

# Orissa Value Added Tax Act, 2004

ODISHA

India

## Orissa Value Added Tax Act, 2004

### Act 4 of 2005

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Orissa Value Added Tax Act, 2004(Orissa Act No. 4 of 2005)Last Updated 4th February, 2020For the Bill see Orissa Gazette Extraordinary dated the 23rd December, 2004.[Received the assent of the President of the 25th March 2005, first published in an extraordinary issue of the Orissa Gazette dated the 30th March, 2005 (No. 535)]An Act to Provide for the Imposition and Collection of Tax on the Sale or Purchase of Goods In The State.Be it enacted by the Legislature of the State of Orissa in the Fifty-fifth Year of the Republic of India as follows:-

## Chapter I Preliminary

### 1. Short Title extent and Commencement.

(1)This Act may be called the Orissa Value Added Tax Act, 2004.(2)It extends to the whole of the State of Orissa.(3)It shall come into force on such date as the Government may, be [notification] [Came into force w.e.f. the 1st April 2005 vide Orissa Gazette, Extraordinary, dated the 31st April 2005. (No. 539).], appoint and different dates may be appointed for different provisions of this Act.

### 2. Definitions.

- In this Act unless the context otherwise requires,-(1)"Appellate authority" means any authority prescribed for the purpose of section 77;(2)"Appointed day" in relation to any provision of this Act, means the date on which such provision comes into force;(3)"Assessee" means any dealer by whom tax or any other of money is payable under this Act, and includes every dealer in respect of whom any proceedings under this Act has been initiated for the assessment of tax payable by him;(4)Assessing Authority" means any other appointed under sub-section (2) of section 3 who is authorised by the Commissioner to make assessment under this Act;(5)"Assessment" means determination of tax liability under this Act and includes self assessment, provisional, assessment,

audit assessment, assessment of escaped turnover, assessment of unregistered dealers liable to be registered, assessment of casual dealers and reassessment;(6)"Audit Assessment" means an audit assessment made under section 42;(7)"Business" includes-(a)Any trade, commerce or manufacture;(b)Any adventure or concern in the nature of trade, commerce or manufacture;(c)Any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;(d)Any transaction in connection with or incidental or ancillary to, the commencement or closure of such trade, commerce, manufacture, adventure or concern;(e)Any occasional transactions, whether or not there is volume, frequency, continuity or regularity of such transaction, in the nature of such trade, commerce, manufacture, adventure or concern, Whether or not such trade, commerce, manufacture, adventure, concern or transaction is effected with a motive to gain or profit or whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure, concern or transaction.Explanation. - For the purposes of this clause,-(i)The activity of raising of man-made forest or rearing of seedlings or plants shall be deemed to be a business.(ii)Transaction of sale or purchase of capital goods pertaining to any trade, commerce, manufacture, adventure, concern or transaction shall be deemed to be a transaction comprised in business.(iii)Purchase of any goods, the price of which is debited to the business and sale of any goods, the proceeds of which are credited to the business shall be deemed to be transaction comprised in business;(8)"Capital goods" means plants, machinery and equipments used directly in the process of manufacturing, but does not include such plant, machinery and equipments which are used for the purposes and in the circumstances specified in Schedule 'D';(9)"Casual dealer" means any person, whether as principal, agent or in any other capacity, who has occasional transactions of buying, selling or supplying or distributing goods in the State without having a fixed place of business for cash or deferred payment or for commission, remuneration or other valuable consideration and includes, whether he has a fixed place of business in this State or not,-(a)A transporter who, while carrying any goods in his goods vehicle, fails to disclose the name and address of the consignor or consignee in the State or fails to furnish copy of invoice, challan, transport receipt or consignment note or document of like nature in respect of such goods, or(b)An owner or a lessee of a warehouse who fails to disclose the name and address of the owner of any goods stored at his warehouse or fails to satisfy the Commissioner that such goods are for his personal use or consumption;(10)"Commissioner" means the Commissioner of Sales Tax appointed under sub-section (1) of section 3 or deemed to have been appointed under clause (a) of sub-section (2) of section 106;(11)"Co-operative society" means a co-operative society registered under the Orissa Co-operative Societies Act, 1962 (Orissa Act 2 of 1963) and includes a Co-operative registered under the Orissa Self-Help Co-operative Act, 2001;(12)"Dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, executing works contract, delivering any goods on hire-purchase or any system of payment by instalments, transferring the right to use any goods or supplying by way of or as part of any service, any goods directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes :-(a)A casual dealer;(b)A commission agent, a broker or a del credere agent or an auctioneer or any other mercantile agent, by whatever name called;(c)a non-resident dealer or an agent of a non-resident dealer, or a local branch of a firm or company or association or body of persons whether incorporated or not, situated outside the State;(d)A person who, whether in the course of business or not,-(i)Sells goods produced by him by manufacture, agriculture, horticulture or otherwise, or(ii)Transfers any goods, including controlled goods whether in pursuance of a

contract or not, for cash or for deferred payment or for other valuable consideration;(iii)Supplies by way of or as part of any service or in any other manner whatsoever, goods, being food or any other articles for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;(13)"Declared goods" means goods declared to be of special importance as specified under section 14 of the Central Sales Tax Act, 1956 (74 of 1956);(14)"Documents" means title deeds, writing or inscription and includes electronic records and the like which is produced as documentary evidence;(15)"Electronic Hardware Technology Park (EHTP) Unit" is a unit set up under the EHTP, which undertakes to export their entire production of goods outside the territory of India and is approved by the Development Commissioner of the Export Processing Zone or any other competent authority duly authorised by the Ministry of Industry, Government of India for the purpose;(16)"Electronic record" means electronic record as defined in the Information Technology Act, 2000 (21 of 2000);(17)"Exempted goods" means any goods exempted from tax under section 17;(18)Export Oriented Unit (EOU)" means any industrial unit, which undertakes to export their entire production of goods and is approved as such by the Development Commissioner of the concerned Export Processing Zone or any other competent authority duly authorised for the purpose by the Ministry of Industry, Government of India;(19)"Fixed place of business" means the place of business from which the dealer carries out his business activities, and includes-(a)A place where the management of the business is undertaken, any of its branch, office, factory or workshop, godown or warehouse;(b)A mine, oil or gas well, quarry, timberland or any other place from which natural resources are extracted; or(c)A fixed place of business of another person (other than a broker, general commission agent or other independent agent acting in the normal course of business) who is carrying on business on behalf of the dealer in the State in ordinary course of business;(20)"Fund" means the Orissa Consumer Welfare Fund referred to in section 53;(21)"Goods" means every kind of movable property not being newspapers, actionable claims, money, stock, shares or securities, and includes all materials, commodities and articles (including goods as goods or in some other form) involved in the execution of any works contract or goods used in the fitting out, improvement or repair of movable property and growing crops, grass and trees, plants including the produce thereof and all other things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;(22)"Goods vehicle" means any motor vehicle constructed or adapted for use solely for carriage of goods, or any motor vehicle not so constructed or adapted but when used for carriage of goods solely or in addition to passengers, and includes any vessel, boat, animal or any other means of conveyance other than railway wagon or coach;(23)"Government" means the Government of Orissa;(24)"Gross turnover" in relation to any period, means the aggregate of the turnover of sales and the turnover of purchases made by a dealer during that period;(25)"Input" means any goods purchased by a dealer in the course of his business for resale or for use in the execution of works contract, in processing or manufacturing, where, such goods directly goes into composition of finished products or packing of goods for sale, and includes consumables directly used in such processing or manufacturing;(26)"Input tax" in relation to any registered dealer means the tax collected and payable under this Act in respect for sale to him of any taxable goods for use in the course of his business, but does not include tax collected on the sale of goods made to a commission agent purchasing such goods on behalf of such dealer;(27)"Input tax credit" in relation to any tax period means the setting off of the amount of input tax or part thereof under section 20 against the output tax, by a registered dealer other than a registered dealer paying turnover tax

