authority to conduct the proceedings under this section at his business premises.
- (3) If the proceedings under this section are to be conducted at the business premises of the dealer and it is found that the dealer or his authorised representative is not available or is not functioning from such premises, the Prescribed Authority shall assess to the best of his judgement the amount of tax due from him.
- (4) If the Prescribed Authority is prevented by the dealer from conducting the proceedings under this section, the Prescribed

Authority may demand, a sum not exceeding the amount of tax so assessed, by way of penalty.

- (5) The Prescribed Authority shall, after considering all the evidence produced in course of the proceedings or collected by him either—
- (a) confirm the self assessment under section 35; or
 - (b) set aside the self assessment under section 35 and assess the amount of tax due from the dealer; or
 - (c) assess the amount of tax due from the dealer, if no assessment has been made under section 35:

Provided that if the Prescribed Authority proposes to rely on any evidence collected by him, the dealer shall be afforded a reasonable opportunity of being heard before any adverse inference is drawn.

Best judgment assessment.

37. (1) If any dealer,—
- (a) has not furnished annual return in respect of any period by the prescribed date; or
 - (b) has knowingly furnished incomplete or incorrect annual return or statement for any period; or
 - (c) has failed to comply with the terms of any notice under sub-section (1) or sub-section (3) of section 36; or
 - (d) has not maintained any accounts or has failed to maintain accounts in accordance with the provisions of this Act or has not regularly employed any method of accounting or the method employed is such that in the opinion of the Prescribed Authority assessment cannot properly be made on the basis thereof,
- the Prescribed Authority shall, after issue of a notice to the dealer in the prescribed form and in the prescribed manner, so as to give him a reasonable opportunity of being heard, assess him to the best of his judgment.
- (2) If the Prescribed Authority is satisfied that the dealer, in order to evade or avoid payment of tax,—
- (a) has failed to furnish without reasonable cause, returns in respect of any period by the prescribed date; or
 - (b) has furnished incomplete and incorrect returns for any period; or
 - (c) has availed himself of tax credit to which he is not entitled; or
 - (d) has failed to keep up-to-date account; or
 - (e) has issued false or incorrect tax invoice,

he may, after giving the dealer a reasonable opportunity of being heard, direct that the dealer shall pay, by way of penalty, a sum not exceeding twice the amount of,—

- (i) tax assessed in a case falling under clause (a); or
- (ii) additional tax assessed on account of the cases falling under clause (b), clause (c), clause (d) and clause (e).
- Assessment of dealer who fails to get himself registered.**
38. (1) If the Prescribed Authority, upon information which has come into his possession, is satisfied that any dealer who has been liable to pay tax under this Act, in respect of any period, has failed to get himself registered, the Prescribed Authority shall proceed in such manner as may be prescribed to assess to the best of his judgement the amount of tax due from the dealer in respect of such period and all subsequent periods and in making such assessment shall give the dealer a reasonable opportunity of being heard.
- (2) The Prescribed Authority may, if he is satisfied that the default was without reasonable cause, direct that the dealer shall pay, by way of penalty, in addition to the amount of tax so assessed, a sum not exceeding the amount of tax assessed or a sum of rupees ten thousand, whichever is more.
- No assessment after five years.**
39. No assessment under the foregoing provisions of this Act, shall be made after the expiry of five years from the end of the year to which the assessment relates:
- Provided that in case of offence under this Act for which proceedings for prosecution has been initiated, the limitation as specified in this sub-section shall not apply.
- Turnover escaping assessment.**
40. (1) Where after a dealer is assessed under section 34, 35, 36 or 37 of this Act for any year or part thereof, the Prescribed Authority has reason to believe that the whole or any part of the turnover of the dealer in respect of any period has,—
- (a) escaped assessment; or
- (b) been under assessed; or
- (c) been assessed at a rate lower than the rate at which it is assessable; or
- (d) been wrongly allowed any deduction therefrom; or
- (e) been wrongly allowed any credit therein,
- the Prescribed Authority may, after giving the dealer a reasonable opportunity of being heard and after making such enquiries as he considers necessary, proceed to assess to the best of his judgement, the amount of tax due from the dealer in respect of such turnover, and the provisions of this Act shall, so far as may be, apply accordingly.
- (2) No order of assessment and reassessment shall be made under sub-section (1) after the expiry of eight years from the end of the year in respect of which or part of which the tax is assessable.
- Exclusion of time period for assessment.**
41. In computing the period of limitation specified for assessment or reassessment, as the case may be, the time during which any assessment or reassessment proceedings remained stayed under the order of a competent Court shall be excluded.
- Power of reassessment in certain cases.**
42. Where any Court or the Tribunal passes an order in appeal or revision to the effect that any tax assessed under this Act or the

Central Sales Tax Act, 1956 should have been assessed under the provision of a law other than that under which it was assessed, then in consequence of such order or to give effect to any finding or direction contained in such order such turnover and part thereof, may be assessed or reassessed, as the case may be, to a tax at any time within five years from the date of such order, notwithstanding any limitation period which would otherwise be applicable to the assessment or reassessment made.

Payment and recovery of tax, penalty and interest.

43. (1) Tax shall be paid in the manner hereinafter provided and at such intervals as may be prescribed.

(2) A dealer furnishing returns under section 29 shall pay into Government account, in such manner and at such interval as may be prescribed, the amount of tax due from him for the period covered under the return along with the amount of interest, penalty or any other sum payable by him and shall furnish a receipt showing the payment of such amount into the Government account.

(3) A dealer furnishing a revised return in accordance with the sub-section (4) of section 29, which shows that a greater amount of tax is due than was paid or payable in accordance with the original return, shall furnish along with the return a receipt showing payment of the differential amount in the manner provided in sub-section (2).

(4) (a) The amount of tax,—

(i) due where returns have been filed without full payment of tax due; or

(ii) assessed under this Act less the sum already paid in respect of such period together with interest, if any; or

(b) the amount of penalty imposed under any provision of this Act; or

(c) any other dues under this Act,

shall be paid by the person or dealer or the person liable therefor into the Government account within thirty days from the date of service of the notice issued by the Prescribed Authority in respect thereof:

Provided that the Prescribed Authority may, in respect of any particular dealer or person, and for reasons to be recorded in writing, allow him to pay the tax, penalty, interest or the sum forfeited, by instalments but grant of instalments to pay tax shall be without prejudice to the other provisions of this Act including levy of penalty and interest.

(5) Where a dealer fails to make payment of the tax assessed or interest levied or penalty imposed on him or any other amount due from him under this Act within thirty days of the date of service of the notice of demand, the Prescribed Authority may, after giving the dealer a reasonable opportunity of being heard, direct that such dealer shall, in addition to the amount due pay, by way of penalty, a sum not exceeding two percent of such amount of tax, penalty, interest or any other amount due, for every month, for the period for which payment has been delayed by him after the date on which such amount was due to be paid.

- (6) The amount that remains unpaid after the due date of payment in pursuance of the notice issued under sub-section (4) and sub-section (5) shall be recoverable as arrears of land revenue.
- (7) Where in pursuance of sub-section (6), any proceedings for the recovery as an arrears of land revenue of any tax, penalty, interest or part thereof or any other amount remaining unpaid, has been commenced and the amount of tax, penalty, interest or any other amount is subsequently enhanced or reduced as a result of any assessment made or order passed in the appeal revision or rectification under this Act, the Prescribed Authority may, in such manner and within such period as may be prescribed, inform the dealer and the authority by whom or under whose order the recovery is to be made and thereupon such proceedings may be continued as if the amount of tax, penalty, interest or any other amount as modified, enhanced or reduced, had been substituted for the tax, penalty, interest or any other amount which was to be covered under sub-section (6).
- (8) Where the amount paid falls short of the aggregate of the tax or any other amount due and interest payable, the amount so paid shall first be adjusted towards interest payable and the balance, if any, shall be adjusted towards the tax or any other amount due.

**Special mode
of recovery.**

44. (1) Notwithstanding anything contained in any law or contract to the contrary, the Prescribed 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 known address, require—
- (a) any person from whom any amount of money is due, or may become due, to a dealer or person liable on whom notice has been served under sub-section (3) of section 29; or
 - (b) any person who holds or may subsequently hold money for or on account of such dealer or person liable,

to pay to the Prescribed Authority, either forthwith upon the money becoming due or being held or within the time specified in the first mentioned notice (but not before the money becomes due or is held as aforesaid) so much of the money as is sufficient to pay the amount due from the dealer or person liable in respect of the arrears of tax, interest, penalty or any other sum due under this Act, or the whole of the money when it is equal to or less than that amount.

Explanation.— For the purposes of this sub-section, the amount of money due to a dealer or person liable from, or money held for or on account of a dealer or a person liable by, any person, shall be calculated by the Prescribed Authority after deducting therefrom such claims, if any, lawfully subsisting, as may have fallen due for payment by such dealer or person liable to such person.

- (2) The Prescribed Authority may amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.
- (3) Any person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the dealer or person liable, and the receipt thereof into the Government account, shall constitute a good and

sufficient discharge of the liability of such person to the extent of the amount specified in the receipt.

- (4) Any person discharging any liability to the dealer or person liable after receipt of the notice referred to in this section, shall be personally liable to the Prescribed Authority to the extent of the liability discharged or to the extent of the liability of the dealer or person liable for tax, interest, penalty or any other sum due whichever is less.
- (5) Where a person to whom a notice under this section is sent, proves to the satisfaction of the Prescribed Authority that the sum demanded or any part thereof is not due to the dealer or person liable or that he does not hold any money for or on account of the dealer or person liable, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Prescribed Authority.
- (6) Any amount of money which the aforesaid person is required to pay to the Prescribed Authority, or for which he is personally liable to the Prescribed Authority under this section shall, if it remains unpaid, be recoverable as an arrear of land revenue.
- (7) The Prescribed Authority may apply to the Court in whose custody there is money belonging to the dealer or person liable for payment to him of the entire amount of such money or if it is more than the tax, interest, penalty or any other sum, if any, due, an amount sufficient to discharge such tax, interest, penalty or any other sum due.

Application of the provisions of the Assam Land and Revenue Regulation, 1886, the Bengal Public Demands Recovery Act, 1913 and the Revenue Recovery Act, 1890 for purposes of recovery of sales tax dues recoverable as arrears of land revenue.

45. For the purposes of recovery of any amount recoverable as an arrear of land revenue under this Act, the provisions of the Assam Land and Revenue Regulation, 1886, the Bengal Public Demands Recovery Act, 1913 as to recovery of arrears of land revenue shall notwithstanding anything contained in those Acts or in any other enactment, be deemed to be in force throughout the State and the provisions of the Revenue Recovery Act, 1890 shall have effect accordingly.

**(Regulation I of 1886)
(Bengal Act III of 1913)**

Central Act I of 1890

Special powers of tax authorities for recovery of tax as arrears of land revenue.

46. (1) Notwithstanding anything contained in the Bengal Public Demands Recovery Act, 1913 the taxing authority appointed by the Government under sub-section (2) of section 3 of this Act for the purpose of recovery of tax, interest, penalty or any other sum due shall be deemed to be a Certificate-officer appointed under clause (3) of section 3 of the said Act and shall have the same powers as are vested in the Certificate-officer under that Act.
- (2) Any proceeding under sub-section (1) shall be deemed to be a proceeding for recovery of the public demand under the Bengal Public Demands Recovery Act, 1913 and all provisions of the said Act for recovery, attachment, sale and arrest shall mutatis mutandis apply.
- (3) The taxing authority appointed by the Government for the purpose of recovery of any amount of tax, interest, penalty or any other sum, shall also be deemed to be a Revenue Officer under the Deputy Commissioner of the district under the Assam Land and Revenue Regulation, 1886 and shall have the same powers as are vested in the Revenue Officer under section 69 of the said Regulation for the purpose of attachment and sale of movable property of the defaulting dealer or the person liable.

Bengal Act III of 1913

Bengal Act III of 1913

Regulation I of 1886

- (4) Any proceeding under sub-section (3) shall be deemed to be a proceeding for recovery of arrears of land revenue under the Assam Land and Revenue Regulation, 1886 and all provisions of the said Regulation for recovery, attachment and sale of movable property of the defaulting dealer or the person liable shall mutatis mutandis apply.
- (5) The Government may, by notification in the Official Gazette, also empower the Commissioner or any person appointed to assist the Commissioner under sub-section (2) of section 3, not below the rank of Superintendent of Taxes, to exercise the power under the said Acts for the purpose of recovering such amount.

Special provisions relating to deduction of tax at source in certain cases.

47. (1) (a) Every person other than an individual, a Hindu Undivided Family, a firm or a company not under the control of the Government, responsible for making any payment or discharging any liability on account of any amount purporting to be the full or part payment of sale price or consideration for the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract shall, at the time of credit to the account of or payment to the dealer (hereinafter referred to as "contractor") of such amount in cash, by cheque, by adjustment or in any other manner, whatsoever, deduct in the prescribed manner, an amount calculated at the rate of five paise in the rupee, from such sum towards part or, as the case may be full satisfaction of the tax payable under this Act on account of total value of such works contract.

- (b) (i) Where on an application being made by any contractor in this behalf, the Prescribed Authority is satisfied that any works contract under reference is separable and involves both transfer of property in goods and labour and services, or involves only labour and services and accordingly, justifies deduction of tax on a part of the sum payable in respect of any works contract or, as the case may be, justifies no deduction of tax at all, he shall, after giving the contractor a reasonable opportunity of being heard, grant him such certificate as may be appropriate:

Provided that the Prescribed Authority may reject such application, or on his own motion, cancel or modify such certificate, after giving the contractor a reasonable opportunity of being heard:

Provided further that, nothing in the said certificate shall affect the tax liability of the contractor.

- (ii) Where such certificate is produced by the contractor, before the person responsible for payment, such person shall, unless the certificate is cancelled or modified by the Prescribed Authority, make deduction of tax in accordance with the said certificate. In the event of such certificate being cancelled or modified as

provided, such person shall make the deductions accordingly.

- (c) Any person entering into any contract with any contractor for transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract shall furnish within fifteen days from the date of signing of the contract such information as may be prescribed to the Prescribed Authority under whose jurisdiction the contractor's place of business is situated. Failure to do so shall entail a penalty not exceeding five hundred rupees per day of default after affording such person a reasonable opportunity of being heard.
- (2) Every person other than an individual, a Hindu Undivided Family, a firm or a company not under the control of the Government responsible for making any payment or discharging any liability on account of any amount purporting to be the full or part payment of sale price or consideration for the transfer of the right to use any goods for any purpose, at the time of credit to the account of or payment to the payee of such amount in cash, by cheque, by adjustment or in any other manner, shall deduct an amount calculated at the rate specified in the Fifth Schedule from such sum towards full satisfaction of the tax payable under this Act on account of total sale price for the transfer of the right to use such goods.
- (3) Every person responsible for paying sale price or consideration or any amount purporting to be the full or part payment of sale price or consideration in respect of any sale or supply of goods liable to tax under this Act to the Government or corporation, board, authority, undertaking or any other body by whatever name called, owned, financed or controlled wholly or substantially by the Government, at the time of credit to the account of or payment to the payee of such amount in cash, by cheque, by adjustment or in any other manner, whatsoever, shall deduct an amount calculated at the rate as may be specified in the Schedule from such sum towards full satisfaction of the tax payable under this Act on account of total sale price of such sale or supply.
- (4) Notwithstanding anything contained in any other Law for the time being in force, every person mentioned in sub-section (1), sub-section (2) and sub-section (3) responsible for paying sale price in respect of any works contract or lease or sale or supply of goods shall not enter into such transaction unless the contractor, lessor or seller or supplier, as the case may be, produces an authenticated copy of the certificate of registration under this Act or furnishes an undertaking for getting himself registered and any such contractor, lessor or seller or supplier who is not so registered under this Act shall not be paid by the said responsible person any amount in respect of the sale or supply, before he gets himself registered under this Act and submits an authenticated copy of the certificate of registration.
- (5) Every person referred to in sub-section (1), sub-section (2) and sub-section (3) responsible for paying sale price, shall within the prescribed time apply to the Prescribed Authority for allotment of a sales tax deduction account number. The number shall be quoted in such documents, statements and returns as may be prescribed.