under section 16;(28)"Manufacture" means any activity that brings out a change in an article or articles as result of some process, treatment, labour and results in transformation into a new and different article so understood in commercial parlance having a distinct name, character and use, but does not include such activity of manufacture as may be notified;(29)"Output tax" in relation to any registered dealer means the tax leviable and payable under this Act in respect of sale of any taxable goods made by that dealer in the course of his business, and includes tax payable by a commission agent in respect of sale of taxable goods on behalf of such dealer;(30)"Passenger vehicle" means a motor vehicle constructed or adapted for the carriage of passengers;(31)"Person" means any individual or association or body of individuals and includes a Hindu Undivided Family, a firm, a company whether incorporated or not, a society including a co-operation, other artificial or legal person, local authority, a department of Government, a Government enterprise and a Financial institution or Bank;(32)"Place of business" means any place where a dealer carries on business and includes-(a)Any warehouse, godown or other place where the dealer stores or processes his goods,(b)Any place where a dealer produces or manufactures goods,(c)Any place where a dealer keeps his books of account,(d)In case where a dealer carries on business through an agent by whatever name called, the place of business of such agent, or(e)Any vehicle or vessel or any other carrier wherein the goods are stored or used for transporting the goods;Explanation. - The place of business specified in sub-clause (e) shall not be construed as such for the purpose of registration under sections 25 and 26.(33)"Prescribed" means prescribed by rules;(34)"Prevailing market price" in relation to any goods sold means the published price in force in the market at the time when the sale of such goods occasioned or, in the absence of any such published price, the price at which such goods were capable of being sold in the open market at that time;(35)"Property" means any property, whether real or personal, movable or immovable, tangible or intangible, corporal or in corporal, and includes a right or interest of any kind, but does not include money;(36)"Published" means published in any newspaper, journal or periodical or notified by a market committee established under the Orissa Agricultural Produce Markets Act, 1956 (Orissa Act 3 of 1956) or any such authority as the Government may, by notification, specify from time to time;(37)"Purchase" with all its grammatical variations and cognate expressions shall be construed from the word sale;(38)"Registered dealer" means a dealer registered under this Act;(39)"Registered authority" means any officer appointed under sub-section (2) of section 3 who is authorised by the Commissioner to function as registering authority;(40)"Resale" means a sale of goods in the same form in which they were purchased;(41)"Retailer" means a dealer, not being a manufacture or a person selling or despatching goods outside the State, or purchases or receives goods other than by way of purchase from outside the State, who ordinarily effects sales to consumers;(42)"Return" means any return prescribed or otherwise required to be furnished by or under this Act;(43)"Reverse Tax" means the portion of input tax on the goods for which credit has been availed but such goods are used subsequently for any purpose other than resale or manufacture of taxable goods or execution of works contract or use as containers or packing materials;(44)"Rules" means rules made under this Act;(45)"Sale" with all its grammatical variations and cognate expressions, means every transfer of the property in goods, other than by way of mortgage, hypothecation, charge or pledge, by one person to another in the course of trade or business for cash, deferred payment or other valuable consideration, and includes-(a)A transfer, otherwise than in pursuance of a contract, of property in goods for cash, deferred payment or other valuable consideration,(b)Transfer of property in goods (whether as goods or in some other form) involved in the execution of works

contract,(c)Delivery of goods on hire purchase or any other system of payment by instalments,(d)A transfer of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or any other valuable consideration,(e)A supply, by way of or as part of any service or in any other manner whatsoever, of goods being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration,(f)A transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration,and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made, but does not include a mortgage, hypothecation, charge or pledge.Explanation. - (a) A sale or purchase of goods shall be deemed to have taken place inside the State if the goods are within the State-(i)In the case of specific or ascertained goods, at the time the contract of sale is made, and(ii)In the case of un ascertained or future goods, at the time of their appropriation to the contract of sale by the seller, or by the buyer, whether assent is prior or subsequent to such appropriation.(b)Where there is a single contract of sale or purchase of goods situated in more than one place, the provisions of this Explanation shall apply as if there were separate contracts in respect of the goods at each of such places.Note. - A sale or purchase of goods shall not be deemed to have taken place inside the State, if the goods are sold-(i)In the course of inter-State trade or commerce, or(ii)Outside the State, or(iii)In the course of import into or export out of the territory of India;(46)"Sale price" means the amount of valuable consideration received or receivable by a dealer as consideration for the sale of any goods less any sum allowed as cash discount or trade discount according to the practice normally prevailing in the trade but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof, and the expression "purchase price" shall be construed accordingly.Explanation. - (a) Where according to the terms of contract, the cost of freight in respect of transportation of goods are incurred by the dealer for or on behalf of the purchaser such cost of freight shall not be included in the sale price but the burden of proof thereof shall be on the dealer,(b)In case of sale by hire purchase agreement, the prevailing market price of the goods on the date on which such goods are delivered to the purchaser under such agreement shall be deemed to be the sale price.(c)In relation to transfer of right to use any goods for any purpose (whether or not for a specified period) the consideration or the hire charges received or receivable for such transfer shall be the sale price.(d)Amount of duties levied or leviable on the goods under the Central Excise Act, 1944, and the Customs Act, 1962 (52 of 1962) whether such duties are payable by the seller or any other person, shall be included in the sale price.(e)Amount received or receivable by the seller by way of deposit, warranty (whether refundable or not) which has been received or is receivable whether by way of separate agreement or not, in connection with or incidental or ancillary to the sale of goods shall be deemed to be included in the sale price,(f)The sale price shall not include the tax paid or payable under this Act;(47)"Self assessment" means a true and correct determination of net tax liability by a dealer in relation to any tax period;(48)"Software Technology Park (STP)" unit means a unit set up under the STP, which undertakes to export their entire production of goods outside the territory of India and is approved by the Development Commissioner of the concerned Export Processing Zone or any other competent authority duly authorised by Ministry of Industry, Government of India for the purpose;(49)"Special Economic Zone (SEZ)" means any Special Economic Zone specified by the Government of India by notification under section 76A of the

Customs Act, 1962 (52 of 1962);(50)"State" means the State of Orissa;(51)"Tax" means tax chargeable under this Act;(52)"Tax invoice" means a document showing the goods sold with price, quantity and other details as required under section 62;(53)"Tax period" means such period for which return is required to be furnished by or under this Act;(54)"Taxable" goods" means goods liable to tax under this Act;(55)"Taxable limit" , in relation to the business of a dealer is that part of the gross turnover of sales or purchases, as the case may be, specified in sub-section (4) of section 10;(56)"Taxable turnover" means the turnover on which a dealer is liable to pay tax as determined after making such deduction from his gross turnover and in such manner as may be prescribed;(57)"Transporter", "carrier" or "transporting agent" means the owner or nay person having possession or control of a goods vehicle, who transports on account of any other person for hire or on his own account, any goods from one place to another, and includes any person whose name is entered in the permit issued under the Motor Vehicles Act, 1988 (59 of 1988) as the holder thereof, the driver of any other person in-charge of such vehicle;(58)"Tribunal" means the Orissa Sales Tax Tribunal constituted or deemed to have been constituted under section 4;(59)"Turn over of purchases" means the aggregate of the amounts of purchase price paid and payable by a dealer in respect of the purchase or receipt of goods liable to tax under section 12 during a given period;(60)"turn over sales" means the aggregate of the amounts of sale price received or receivable by a dealer in respect of sale or supply of goods effected or made during a given period;(61)"Vehicle" includes every wheeled conveyance used for the carriage of goods or goods in addition to passengers;(62)"Vessel" includes any ship, barge, boat, raft, timber, bamboos or floating materials propelled in any manner;(63)"Works contract" means a contract for the construction, building, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any property;(64)"Year" means the financial year.