- (6) Any tax deducted under this section shall be paid into the Government account within such time and in such manner accompanied with such documents and statements of account as may be prescribed.
- (7) The person making any deduction of tax under this section and paying it into the Government account shall issue to the payee a certificate of tax deduction and payment in such form and manner and within such time as may be prescribed.
- (8) Any deduction made in accordance with the provisions of this section and credited into the Government account, shall be treated as payment of tax on behalf of the person from whose bills and invoices, the deduction has been made and credit shall be given to him for the amount so deducted on the production of the certificate prescribed in this regard, towards the amount of tax finally assessed or determined as being payable by the concerned person in the assessment for the relevant assessment year and any amount deducted in excess of the tax so assessed or determined shall be refundable in accordance with the provisions of this Act.
- (9) The person responsible for deduction of tax shall within the prescribed time after the end of each year, file a return in the prescribed form to the Prescribed Authority.
- (10) No interest or penalty shall be imposed or no recovery proceedings against the dealer or payee shall be initiated in respect of deduction of tax under this section.
- (11) Where the amount has not been deposited after deduction, such amount and any other sum which may be payable under this section shall be a charge upon all the assets of the person concerned who made the deduction or who is liable to pay any other amount and shall be recoverable from him as arrears of land revenue:

Provided that no recovery proceedings shall be drawn up by the Prescribed Authority having jurisdiction over the person concerned without prior approval of the Commissioner.

- (12) If any person as referred to in sub-section (1), sub-section (2) or sub-section (3) fails to make the deduction or after making the deduction fails to deposit the amount so deducted into the Government account, the Prescribed Authority may, after giving such person a reasonable opportunity of being heard, by an order in writing, direct that such person shall pay, by way of penalty, a sum not exceeding twice the amount deductible under this section besides tax deductible but not so deducted and, if deducted, not so deposited into the Government account.
- (13) Without prejudice to the provision of sub-section (12), if any person fails to make the deduction or after deducting fails to deposit the amount so deducted, he shall be liable to pay simple interest at the rate of one and half percent per month on the amount deductible under this section but not so deducted and, if deducted not so deposited, from the date on which such amount was deductible to the date on which such amount is actually deposited into the Government account.

Tax to be first charge on property.

48. Notwithstanding anything contained in any contract to the contrary but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any

amount payable by a dealer under this Act on account of tax, penalty or interest or any other sum which a person is required to pay under this Act shall be a first charge on the property of the dealer or such person.

Period of limitation for recovery of tax.

49. Notwithstanding anything contained in any law for the time being in force, no proceedings for recovery of any amount under this Act shall be initiated after the expiry of twelve years from the date of the relevant assessment or from the end of the relevant year:

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

Refund.

50. (1) Subject to other provisions of this Act and the rules made thereunder, if it is found on the assessment or reassessment, as the case may be, that a dealer has paid tax, interest or penalty in excess of what is due from him, the Prescribed Authority shall, on the claim being made by the dealer in the prescribed manner and within the prescribed time, refund to such dealer the amount of tax, penalty and interest paid in excess by him:

Provided that, such refund shall be made after adjusting the amount of tax or penalty, interest or sum forfeited or all of them due from, and payable by the dealer on the date of passing of order for such refund.

- (2) Where the amount of input tax credit admissible to a registered dealer for a given period exceeds the tax payable by him for the period, he may, subject to such restrictions and conditions as may be prescribed, seek refund of the excess amount, by making an application in the prescribed form and manner, containing the prescribed particulars and accompanied with the prescribed documents to the Prescribed Authority, or adjust the same provisionally with his future liability to tax in the manner prescribed:

Provided that the amount of tax or penalty, interest or sum forfeited or all of them due from, and payable by, the dealer on the date of such adjustment shall first be deducted from such refund before adjustment.

Provisional refund.

51. (1) If a registered dealer has filed any return as required under this Act and the return shows any amount to be refundable to the dealer on account of sales in course of export out of the territory of India, then the dealer may apply in the manner and form as may be prescribed, to the Prescribed Authority for grant of provisional refund pending audit and investigation to establish the correctness of the claim and consequent assessment, if any.
- (2) Subject to the provisions of sub-section (3), the Prescribed Authority may require the dealer to furnish a Bank Guarantee or other security as may be prescribed for an amount equal to the amount of refund and on receipt of such guarantee or other security, the Prescribed Authority shall grant the dealer a provisional refund that may be determined as refundable.
- (3) The Prescribed Authority may direct the assessment of such dealer in respect of the year containing the period covered by the said return to be taken up as early as practicable and adjust the grant of provisional refund against tax due, if any, as a result of that assessment.

- (4) If, on assessment, the provisional refund granted under sub-section (2) is found to be in excess, then the excess shall be recovered as if it were a tax due from the dealer under this Act.
- (5) Interest shall be charged on such excess amount at the rate of one and half percent per month from the date of grant of provisional refund till the date of recovery of the amount.

Interest.

52. (1) A registered dealer entitled to refund in pursuance of any order under this Act including assessment or in pursuance of any order by any Court, shall be entitled to receive, in addition to the refund, simple interest at the rate of nine percent per annum for the period commencing after ninety days of the application claiming refund in pursuance to such order till the date on which the refund is granted.
- (2) The interest shall be calculated on the amount of refund due after deducting therefrom any tax, interest, penalty or any other dues under this Act.
- (3) If, as a result of any order passed under this Act, the amount of such refund is enhanced or reduced such interest shall be enhanced or reduced accordingly.
- (4) When a dealer is in default or is deemed to be in default in making the payment in pursuance of any assessment under this Act, he shall be liable to pay simple interest on such amount at the rate of one and half percent per month from the date of such default for so long as he continues to make default in the payment of the said tax.
- (5) Where as a result of any final order the amount of tax (including any penalty) due or in default is wholly reduced, the amount of interest, if any, paid shall be refunded, or if such amount is modified, the interest due shall be calculated accordingly and any excess amount of interest paid shall be refunded.
- (6) Where any amount of tax payable is enhanced by any such order, interest shall be payable on the amount by which the tax is enhanced.
- (7) Where the realisation of any amount remains stayed by the order of any Court or authority and such order is subsequently vacated, interest shall be payable also for any period during which such order remained in operation.
- (8) The interest payable under this Act shall be deemed to be tax due under this Act.

Power to withhold refund in certain cases.

53. (1) Where an order giving rise to refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending, and the Prescribed Authority is of the opinion that the grant of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Prescribed Authority may, withhold the refund till such time as he may determine.
- (2) Where a refund is withheld under sub-section (1) the dealer shall be entitled to interest as provided under sub-section (1) of section 52, if as a result of the appeal or further proceedings or any other proceedings he becomes entitled to the refund.

Exemption of certain sales and purchase.

54. (1) Subject to such conditions as it may impose, the Government may, if it is necessary so to do in the public interest, by notification in the Official Gazette, exempt any sales or purchases made to or by a class of dealers or persons specified in the said notification from payment of the whole or any part of any tax payable under the provisions of this Act and any notification issued under this section may be issued so as to be retrospective to any date not earlier than the 1st April, 2003 and such exemption shall take effect from the date of publication of the notification in the Official Gazette or such other earlier or later date as may be mentioned therein.
- (2) The sale of goods to any person or international organisations as specified in the Seventh Schedule appended to this Act shall be zero-rated.

The persons or International Organizations listed in the said Schedule may apply for refund of VAT paid for goods purchased in the State subject to conditions as may be prescribed.

CHAPTER — VI**ACCOUNTS AND RECORDS****Maintenance of accounts and records etc.**

55. (1) Every registered dealer or every dealer liable to pay tax under this Act shall keep a true and up-to-date account of the value of goods purchased or manufactured and sold by him or goods held by him in stock, in respect of each class of goods taxable at different rate of tax under this Act including input tax paid and output tax payable and, in addition to the books of account that a dealer maintains and keeps for the purpose referred to in this sub-section, he shall maintain and keep such registers and accounts in such form and in the manner as may be prescribed.
- (2) Every registered dealer or the dealer referred to in sub-section (1) shall keep at his place of business all accounts, registers and documents maintained in the course of business and shall not remove elsewhere such accounts, registers and documents except in accordance with the requirement of law or except for any purpose for which just cause is shown to the satisfaction of the Commissioner.
- (3) Where a dealer as referred to in sub-section (1) has established branch offices of the business in the State at places other than the principal place of business, the relevant accounts, registers and documents in respect of each such branch shall, without prejudice to the provisions of sub-section (5), be kept by him at the respective branch office.
- (4) If the Commissioner is of the opinion that the accounts kept and maintained by any dealer or class of dealers are not sufficiently intelligible and clear to enable him to verify the returns or to make any assessment under this Act, he may by an order, require such dealer or class of dealers, to keep such accounts, in such form and in such manner as he may, subject to rules made under this Act, direct.
- (5) If the Commissioner is satisfied that any dealer is not in a position to maintain accounts in accordance with the provisions of sub-section (1), he may, for reasons to be recorded in writing,

exempt such dealer from the operation of the provisions of the said sub-section.

- Tax invoice.**
- 56.** (1) Every registered dealer making a taxable sale to another dealer, whether registered or not, shall provide that purchaser at the time of sale with a tax invoice containing such particulars as specified in sub-section (4), and retain a copy thereof.
- (2) The tax invoice shall not be issued by a dealer, if,—
- (a) he is paying composite tax in lieu of Value Added Tax; or
- (b) the sale is in the course of export out of the territory of India; or
- (c) the sale is in the course of inter-state trade and commerce; or
- (d) the sale of goods is exempt from tax.
- (3) Not more than one tax invoice shall be issued for each taxable sale.
- (4) The tax invoice issued under sub-section (1) shall contain the following particulars on the original as well as the copies thereof,—
- (a) the word ‘Tax Invoice’ printed in bold letter at the top or at any prominent place;
- (b) the name, address and Taxpayer Identification Number (TIN) of the selling registered dealer;
- (c) the name, address and Taxpayer Identification Number (TIN) of the purchasing registered dealer;
- (d) an individual serialised number either printed or put by a numbering machine, and the date on which the tax invoice is issued;
- (e) description, quantity, volume and value of goods sold, and amount of tax charged thereon indicated separately;
- (f) signature of the selling dealer or his manager or agent, duly authorised by him;
- (g) the name and address of the printer, and the first and the last serial number of tax invoices printed and supplied by him to the dealer.
- (5) Except when a tax invoice is issued under sub-section (1), if a registered dealer sells any goods exceeding such amount in value as may be prescribed, in any one transaction to any person, he shall issue to the purchaser a retail invoice and retain a copy thereof.
- (6) The retail invoice shall contain the following particulars on the original as well as copies thereof,—
- (a) the words ‘Retail Invoice’ or ‘Cash Memorandum’ or ‘Bill’ printed in bold letters at the top or at a prominent place;

- (b) the name, address and Taxpayer Identification Number (TIN) of the selling registered dealer;
 - (c) in case the sale is in course of export out of the territory of India, the name, address and the registration number, if any, of the purchasing dealer or the foreign buyer, and the type of statutory form, if any, against which the sale has been made;
 - (d) an individual serialised number, either printed or put by a numbering machine, and the date on which the retail invoice is issued;
 - (e) description, quantity, volume and value of goods sold inclusive of tax, charged thereon;
 - (f) signature of the selling dealer or his manager or agent, duly authorised by him;
 - (g) the name and address of the printer, and the last serial number of retail invoices printed and supplied by him to the dealer.
- (7) Tax invoice shall be triplicate. The original and the duplicate copy shall be issued to the purchaser or the person taking delivery of the goods, as the case may be, and the triplicate copy shall be retained by the selling dealer.
- (8) Retail invoice shall be issued in duplicate. The original shall be issued to the purchaser and the duplicate copy shall be retained by the selling dealer.

Credit and debit notes.

57. (1) Where a tax invoice has been issued and the amount shown as tax charged in the tax invoice exceeds the actual tax charged in respect of the sale concerned, the seller shall provide the purchaser with a credit note within six months of the sales of goods involved in the transaction, containing such particulars as may be prescribed.
- (2) Where a tax invoice has been issued and the actual tax charged in respect of the sale concerned exceeds the tax shown in the tax invoice as charged, the seller shall provide the purchaser with a debit note within six months of the sale, containing such particulars as may be prescribed.
- (3) In case of goods returned or rejected by the purchaser, a credit note shall be issued by the selling dealer to the purchaser and a debit note shall be issued by the purchaser to the selling dealer containing the particulars as may be prescribed.
- (4) Any registered dealer who receives or issues credit notes or debit notes shall modify his return for the period in which the credit note or debit note is issued and pay any tax due on such return.

Quoting of registration number.

58. (1) For the purposes of identification of a registered dealer liable to pay tax the Prescribed Authority shall issue a registration number known as Taxpayer Identification Number (TIN). Every registered dealer shall quote such registration number allotted to him by the Prescribed Authority on all correspondences made, or statements and returns submitted, or information furnished and on tax invoices or documents issued by him. He shall also mention invariably his registration number on each copy of

challan while depositing amount of tax, or fee or other dues under this Act.

- (2) The selling dealer, if required by the purchaser of such goods, shall show him the certificate of registration granted to him under the provisions of this Act.
- (3) While making purchases of any goods every purchasing dealer who is a registered dealer under this Act shall give his Taxpayer Identification Number (TIN) to the dealer selling such goods and the dealer selling the goods shall mention the TIN of the purchasing dealer on sale invoice or bill or cash memo or transfer memo or challan or transfer invoice as the case may be, to be issued to the purchasing dealer or the recipient of goods.

Period of retention of accounts.

- 59.** (1) Every dealer shall preserve books of accounts including tax invoices and retail invoices until the expiry of eight years after the end of the year to which they relate or for such other period as may be prescribed or until the assessment reaches its finality, whichever is later.
- (2) Where such a dealer is a party to any appeal or revision under this Act he shall retain, until the appeal or revision is finally disposed of, every record and accounts that pertain to the subject matter of the appeal or revision.

Electronic record.

- 60.** Every dealer who maintains the records in a computer or any other electronic device shall also maintain day to day print out of all such records and shall retain them for the period specified in section 59.

Requirement to provide information.

- 61.** Notwithstanding anything contrary to the provisions of this Act, the Commissioner may, for any purpose related to the administration or enforcement of the provisions of this Act, by notice, require any person to provide the Commissioner, within such reasonable time as is stipulated in the notice, with any information or additional information including a return under this Act, or any document including electronic records.

Audit of accounts.

- 62.** (1) Where in any particular year, the gross turnover of a dealer exceeds forty lakhs rupees or such other amount as the Commissioner may, by notification in the Official Gazette, specify, then such dealer shall get his accounts, in respect of that year audited by an accountant within six months from the end of that year and obtain a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

Provided that in a case where such dealer is required under any other law to get his accounts audited, it shall be deemed to be sufficient compliance if he gets his accounts audited under such law and furnishes an audit report as required under such law and a further report in the form prescribed under this section within the time specified under sub-section (2).