## Chapter II

## Taxing Authorities and Tribunal

### 3. Taxing Authorities.

(1)The Government shall, for carrying out the purposes of this Act, appoint a person to be the Commissioner of Sales Tax.(2)The Government may appoint such other persons under any prescribed designation including a Special Commissioner, as Additional Commissioner, a Joint Commissioner, a Deputy Commissioner, an Assistant Commissioner, a Sales Tax Officer, or an Assistant Sales Tax Officer to assist the Commissioner and they shall exercise such powers as may be conferred, and discharge such functions as may be required, by or under this Ac within such local area as may be assigned by the Commissioner.(3)The Commissioner shall have jurisdiction over the whole of the State and the other persons appointed under sub-section (2) shall, within such areas as the Commissioner may, by general or special order specify, exercise such powers as are, or may be conferred and discharged such functions as may be required, by or under this Act.(4)Without prejudice to any other functions that the Commissioner may perform under the provisions of this Act, he shall exercise the following powers and discharge the following functions:-(a)To superintend and control all persons employed in the executive administration of tax;(b)Subject to the provisions of this Act and the rules, to make rules of procedure and conduct of administration for the guidance

of persons subordinate to him;(c)To call for any record from any subordinate officer and also to call for any paper or document in connection with any assessment under this Act;(d)To inspect the records and to superintend the work of officers subordinate to him and their officers.

#### **4. Orissa Sales Tax Tribunal.**

(1)(a)The Government shall, by notification, constitute a Tribunal to be called the Orissa Sales Tax Tribunal, which shall exercise such powers and discharge such functions as may be conferred or imposed by or under the provisions of this Act.(b)The Tribunal shall consist of six members, of whom three shall be appointed from among the members of the Orissa Superior Judicial Service (Senior Branch) (thereinafter called the Judicial members of the Tribunal) and the other three members shall be appointed from among the members of the Orissa Finance Service, Class-I (Upgraded Super time) (hereinafter called the Accounts members of the Tribunal).(c)The Senior-most Judicial member of the Tribunal shall be the Chairman of the Tribunal, who shall constitute benches, allot cases to the benches and exercise supervision in respect of their disposal,(d)The Chairman of the Tribunal shall look to the overall administration of the Tribunal subject to regulations to be made by the Tribunal with the previous sanction of the Government consistent with the provisions of this Act and rules.(e)Any vacancy in the membership of the Tribunal shall be filled up by the Government.(2)Notwithstanding anything contained in sub-section (1), the Orissa Sales Tax Tribunal constituted under the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947)shall be deemed to have been constituted under this Act with effect from the appointed day and shall be called as such from that date.(3)The functions of the Tribunal may be exercised by a bench consisting of-(a)The Chairman or any other single member, as may be constituted by the Chairman, when the total disputed amount of tax and interest and penalty, if any, involved in a case does not exceed rupees two lakhs;(b)The Chairman or any other Judicial member and an Accounts member, as may be constituted by the Chairman, when the total disputed amount of tax and interest and penalty, if any, involved in a case exceeds rupees two lakhs, but does not exceed rupees ten lakhs; and(c)Three members of the Tribunal, which shall include the Chairman or any other Judicial member and one Accounts member, when the total disputed amount of tax and interest and penalty, if any, involved in a case exceeds rupees ten lakhs and shall be presided over by the Chairman or, as the case may be, the senior Judicial member.(4)(a)Where an appeal or application is heard by a bench consisting of two members and the members are divided in opinion on any point or points, such point or points shall be referred to the Tribunal consisting of three members.(b)Where an appeal or application is heard by three members of the Tribunal and the members are divided in opinion on any point or points, such point or points shall be decided in accordance with the opinion of the majority.(5)Any member who has previously dealt with any case coming up before the Tribunal in any other capacity or is personally interested in any case coming up before the Tribunal shall be disqualified to hear that case.

#### **5. Delegation of the Commissioner's Power and functions.**

- Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers and functions under this Act or the rules to any person appointed under sub-section (2) of section 3, and any order passed by any such person in exercise of

the powers so delegated shall be deemed to be an order passed by that person.

## **6. Power to transfer proceedings.**

(1)Notwithstanding anything contained elsewhere in this Act or in the rules, the Commissioner may, by order in writing, transfer any proceeding or class of proceedings under any provision of this Act from any person appointed under sub-section (2) of section 3 to any other person so appointed, whether or not such other person has jurisdiction in respect of the local areas to which such proceedings or class of proceedings relate.(2)The person to whom any proceeding is transferred under sub-section (1) shall proceed to dispose of such proceedings as if it has been initiated by himself.(3)The transfer of a proceeding shall not require reissue of any notice, if such a notice has already been issued before transfer and the person to whom the proceeding is transferred may, at his discretion, continue the proceeding from the stage at which it was left by the person from whom it was transferred.

## **7. Person appointed under section 3 and members of the Tribunal to the public servants.**

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

## **8. Indemnity.**

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

## **Chapter III**

## **The Incidence, Levy and Rate of Tax**

## **9. Charge to Tax and incidence.**

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



## 10. Liability.

(1) Subject to other provisions of this Act, every dealer- (i) Whose gross turnover of sales or purchases, as the case may be, during a period of twelve consecutive months immediately preceding the appointed day exceeded the taxable limit; or (ii) Who is registered or liable to be registered under the Orissa sales Tax Act, 1947 (14 of 1947) or the Central Sales Tax Act, 1956 (74 of 1956); or (iii) To whom clauses (i) and (ii) do not apply, but- (a) whose gross turnover exceeds the taxable limit during any period of twelve consecutive months, or (b) Who has become liable to pay tax under the Central Sales Tax Act, 1956, or (c) Who is registered as a dealer under the Central Sales Tax Act, 1956 (74 of 1956) or under this Act at any time on and from the appointed day, shall be liable to pay tax in accordance with the provisions of this Act,- (a) In cases of clauses (i) and (ii), with effect from the appointed day, (b) In case of sub-clause (a) of clause (iii), with effect from the date immediately following the day on which his gross turnover exceeded the taxable limit during a period of any twelve consecutive months, and (c) In cases of sub-clauses (b) and (c) of clause (iii), with effect from the date on which he becomes so liable, or the date of registration, whichever is earlier. (2) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years during each of which his gross turnover has failed to exceed the taxable limit and his liability to pay tax under this Act shall cease on the expiry of the period specified above. Explanation. - In computing the period of three years, the part of a year shall be ignored. (3) Every dealer who has ceased to be liable under sub-section (2) shall be again liable to pay tax under this Act with effect from the date immediately following a period not exceeding twelve consecutive months during which his gross turnover again exceeds the taxable limit. (4) For the purposes of this Act, taxable limit shall be in relation to any dealer who-

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

(5) For the purpose of calculating the gross turnover to determine the liability of a dealer to pay tax under this Act the turnover of all sales whether taxable or not and all purchases subject to tax shall be taken. Explanation. - The expressions sales and purchases shall mean sales and purchases made by a dealer on his own account and those made on behalf of principal whether disclosed or not.

## 11. Levy of Tax on sale.

(1) The tax shall be levied under this Act on every dealer who is liable to pay tax under section 10 on his taxable turnover of sales. (2) For the purposes of sub-section (1), the expression "taxable turnover of sales" shall mean, in relation to a dealer liable to pay tax on sale of goods under sub-section (1) of section 10, that part of the gross turnover of sales during any period which remains after deducting therefrom. (a) The turnover of sales of goods exempted from tax under section 17; (b) The turnover of

sales of goods which are shown to the satisfaction of the Commissioner to have taken place-(i)In course of inter-State trade or commerce, or(ii)Outside the State, or(iii)In the course of import into or export out of the territory of India.Explanation. - Section 3, 4 and 5 of the Central Sales Tax Act, 1956 shall apply for determining whether or not a particular, sale has taken place in the manner indicated in sub-clauses (i), (ii) and (iii) of clause (b);(c)In case of turnover of sales in relation to works contract, the charges towards labour, services and other like charges subject to such conditions and restrictions as may be prescribed:Provided that where the amount charged towards labour, services and other like charges in such contract are not ascertainable from the terms and conditions of the contract or the books of account maintained for the purpose, the amount of such charges shall be calculated at the prescribed rate; and(d)Such other sales on such conditions and restrictions as may be prescribed.(3)Notwithstanding anything contained in any other provision of this Act and subject to such conditions as may be prescribed, a dealer executing works contract may exercise option in writing to pay tax by way of composition at such rate and on such portion of the value of consideration received or receivable and in such manner as may be prescribed.(4)(a)Notwithstanding anything contained in the Sale of Goods Act, 1930, but subject to clauses (b) and (c), the sale of goods shall, for the purposes of this Act, be deemed to have taken place when title or possession of the goods is transferred or, in the case of works contract, when the goods are incorporated in the course of execution of the works contract, whether or not there is receipt of payment for such sale.(b)Where, before the time applicable under clause (a), the dealer selling the goods issues a tax invoice in respect of such sale, the sale shall, to the extent it is covered by the invoice or payment, be deemed to have taken place at the time the invoice is issued or the payment is received, whichever is earlier.(c)Where a dealer issues a tax invoice in respect of any sale not falling under clause (b) within fourteen days from the time specified under clause (a), the sale shall be deemed to have taken place at the time the invoice is issued.

## **12. Levy of Tax on purchase.**

- Every dealer who, in the course of his business, purchases or receives any goods-(i)From a registered dealer, in the circumstances in which no tax under section 11 is payable by that registered dealer on such goods, or(ii)From any person other than a registered dealer,shall be liable to pay tax on the purchase price or prevailing market price of such goods, if after such purchase or as the case may be receipt, the goods are not sold within the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India, but are-(a)sold or disposed of otherwise; or(b)Consumed or used in the manufacture of goods declared to be exempt from tax under this Act, or(c)After their use or consumption in the manufacture of goods, such manufactured goods are disposed of otherwise than by way of sale in the State or in the course of inter-State trade or commerce or export out of the territory of India; or(d)Used or consumed otherwise,and such tax shall be levied at the same rate, at which tax under section 11 would have been levied, on the sale of such goods within the State on the date of such purchase or receipt.

## **13. Levy of Tax on containers and packing materials.**

- Where any goods is packed in any container or packing materials are sold, such container or packing material shall be deemed to have been sold or purchased along with such goods and the tax

under section 11 or section 12 shall be levied on the sale or purchase of such container or packing material at the same rate as applicable to the sale or purchase of the goods contained therein; Provided that no tax under section 11 or section 12 shall be levied where the container or packing material is sold or purchased along with the goods exempted from tax under section 17.

#### **14. Rates of Vat.**

(1) The Value Added Tax payable by a dealer under this Act shall be levied on his taxable turnover in respect of different goods specified in Schedule B and Schedule C at the rate mentioned under the said Schedules in respect of those goods. (2) The levy of tax under sub-section (1) in respect of goods specified in Schedule C shall be in the manner provided in section 15.

#### **15. Points of levy in respect of certain goods.**

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

#### **16. Levy of Turnover tax.**

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

#### **17. Sale of goods exempted from tax.**

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

#### **18. Zero rated sales.**

- The rate of tax on the sale of goods subject to levy of tax shall be zero when such goods are sold- (a) In course of inter-State trade or commerce; or (b) In course of export out of the territory of India; or (c) To a dealer having business under- (i) A SEZ; or (ii) A STP; or (iii) A EHTP; or (d) To an EOU

## 19. Net Tax Payable.

(1)The net tax payable by a registered dealer for a tax period shall be the different between the output tax (plus purchase tax, if any), and the input tax, which can be determined from the following formula.  $\text{Net tax payable} = (O+P) - I$  Where 'O' denotes the output tax payable for any tax period, 'P' denotes the tax payable on purchases by a registered dealer for that tax period under section 12 and 'I' denotes the input tax paid or payable for the said tax period. (2)The net tax payable by a dealer liable to pay tax but not registered under this Act for a tax period shall be equal to the output tax payable for the said tax period. (3)If the amount calculated under sub-section (1) is negative, the same shall be carried forward to the next tax period or periods for adjustment against the output tax payable.

## 20. Input Tax Credit.

(1)Subject to the provisions of this Act, for the purpose of calculating the net tax payable by a registered dealer for any tax period, an input tax credit as determined under this section shall be allowed to such registered dealer against the tax paid or payable in respect of all sales or purchases taxable under this Act, other than sales or purchases of goods specified in Schedule C and Schedule D. (2)The input tax credit to which a registered dealer is entitled under sub-section (1) shall be the amount of tax paid by the registered dealer to the seller on his turnover of purchase of goods during the tax period, calculated, subject to the provisions contained in sub-section (3), (4) and (5), in such manner as may be prescribed. (3)Input tax credit shall be allowed for purchase made within the State from a registered dealer holding a valid certificate of registration in respect of goods intended for the purpose of- (a) Sale of resale by him in the State; (b) Use as inputs or as capital goods in the manufacturing or processing of goods, other than those specified in Schedule A and Schedule C and Schedule D for sale; (c) Sale of goods subject to levy of tax at zero rate under section 18; (d) For use as containers for packing of goods, other than those exempt from tax under this Act, for sale or resale; or (e) Transfer of stock of taxable goods other than by way of sale, to any place outside the State: Provided that- (a) The input tax credit on purchases intended for the purpose of clause (e) shall only be allowed in respect of the amount of tax paid or payable in excess of tax at the rate of four per centum; (b) If goods purchased are used partially for the purposes specified in this sub-section, input tax credit shall be allowed proportionately to the extent they are used for such purposes; and (c) Where a registered dealer sells or despatches goods, both taxable and exempt under this Act, the input tax credit shall be allowed proportionately only in relation to the goods which are not so exempt. (4)Notwithstanding anything contained in this section or elsewhere in this Act, and subject to such conditions and restrictions and in such manner, as may be prescribed, input tax credit may be allowed partially or in phased manner, in respect of such goods or such class of dealers or in such cases, as may be prescribed. (5)(a) Input tax credit on capital goods shall be allowed from the date of first sale of taxable goods produced or manufactured after the commencement of such production and shall be adjusted against the output tax over a period not exceeding three years: Provided that no input tax credit shall be allowed on such capital goods used for the purposes and in the circumstances as specified in Schedule 'D'. (b) Input tax credit under clause (a) of this sub-section shall be allowed in lump sum provided that value of such capital goods is rupees one lakh or less. (c) Input tax credit on capital goods shall be allowed only on purchase of such goods made on or