- (2) A true copy of such report shall be furnished by such dealer to the Prescribed Authority by the end of the month after expiry of the period of six months during which the audit would have been completed.
- (3) If any dealer fails to get his accounts audited under sub-section (1) and fails to furnish a true copy of the audit report within the time specified in sub-section (2), the Prescribed Authority may,

after giving the dealer a reasonable opportunity of being heard, impose on him, in addition to any tax payable, a sum by way of penalty equal to half percent of the gross turnover or a sum of rupees one lakh, whichever is less.

Explanation.— For the purpose of this section, “Accountant” means a Chartered Accountant within the meaning of the Chartered Accountant Act, 1949 or a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 and includes a person who by virtue of the 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 registered under the said Act.

**Central Act
38 of 1948
Central Act
23 of 1959
Central Act
1 of 1956**

CHAPTER — VII

LIABILITY IN SPECIAL CASES

Liability in case of transfer of business.

63. (1) Where the business of a dealer liable to pay tax under this Act is transferred in whole or in part, by sale, bequest, inheritance, gift, lease, licence, or in any other manner whatsoever, the dealer and the person to whom the business is so transferred shall jointly and severally be liable to pay the tax (including any penalty) due from the dealer under this Act or under the earlier law, up to the time of such transfer, whether such tax (including any penalty) has been assessed before such transfer, but has remained unpaid or is assessed thereafter.
- (2) Where the transferee or the lessee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the sale of goods effected by him with effect from the date of such transfer and shall, if he is an existing dealer, apply within the prescribed time for amendment of his certificate of registration.

Liability to pay tax in case of death.

64. Where a dealer, liable to pay tax under this Act, dies then,—
- (a) if the business carried on by the dealer is continued after his death by his legal representative or any other person, such legal representative or other person shall be liable to pay tax including any penalty, sum forfeited and interest due from such dealer under this Act or under earlier law, in the like manner and to the same extent as the deceased dealer; and
- (b) if the business carried on by the dealer is discontinued whether before or after his death, his legal representative shall be liable to pay out of the estate of the deceased, in the like manner and to the extent the estate is capable of meeting the charge as the deceased dealer would have been liable to pay if he had not died, the tax including any penalty, sum forfeited and interest due from such dealer under this Act, or under earlier law;

whether such tax including any penalty, sum forfeited and interest has been assessed before his death but has remained unpaid, or is assessed after his death.

Explanation.— For this purposes of this section "legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908.

**Central Act
5 of 1908**

Liability of guardians, trustees and Court of Wards etc.

65. (1) Where the business in respect of which tax is payable under this Act is carried on by, or is in the charge of any guardian, trustee or agent of a minor or other incapacitated person on his behalf and for the benefit of such minor or other incapacitated person, the tax (including any penalty) shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be assessed upon and recoverable from any such minor or other incapacitated person, if he were of full age and of sound mind and if he were conducting the business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.
- (2) Where the estate or any portion of the estate of a dealer owning a business in respect of which tax is payable under this Act is under the control of the Court of Wards, the Administrator-General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a Court, the tax (including any penalty) shall be levied upon and be recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in like manner and to the same extent as it would be assessable upon and be recoverable from the dealer if he were conducting the business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.

Liability of partners of firm to pay tax.

66. (1) Notwithstanding anything contained in the Indian Partnership Act, 1932 or in any contract to the contrary, where any firm is liable to pay any tax (including any penalty) under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment and accordingly any notice or order under this Act may be served on any person who was a partner during the relevant time whether or not the firm has been dissolved and all the provisions of this Act shall apply accordingly:

**Central Act
9 of 1932**

Provided that where any such partner retires from the firm, he shall intimate the date of his retirement to the Prescribed Authority by a notice in that behalf in writing and he shall be liable to pay tax (including any penalty) remaining unpaid at the time of his retirement and any tax (including any penalty) due up to the date of his retirement though un-assessed on that date:

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

- (2) Where a change has occurred in the constitution of a firm or an association of persons, the partners or members of the firm or association as it existed before and as it exists after its reconstitution, shall, jointly and severally be liable to pay tax (including any penalty) due from such firm or association for any period before its re-constitution.

Liability to tax of a partitioned Hindu Undivided Family and dissolved firm etc.

67. (1) Where a dealer, liable to pay tax under this Act, is a Hindu Undivided Family and the joint family property is partitioned amongst the various members or group of members, then each member or group of members shall be jointly and severally liable to pay the tax including any penalty, sum forfeited and interest due from the dealer under this Act or under the earlier law, up to the time of the partition, whether such tax including any penalty,

sum forfeited and interest has been assessed before partition but has remained unpaid, or is assessed after partition.

- (2) Where a dealer liable to pay tax under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay, the tax including any penalty, sum forfeited and interest due from the firm under this Act or under the earlier law, up to the time of dissolution, whether such tax including any penalty, sum forfeited and interest has been assessed before such dissolution but has remained unpaid, or is assessed after dissolution.

Certain agents liable to tax for sales on behalf of principal.

68. (1) Where any person sells or purchases any taxable goods on behalf of his principal then such person and his principal shall both be jointly and severally liable to pay tax on the turnover of such sales or purchases.
- (2) If the principal, on whose behalf a commission agent has sold or purchased any goods, shows to the satisfaction of the Prescribed Authority that tax has been paid by the commission agent on such goods under sub-section (1), the principal shall not be liable to pay tax again in respect of the same transaction.
- (3) Where a manager or an agent of a non-resident dealer sells or purchases any goods on behalf of the non-resident dealer in the State, then the non-resident dealer and the manager or agent residing in the State, shall be jointly and severally liable to pay tax on the turnover of such sales or purchases:

Provided that, if the non-resident dealer shows to the satisfaction of the Prescribed Authority that the tax payable in respect of any sale or purchase has been paid by the manager or agent residing in the State, then the non-resident dealer shall not be liable to pay tax in respect of the same transaction.

Liability of contractor and sub-contractor to tax.

69. (1) Where a dealer carries on the business of transfer of property in goods involved in the execution of a works contract (hereinafter referred to as a contractor) through another such dealer (hereinafter referred to as a sub-contractor) directly or otherwise, and the sub-contractor executes such works contract and each or either of them is liable to pay tax under this Act, then notwithstanding anything contained in this Act, the contractor and the sub-contractor shall be jointly and severally liable to pay tax in respect of transfer of property in goods whether as goods or in some other form involved in the execution of such works contract.
- (2) If the contractor proves in the prescribed manner that the tax has been paid by the sub-contractor on the taxable turnover of the goods involved in the execution of the works contract, executed by such sub-contractor, the contractor shall not be liable to pay tax again on the taxable turnover of such goods.
- (3) If the sub-contractor proves in the prescribed manner that the tax has been paid by the contractor on the taxable turnover of goods involved in the execution of the works contract, executed by such contractor, the sub-contractor shall not be liable to pay tax again on the taxable turnover of such goods.

Liability in case of company in liquidation.

70. (1) Every person,—

- (a) who is a liquidator of any company which is being wound up whether under the orders of a Court or otherwise; or
 - (b) who 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, give notice of his appointment as such to the Prescribed Authority.
- (2) The Prescribed Authority shall, after making such inquiries or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he received notice of the appointment of the liquidator, the amount which in the opinion of the Prescribed Authority would be sufficient to provide for any tax (including any penalty) which is then, or is likely thereafter to become, payable by the company.
- (3) The liquidator shall not part with any of the assets of the company or the properties in his hand until he has been notified by the Prescribed Authority under subsection (2) and on being so notified, the liquidator shall set aside an amount equal to the amount notified and, until he so sets aside such amount, he shall not part with any of the assets of the company or the properties in his hand:

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 the tax, interest, penalty and any other sum, if any, payable by the company under this Act or for making any payment to secured creditors whose debts are entitled under law to priority of payments over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Prescribed Authority reasonable.

- (4) If the liquidator fails to give notice in accordance with subsection (1) or fails to set aside the amount as required by subsection (3) or parts with any assets of the company or the properties in his hand in contravention of the provisions of that sub-section, he shall be personally liable for the payment of tax, interest, penalty and any other sum, if any, which the company would be liable to pay under this Act:

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

- (5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.
- (6) When any private company is wound up and any tax, interest, penalty and any other sum, assessed under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due, shall be jointly and severally liable for the payment of such tax and penalty, if any, unless he proves to the satisfaction of the Prescribed Authority that 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.

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

**Amalgamation
of Companies.**

- 71.** (1) When two or more companies are to be amalgamated by the order of a Court or of the Central Government and the order is to take effect from a date earlier to the date of the order and any two or more such companies have sold or purchased any goods to or from each other in the period commencing on the date from which the order is to take effect and ending on the date of the order, then such transactions of sale and purchase shall be included in the turnover of the sales or of purchases of the respective companies and shall be assessed to tax accordingly.
- (2) Notwithstanding anything contained in the said order, for all of the purposes of this Act, the said two or more companies shall be treated as distinct companies and shall be treated as such for all periods up to the date of the said order and the certificates of registration of the said companies shall be cancelled, where necessary, with effect from the date of the said order.
- (3) Words and expressions used in this section, but not defined, shall have the meanings respectively assigned to them in the Companies Act, 1956.

**Central Act
1 of 1956**

CHAPTER — VIII

**SURVEY, INSPECTION OF ACCOUNTS, DOCUMENTS, SEARCH
OF PREMISES AND ESTABLISHMENT OF CHECK-POSTS**

Survey.

- 72.** (1) With a view to identifying dealers who are liable to pay tax under this Act, but have remained unregistered, the Commissioner shall from time to time cause a survey of unregistered dealers to be undertaken.
- (2) For the purpose of survey, the Commissioner may by general or special notice require any dealer or class of dealers to furnish the names, addresses and such other particulars as he may find necessary relating to the persons and dealers who have purchased any goods from or sold any goods to such dealer or class of dealers during any given period.
- (3) For the purpose of survey, the Commissioner may call for details and particulars regarding the services provided by public utilities and financial institutions including banking companies which, he is of the opinion, shall be relevant and useful for the purposes of the survey. He may from time to time cause the results of the survey to be published in any manner that he thinks fit so as not to disclose or indicate the identity of any particular unregistered dealer identified during the survey.
- (4) The Commissioner may for the purpose of survey enter any place where a person is engaged in business, whether such place be the principal place of business or not of such person and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in the business,—

- (i) to provide him with the necessary facility to inspect such books of accounts or other documents as he may require and which may be available at such place;
- (ii) to provide him with the necessary facility to check or verify the cash, stock or other valuable articles or things which may be found therein; and
- (iii) to furnish such information as he may require as to any matter which may be useful for, or relevant to any proceedings under this Act.

Explanation.— For the purposes of this section, a place of business includes a place where a person is engaged in business through an agent by whatever name called or otherwise, the place of business of such agent, a warehouse, godown or other place where the dealer or the agent stores his goods, or any place where the dealer or the agent keeps the books of accounts.

- (5) The Commissioner shall enter the place where the person is carrying on business only during the hours at which such place is open for business and in case of the said or any other place only after sunrise and before sunset. The Commissioner may make or cause to be made extracts or copies from books of accounts and other documents inspected by him, make an inventory of any cash, stock or things checked or verified by him, and record the statement of any person which may be useful for, or relevant to, any proceedings under this Act.
- (6) The Commissioner, in exercise of the powers under this section, shall on no account, remove or cause to be removed from the place where he has entered, any books of accounts, other documents or any cash, stock or other valuable article or thing.

**Cross-
checking of
transactions.**

- 73. (1) With a view to preventing evasion of tax and ensuring proper compliance with the provisions of this Act, the Commissioner may from time to time collect information regarding sales and purchases effected by any class of dealers and cause any of such transactions of sale and purchase to be cross-checked.
- (2) For this purpose, the Commissioner may from time to time by notification in the Official Gazette require any class of dealers to furnish such information, details and particulars as may be specified therein regarding the transactions of sales and purchases effected by them during the period mentioned in the said notification in such form to such authority and by such date as may be specified. The Commissioner may cause such transactions to be cross-checked with the help of the automated data processing system to the extent possible.
- (3) The Commissioner may cause any of such transactions to be cross-checked by reference to the books of accounts of the purchasing and selling dealers. For this purpose, the Commissioner shall so far as he may, send an intimation in writing in the prescribed form to the dealer whose books of accounts are required to be verified for the purpose of cross-checking, stating therein the details of the transactions proposed to be cross-checked and the time and date on which the dealer may attend with books of accounts and sale and purchase invoices. The intimation shall also specify that if the dealer fails to attend, then the place and date on which any officer or person duly authorised to cross-check the transaction shall visit the

place of business where the books of accounts are ordinarily kept by the dealer.

- (4) The Commissioner, may as far as possible, arrange that for any given dealer, not more than two dates are fixed during any year for cross-checking the transactions with reference to the books of accounts and other evidence by calling the dealer and two dates for visiting the said place of business of the dealer if the dealer has failed to attend in response to the intimation. The Commissioner may communicate such dates to the dealer.

Production and inspection of accounts and documents and search of premises.

74. (1) The Commissioner or any authority appointed under sub-section (2) of section 3 to assist him may, subject to such conditions as may be prescribed, require any dealer or any other person to produce before him any accounts, registers or documents, or to furnish any information, relating to stocks of goods, or to sale, purchase and delivery of goods or to payments made or received by the dealer, or any other information relating to his business, as may be necessary for the purpose of this Act.

- (2) All accounts, registers and documents including electronic records relating to stocks of goods, or to purchase, sale and delivery of goods, or to payments made or received by any dealer, and all goods and cash kept in any place of business of any dealer, shall at all reasonable time be open to inspection by any authority referred to in sub-section (1), and the dealer shall render all possible assistance to such authority in carrying out the inspection.

Explanation.— Such authority may take or cause to be taken such copies or extracts of the said accounts, registers or documents and such inventory of the goods and cash found as appears to him necessary for the purpose of this Act.

- (3) (a) If any authority referred to in sub-section (1), has reasons to believe that any dealer has evaded or is attempting to evade the payment of any tax due from him and is keeping or has kept his accounts in such a manner as is likely to cause evasion of tax payable under this Act, such authority may, for reasons to be recorded in writing, seize such accounts, registers, documents including electronic records or computer of the dealer, as may be necessary, and shall grant a receipt for the same and obtain acknowledgement of the receipt so given to him:

Provided that if the dealer or person from whose custody the books of accounts, registers, documents including electronic records or the computer are seized refuses to give an acknowledgement, such authority may leave the receipt at the premises and record this fact.

- (b) The authority referred to in sub-section (1), shall keep in his custody the books of accounts, registers, documents including electronic records or the computer seized and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or for the prosecution of the dealer, under any law and shall thereafter be returned to the dealer or any other person from whose custody they were seized, in the prescribed manner:

Provided that the authority seizing any books of accounts, registers, documents including electronic records or the computer is any authority other than the Commissioner, such authority may, for reasons to be recorded by him in writing and with the prior approval of the Commissioner, retain such books of accounts, registers, documents including electronic records or the computer for a period exceeding one hundred twenty days:

Provided further that on application of the dealer, the Commissioner shall on payment of fees as may be prescribed, provide him with true copies of the said books of accounts, registers or documents including electronic records.

- (c) The authority referred to in sub-section (1) may, before returning such books of accounts, registers or other documents as aforesaid, place or cause to be placed such marks of identification thereon as appear to him to be necessary:

Provided that such authority may, before returning the books of accounts, registers and other documents, require that the dealer or the person, as the case may be, shall give a written undertaking that the books of accounts, registers and other documents shall be presented whenever required by any competent authority for any proceedings under this Act.