after the appointed day.(d)In case of closure of business before the commencement of commercial production, no input tax credit on capital goods shall be allowed and input tax credit carried forward, if any, shall be forfeited.(e)In case where there is production of both taxable goods and goods exempt from tax, the input tax credit admissible on capital goods shall be determined in the manner prescribed.(f)Where the used capital goods are sold, the same shall be subject to tax under this Act.(6)Input tax credit shall not be claimed by the dealer for any tax period until the dealer receives the tax invoice in original evidencing the amount of input tax:Provided that for good and sufficient reasons to be recorded in writing, the Commissioner may, in the prescribed manner, allow such credit subject to such conditions and restrictions as may be specified in the order allowing the credit.(7)A registered dealer who intends to claim input tax credit shall, for the purpose of determining the amount of input tax credit, maintain accounts and such other records as may be prescribed in respect of the purchases and sales made by him and stock in trade held.(8)No input tax credit shall be claimed by or be allowed to a registered dealer-(a)In respect of any taxable goods purchased by him from another registered dealer for resale but given away by way of free sample or gift;(b)Who makes payment of turnover tax as provided in section 16;(c)In respect of capital goods used for the purposes and in the circumstances as specified in Schedule 'D'.(d)In respect of goods brought from outside the State against the tax paid in any other State;(e)In respect of stock of goods remaining unsold at the time of closure of business;(f)In respect of goods purchased on payment of tax, if such goods are not sold because of any theft, damage and destruction;(g)Where the tax invoice is not available with the dealer or there is evidence that the same has not been issued by the selling registered dealer from whom the goods are purported to have been purchased;(h)In respect of goods purchased from a dealer whose certificate of registration has been suspended;(i)In respect of sale of goods specified in Schedule 'A';(j)In respect of sale of goods specified in Schedule 'C';(k)In respect of raw materials used in manufacture or processing of goods, where the finished products are exempt from tax; and(l)Executing works contract, in relation to works contracts executed by him, where he has exercised option under sub-section (3) of section 11 to pay tax by way of composition; and(m)In any other case as the Government may, by notification, specify,(9)If goods purchased-(a)Are intended for any of the purposes specified under sub-section (3) but are subsequently used otherwise, or(b)Are lost due to theft, damage or for any other reason, or(c)Remain unsold at the time of closure of business,the input tax credit availed in respect of purchase of such goods shall be deducted from the input tax credit admissible for the tax period during which any one or more of such events occurs:Provided that if part of the goods so purchased are used otherwise or lost or remain unsold, the amount of reverse tax credit shall be proportionately calculated:Provided further that if no input tax credit is available for such deduction, the input tax credit availed of shall be repayable in the manner prescribed.(10)Where the Commissioner is of the opinion that the method used by a registered dealer to determine the extent to which goods are used, consumed or supplied or intended to be used, consumed or supplied, in the course of manufacturing taxable goods or making sales liable to tax, is not fair and appropriate in the circumstances, he may, after giving the dealer an opportunity of being heard, for reasons to be recorded in writing, reject the method adopted by the dealer and determine the amount of input tax credit admissible.(11)Subject to the restriction specified in sub-section (8), input tax credit shall be allowed to a registered dealer in respect of the amount of tax paid payable on purchase of taxable goods from a registered dealer, which the dealer holds on the date of registration, if such purchase were made within three months prior to the date of his registration.

## **21. Input Tax credit exceeding tax liability.**

(1) If the input tax credit of a registered dealer other than an exporter selling goods outside the territory of India determined under section 20 for any tax period exceeds the tax liability for that period, the excess credit shall be set off against any outstanding tax, penalty or interest under this Act against that dealer. (2) The excess input tax credit after adjustment under sub-section (1), shall be carried forward as an input tax credit, to the subsequent tax period or periods, till it is fully adjusted: Provided that no excess input tax credit for a tax period shall be carried forward exceeding a period of twenty-four months from the close of the year to which that tax period relates. (3) Where input tax credit is so carried forward, a quarterly credit statement shall be forwarded to the concerned dealer and the claims reconciled accordingly.

## **22. Adjustment of input tax credit.**

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

## **23. Credit notes and debit notes.**

(1) Where a tax invoice has been issued in respect of any sale and the amount shown as tax charged in the tax invoice is found to be in excess of the tax payable under this Act in respect of that sale, the registered dealer making the sale shall provide the purchaser with a debit note containing the requisite particulars as may be prescribed. (3) In case of goods returned or rejected by the purchaser, a credit note shall be issued by the selling dealer to the purchaser and a debit note shall be issued by the purchaser to the selling dealer containing the requisite particulars as may be prescribed.

## **Chapter IV**

### **Registration of Dealers, Cancellation and Amendment of Registration Certificate**

## **24. Persons liable to be registered.**

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

## 25. Compulsory registration of dealers.

(1) Every dealer required by section 24 to be registered shall make an application in the prescribed manner to the registering authority within thirty days from the date of his liability to pay tax, and such application shall be accompanied by a declaration in the prescribed form duly filled in the signed by the dealer specifying therein such particulars as may be prescribed: Provided that where a dealer has more than one place of business inside the State, he shall declare one of such places as the principal place of business and make the application for the principal place of business, in the manner prescribed. (2) If the registering authority, after causing such enquiry as he deems necessary is satisfied that the applicant is a bonafide dealer and the application for registration is correct and complete and that the requirements of the provisions of this Act and rules have been complied with, he shall register the applicant and grant him a certificate of registration in the prescribed form, which shall specify the class or classes of goods dealt in or manufactured by him and such registration certificate shall be assigned a number in the manner as may be prescribed: Provided that the registration certificate issued in respect of dealers liable to pay turnover tax under section 16 shall be in such different form and bear such number in such manner, as may be prescribed. (3) Nothing in sub-section (2) shall debar the registering authority from refusing to grant a certificate of registration to the applicant after giving him a reasonable opportunity of being heard, if- (a) The applicant has not paid any dues payable by him under this Act or under the Orissa Sales Tax Act, 1947 or under the Central Sales Tax Act, 1956 in respect of any business; (b) Any person associated with the business for which the application for grant of registration is made is in arrears of any dues under the provisions of this Act or the Orissa Sales Tax Act, 1947 in respect of any business; or (c) Any earlier certificate of registration granted to the applicant or any persons associated with the business for which the application for grant of registration is made, had been cancelled under the provisions of this Act or the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) and the circumstances and reasons for which the certificate was cancelled continue to exist; or (d) For any other good and sufficient reasons to be recorded in writing. (4) Where the application for registration is made under this section the registering authority shall grant him the certificate of registration effective from the date of filing of such application: Provided that the registering authority shall grant to such dealer the certificate of registration from the date of commencement of liability to pay tax where the application for registration has been made within thirty days of such date. (5) Where a dealer registered under the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) continues to be so registered on the day immediately before the appointed day and is liable to pay tax under this Act on such appointed day, shall be deemed to be registered under this Act and the registering authority shall issue to such dealer, in the prescribed manner, a certificate of registration under this Act in the prescribed form and the certificate of registration so issued shall be effective from the appointed day: Provided that where any such dealer has more than one place of business inside the State, the registering authority shall issue to the dealer, one registration certificate in respect of any such place of business, as he deems appropriate, unless he intimates in writing, to the registering authority, within fifteen days from the appointed day, the principal place of his business in the State in respect of which the certificate of registration shall be issued. (6) When any dealer has been convicted or has paid composition money under section 86, in respect of any contravention of the provision of section 24, the registering authority shall register such dealer and grant him a certificate of registration and such registration shall take effect from the date of the

order granting such registration.

## **26. Voluntary Registration.**

(1) Any person, who intends to establish a business for the purpose of manufacturing or processing of taxable goods of value exceeding rupees two lakhs per year for sale, may, notwithstanding that he is not liable to pay tax under section 10, apply in the prescribed form and manner to the registering authority for registration: Provided that for the purpose of this sub-section, the person shall have to furnish such evidence as may be required by the registering authority in support of his intention to establish a business for manufacturing or processing of taxable goods for sale. (2) In respect of an application for registration under sub-section (1), the provisions of sub-section (2), (3) and (4) of section 25 shall apply. (3) Every dealer who has been registered on application made under this section shall so long as his registration remains in force, be liable to pay tax under this Act. (4) The registration of a dealer on application made under this section shall be in force for a period of not less than three complete years, unless cancelled earlier.