- (4) For the purposes of sub-section (2) or sub-section (3), the authority referred to in sub-section (1) may, enter and search any place of business of any dealer or any other place where such authority has reason to believe that the dealer keeps or is for the time being keeping any account, registers or documents of his business or stocks of goods relating to his business:

Provided that no such authority below the rank of the Commissioner shall enter and search any residential accommodation (not being a place of business cum residence) unless such authority is specifically authorised in writing by the Commissioner in this regard:

Provided further that the power conferred by this sub-section, shall include the power,—

- (i) to search any person who leaves or is about to enter such place of business, residence or any other place or the dealer or his agent and employees present, and if such person is a woman, the search shall be made by another woman, with strict regard to decency;
- (ii) to make a note or inventory of any thing including goods found as a result of such search;
- (iii) to record the statement of a dealer or any person connected with his business, and such statement may, after giving the affected person a reasonable opportunity of being heard, be used for the purpose of determining his liability to tax.
- (5) (a) The authority referred to in sub-section (1), shall have the powers to seize any goods,—

- (i) which are found in a dealer's place of business or vehicle; or
- (ii) which, such authority has reason to believe to belong to the dealer and which are found in any place of business or vehicle or any other building or place;

but are not accounted for by the dealer in his accounts or 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.

- (b) The authority referred to in clause (a) shall as soon as possible, after seizure of the goods under clause (a), serve upon the dealer, a notice to show cause within a period of thirty days of service of such notice as to why a penalty equal to three times of the amount of tax as may be calculated on the price which such goods would have fetched on their assumed sale in the State, on the date of seizure, be not imposed on him for the dealer's default in not making entries in respect of such goods in his books of accounts or registers or other documents, as the case may be, maintained by him in the course of his business.
- (c) The authority seizing the goods shall record the statement, if any, given by the owner of the goods or his representative. If the authority referred to in clause (a), after taking into consideration the explanation of the dealer and after giving him a reasonable opportunity of being heard, is satisfied that the entries relating to the said goods were not made in the books of accounts, registers or other documents of the dealer without any proper justification, such authority shall, direct him to deposit, in addition to the penalty, advance tax computed by multiplying the value of the goods with the rate of tax applicable on sale of goods which shall be adjustable with the liability to tax incurred on the purchase or the sale of such goods or the sale of goods manufactured therefrom and in case he finds otherwise, he shall order release of the goods.
- (d) The authority referred to in clause (a) may, at any time after the service of the notice under clause (b) and before passing an order imposing penalty and for payment of advance tax under clause (c), release the goods seized if the dealer or the person from whom the goods were seized furnishes security equivalent to penalty and advance tax in the form of call deposit receipt drawn on a Scheduled Bank or a Bank guarantee from such a Bank to the satisfaction of such authority, and on payment by the dealer of the penalty and advance tax under clause (c), the security furnished shall be released.
- (e) Where no security is furnished under clause (d), the dealer shall pay the amount of penalty and advance tax, within ten days of the service of the order imposing penalty and for payment of advance tax on him, and on

payment of such amount the goods seized shall be released forthwith.

- (f) If the dealer fails to pay within the period specified in clause (e) the penalty and advance tax, the authority referred to in clause (a) shall, subject to other provisions of this section, dispose of the goods by way of sale in open auction in such manner as may be prescribed:

Provided that if the goods, in respect of which seizure is made, are of a perishable nature or subject to speedy and natural decay or when the expenses of keeping them in custody are likely to exceed their value, the same may be ordered to be auctioned as soon as it is practicable soon after an order of seizure of such goods is made.

- (g) The proceeds of sale of the goods referred to in clause (f) shall be applied in the prescribed manner for payment in the following order of priority,—

first, for incidental charges, if any, relating to auction sale of such goods;

secondly, for expenses, if any, for storage of such goods;

thirdly, for advance tax and penalty imposed under clause (b) and clause (c); and

the balance of the proceeds of sale, if any, shall be remitted to a Government account and shall be paid to the owner of the goods or, if his particulars are not available, to the persons from whom such goods were seized, upon application within one year from the date of sale or within such further period as may be allowed by the Commissioner for cause shown to his satisfaction.

Any amount of advance tax directed to be paid and penalty imposed under clause (c), which remains unpaid or which cannot be recovered in accordance with the provisions of this sub-section, shall be recoverable as an arrear of land revenue.

- (h) Any authority referred to in clause (a), seizing the goods shall take all the measures necessary for their safe custody. Where it is not feasible for such authority, to take possession of such seized goods, the said authority may, in writing, give custody of such seized goods to such person from whom the seizure of goods has been made on the express condition that he shall keep such seized goods,—

(i) where the custody is given to the person from whom the goods are seized, in the warehouse or any other place where the seizure has been made or in any other place as may be indicated by such authority in the zimmanama; or

(ii) where the custody is given to any other person, in the warehouse or place as may be indicated by such authority in the zimmanama

and such zimmadar shall not dispose of such goods in any manner and that he shall remain personally liable to return the goods to the authority on demand in the condition in which the goods were at the time of giving zimma:

Provided that the authority referred to in this sub-section may take physical possession of such seized goods from the custody of such person even before the conclusion of the proceedings where such person communicates, in writing, to such authority his difficulty in keeping such seized goods in his custody, or such authority finds it expedient to take custody of the goods or to transfer the custody from that person to some other person, for any reason.

- (6) Where any books of accounts, other documents, money or goods are found in the possession or control of any person in the course of any search, it shall be presumed, unless the contrary is proved, that such books of accounts, other documents, money or goods belong to such person.
- (7) (a) The authority referred to in sub-section (1), shall have the power to seal the place of business, goods vehicle or any box, locker, safe, almirah, or other receptacle found in such place of business or goods vehicle in which he has reason to believe that any books of accounts, registers 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, goods vehicle or box, locker, safe, almirah or other receptacle leaves the place or is not available or fails or refuses to open it when called upon to do so:

Provided that the power to seal shall be exercised in presence of two witnesses.

- (b) Where any place of business, godown, warehouse, goods vehicle or any box, locker, safe, almirah or other receptacle has been sealed, the authority referred to in sub-section (1), on an application made by the owner or the person in occupation or in-charge of such place of business, godown, warehouse, goods vehicle or any box, locker, safe, almirah or other receptacle, may order de-sealing thereof on such terms and conditions as may be directed.
- (8) The authority referred to in sub-section (1), shall also have the power to break open the lock of any door, box, locker, safe, almirah or other receptacle where the owner or other person in occupation or in-charge of the office, shop, godown, vessel or goods vehicle or the box, locker, safe, almirah or other receptacle found in the place of business or vehicle, is present but leaves the place or after a reasonable opportunity having been given to him to do so, fails to open such office, shop, godown, vessel or goods vehicle or the box, locker, safe, almirah or other receptacle as the case may be. Such authority shall prepare a list of the goods and documents found therein which shall be signed by such authority and not less than two witnesses.
- (9) The Commissioner or any authority appointed to assist him may requisition the services of any police officer or any public

servant, or of both in making search and seizure or for safe custody of goods seized under this Act and such public servant or police officer shall render necessary assistance to him.

- (10) The Commissioner or any authority appointed to assist him while making entry, search and seizure under this section shall, as far as may be, follow the procedure prescribed in the Code of Criminal Procedure, 1973.

**Central Act
2 of 1974**

**Establishment
of check-posts.**

75. (1) If the Government, considers it necessary that, with a view to preventing or checking evasion of tax under this Act in any place or places in the State, it is necessary so to do, it may, by notification in the Official Gazette, direct the establishment of a check-post or the erection of a barrier, or both, at such place or places as may be notified.

- (2) At every check-post or barrier, or at any other place when so required by any officer empowered by the Commissioner in this behalf, the driver or any other person-in-charge of a goods vehicle shall stop the vehicle, as the case may be, and keep it stationary as long as may be required by the officer-in-charge of the check post or barrier or the officer empowered as aforesaid, to examine the contents in the vehicle, by breaking open the package or packages, if necessary, and inspect all records relating to the goods carried which are in the possession of such driver or other person-in-charge, who shall, if so required, give his name and address and, the name and address of the owner of the goods vehicle as well as those of the consignor and consignee of the goods and also furnish such other information, as may be required by the aforesaid officer, who may also search the goods vehicle or part thereof and the driver or the person-in-charge of the goods vehicle or the goods, if he considers it necessary.

Explanation. — The officer-in-charge of the check post shall be an officer appointed to assist the Commissioner and posted to the check-post, but not below the rank of the Superintendent of Taxes.

- (3) The owner or the person in charge of a goods vehicle shall carry with him,—
- (a) such documents as may be prescribed; and
- (b) a goods vehicle record, a trip sheet or a log book, as the case may be, containing such particulars as may be prescribed in respect of the goods carried in the goods vehicle and produce the same before any officer-in-charge of a check-post or barrier or any other officer as may be empowered by the Commissioner in this behalf.
- (4) (a) If it appears to the officer-in-charge of the check-post or any officer empowered by the Commissioner in this behalf that the driver or the person-in-charge of the goods vehicle is not giving the correct name and address of the owner of the goods vehicle or of the consignor or consignee of the goods, and if the said authority after making such enquiry as he deems fit, finds that in order to prevent any evasion of tax payable under this Act and to ascertain the correct name and address of the owner of the goods vehicle or of the consignor or the consignee of the goods it is necessary to detain the goods, he shall

detain the goods either in the check-post or elsewhere as long as may be necessary:

Provided that no such goods shall be detained by the said authority for more than forty eight hours except with the permission of the next higher authority.

- (b) When any goods are detained under clause (a), the authority detaining the goods shall issue to the owner of the goods, if present, or, if the owner of the goods is not present, to his representative or the driver or other person-in-charge of the goods vehicle a receipt specifying the description and quantity of the goods so detained and obtain an acknowledgement, from such person or if such person refuses to give an acknowledgement, record the fact of refusal in the presence of two witnesses.
- (5) If on an examination of the contents in the goods vehicle or the inspection of records relating to the goods carried, the officer-in-charge of a check-post or barrier or any officer empowered by the Commissioner in this behalf has reason to believe that the owner or the person-in-charge of such goods vehicle is not carrying the documents as required by sub-section (3) or is not carrying proper and genuine documents or is attempting to evade payment of the tax due under this Act, or that the sale or purchase of the goods for the purpose of payment of tax under this Act has not been properly accounted for, he may, for reasons to be recorded in writing seize the goods and documents relating to the goods and the documents of the vehicle:

Provided that a list of all the goods and the documents seized under this sub-section shall be prepared by such officer and be signed by the officer and not less than two witnesses.

- (6) The officer detaining or seizing the goods shall record the statement, if any, given by the owner of the goods or his representative or the driver or other person-in-charge of the vehicle. If, after the inquiry including an inquiry into the nature of the transaction which occasioned the movement of goods, such officer finds that there has been an attempt to evade the tax under this Act, he shall, by an order, impose on the owner of the goods and in case the owner is not forthcoming or his identity is not disclosed by the person-in-charge of the goods or the driver or person-in-charge of the vehicle, in which the goods are being carried, on the person-in-charge of the goods or the goods vehicle or the driver, deeming such person to be the owner of the goods, a penalty calculated on the value of the goods at three times the rate of tax applicable on sale or purchase of such goods, and direct him to deposit, in addition to the penalty, advance tax computed by multiplying the value of the goods with the rate of tax applicable on sale or purchase of goods which shall be adjustable with the liability to tax incurred on the purchase or the sale of such goods or the sale of goods manufactured therefrom, and in case he finds otherwise, he shall order the release of the goods:

Provided that no penalty shall be imposed and no advance tax shall be required to be deposited unless the owner of the goods or his representative or the person-in-charge of the goods or the goods vehicle or the driver, as the case may be, has been given a reasonable opportunity of being heard.

- (7) The officer in charge of the check-post or the officer empowered by the Commissioner under sub section (2) may release the goods to the owner of the goods or to any person duly authorised by such owner on payment of the penalty and the advance tax under sub section (6).
- (8) The goods detained or the goods and documents so seized may be released by the officer detaining or seizing the goods, if the owner or his agent or the person-in-charge of the goods vehicle requests for time to adduce further evidence in respect of goods ordered to be detained under clause (a) of sub-section (4) or seized under sub-section (5) subject to furnishing of security to the satisfaction of such officer in the form of a bank draft or a call deposit or a guarantee from a Scheduled Bank, equivalent to penalty and advance tax calculated in the manner laid down in sub-section (6):

Provided that where the owner or his agent or the person-in-charge of the goods vehicle exercises the option of paying tax and penalty as per provision of sub-section (6), the officer-in-charge of the check-post or the officer empowered in this behalf instead of detaining or seizing the goods or the documents relating to the goods shall release the same.

- (9) If the tax and penalty imposed under sub-section (6) is not paid or the security as provided in sub-section (8) is not furnished forthwith or the goods are not claimed by any person, the officer-in-charge of the check-post or any officer empowered by the Commissioner shall arrange for safe custody and sale of the goods by public auction and for this purpose the provisions contained in clause (f), clause (g) and clause (h) of sub-section (5) of section 74, in so far as may be applicable, shall apply.
- (10) Where any goods are in movement within the territory of the State, an officer empowered by the Commissioner in this behalf may stop the goods vehicle or the carrier or the person carrying such goods, for inspection, at any place within his jurisdiction and provisions of this section in respect of detention, seizure or disposal of such goods shall *mutatis mutandis*, apply.
- (11) Where a transporter, while transporting goods, is found to be in collusion with any dealer to avoid or evade tax, the officer-in-charge of the check-post or the officer empowered by the Commissioner, shall detain the goods vehicle or the carrier of such transporter, and after affording him a reasonable opportunity of being heard and with prior approval in writing of the Commissioner, may confiscate such goods vehicle or carrier.
- (12) (a) Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. Where before delivery is taken from him, a carrier or bailee to whom goods are delivered for transmission, keeps the said goods in any office, shop, godown, vessel, receptacle, goods vehicle or any other place of business or any building or place, any officer appointed to assist the Commissioner under sub-section (2) of section 3 shall have power to enter and search such office, shop, godown, vessel, receptacle, goods vehicle or other place of business or building or place, and to examine the goods and inspect all documents relating to such goods. The carrier or bailee or the

person-in-charge of the goods and records shall give all facilities for such examination or inspection and shall, if so required, produce the documents referred to in subsection (3) and give a declaration containing such particulars as may be prescribed regarding the goods and give his name and address and the name and address of the carrier or the bailee and the consignee.

- (b) The power conferred by clause (a) shall also include,—
- (i) power to seize any books of accounts;
 - (ii) power to seize any goods;
 - (iii) power to break open the lock of any door, box, locker, safe, almirah or other receptacle in the office, shop, godown, vessel, vehicle, place of business, building or place where goods are kept by a transporter or bailee;
 - (iv) power to seal the place of business, goods vehicle or any box, locker, safe, almirah or other receptacle found in such place of business;
 - (v) power to levy tax and penalty;
 - (vi) power to auction goods; and

for this purpose, all the provisions of section 74 and of this section in this regard shall, *mutatis mutandis*, apply.

Transit of goods by road through the State and issue of transit pass.

76. (1) Where a goods vehicle is carrying goods taxable under this Act,—
- (a) from any place outside the State and is bound for any place outside the State, and in course of its movement passes through the State; or
 - (b) imported into the country from any place outside the country and such goods are being carried through the State to any place outside the State;

the driver or the person-in-charge of such goods vehicle or the transporter shall make, in the prescribed manner a declaration that the goods being so transported in his goods vehicle shall not be unloaded, delivered or sold in the State and obtain a transit pass containing such particulars as may be prescribed, from the officer-in-charge of the first check-post or barrier on entry into the State (hereinafter referred to as the entry check-post) or where there is no check-post from such officer as empowered by the Commissioner in this regard, after entry of the goods vehicle into the State, and shall produce it along with goods mentioned in such transit pass before the officer-in-charge of the check-post or barrier or such officer empowered by the Commissioner, before his exit from the State (hereinafter referred to as the exit check-post) and obtain his endorsement with his seal and signature, in proof of such exit from the State.

- (2) Where any goods consigned from any place outside the State are brought into the State at any place by railway or by air or by post or by steamer or boat for transport outside the State by road, the driver or person in-charge of the goods vehicle or the transporter

carrying goods from railway station or airport or post office, or steamer or boat station, as the case may be, to the place outside the State shall obtain transit pass in the prescribed manner and in the prescribed form, from such officer as empowered by the Commissioner, in whose jurisdiction such railway station or airport, or post office, or steamer or boat station is situated, and shall produce the goods vehicle along with the goods mentioned in such transit pass before the officer-in-charge of the check-post or barrier, or where there is no such check-post or barrier, before such officer as empowered by the Commissioner in this regard, before exit of the goods vehicle from the State (hereinafter referred to as the exit check-post) and obtain his endorsement with his seal and signature, in proof of such exit from the State. For the purpose of this sub-section, the office of the officer empowered by the Commissioner and having jurisdiction over the area in which such railway station or airport or post office, or steamer or boat station is situated shall be deemed to be the entry check-post.

- (3) Where any goods are brought from a place outside the State by road and after entry of such goods into the State the same are to be transported to a place outside the State either by railway or by air or by post or by river, the driver or the person-in-charge of the vehicle, or the transporter while obtaining transit pass from the entry check-post shall state the fact to this effect in the application for obtaining transit pass. The driver or the person-in-charge of such vehicle, or the transporter shall also mention the authority before whom, the transit pass along with copy of goods receipt is to be produced for endorsement. For the purpose of this sub-section, the office of the officer as empowered by the Commissioner in this regard and having jurisdiction over the area in which such railway station or airport or post office, or steamer or boat station is situated shall be deemed to be the exit check-post. The officer in-charge of the entry check-post after making such enquiries as he deems fit shall issue transit pass. The driver or the person-in-charge of the vehicle, after handing over goods to railway or airway or post office or steamer or boat, as the case may be, produce copies of the transit pass along with goods receipt note issued by railway or air port authority or post-office or steamer owner before such officer empowered by the Commissioner to be deemed officer-in-charge of the exit check-post mentioned in the transit pass for endorsement on them.
- (4) Where it appears to the officer-in-charge of the entry check-post or barrier or to the officer empowered by the Commissioner in this regard that the driver or the person-in-charge of the vehicle, or the transporter is not giving correct and complete documents relating to the consignment of the goods and correct information about the ownership of the goods and their destination and also in a case where the transporter of the goods has no permanent address within the State, the officer-in-charge of the entry check-post or the officer empowered by the Commissioner shall before issuing the transit pass, require the driver or the person-in-charge of the vehicle, or the transporter to furnish a security equivalent to the amount of tax calculated on the goods at the rate of tax prevailing in the State, in the form of a demand draft, call deposit or guarantee from a Scheduled Bank.

The security so furnished shall be released to the person who furnished the security on submission of the transit pass as per provision of sub-section (6). If, however, the transit pass is not submitted in time as provided in the said sub-section or is submitted without due endorsement(s) as provided in the same

sub-section, the amount of such security shall be adjusted against the amount of tax that may be assessed under sub-section (6) and shall be deposited into the Government account.

- (5) Where goods carried by a goods vehicle coming from any place outside the State are required to be unloaded temporarily at any place within the State for the purpose of transshipment or for any other purpose, the driver or the person-in-charge of the goods vehicle shall give a declaration to this effect before the officer-in-charge of the entry check-post or barrier or the officer empowered by the Commissioner in this regard, mentioning the exact place of such temporary unloading while applying for the transit pass. Before unloading, even temporarily, any goods for which transit pass has been issued, at any place within the State, the driver or the person-in-charge of the vehicle, or the transporter of the goods shall inform the officer empowered by the Commissioner in this regard, under whose jurisdiction the place of such unloading falls and such unloading and subsequent loading in the same goods vehicle or in a different goods vehicle shall be done in presence of the such officer and an endorsement of such officer to this effect with his seal and signature shall be obtained on the transit pass:

Provided that where any transshipment of goods is made by the driver or the person in-charge of the vehicle, or the transporter under any compelling circumstances and if the fact of such transshipment was not declared by him at the entry check-post or before the officer empowered by the Commissioner in this behalf, he shall adduce reasons for doing so before such officer along with supporting evidence wherever necessary, and if such officer is satisfied with the reasons adduced or evidence produced by the driver or the person-in-charge of the vehicle, or the transporter, he shall make an endorsement on the document containing the declaration as required and return the same to the driver or the person-in-charge of the goods vehicle or the transporter and allow the movement of the vehicle, carrying such goods outside the State:

Provided further that the Commissioner may, for the purpose of this sub-section, constitute a separate group of officers for any place in the State, who shall supervise such unloading and re-loading at that place and shall put the endorsement on the transit pass accordingly.

- (6) The driver or the person in-charge of the goods vehicle or the transporter of the goods shall submit the transit pass with the endorsement of the officer-in-charge of the exit check-post or barrier, or any officer empowered by the Commissioner in this behalf and also the endorsement of such officer as provided in sub-section (5), in case of a transshipment of the goods within the State, to the officer-in-charge of the concerned entry check-post within thirty days from the date of its issue, failing which it shall be presumed that the goods carried by the goods vehicle have been sold within the State by the driver or the person in-charge of the goods vehicle or boat, or the transporter or the carrier of the goods and all provisions of this Act shall, so far as may be applicable, be applicable as if such driver or the person-in-charge of the vehicle, or transporter were a dealer within the meaning of clause (15) of section 2 and the officer-in-charge of the entry check-post or barrier, or the officer empowered by the Commissioner in this behalf were the Prescribed Authority with power of assessment having jurisdiction in respect of this dealer to assess his liability to tax and to impose interest or penalty.

- (7) If the officer-in-charge of the entry check-post or any other officer from whom transit pass was obtained is satisfied that the owner, driver or person-in-charge of the vehicle, or the transporter has failed to submit the transit pass with endorsements in time as provided under sub-section (6) without any reasonable cause, such officer may, after giving the person concerned a reasonable opportunity of being heard, impose upon him, in addition to tax, a penalty equal to three times of such tax.
- (8) If the owner, driver or the person-in-charge of the vehicle, or the transporter fails to obtain a transit pass without any reasonable cause, in a case where he was liable to obtain such a transit pass under this section, the officer-in-charge of the entry check-post or deemed entry check-post or any officer empowered by the Commissioner in this behalf shall after giving the person concerned a reasonable opportunity of being heard, impose upon him a penalty equal to three times of the tax calculated on the goods carried by the goods vehicle at the rate of tax prevailing in the State and shall also realise security equivalent to the amount of tax so calculated. If the person concerned fails to pay the penalty and the security, the goods shall be seized under the provision of sub-section (5) and shall be disposed of as per provision of sub-section (9) of section 75.
- (9) If, at the exit check post or deemed exit check post or at any point of movement of the goods carried by the vehicle, within the State or at the place of transshipment of the goods, the goods are not found in accordance with the transit pass, it shall be presumed that the goods carried by such goods vehicle have been sold within the State and in such case the officer-in-charge of the exit check-post or any other officer as may be empowered, may, after giving the driver or the person-in-charge of the vehicle, or the transporter a reasonable opportunity of being heard, impose upon him in addition to tax, a penalty equal to three times of such tax on the portion of the goods not found in accordance with the transit pass and also on any unaccounted for goods carried by the goods vehicle without obtaining transit pass.

For the purpose of this sub-section, the driver or the person-in-charge of the vehicle, or the transporter shall be deemed to be a dealer within the meaning of clause (15) of section 2 and the officer-in-charge of the exit check-post or deemed exit check-post or the officer empowered by the Commissioner in this behalf shall be deemed to be the Prescribed Authority with power of assessment having jurisdiction in respect of this dealer to assess his liability to tax and to impose interest or penalty.

**Import of goods
into the state by
Rail, River, Air
or Post.**

77. (1) No person shall transport from any railway station, steamer station, airport, port, post office or any other place whether of a similar nature or otherwise, any consignment of goods except in accordance with such restrictions and conditions as may be prescribed, with a view to ensure that there is no evasion of tax payable under this Act.
- (2) Where any taxable goods are consigned by rail, river, air or post from a place outside the State for delivery to a dealer inside the State, the importer shall not,—
- (a) obtain or cause to be obtained delivery thereof unless he furnishes or causes to be furnished to the prescribed officer or any such officer empowered by the

Government in this behalf, a declaration in the prescribed form, in duplicate, duly filled in and signed by him along with relevant consignment note, railway receipt, bill of lading or air note as the case may be, and the invoice or bill or other document for endorsement by such officer; and

- (b) after taking delivery, carry such goods away or cause the goods to be carried away from the railway station, steamer or boat station or air port or post office, as the case may be, unless a copy of the declaration duly endorsed by such officer is carried with the goods.

Power to purchase goods in case of under-valuation.

78. (1) Where in respect of any taxable goods, carried in a goods vehicle or held in stock by any dealer or on his behalf by any other person, or held in the custody of any transporter, the Prescribed Authority or any authority to assist the Commissioner under sub-section (2) of section 3, has reason to believe that the value disclosed in invoice, challan, stock transfer memo or any other related document is lower than the prevailing market price or Maximum Retail Price in case of packaged goods by a difference of thirty per cent or more of the prevailing market price or Maximum Retail Price, as the case may be, such authority, for reasons to be recorded in writing, may purchase such goods. No such order for purchase shall be passed unless the person or dealer being dispossessed of such goods, is afforded a reasonable opportunity of being heard.

Explanation.— “Prevailing market price” shall mean the wholesale price at which the goods are generally bought and sold in the nearest wholesale market of the State by the dealers in such goods during the time when proceedings are taken to purchase such goods.

“Maximum Retail Price” (or ‘MRP’) shall mean the price marked on the package in which the goods are contained.

- (2) The price payable for purchase of such goods shall be the total price as mentioned in the invoice, challan, delivery note, or any other related document, plus the cost of transportation of the goods incurred up to the time of purchase, if any.
- (3) The person in possession of such goods, shall be bound to sell the goods to such authority and if he refuses, fails or does not deliver the goods, he shall be liable to a penalty which shall be double the amount of differences between the prevailing market price or Maximum Retail Price in the opinion of such authority and the price offered to such person for purchase of such goods.
- (4) The authority purchasing the goods, shall dispose of such goods in public auction and the sale proceeds so realized shall forthwith be paid into the Government account.

CHAPTER — IX

APPEAL AND REVISION

Appeals to the Appellate Authority.

79. (1) Any person aggrieved by an order passed under this Act by a taxing authority lower in rank than a Deputy Commissioner of Taxes, may appeal to the Appellate Authority, in the manner as

may be prescribed, within sixty days from the date of receipt of such order.

- (2) Where the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, it may admit an appeal after the expiry of the said period provided it is presented within a further period of one hundred eighty days.
- (3) The appeal shall be in the prescribed form and verified in the prescribed manner. It shall specify in detail the grounds upon which it is made and shall be accompanied by such documents as may be prescribed.
- (4) No appeal shall be entertained by the Appellate Authority unless it is satisfied that such amount of the tax, penalty or interest, as the case may be, as the appellant may admit to be due from him, has been paid.
- (5) No appeal by a person shall be entertained by an Appellate Authority unless such appeal is accompanied by satisfactory proof of payment of minimum twenty five per cent of the disputed tax, penalty, if any, imposed and the interest accrued thereon, if any:

Provided that such authority may stay the recovery of the full or part of the balance amount of tax, interest and penalty, till disposal of the appeal.

- (6) Where an order staying proceedings of recovery of any tax or other amount is made in any proceedings relating to an appeal, the Appellate Authority shall dispose of the appeal within a period of one hundred twenty days from the date of such order.
- (7) If such appeal is not so disposed of within the period specified in sub-section (6) for the reasons attributable to the appellant, the order of stay shall stand vacated after the expiry of the said period.
- (8) The Appellate Authority may, at the hearing of an appeal, after giving the authority which passed the order under appeal a reasonable opportunity of being heard, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, or to produce any evidence whether oral or documentary, not produced at any earlier stage of the proceedings in so far as such ground or evidence does not relate to any matter or facts relating to any claim not made before the lower authority, if the Appellate Authority is satisfied that the omission of that ground from the grounds of appeal or the failure to produce the evidence at the earlier stage was not willful or unreasonable.
- (9) The appellant shall serve a copy of the appeal memo to the authority against whose order the appeal is filed.
- (10) The Appellate Authority shall fix a day and place for the hearing of the appeal and shall give notice of the same to the appellant and the tax authority against whose order the appeal is preferred.
- (11) The Appellate Authority, after calling for and examining the relevant records and making such further inquiry as may be necessary, may—

- (a) confirm, reduce, enhance, or annul the decision or order appealed against; or
- (b) set aside the order and may refer the case back to the taxing authority against whose order the appeal is filed, with such directions as it may think fit for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary; or
- (c) pass such order as it may think fit.

Explanation I.— While disposing of an appeal, the Appellate Authority may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before it by the appellant or that no order was made in the said proceedings regarding such matter.

Explanation II.— In disposing of an appeal, the Appellate Authority may summarily reject the appeal if the requirements of this section and the rules framed thereunder are not complied with.

- (12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. On the disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, the tax authority whose order was appealed against and the Commissioner.
- (13) All appeals arising out of the same cause of action in respect of an assessment year shall be heard and decided together.
- (14) An order passed under this section shall, subject to the other provisions of this Act, be final.
- (15) Any Appellate Authority who had previously dealt with any case coming up before it in any other capacity or is personally interested in any case coming up before it shall be disqualified to hear that case. The Commissioner may, by an order, transfer such case to any other Appellate Authority for adjudication.
- (16) In every appeal, the Appellate Authority, where it is possible, hear and decide such appeals within a period of one year from the end of the financial year in which such appeal is filed before it.
- (17) No appeal shall lie against,—
 - (a) an order withholding a refund; or
 - (b) a notice issued under this Act calling upon a dealer for assessment or asking a dealer to show cause as to why he should not be prosecuted for an offence under this Act; or
 - (c) an order pertaining to the seizure or retention of books of accounts, registers and other documents; or
 - (d) an order sanctioning prosecution under the provisions of this Act; or

Appeals to the Appellate Tribunal.

- (e) an order refusing to compound any offence; or
- (f) an interim order passed in the course of any proceedings under this Act; or
- (g) such other order as may be prescribed.

80. (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order,—

- (a) an order passed by the Appellate Authority under section 79; and
- (b) an order passed by an authority not below the rank of Deputy Commissioner of Taxes.

(2) The Commissioner may, if he objects to any order passed by the Appellate Authority, direct the State Representative to appeal to the Appellate Tribunal against such order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the person or to the Commissioner, as the case may be:

Provided that the Appellate Tribunal may admit an appeal after expiry of sixty days if it is satisfied that the appellant or the State Representative on behalf of the Commissioner had sufficient reason for not filing the appeal within the aforesaid time, if it is within a further period of one hundred twenty days.

(4) The Appellate Tribunal may, on an application made by the appellant, order stay of recovery of an amount under dispute subject to such terms and conditions as are deemed necessary.

(5) In deciding an appeal, the Appellate Tribunal shall make an order, after affording the dealer or other person and the Commissioner a reasonable opportunity of being heard,—

- (a) affirming, reducing, increasing, or varying the assessment or other order under appeal; or
- (b) remitting the assessment or other order under appeal for reconsideration by the Authority concerned with such directions as it may deem fit.