## **27. Security.**

(1) The registering authority may, for proper realisation of tax payable under this Act and for enforcement of lawful conduct of any dealer from time to time, demand from a registered dealer or from a dealer who has applied for registration under this Act, a reasonable security, or additional security, as the case may be, to be paid in the prescribed manner and if the security so demanded is not paid within such time as may be specified in the order demanding such security, he may, notwithstanding anything contained in this Act, - (a) If the defaulter happens to be a registered dealer, cancel the certificate of registration granted to him; or (b) If the defaulter is a dealer who has applied for registration, refuse to grant him such registration: Provided that no such cancellation or refusal shall be made unless the dealer has been given a reasonable opportunity of being heard. (2) In case there is reasonable apprehension or likelihood of evasion of tax as a result of misutilisation of way bills, the registering authority may, for reasons to be recorded in writing, demand adequate security or additional security, as the case may be, in the prescribed manner from the dealer before issue of way bills to him on application made in that behalf. (3) The registering authority may, be order, adjust or forfeit, as the case may be, the whole or any portion of the security furnished by a dealer. (a) For realising any amount of tax, penalty or interest payable by the dealer; or (b) If the dealer has misused any forms or has failed to keep them in proper custody: Provided that no order shall be passed under this sub-section without giving the dealer a reasonable opportunity of being heard. (4) Where, by reason of any order under sub-section (3), the security furnished by a dealer is forfeited in whole or is rendered insufficient, such dealer shall, on demand made by order of the registering authority, furnish fresh or further security of the requisite amount or shall make up the deficiency, as the case may be, in such manner and within such period as may be specified in such order. (5) The registering authority may, on application by a dealer who has furnished security as required under sub-section (1) refund in the prescribed manner any amount of security or part thereof if such security is not required for the purposes for which it was furnished.



## **28. Penalty for failure to be registered.**

(1) Without prejudice to any other provision in this Act, when a dealer has, without reasonable cause, failed to get himself registered within the time provided under sub-section (1) of section 25, the registering authority may, after giving such dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum of rupees five thousand: Provided that no such penalty shall be imposed under this sub-section in respect of the same offence for which a prosecution under section 82 has been instituted and no such prosecution shall be initiated in respect of an offence for which a penalty has been imposed under this section. (2) If a penalty is imposed under sub-section (1), the registering authority shall issue a notice in the prescribed form directing the dealer to pay such penalty by such date as may be specified in the notice and the penalty imposed shall be paid to Government treasury.

## **29. Liability in case of grant of registration by mistake.**

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

## **30. Suspension of Registration certificate.**

(1) If a dealer- (a) Fails to file the returns under this Act within the time prescribed; or (b) Knowingly furnishes incomplete or incorrect particulars in his returns; or (c) Fails to pay any tax including penalty or interest, if any, due from him under the provisions of this Act; or (d) Having issued tax or retail invoices, fails to account for the said invoices in his books of account; or (e) Holds, accepts or furnishes or causes to be furnished, a way bill which he knows or has reason to believe to be false; or (f) Is found to have no business at the place declared in the application for registration as his place of business; or (g) Contravenes any of the provisions of this Act; or (h) Discontinues his business and fails to furnish information regarding such discontinuation, or if there is any other reason for apprehension of evasion of tax or any attempt to evade tax, which, in the opinion of the registering authority, is good and sufficient, the registering authority may, at any time, for reasons to be recorded in writing, suspend the certificate of registration of such dealer by notification, in the manner prescribed. (2) Where a certificate of registration is suspended under sub-section (1), the registering authority shall issue a notice to the dealer concerned requiring him to appear in person or through authority representative and produce records, documents and evidence on the date and time specified therein, which in no case shall be later than thirty days from the date of such suspension, relying on which he intends to rebut such suspension. (3) The certificate of registration suspended under sub-section (1) may be restored on an application made by the dealer along with evidence, to the satisfaction of the registering authority; of payment of taxes due and submission of returns of the evidence to the effect that the grounds on which the certificate of registration has been so suspended as erroneous or not applicable, as the case may be. (4) Where the certificate of registration of a dealer is suspended or is restored after such suspension, the information shall be widely publicised through publication in the Commercial Tax Gazette and in any other manner as

may be prescribed.

### **31. Cancellation of certificates of registration.**

(1)Where-(a)Any business in respect of which a certificate of registration has been granted to a dealer under this Act is discontinued ; or(b)In the case of transfer of business by a dealer, the transferee already holds a certificate of registration under this Act; or(c)An incorporated body is closed down or otherwise ceases to exist; or(d)The owner of a proprietorship business dies leaving no successor, or(e)In case of a firm or association of persons, if it is dissolved; or(f)A dealer has ceased to be liable to pay tax under this Act,the registering authority may, by order, cancel the certificate of registration of such dealer or the transfer dealer, as the case may be, from such date as may be specified in that order.(2)The certificate of registration shall be deemed to be inoperative-(a)In case of clause (a) and clause (b) of sub-section (1), with effect from the date of discontinuance or transfer of the business, as the case may be;(b)In case of clause (c), (d), (e) and (f) of sub-section (1), from the date on which the liability of the dealer to pay tax has ceased,Notwithstanding the fact that the certificate of registration is cancelled from a later date.(3)A registered dealer, whose certificate of registration becomes liable for cancellation under clauses (a), (b), (c), (e) and (f) of sub-section (1) shall apply with such time as may be prescribed.(4)On receipt of such application, if the registering authority is satisfied that the certificate of registration of the dealer is liable to be cancelled under sub-section (1), he may cancel such certificate.(5)Where the dealer whose certificate of registration has been suspended under sub-section (1) of section 30 fails to furnish the requisite evidence within the time specified under sub-section (3) of the said section, the registering authority shall, after causing such inquiry as he may consider necessary and after giving an opportunity of being heard to the dealer, cancel the certificate of registration held by him and the cancellation shall take effect from the date of order of cancellation.(6)Every dealer whose certificate of registration is cancelled under this section shall pay in respect of every taxable goods held as stock in trade or as capital goods on the date of cancellation, an amount equal to the tax that would have been payable in respect of those goods if the goods were sold at prevailing market price on that date or the total input tax credit previously claimed in respect of those goods, whichever is higher.(7)Every dealer who applies for cancellation of his registration shall surrender with his application the certificate of registration granted to him alongwith the unused way bills held on the date of such application and the account of utilisation of such way bills, if any, for which no account has been rendered.(8)Every dealer whose certificate of registration is cancelled otherwise than on application shall surrender the certificate of registration alongwith the unused will bills, if any, held on the date of such cancellation, the account of utilisation of such way bills and the statutory declaration forms, if any, for which no account has been rendered, within seven days from the date of receipt, by him, of the order of cancellation.(9)If a dealer-(a)Fails, without sufficient cause, to comply with the provisions of sub-section (3) or sub-section (6); or(b)Fails to surrender his certificate of registration as required under sub-section (7); or(c)Fails to surrender his registration certificate alongwith unused way bills and the statutory declaration forms and the account of utilisation of such way bills and declaration forms, for which no account has been rendered under sub-section (8),the registering authority may, by an order in writing and after giving the dealer an opportunity of being heard, direct that the dealer shall pay, by way of penalty, a sum equal to rupees one hundred for each day of default subject to a maximum of rupees ten thousand.(10)The

registering authority shall, at intervals of one month, publish in the Commercial Tax Gazette such particulars, as may be prescribed, in respect of every dealer whose certificate of registration has been cancelled under the provisions of this Act during the intervening period.(11)The cancellation of a certificate of registration shall not affect the liability of any dealer to pay tax for any period till the date of such cancellation which remains unpaid or is assessed after the said date, notwithstanding that he is not liable to pay tax under this Act.