(6) The Appellate Tribunal shall serve the appellant and the Commissioner with the order in writing, of its decision in the appeal setting forth the reasons for such decision.

(7) The Appellate Tribunal shall hear and decide every appeal, as expeditiously as possible, and ordinarily within a period of one year from the end of the financial year in which such appeal is filed before it.

(8) The Appellate Tribunal may, on an application either by the appellant or by the respondent made within one year from the date of receipt of the order under this section, review any order passed by it on the basis of the facts which were not before it when the order was passed.

Revision to High Court.

81. (1) Any dealer or other person, who is dissatisfied with the decision of the Appellate Tribunal, or the Commissioner may, within

sixty days after being notified of the decision of the Appellate Tribunal, file a revision to the High Court; and the dealer or other person so appealing shall serve a copy of the notice of revision on the respondents to the proceedings.

- (2) A revision to the High Court may be made on question of law or an erroneous decision or failure to decide a question of law that shall be raised in the revision.
- (3) The Commissioner shall also be made a party to the proceedings before the High Court where revision is filed by the dealer or other person.
- (4) The High Court may on application either by the petitioner or by any of the respondents review any order passed by it provided such application is made within one year from the date of receipt of the judgement.
- (5) A revision or review application presented before the High Court under this section shall be heard by the bench consisting of not less than two judges.

Revision by the Commissioner.

82. The Commissioner may, on his own motion, call for and examine the record of any proceedings under this Act and if he considers that any order passed therein by any officer other than the Appellate Authority and the Appellate Tribunal, is erroneous in so far as it is prejudicial to the interest of the revenue, may, after giving the dealer a reasonable opportunity of being heard, pass such order as he deems fit:

Provided that the Commissioner shall not pass any order under this section after the expiry of five years from the date of such order.

Power to rectify error apparent on the record.

83. (1) Any authority including the Appellate Authority, Revisional Authority and Appellate Tribunal may, on an application or otherwise at any time within three years from the date of any order passed by it, rectify any error apparent on the face of the record:

Provided no such rectification which has the effect of enhancing the liability to pay tax or penalty or penal interest shall be made unless such authority has given notice to the person affected and has allowed him a reasonable opportunity of being heard.

- (2) Where such rectification has the effect of enhancing the tax liability or penalty or both, the Prescribed Authority shall give the dealer or other person a notice of enhanced tax or penalty and the dealer or other person shall pay the enhanced tax or penalty or both in the manner prescribed and when such rectification has the effect of reducing the tax liability or penalty or both the Prescribed Authority shall issue a refund order of the excess tax or penalty or both paid, if any.

Application of section 4 and 12 of Limitation Act, 1963.

84. In computing the period of limitation under this chapter, the provisions of section 4 and 12 of the Limitations Act, 1963 shall, so far as may be, apply.

CHAPTER — X

OFFENCES AND PENALTIES

Offences and prosecution.

85. (1) Whoever,—
- (a) being liable to pay tax under this Act, carries on business as a dealer without getting himself registered under section 21; or
 - (b) not being a registered dealer, falsely represents, while making any sale or purchase of goods, that he is a registered dealer under this Act; or
 - (c) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration; or
 - (d) carries on or continues to carry on business as a dealer without furnishing the security demanded under section 25 of this Act; or
 - (e) fails to deposit the tax due before furnishing the return in accordance with the provisions of this Act; or
 - (f) fails to pay without reasonable cause the amount of any demand under the provisions of this Act; or
 - (g) fails to submit, without reasonable cause, return of his turnover under the provisions of this Act; or
 - (h) submits a false return of turnover under this Act or furnishes a false statement; or
 - (i) fails or neglects to issue sale invoice or bill or cash memo; or
 - (j) issues a false sale invoice or bill or cash memo without sale of goods shown in such sale invoice or bill or cash memo or issues a false transport memo or challan or transfer invoice without despatch or delivery of goods shown in such transport memo or challan or transfer invoice; or
 - (k) receives a false purchase invoice or bill or cash memo from a dealer without purchase of goods shown in such purchase invoice or bill or cash memo or receives a transport memo or challan or transfer invoice without receipt of goods shown in such transport memo or challan or transfer invoice; or
 - (l) is found to have availed wrong credit of input tax in a fraudulent manner; or
 - (m) fails to keep true and proper accounts or records of sales or purchases or to produce such accounts before the taxing authority or to preserve such accounts or records in accordance with provisions of this Act; or
 - (n) knowingly prepares or produces incorrect accounts, registers or documents or knowingly furnishes incorrect information; or

- (o) refuses to permit or prevents or obstructs, in any manner, any competent authority under this Act, to enter, survey, inspect and search the business place or any other place where any goods or accounts, registers or other documents are believed to have been kept or refuses to display material in a computer or in a computer floppy or refuses to allow copies or printout of the material in a computer or its floppy to be taken in accordance with the provisions of this Act; or
- (p) prevents or obstructs, in any manner, any officer to seize the goods or the accounts, registers or other documents; or
- (q) prevents or obstructs an officer empowered under this Act from performing any of the functions under this Act or the rules made thereunder; or
- (r) makes a false verification or declaration on an application for registration or in connection with any other proceedings under this Act; or
- (s) willfully evades or attempts to evade tax leviable under this Act or willfully attempts, in any manner whatsoever, to evade payment of any tax, penalty or interest or all of them under this Act; or
- (t) tampers with any seal put under sub-section (7) of Section 74; or
- (u) produces a false proof of deposit of any amount of tax or fee, or penalty or any other sum due under this Act; or
- (v) demands or charges on the sale or purchase of any goods any amount of tax in contravention of provisions of this Act; or
- (w) refuses or neglects to furnish any information which may be in his knowledge or possession and which he has been required to furnish for the purpose of this Act, or furnishes information which is false in any materials particular or refuses or fails to comply with any requirement made of him under the provisions of this Act; or
- (x) uses or furnishes a prescribed form of declaration or certificate which has not been obtained by him or his authorised agent from the Prescribed Authority in the prescribed manner, or is found to have in his possession any statutory form which has not been obtained in accordance with the provisions of this Act or which has not been furnished to him under the provision of this Act or the rules thereunder by any other dealer; or after obtaining the statutory form from the Prescribed Authority uses it in a manner not authorised by this Act or the rules thereunder; or
- (y) fails to stop the goods vehicle or carrier transporting the goods of which he is the driver or otherwise in charge, for being inspected in accordance with the provisions of this Act, or prevents or obstructs the inspection of the goods or the goods vehicle or the carrier transporting the

goods, by the officer in-charge of a check-post or any other officer empowered in this behalf by the Commissioner; or

- (z) imports into or exports from the State, any goods showing incorrect or fictitious names or addresses of consignors or consignees or incorrect details about the goods or incorrect particulars in vouchers, way bills or goods receipts or documents accompanying the goods, while such goods are in transit; or
- (za) closes or leaves the place of business or being a driver or person-in-charge of a goods vehicle carrying goods leaves the goods vehicle with a view to preventing inspection under this Act or the rules made thereunder; or
- (zb) fails to obtain authorisation for transit of goods through the State as provided under section 76 and also fails to prove that the goods are meant for delivery outside the State; or
- (zc) having obtained authorisation for transit of goods through the State and having taken responsibility to carry goods outside the State, fails to prove that the same has been carried outside the State; or
- (zd) imports or transports or abets import or transport of any taxable goods by road but fails to disclose the particulars of such goods as provided under section 75 of this Act before the officer-in-charge of a check-post or before an officer empowered by the Commissioner; or
- (ze) being a transporter fails to get himself registered under section 28, or fails to maintain the records or submit the statements or returns as required under the provisions of this Act; or
- (zf) fails to deduct tax at source as required under section 47; or
- (zg) willfully acts in contravention of any provisions of this Act or the rules made thereunder, for the contravention of which no express provision for punishment is made by this Act,

shall, without prejudice to his liability under any other law for the time being in force and in addition to recovery of tax or any other dues payable by him under this Act, on conviction be punishable with simple imprisonment for a period which shall not be less than six months but which may extend to three years and shall also be liable to pay a fine of an amount not less than the tax or other amount due and not exceeding fifty thousand rupees.

- (2) Whoever aids or abets or induces any person in commission of any act specified in sub-sections (1) shall, on conviction, be punished with simple imprisonment which shall not be less than three months but which may extend to three years with fine not exceeding fifty thousand rupees.
- (3) Whoever commits any of the acts specified in sub-sections (1) and sub-section (2) and the offence is a continuing one under any

of the provisions of these sub-sections, shall, on conviction, be punished with daily fine not less than rupees one hundred during the period of the continuance of the offence, in addition to the punishments provided under this section.

- (4) Notwithstanding anything contained in sub-sections (1) and sub-section (2), no person shall be proceeded against under these sub-sections for the acts referred to therein if the total amount of tax evaded or attempted to be evaded is less than rupees two hundred during the period of a year.
- (5) Where a dealer is accused of an offence specified in sub-sections (1) or sub-section (2), the person deemed to be the manager of the business of such dealer shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.
- (6) In any prosecution for an offence under this section, which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state, but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.— Culpable mental state includes intention, motive or knowledge of fact or belief in, or reason to believe a fact and a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Offences by companies and Hindu Undivided Family.

86. (1) Where an offence under this Act or the rules made thereunder has been committed by a company, every person who at the time when the offence was committed, was in-charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purpose of this section,—

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

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

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

Provided further that, where an offence under this Act has been committed by a Hindu Undivided Family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any adult member of the Hindu Undivided Family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceed against and punished accordingly.

Cognizance of offences.

87. (1) No Court shall take cognizance of any offence under this Act or the rules made thereunder except with the previous sanction of the Commissioner and no Court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences punishable under this Act or the rules made thereunder shall be cognizable and bailable.

**Central Act
2 of 1974**

Investigation of offences.

88. (1) Subject to conditions, if any, as may be prescribed, the Commissioner may authorise either generally or in respect of a particular case or class of cases any officer subordinate to him to investigate all or any of the offences punishable under this Act.

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

**Central Act
2 of 1974**

Compounding of offences.

89. (1) The Commissioner may, either before or after the institution of proceedings of prosecution for any offence punishable under section 85 or under any rules made under this Act, accept from any person charged with such offence, by way of composition,—

- (a) where the offence consists of the failure to pay or the evasion of, any tax recoverable under the provisions of this Act, in addition to the tax so recoverable, a sum of money not exceeding double the amount of tax recoverable:

Provided that the Commissioner shall not accept any sum by way of composition which is less than twenty-five percent of the amount of tax recoverable;

- (b) in any other case, a sum of money not exceeding fifty thousand rupees subject to a minimum of rupees two thousand, in addition to the tax recoverable.
- (2) The Commissioner shall not compound an offence under this section and pass an order for payment of the composition money unless the person concerned admits in writing that he has committed the offence.

- (3) Where the Commissioner compounds an offence under this section, the order,—
- (a) shall be in writing and specify the offence committed, the sum of money to be paid, the due date for the payment, and date by which the proof of such payment is to be produced;
 - (b) shall be served on the person who committed the offence; and
 - (c) shall be final and not subject to any appeal.
- (4) On payment of the full composition money, no further proceedings shall be taken against the accused person in respect of the same offence and any proceedings, if already taken, shall not be further proceeded with.

Penalties.

- 90.** Whosoever contravenes or fails to comply with, any of the provisions of this Act or the rules made thereunder or any order or direction made or given under this Act or the rules thereunder, shall, if no other penalty is provided under this Act for such contravention or failure, be liable to imposition of a penalty of an amount not exceeding twice the amount of tax involved or tax evaded or sought to be evaded where it is practicable to quantify such amount or an amount not exceeding fifty thousand rupees in any other case, subject to a minimum of two thousand rupees and where such contravention or failure is a continuing one, to a further penalty of one hundred rupees for every day during the period of continuance of the contravention or failure:

Provided that no penalty under this section shall be imposed unless the person concerned is given a reasonable opportunity of being heard.

CHAPTER — XI**MISCELLANEOUS****Dealer to declare the name of his business manager.**

- 91.** (1) Every dealer, who is liable to pay tax, and who is a Hindu Undivided Family or an association of persons, club or society, firm or company, or who is engaged in business as the guardian or trustee or otherwise on behalf of another person, shall within the period prescribed, furnish a declaration in the manner prescribed stating the name of the person or persons who shall be deemed to be manager or managers of such dealer's business for the purposes of this Act.
- (2) Such declaration shall be furnished at the time of registration, wherever applicable and whenever there is a change of such manager or managers, a fresh declaration shall be furnished stating the name or names of the new manager or managers, within the period prescribed in sub-section (1) of such change.
- (3) The statement furnished under this sub-section shall also contain the name and address with designation, in relation to the business, of such persons who are authorised to receive notice and other documents under this Act and service of notice or other documents on such person shall be binding on the dealer.

Special powers for reconstitution of records in certain circumstances.

92. (1) If the Commissioner is satisfied that any records pertaining to a dealer have been destroyed as a result of fire, flood or earthquake or otherwise as a result of any natural or other calamity or event, he may by notice in writing, require the dealer to attend before him on a date and at a place specified in the notice, or to produce before him any accounts or registers or documents or copies thereof or to furnish fresh returns or declarations under this Act or earlier law for such period, by such dates and to such authority as may be specified in the notice (being returns for a period for which the dealer has not yet been assessed), or to furnish true copies of or extracts from any documents already submitted to the Commissioner, on or before the date specified in the notice, or to furnish any other information relating to the business of the dealer as may be specified in the notice, being information which the Commissioner considers necessary for facilitating the work of assessment including reassessment or the collection of the tax from such dealer under this Act or under earlier law.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the Commissioner may require the dealer to produce for inspection or furnish copies of or extracts from all or any of the following, namely:—

- (a) application for the issue of a certificate of registration made under this Act;
- (b) certificate of registration granted to the dealer;
- (c) returns furnished by the dealer;
- (d) proof of payment of tax, penalty and any other sum by the dealer;
- (e) copies of the trading account, profit and loss account and Balance Sheet;
- (f) a certified copy of the assessment order given to the dealer;
- (g) any notice of demand served on the dealer;
- (h) specimen signature furnished by a dealer;
- (i) any nomination made by a dealer,

For securing compliance with any notice given under this section, the Commissioner shall have all the powers mentioned in section 74.

(3) Where any person is prosecuted for failure to comply with any requirement made of him under this section, the burden of proving that he had reasonable excuse for such failure shall be on him.

Publication and disclosure of information respecting dealers and other persons in public interest.

93. (1) Notwithstanding anything contained in section 102, if the Commissioner is of the opinion that it is necessary or expedient in the public interest to publish or disclose the names of any dealers or other persons and any particulars relating to any proceedings under this Act in respect of such dealers and persons, it may publish or disclose or cause to be published or disclosed such names and particulars in such manner as it thinks fit.

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

Explanation.— In the case of a firm, company or other association of person, the names of the partners of the firm, the directors, managing agents, secretaries, treasurers or managers of the company or the members of the association, as the case may be, may also be published or disclosed, if, in the opinion of the Commissioner, the circumstances of the case justify it.

Service of notice when family is disrupted or firm is dissolved or business is discontinued.

94. (1) Where a Hindu Undivided Family has been partitioned, notices under this Act shall be served on the person who was the last manager of the Hindu Undivided Family, or if such person cannot be found, then on all adults who were members of the Hindu Undivided Family, immediately before the partition.
- (2) Where a firm or an association of persons is dissolved, notices under this Act may be served on any person who was a partner (not being a minor) of the firm, or a member of the association, as the case may be, immediately before its dissolution.
- (3) Where an assessment is to be made in respect of business which has been discontinued, a notice under this Act shall be served in the case of a firm or an association of persons on any person who was a member of such firm or association at the time of its discontinuance or in the case of a company on the principal officer thereof.

Power to call for information or statement from bank, post office, railway, etc.

95. Subject to the provisions of any law for the time being in force, the Commissioner, may require, by notice, any bank, post office, railway, transporter, carrier, shipper, owner or lessee of a warehouse, or clearing, forwarding or transporting agent to furnish to him any information or statement useful for, or relevant to, any proceedings under this Act or to produce before him any accounts registers, documents or other records in the possession of such bank, post office, railway, transporter, carrier, shipper, owner or lessee of a warehouse or clearing, forwarding or transporting agent for examination for the purposes of this Act.

Power to collect statistics.

96. (1) If the Commissioner considers that for the purposes of better administration of this Act it is necessary so to do, he may by notification in the Official Gazette, direct that statistics be collected relating to any matter dealt with, by or in connection with this Act.
- (2) Upon such direction being made, the Commissioner or any person or persons authorised by him in this behalf may by notification in the Official Gazette; and if found necessary by notice in any news paper or in such other manner as in the opinion of the Commissioner or the said person, is best calculated to bring the notice to the attention of dealers and other person or persons, call upon all dealers or any class of dealers or persons to furnish such information or returns as may be stated therein relating to any matter in respect of which statistics are to be collected. The form in which, the persons to whom or the

authorities to which, such information or returns should be furnished, the particulars which they should contain, and the intervals in which such information or returns should be furnished, shall be such as may be prescribed.

Power to take evidence on oath.

97. (1) A taxing authority or an Appellate Authority shall for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:—

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents and impounding or detaining them;
- (c) issuing commissions for the examination of witnesses;
- (d) requiring or accepting proof of facts by affidavits;
- (e) any other matter as may be prescribed.

**Central Act
5 of 1908**

(2) Every proceedings under this Act before a taxing authority or an Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 and the said authority shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

**Central Act
45 of 1860
Central Act
2 of 1974**

Transfer to defraud revenue void.

98. (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.

(2) Where any person liable to pay tax or other sum payable under this Act has, during the pendency of any proceedings under this Act or after completion thereof, created a charge on or parted with possession by any mode of transfer including sale, mortgage, gift or exchange, of any of his assets in favour of any other person and the Commissioner is of the opinion that such charge or transfer becomes void under sub-section (1), then the Commissioner shall issue a notice and hold enquiry and decide whether the charge or transfer became void under sub-section (1).

(3) If, after holding such enquiry the Commissioner comes to a conclusion that the charge or transfer is void, he shall make an order declaring such charge or transfer to be void for the purposes of this Act.

Explanation.— In this section, "assets" includes land, building, machinery, plant, shares, securities and fixed deposits in banks, to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the dealer.

Bar to certain proceedings.

99. (1) 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 shall lie against any such assessment or order.

- (2) No injunction shall be granted by any Court other than the High Court of the State or the Supreme Court of India in respect of any assessment made or any proceedings initiated, or in respect of any action taken, or to be taken, in pursuance of any provisions of this Act or the rules made thereunder.
- Indemnity.** **100.** No suit, prosecution or other legal proceedings shall lie against any officer of Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.
- Automation.** **101.(1)** The Government shall endeavour to introduce and establish an automated data processing system for complementing the purposes of this Act and for matters incidental and allied thereto.
- (2) In order to make the said system effective, the Government may from time to time make Regulations for regulating the interactions between the dealers and the authorities appointed or constituted under this Act.
- (3) The provisions contained in the Information Technology Act, 2000, and the rules made and directions given under that Act, including the provisions relating to digital signatures, electronic governance, attribution, acknowledgement and dispatch of electronic records, secure electronic records and secure digital signatures and digital signature certificates, shall, in so far as they may apply to the procedures under this Act, apply. **Central Act 21 of 2000**
- (4) Except as may be provided otherwise in this Act, the software for the automated data processing system, the operating system, the operating instructions, and the criteria for any selection shall be treated as confidential.
- Returns etc. to be confidential.** **102.(1)** All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceedings before a Criminal Court), or in any record of any assessment proceedings, or any proceedings relating to the recovery of a demand, prepared for the purposes of this Act shall, save as provided in sub-section (3), be treated as confidential; and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall save as aforesaid, be entitled to require any servant of the Government to produce before it any such statement, return, account, document or record or any part thereof, or to give evidence before it in respect thereof. **Central Act 1 of 1872**
- (2) Save as provided in sub-section (3), if any employee of the Government discloses any of the particulars referred to in sub-section (1), he shall, on conviction, be punished with imprisonment which may extend to six months or with fine or with both :
- Provided that no prosecution shall be instituted under this section except with the previous sanction of the Government.
- (3) Nothing contained in this section shall apply to the disclosure,—
- (a) of any such particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the

Indian Penal Code, 1860 or the Prevention of Corruption Act, 1988, or this Act, or any other law for the time being in force; or

**Central Act
45 of 1860
Central Act
49 of 1988**

- (b) of any such particulars to the Government or to any person acting in the execution of this Act or to any person for the purposes of this Act; or
- (c) of any such particulars when such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demands; or
- (d) of any such particulars to a Civil Court in any suit, to which the Government is a party, which relates to any matter arising out of any proceedings under this Act; or
- (e) of any such particulars to any officer appointed by the Comptroller and Auditor-General of India for the purpose of audit of tax receipts or refunds ; or
- (f) of any such particulars where such particulars are relevant to any inquiry into the conduct of an official of the Sales Tax Department to any person or persons appointed as Commissioner under any Enquiry Act or to any officer otherwise appointed to hold such inquiry or to a Public Service Commission established under the Constitution when exercising its functions in relation to any matter arising out of such inquiry; or
- (g) of any such particulars to an officer of the Central Government or any Government as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it; or
- (h) of any such particulars to the Director, Bureau of Economics and Statistics or any officer serving under him or to any person or persons authorised under subsection (2) of section 96 as may be necessary for enabling the Director or such person or persons to carry on their official duties; or
- (i) of any such particulars to an officer of the Central Government or any Government as may be necessary for the administration of any law in force in India; or
- (j) of any such particulars in publication of any information relating to a class of dealers or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

**Appearance
before any
authority in
proceedings.**

- 103. (1)** Any person who is entitled or required to appear before any authority including the Appellate Tribunal in connection with any proceedings under this Act, otherwise than when required to appear personally for examination on oath or affirmation, may appear,—
- (a) by his relative or a person regularly employed by him; or
 - (b) by a legal practitioner, Chartered Accountant or Cost Accountant who is not disqualified by or under subsection (2); or

- (c) by a sales tax practitioner who possesses the prescribed qualifications and is entered in the list which the Commissioner shall maintain in that behalf, and who is not disqualified by or under sub-section (2);

only if such relative, person employed, legal practitioner, Chartered Accountant, Cost Accountant or sales tax practitioner is authorised by such person in the prescribed form, and such authorisation may include the authority to act on behalf of such person in such proceedings.

- (2) The Commissioner may by an order in writing and for reasons to be recorded therein disqualify for such period as is stated in the order from appearing before any such authority, any legal practitioner, Chartered Accountant, Cost Accountant or sales tax practitioner,—
- (i) who has been removed or dismissed from Government service; or
- (ii) who being a sales tax practitioner, a legal practitioner, Cost Accountant or a Chartered Accountant is found guilty of misconduct in connection with any proceedings under this Act by the Commissioner or by an authority, if any, empowered to take disciplinary action against the member of the profession to which he belongs.
- (3) No order of disqualification shall be made in respect of any particular person unless he is given a reasonable opportunity of being heard.
- (4) Any person against whom any order of disqualification is made under this section may, within one month of the date of communication of such order, appeal to the Appellate Tribunal to have the order cancelled or modified. The order of the Commissioner shall not take effect, until one month of the making thereof or, when an appeal is preferred, until the appeal is decided.
- (5) The Commissioner may, at any time, suo-motu or on an application made to him in this behalf, revoke or modify any order made against a person under sub-section (2) and thereupon such person shall cease to be disqualified subject to such conditions or restrictions as may be contained in such order.

Power to write off demand.

- 104.** Where a demand against a dealer for a year or years payable under this Act including the Central Sales Tax Act, 1956 has been outstanding for more than ten years from the year during which such demand is created, and such demand has been rendered irrecoverable for want of any kind of property of the dealer for being attached and sold, without prejudice to the provisions of any other law or rules providing for writing off of demands, such demand may be written off through an order in writing, subject to such restrictions and conditions as may be prescribed.

**Central Act
74 of 1956**

Determination of disputed questions.

- 105.(1)** If any question arises, otherwise than in a proceedings pending before an Appellate Authority or an Appellate Tribunal or a Court, whether or not,—
- (a) any person or association of persons, society, club, firm, company, corporation, undertaking or Government Department is a dealer; or

- (b) any transaction is a sale or purchase and, if so, the sale or purchase price, as the case may be, therefor; or
- (c) any particular dealer is required to obtain registration; or
- (d) any particular goods purchased or sold by a registered dealer are covered by his certificate of registration; or
- (e) any tax is payable in respect of any particular sale or purchase and, if so, the point at which tax is leviable and the rate thereof; or
- (f) any goods is taxable and, if taxable, the point at which and the schedule under which it is taxable and the rate thereof; or
- (g) any goods or classes of goods should be specified in the certificate of registration issued under this Act; or
- (h) any transaction, contract or agreement or arrangement is works contract or an operating lease; or
- (i) any particular thing done to any goods amounts to or results in the manufacture of goods within the meaning of that term; or
- (j) any set-off can be claimed on any particular transaction of purchase and if it can be claimed, what are the conditions and restrictions subject to which such set-off can be claimed,

the Commissioner shall make an order determining such question:

Provided that, before giving such decision, the Commissioner may, in his discretion, ask an officer appointed to assist him to make such inquiries as he considers necessary for the decision of the question.

- (2) Any registered dealer or any association of trade, commerce, industry may apply in the prescribed form and manner to the Commissioner for determination of such question and the Commissioner shall, after giving the applicant a reasonable opportunity of being heard, make an order determining such question.
- (3) No question which arises from an order already passed, in the case of an applicant, by any authority under this Act or the Tribunal, shall be entertained for determination under this section.
- (4) No decision of the Commissioner under this section shall affect the validity or operation of any order passed earlier by any Prescribed Authority, Appellate Authority, Appellate Tribunal or any Court.
- (5) Subject to other provision of this Act, a decision given by the Commissioner under this section shall be final and binding on the applicant, and the Prescribed Authority.
- (6) The Commissioner, for reasons to be recorded in writing may, on his own motion review an order passed by him under this section

and pass such order thereon as he thinks just and proper. The Commissioner may direct that the order of review shall not affect the liability of the person in whose case the review is made in respect of any sale or purchase effected prior to the review and may likewise if the circumstances so warrant direct accordingly in respect of any other person similarly situated:

Provided that no order shall be passed under this sub-section unless the dealer or the person in whose case the order is proposed to be passed has been given a reasonable opportunity of being heard:

Provided further that, before initiating any action under this sub-section, the Commissioner shall obtain prior permission of the Government.

Power of Government to make rules.

- 106.(1) The Government may, subject to the condition of previous publication, make rules, by notification, for carrying out the purposes of this Act:

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

- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,—
- (a) all matters expressly required or allowed by this Act to be prescribed;
 - (b) the fees to be paid in connection with the registration, memorandum of appeals, petition for revisions, certified copies of orders, petitions, other matters and any other matter ancillary or incidental thereto; and
 - (c) any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the Government, necessary for giving effect to the purposes of this Act.
- (3) In making any rules under this section, the Government may direct that a breach thereof shall be punishable with fine not exceeding five thousand rupees and, when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the continuance of such offence.
- (4) The Government shall cause every rule made under this Act and every notification issued under this Act to be laid, as soon as may be, after it is published before the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions in which it is so laid or the sessions immediately following, and if the State Legislature agrees in making any modification in the rule or notification or that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

Repeal and saving.

- 107.(1) The Assam General Sales Tax Act, 1993 and the Assam Taxation (On Luxuries) Act, 1997 (hereinafter referred as the

repealed Acts) as is in force in the State are hereby repealed from the date of commencement of this Act.

- (2) The repeal shall not,—
- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
 - (b) affect the previous operation of repealed Acts or anything done or suffered thereunder; or
 - (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the repealed Acts; or
 - (d) affect any penalty, forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the repealed Act; or
 - (e) affect any investigation, enquiry, assessment, proceedings, any other legal proceedings or remedy instituted, continued or enforced under the repealed Acts;

and any such penalty, forfeiture or punishment as aforesaid or any proceedings for remedy instituted, continued, or enforced under the repealed Acts shall be deemed to be instituted, continued or enforced under the corresponding provisions of this Act.

- (3) All rules made and notifications or orders issued under the provisions of the repealed Acts and or the rules made thereunder and in force on the date of the commencement of this Act, shall remain in force unless such rules and notifications are superseded in express terms or by necessary implication by the provisions of this Act or the rules made and notifications issued thereunder.
- (4) Any reference to any section of the repealed Acts in any rule, notification, regulation or circular shall be deemed to refer to the relevant corresponding section of this Act, until necessary amendments are made in such rule, notification, regulation or circular.
- (5) The limitations provided in this Act shall apply prospectively, and all events occurring and all issues arising prior to the date of commencement of this Act, shall be governed by the limitations as provided under the repealed Acts.

Stock brought forward during transition.

- 108.(1)** A registered dealer under this Act shall be entitled to input tax credit in respect of any sales tax paid under the Assam General Sales Tax Act, 1993 on taxable goods held as opening stock as on the date of commencement of this Act, if such goods were purchased not more than three months prior to the date of commencement of this Act:

Provided that no tax credit under this section shall be allowed unless,—

- (i) the dealer has in his possession, sale vouchers issued by a dealer registered under the Assam General Sales Tax Act, 1993, against the purchases of the said goods;

Assam Act XII of 1993

Assam Act XII of 1993

- (ii) the goods are intended to be used for the purposes specified in sub-section (3) of section 14; and
 - (iii) goods are included in the statement of taxable goods prescribed under sub-section (2).
- (2) Within a period of thirty days of the appointed day, all registered dealers who claim input tax credit under the provisions of this section shall furnish in such form and to such authority as may be prescribed, a statement of such claim along with an inventory of such taxable goods under this Act held in stock on the appointed day. A registered dealer who has submitted the statement of taxable goods under this sub-section shall not be permitted to make any changes in the details of such statement if such changes result in increase in the tax credit claimed in the statement of taxable goods.
- (3) Such input tax credit shall be available as the outstanding credit brought forward for being availed of in nine equal instalments commencing after three months from the appointed day, in the manner as may be prescribed.
- (4) No tax credit can be availed of for opening stock of goods that were taxable at last point under the Assam General Sales Tax Act, 1993 held at the time of commencement of this Act.
- (5) The input tax credit shall be calculated:
- (a) on the basis of amount of tax actually paid on the purchase of the goods held as stock if it is ascertainable from the sale voucher or;
 - (b) at the rate to which the goods were subjected to tax under the Assam General Sales Tax Act, 1993 on the purchase value of such goods after deducting profit element as may determined by the Prescribed Authority and then applying tax fraction in cases where the amount of tax on the purchase of goods is not indicated separately:

**Assam Act
XII of 1993**

Provided that the amount of input tax credit shall be calculated at a rate applicable under this Act or at the rate applicable under the Assam General Sales Tax Act, 1993, whichever is less.