## **32. Amendment of certificate of registration.**

(1)If any dealer registered under this Act-(a)Seller or disposes of his business or any part thereof or the place of business, or discontinues his business; or(b)Effects, or comes to know of, any other change is the ownership of the business, or changes the name, style, constitution or nature of business, or changes his place of business or warehouse, or opens a new place of business, or makes any addition or deletion in the class or classes of goods dealt in or manufactured.he or any person duly authorized by him shall, within the prescribed time, inform the registering authority accordingly.(2)If under circumstances mentioned in clause (b) of sub-section (1) a registered dealer makes an application for amendment of the certificate of registration, the registering authority may, subject to provisions of sub-section (6), make or cause to be made such enquiry as he deems necessary and amend the certificate of registration of the dealer or reject the application for such amendment;Provided that before an application for amendment of certificate of registration in rejected, an opportunity of being heard shall be allowed to the dealer.(3)Notwithstanding anything contained in sub-section (2), where the registering authority is satisfied on his own information that the certificate of registration issued to a dealer requires amendment with regard to certain particulars specified therein, he may amend the said certificate after giving the dealer an opportunity of being heard.(4)Where no order either granting or rejecting the application for amendment of the registration certificate is passed within thirty days from the date of receipt of such application, it shall be deemed that the amendment as applied for has been granted and the certificate of registration shall accordingly be amended:Provided that if the delay in disposal of the application for amendment of certificate of registration is attributable to the lapse on the part of the dealer, the limitation as provided under this sub-section shall not apply.(5)When a certificate of registration is amended under sub-section (3) on any of the events specified in sub-section (1), such amendment shall take effect from the date of such event and in any other case of amendment coming under sub-section (2), the amendment shall take effect from the date of application.(6)Notwithstanding anything contained in sub-section (1), where any change alters the basic status of a dealer, such as, conversion of proprietorship concern to partnership firm or vice-versa, dissolution of an existing firm and creation of a new firm, formation of a firm into a company or vice versa, a fresh certificate of registration shall be required to be obtained by the dealer.(7)Where a dealer fails, without any reasonable cause, to inform the registering authority the changes as provided under sub-section (1) within the time prescribed, he shall be liable to a penalty of rupees one hundred for each day of default.

## Chapter V

### Return and Return Defaults

#### 33. Periodical returns and payment of tax.

(1) Every registered dealer shall furnish returns in such form, for such period, by such dates and to such authority, as may be prescribed: Provided that the Commissioner may, subject to such conditions and restrictions as may be prescribed, exempt any such dealer or class of dealers from furnishing such returns or require any such dealer to furnish-

(a) Returns for such different periods;

or (b) Separate return for each or any branch or place of business inside the State, where such registered dealer has more than one branch or place of business in the State.

(2) If the Commissioner has reason to believe that the turnover of sales or the turnover of purchase of any dealer is likely to exceed or has exceeded the taxable limit as specified in sub-section (4) of section 10, he may, by notice, served in the prescribed manner, require such dealer to furnish return as if he were a registered dealer, but not tax shall be payable by him unless his gross turnover exceeds the taxable limit provided under the said sub-section.

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

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

(5) If any dealer, after furnishing a return under sub-section (1) or sub-section (2), discovers that a higher amount of tax was due than the amount of tax admitted by him in the original return for any reason, he may voluntarily disclose the same by filing a revised return for the purpose and pay the higher amount of tax as due at any time, in the manner provided under section 50: Provided that no such voluntary disclosure shall be accepted where the disclosure is made or intended to be made after receipt of the notice for tax audit under this Act, or as a result of such audit.

(6) Every dealer required to file return under sub-section (1) or sub-section (2) shall pay the full amount of tax payable according to the return or the differential tax payable according to the revised return furnished, if any, in the manner provided under section 50.

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

(a) In case of an individual, by the individual himself, and where the individual is absent, by any person duly authorised by him in the behalf;

(b) In the case of a Hindu Undivided Family, by the Kara.

(c) In the case of a company or local authority; by the principal officer thereof;

(d) In the case of a firm, by any partner thereof not being a minor;

(e) In the case of any other association, by any person competent to act in that behalf.

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

(8) Any return signed by a person who is not authorised under sub-section (7) shall not be treated as a return for the purposes of this Act: Provided that any amount deposited on the basis of such return shall not be refunded except where it is established under the provisions of this Act to be otherwise not payable.

### **34. Default in filing of return.**

(1)Where a dealer required to file return under sub-sections (1), (2) or (3) of section 33-(a)Fails without sufficient cause to pay the amount of tax due as per the return for any tax period; or(b)Makes voluntary disclosure under sub-section (5) of section 33 showing a higher amount of tax to be due than was shown by him in the original return; or(c)Fails to furnish return,such dealer shall be liable to pay interest in respect of-(i)The tax, which he fails to pay according to the return; or(ii)The difference of the amount of tax according to the voluntary disclosure; or(iii)The tax payable for the period for which he has failed to furnish return;at the rate of two per centum per month from the date the return for the period was due to the date of its payment or to the date of order of assessment, whichever is earlier.(2)If a registered dealer, without sufficient cause, fails to pay the amount of tax due and interest payable thereon along with return or revised return in accordance with the provisions for sub-section (1), the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to the tax and the interest payable by him, a penalty at the rate of two per centum per month on the tax and interest so payable, from the date it had become due to the date of its payment or the order of assessment, whichever is earlier.(3)If a registered dealer or any other dealer required to furnish return under sub-section (2) of section 33, without any sufficient cause,-(a)Fails to comply with the requirements under sub-section (2) or (3) of section 33; or(b)Fails to furnish, the proof of payment in relation to any voluntary disclosure made in accordance with sub-section (5) of section 33, or(c)Fails to furnish the proof of payment as required under sub-section (6) of section 33,the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to any tax, interest and penalty under sub-section (1) and (2) payable or paid by him, a penalty of a sum of rupees one hundred per each day of default subject to a maximum of rupees ten thousand.(4)The penalties as provided under this section may be imposed by the Commissioner notwithstanding the fact the assessment proceedings have not been initiated against the dealer under section 42 or section 43.(5)Any penalty imposed under this section shall be without prejudice to any prosecution for any officer under this Act.

### **35. Tax to be collected by registered dealers.**

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

### **36. Rounding off of amount of Tax or penalty.**

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

### **37. Rounding off of Tax or penalty for calculation of interest.**

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

### **38. Scrutiny of returns.**

(1) Each and every return in relation to any tax period furnished by a registered dealer under section 33, shall be subject to scrutiny by the assessing authority to verify the correctness of calculation, application of correct rate of tax and interest, claim of input tax credit made therein and full payment of tax and interest, payable by the dealer for such period. (2) If any mistake is detected as a result of scrutiny made under sub-section (1), the assessing authority shall serve a notice in the prescribed form on the dealer to make payment of the extra amount of tax along with the interest as per the provisions of this Act, by the date specified in the said notice.

## **Chapter VI**

### **Assessment, Refund and Recovery of Tax**

#### **39. Self assessment.**

(1) Subject to provisions of sub-section (2), the amount of tax due from a registered dealer or a dealer liable to be registered under this Act shall be assessed in the manner hereinafter provided, for each tax period or tax periods during which the dealer is so liable. (2) If a registered dealer furnishes the return in respect of any tax period within the prescribed time and the return so furnished is found to be in order, it shall be accepted as self-assessed subject to adjustment of any arithmetical error apparent on the face of the said return.