**Assam Act
XII of 1993**

- (6) The provisions of section 14 shall apply mutatis-mutandis in respect of the input credit to be availed of under this section.
- (7) If the Commissioner is satisfied that a dealer,—
- (a) has claimed input tax credit for such stock for which he is not entitled for claiming tax credit as per the provisions of section 14 or proviso to sub-section (1) of this section; or
 - (b) has claimed tax credit in excess of what is admissible under sub-section (1) of this section,

he may, after giving the dealer a reasonable opportunity of being heard direct him to pay a penalty equal to twice the amount of tax credit so claimed.

Transitional provisions.

- 109.(1) A registered dealer who would have continued to be so liable to pay tax under the repealed Acts had this Act not come into force, and who makes an application for registration in terms of this Act, shall be deemed to be a registered dealer till his application for registration is disposed of.
- (2) Notwithstanding anything contained elsewhere in this Act,—
- (a) Any person appointed as the Commissioner, Additional Commissioner of Taxes, Joint Commissioner of Taxes, Deputy Commissioner of Taxes, Senior Superintendent of Taxes, Superintendent of Taxes, Inspector of Taxes or any other person appointed to assist the Commissioner, under the repealed Acts and continuing in the office immediately before the appointed day, shall, on and from the appointed day, be deemed to have been appointed under this Act and shall continue in office as such till such person ceases to be the Commissioner, Additional Commissioner of Taxes, Joint Commissioner of Taxes, Deputy Commissioner of Taxes, Senior Superintendent of Taxes, Superintendent of Taxes, Inspector of Taxes or ceases to be the person appointed to assist the Commissioner;
- (b) Any dealer liable to furnish return under the repealed Acts immediately before the appointed day, shall furnish such return in respect of tax payable for sales or purchases made up to the day immediately before such appointed day and pay tax in accordance with the provisions of the repealed Acts and all proceedings for the assessment or reassessment of any dealer or person in respect of such period may be taken or continued as if this Act had not been passed;
- (c) Any order delegating any power under any Act or the rules made thereunder, by the Commissioner to any person appointed, by designation, to assist him before the appointed day, which is in force on the day immediately before such appointed day, on and from such appointed day, shall, continue to be in force, until the Commissioner amends, varies or rescinds such order after such appointed day under this Act;
- (d) Any dealer, who is no longer liable to pay tax under the repealed Acts and whose accounts, registers or documents have been seized under that Act, shall continue to be retained in accordance with the provisions of that Act on or after the appointed day;
- (e) All forms of challan (Form-12), delivery notes (Form-24), transit pass (Form-25) and despatch notes (Form-35) prescribed by the rules made under the Assam General Sales Tax Act, 1993 and continuing in the force on the day immediately before the appointed day shall, with effect from such appointed day, continue in force and shall be used mutatis mutandis for the purpose for which they were being used before such appointed day until the Commissioner directs, by notification, the discontinuance of the use of such forms with effect from a date as may be specified in the notification;

- (f) Any application for revision arising from any order passed before the appointed day or any appeal arising from any assessment of tax or any other order made before such appointed day or any application for refund or for rectification in respect of any period before such appointed day, under the repealed Acts, if made before such appointed day and is pending on such appointed day, or if made on or after such appointed day, shall be disposed of in accordance with the provisions of the repealed Acts;
- (g) Any other authority to whom power in this behalf has been delegated by the Commissioner under the repealed Acts may on its or his own motion, revise any order passed before the appointed day in accordance with the provision of that Act;
- (h) All check-posts erected by the Government under the provisions of the repealed Acts and the deemed check-posts notified by the Commissioner under section 46 of the Assam General Sales Tax Act, 1993 shall on and from the appointed day be deemed to have been erected or notified, as the case may be, under the provisions of this Act until the Government or the Commissioner, by notification, provides otherwise; and
- (i) Any security or additional security furnished under the provisions of the Assam General Sales Tax Act, 1993 in respect of grant of registration certificate or continuation of the registration certificate or for safe custody and proper use of any form or declaration or certificate prescribed under the provisions of the said Act shall be deemed to have been furnished for the purposes under this Act:

**Assam Act
XII of 1993**

Provided that nothing contained in this clause shall preclude the Prescribed Authority from demanding any additional security from a registered dealer under this Act.

- (3) All transporters who are registered under the repealed Acts, shall be deemed to have been registered under this Act with effect from the appointed day.
- (4) In respect of a registered unit which had been enjoying the benefits of sales tax concession under the Assam Industries (Sales Tax Concessions) Scheme, 1997 and any other such schemes immediately before the appointed day and it would have continued to be so eligible for any period which is to end after the appointed day had this Act not come into force, the Government may formulate appropriate scheme in conformity with the provisions of this Act to substitute the said Scheme for the period commencing on or after the appointed day.

**Power to
remove
difficulties.**

- 110.** If any difficulty arises in giving effect to the provisions of this Act, the Government may, by notification in the Official Gazette, make such provisions, not inconsistent with the purposes of this Act, as appear to it to be necessary or expedient for removing the difficulty.

FIRST SCHEDULE
List of exempted goods
(See section 9)

Sl. No.	Description of goods	Conditions and exception
1.	Agricultural implements, manually operated or animal driven	
2.	Aids and Implements used by handicapped persons	
3.	Aquatic feed, poultry feed and cattle feed including grass, hay and straw	
4.	Betel leaves	
5.	Books, periodicals and journals	
6.	Charakha and Amber Charakha handlooms and handlooms fabrics and Gandhi Topi	
7.	Charcoal	
8.	Coarse grains other than paddy, rice and wheat	
9.	Condoms and contraceptive	
10.	Cotton and silk yarn in hank	
11.	Curd, lussi, butter milk and separated milk	
12.	Earthen pot	
13.	Electrical energy	
14.	Firewood	
15.	Fishnet and Fishnet fabrics	
16.	Fresh milk and pasteurized milk	
17.	Fresh plants, saplings and fresh flowers	
18.	Fresh vegetables and fruits	
19.	Garlic and ginger	
20.	Glass bangles	
21.	Human blood and blood plasma	
22.	Indigenous handmade musical instruments	
23.	Kumkum, bindi, alta and sindur	
24.	Meat, fish, prawn and other aquatic products when not cured or frozen; eggs and livestock and animal hair	
25.	National Flag	
26.	Organic manure including dung (Gobar)	
27.	Non-judicial stamp paper sold by Government Treasuries, postal items like envelope, post card etc. sold by Government, rupee note, when sold to the Reserve Bank of India and cheques, loose or in book form	
28.	Raw wool	
29.	Semen including frozen semen	
30.	Silk worm laying, cocoon and raw silk	
31.	Slate and Slate pencils	
32.	Tender green coconut	
33.	Toddy, Neera and Arak	
34.	Unbranded bread	

35.	Unprocessed and unbranded salt	
36.	Water other than (i) aerated, mineral, distilled, medicinal, ionic, battery, de-mineralised water and (ii) water sold in scaled container	
37.	Sugar and khandsari	
38.	Textile fabric	
39.	Tobacco	

SECOND SCHEDULE

[See Section 10(1)(a)]

Sl. No.	Description	Rate of tax (paise in the rupee)
1	Agricultural implements, not operated manually or not driven by animal.	4
2	All equipments for communications such as private Branch Exchange (P.B.X) and Electronic Private Automatic Branch Exchange (E.P.A.B.X) etc.	4
3	All intangible goods like copyright, patent, replenishment license.	4
4	All kinds of bricks including fly ash bricks, refractory bricks and ashphaltic roofing, earthen tiles.	4
5	All types of yarn other than cotton and silk yarn in hank and sewing thread.	4
6	Aluminium utensils and enamelled utensils	4
7	Areca nut powder and betel nut	4
8	Bamboo	4
9	Bearings	4
10	Beedi leaves	4
11	Beltings	4
12	Bicycles, tricycles, cycle rickshaws and parts	4
13	Bitumen	4
14	Bone meal	4
15	Branded bread <i>Explanation.</i> — ‘brand name’ means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product for the purpose of indicating or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.	4
16	Bulk drugs	4

17	Capital goods	4
18	Castings	4
19	Centrifugal and monobloc submersible pumps and parts thereof	4
20	Coffee beans and seeds, cocoa pod, green tea leaf and chicory	4
21	Chemical fertilizers, pesticides, weedicides and insecticides	4
22	Coir and Coir products excluding coir mattresses	4
23	Cotton and cotton waste	4
24	Crucibles	4
25	Declared goods as specified in section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956)	4
26	Edible oils, oil cake and de-oiled cake	4
27	Electrodes	4
28	Exercise books, graph book and laboratory note book	4
29	Ferrous and non-ferrous metals and alloys, non-metals such as aluminium, copper, zinc and extrusions of those	4
30	Fibres of all types and fibre waste	4
31	Flour, atta, maida, suji and besan	4
32	Fried grams	4
33	Gur, jaggery and edible variety of rub gur	4
34	Hand pumps and spare parts	4
35	Herb, bark, dry plant, dry root, commonly known as jari booti and dry flower	4
36	Hose pipes	4
37	Hosiery goods	4
38	Husk and bran of cereals	4
39	Ice	4
40	Incense sticks commonly known as, agarbathi, dhupkathi or dhubathi	4
41	Industrial cables (High voltage cables, XLPE Cables, jelly filled cables, optical fibres)	4
42	IT products including computers, telephone and parts thereof, tele-printer and wireless equipment and parts thereof	4
43	Leaf plates and cups	4
44	Industrial inputs and packing materials as notified by the Government	4
45	Murmuralu, pealu, alukulu, puffed rice, muri	4
46	Newars	4
47	Napa slabs (Rough flooring stones)	4
48	Ores and minerals	4
49	Paddy, rice, wheat and pulses	4

50	Paper and newsprint	4
51	Pipes of all varieties including G.I. pipes, C.I. pipes, ductile pipes and PVC pipes	4
52	Plastic Footwear	4
53	Printed material including diary and calendar	4
54	Printing ink excluding toner and cartridges	4
55	Processed and branded salt	4
56	Pulp of bamboo, wood and paper	4
57	Rail coaches, engines and wagons	4
58	Readymade garments	4
59	Renewable energy devices and spare parts	4
60	Safety matches	4
61	Seeds	4
62	Sewing machines	4
63	Ship and other water vessels	4
64	Silk fabrics	4
65	Skimmed milk powder	4
66	Solvent oils other than organic solvent oil	4
67	Spices of all varieties and forms including cumin seed, aniseed, turmeric and dry chilies	4
68	Sports goods excluding apparels and footwear	4
69	Starch	4
70	Tamarind	4
71	Tractors, harvesters and attachment and parts thereof	4
72	Transmission towers	4
73	Umbrella except garden umbrella	4
74	Vanaspati (Hydrogenated Vegetable oil)	4
75	Vegetable oil including ginglli oil and bran oil	4
76	Writing instruments	4

THIRD SCHEDULE

[See section 10(1)(a)]

Sl. No.	Description	Rate of tax (paise in the rupee)
1	Articles of gold and silver including coins, bullion.	1
2	Gold and silver ornaments of personal wear	1
3	Precious stones such as diamonds, emeralds, rubies, pearls and sapphires whether they are sold loose or as forming part of any article in which they are set.	1

FOURTH SCHEDULE

[See section 10(1)(b)]

Sl. No.	Description of goods	Rate of tax (paise in the rupee)
1	Crude oil and Petroleum coke	4
2	Diesel	12.5
3	Petrol	20
4	(i) Aviation turbine fuel (ATF) sold to a Turbo-Prop Aircraft as specified in clause (iid) of section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) (ii) Aviation turbine fuel (ATF) not falling under item (i) above	4 20
5	Natural gas, liquified petroleum gas and compressed natural gas	20
6	(i) Kerosene oil sold through Public Distribution System (PDS) (ii) Kerosene oil not falling under item (i) above	4 12.5
7	Other petroleum products not elsewhere mentioned in this Schedule or any other Schedule	12.5
8.	Liquor	20

FIFTH SCHEDULE

[See section 10(1)(a)]

Sl. No.	Description	Rate of tax (paise in the rupee)
1	All other goods not covered by First, Second, Third and Fourth Schedule	12.5
2	Works contract	12.5
3	Lease transactions	12.5

SIXTH SCHEDULE**[See section 11 (c)]**

Sl. No.	Description of works contract	Percentage of deduction under Section 11(c) not more than
(1)	(2)	(3)
1.	Fabrication and installation of plants and machinery.	15%
2.	Fabrication and erection of structural works, including fabrication, supply and erection of iron trusses, purlines etc.	20%
3.	Fabrication and installation of cranes and hoists	15%
4.	Fabrication and installation of elevators (lifts) and escalators.	15%
5.	Fabrication and installation of rolling shutters and collapsible gates.	15%
6.	Civil works like construction of building, bridges, road, rail roads etc.	25%
7.	Installation of doors, doorframes, windows, window frames and grills.	25%
8.	Supplying and fixing of tiles, slabs, stones and sheets.	30%
	(i) Supplying and fixing of Mosaic tiles	
	(ii) Supplying and fixing of marble slab, polished granite stone and tiles (other than mosaic tiles)	20%
	(iii) Supply and fixing of slabs, stones and sheets other than those specified at item (i) and (ii) above	20%
9	Supplying and installation of air-conditioning equipments including deep-freezers, cold storage plants, humidification plants and dehumidifiers.	20%
10.	Supplying and installation of air-conditioner and air-coolers.	20%
11.	Supplying and fitting of electrical goods, supply and installation of electrical equipment including transformers.	10%
12.	Supplying and fixing of furniture and fixtures, partitions including contracts for interior decoration.	15%
13.	Construction of railway coaches on under-carriage Supplied by railway.	20%
14.	Ship and boat building including construction of barges, ferries, tugs, trawlers and dredgers.	20%
15.	Sanitary fitting for plumbing for drainage etc.	15%
16.	Printing and polishing.	15%
17.	Construction of bodies of motor vehicles and construction of trailers.	25%
18.	Insulation and lining of equipment, plant and machinery instruments, appliances of buildings	15%

19.	Providing and laying of pipes for purposes other than those specified in serial number 15 of this schedule.	15%
20.	(i) Providing and laying pipes (other than steel pipes) for purposes other than those specified in serial number 15 of this schedule	15%
	(ii) Providing and laying of steel pipes for purpose other than those specified in serial number 15 of this schedule	15%
	(iii) Providing and boring, drilling and fitting of all types of pipes.	30%
21.	Programming and providing of computers software.	15%
22.	Fabrication, testing and reconditioning of metallic gas cylinders	20%
23.	Tyre re-treading	15%
24.	Processing and supplying of photograph, photo prints, photo negatives (including photographing with camera, X-ray and other scanning materials).	15%
25.	Supplying and installation of electronic instruments, equipment, apparatus, appliances & devices.	10%
26.	Supplying and installation of fire fighting equipment and devices.	10%
27.	Electroplating and anodising.	25%
28.	Bowling, canning and packing of goods.	25%
29.	Lamination, rubberisation, coating and similar process.	25%
30.	Printing and block making.	20%
31.	Supply and erection of weighing machines and weigh bridges.	15%
32.	Supply and installation of submersible and centrifugal pump sets.	20%
33.	Dyeing and printing Textiles.	20%
34.	Construction on tankers on motor vehicles, chassis.	20%
35.	Supply and fixing of door and window curtains including Venetian blinds and nets.	15%
36.	Works/ contract not covered by serial number 1 to 35	20%

Seventh Schedule
[See Section 54 (2)]

(1) United Nations and its constituent agencies like:

- (i) UNDP
- (ii) UNESCO
- (iii) UNFPA
- (iv) UNHCR
- (v) UNICEF
- (vi) UNIDO
- (vii) UNIFEM
- (viii) WFAO
- (ix) WHO
- (x) ILO

- (2) International Red-Cross society and its National branches.