#### **40. Provisional assessment.**

(1) Where a registered dealer fails to furnish the return in respect of any tax period within the prescribed time, the assessing authority, if he is satisfied that provisional assessment is necessary in that case, may proceed to assess the dealer provisionally for that period, notwithstanding anything contained in section 42. (2) The provisional assessment under sub-section (1) shall be made on the basis of past returns or past records and, where no such returns or records are available, on the basis of information received by the assessing authority and in every such case, the assessing authority shall direct the dealer to deposit the amount of tax so assessed in such manner and by such date as may be prescribed. (3) If the dealer furnishes return along with evidence showing full payment of the tax due and the interest and penalty, payable, if under section 34 on or before the date specified under sub-section (2), the provisional assessment made under sub-section (1) shall stand revoked on the date on which such return is filed by the dealer. (4) Nothing contained in this

section shall prevent the assessing authority from making assessment under section 42 and any tax, interest or penalty paid against the provisional assessment under this section shall be adjusted against tax, interest or penalty payable on such assessment.

#### **41. Identification of Tax payers for Tax audit.**

(1)The Commissioner may select such individual dealers or class of dealers for tax audit on random basis or on the basis of risk analysis or on the basis of any other objective criteria, at such intervals or in such audit cycle, as may be prescribed.(2)After identification of individual dealers or class of dealers for tax audit under sub-section (1), the Commissioner shall direct that tax audit in respect of such individual dealers or class of dealers be conducted in accordance with the audit programme approved by him:Provided that the Commissioner may direct tax audit in respect of any individual dealer or class of dealers on out of turn basis or for more than once in an audit cycle to prevent evasion of tax and ensure proper tax compliance.(3)Tax audit shall ordinarily be conducted in the prescribed manner in the business premises or office or godown or warehouse or any other place, where the business is normally carried on by the dealer or stock in trade or books of account of the business are kept or lodged temporarily or otherwise.(4)After completion of tax audit of any dealer under sub-section (3), the officer authorised to conduct such audit shall, within seven days from the date of completion of the audit, submit the audit report, to be called "Audit Visit Report", the assessing authority in the prescribed form alongwith the statements recorded and documents obtained evidencing suppression of purchases or sales or both, erroneous claims of deductions including input tax credit and evasion of tax, if any, relevant for the purpose of investigation, assessment or such other purposes.

#### **42. Audit assessment.**

(1)Where the tax audit conducted under sub-section (3) of section 41 results in the detection of suppression of purchases or sales or both, erroneous claims of deductions including input tax credit evasion of tax or contravention of any provision of this Act affecting the tax liability of the dealer, the assessing authority may, notwithstanding the fact that the dealer may have been assessed under section 39 or section 40, serve on such dealer a notice in the form and manner prescribed along with a copy of the Audit Visit Report, requiring him to appear in person or through his authorised representative on a date and place specified therein and produce or cause to be produced such books of account and documents relying on which he intends to rebut the findings and estimated loss of revenue in respect of any tax period or periods as determined on such audit and incorporated in the Audit Visit Report.(2)Where a notice is issued to a dealer under sub-section (1), he shall be allowed time for a period of not less than thirty days for production of relevant books of account and documents.(3)If the dealer fails to appear or cause appearance, or fails to produce or cause production of the books of account and documents as required under sub-section (1), the assessing authority may proceed to complete the assessment to the best of his judgement basing on the materials available in the Audit Visit Report and such other materials as may be available and after causing such enquiry as he deems necessary.(4)Where the dealer to whom a notice is issued under sub-section (1), produces the books of account and other documents, the assessing authority may, after examining all the materials as available with him in the record and those produced by the

dealer and after causing such other enquiry as he deems necessary, assess the tax due from that dealer accordingly.(5)Without prejudice to any penalty or interest that may have been levied under any provision of this Act, an amount equal to twice the amount of tax assessed under sub-section (3) or sub-section (4) shall be imposed by way of penalty in respect of any assessment completed under the said sub-sections.(6)Notwithstanding anything contained to the contrary in any provision under this Act, an assessment under this section shall be completed within a period of six months from the date for receipt of the Audit Visit Report:Provided that if, for any reason, the assessment is not completed within the time specified in this sub-section, the Commissioner may, on the merit of each such case, allow such further time not exceeding six months for completion of the assessment proceeding.(7)No order of assessment shall be made under sub-section (3) or sub-section (4) after the expiry of one year from the date of receipt of the Audit Visit Report.

### **43. Turnover escaping assessment.**

(1)Where, after a dealer is assessed under section 39, 40 or 42 for any tax period, the assessing authority, on the basis of any information in his possession, is of the opinion that the whole or any part of the turnover of the dealer in respect of such tax period or tax periods has-(a)Escaped Assessment, or(b)Been under-assessed, or(c)Been assessed at a rate lower than the rate at which it is assessable;or that the dealer has been allowed-(i)Wrongly any deduction from his turnover, or(ii)Input tax credit, to which he is not eligible.the assessing authority may serve a notice on the dealer in such form and manner as may be prescribed and after giving the dealer a reasonable opportunity of being heard and after making such enquiry as he deems necessary, proceed to assess to the best of his judgement the amount of tax due from the dealer.(2)If the assessing authority is satisfied that the escapement is without any reasonable cause, he may direct the dealer to pay, by way of penalty, a sum equal to twice the amount of tax additionally assessed under this section.(3)No order of assessment shall be made under sub-section (1) after the expiry of five years from the end of the tax period or tax periods in respect of which the tax is assessable.

### **44. Assessment of dealer who being liable to pay tax fails to register.**

(1)If the assessing authority, on the basis of any information in his possession, is satisfied that any dealer, who has been liable to pay tax under this Act in respect of any period, has failed to get himself registered, the assessing authority shall proceed in such manner as may be prescribed to assess to the best of his 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 reasonable opportunity of being heard, and the assessing authority may, if he is satisfied that the default is without reasonable cause, direct the dealer to pay, in addition to the amount of tax so assessed, a penalty equal to the amount of tax so assessed.(2)No assessment under sub-section (1) shall be made after the expiry of five years from the end of the tax period or tax periods to which the assessment relates.



## **45. Assessment of a casual dealer.**

(1) Every casual dealer shall be liable to pay tax on all his- (a) Sales, within the State, of taxable goods purchased or received by him; and (b) Purchases of taxable goods within the State, which are liable to be taxed under section 12, (2) A casual dealer shall furnish to the assessing authority including the officer-in-charge of any check-post or barrier referred to in section 74, voluntarily or immediately when called upon to do so by a notice in the prescribed form, a return of estimated turnover in the form prescribed. (3) If a casual dealer does not furnish the return as required under sub-section (2) or if the return furnished by him appears to the assessing authority or the officer-in-charge of the check-post or barrier to be incorrect or incomplete, such authority or the officer-in-charge shall, after giving the casual dealer a reasonable opportunity of being heard, assess him to the best of his judgement. (4) The assessing authority or the officer-in-charge of the check-post or barrier shall, if he is satisfied after making such scrutiny of the accounts of the casual dealer and such enquiry as he may consider necessary that the return furnished under sub-section (2) is correct and complete, provisionally assess the amount of tax due from him on the basis of such return. (5) The provisional and the final assessment of a casual dealer shall be made in the manner prescribed. (6) No order under sub-section (3) or (4) shall be passed after the expiry of six months from the date the notice calling upon the casual dealer to furnish return is served on him or the date on which such return is voluntarily filed.

## **46. Period of limitation where proceeding for prosecution has been initiated not to supply in certain cases.**

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

## **47. Assessment where proceeding for prosecution has been initiated.**

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

## **48. Exclusion of time period for assessment.**

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

## **49. Power of reassessment in certain cases.**

(1) Where any order passed by the assessing authority in respect of a dealer for any period is found to be erroneous or prejudicial to the interest of revenue consequent to, or in the light of, any judgement or order of any Court or Tribunal, which has become final and binding, then, notwithstanding

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

## **50. Payment and recovery of tax, interest and penalty.**

(1)Tax payable under this Act shall be paid in the manner hereinafter provided in this section at such intervals as may be prescribed.(2)A registered dealer furnishing any return under sub-section (1) of section 33 shall pay into Government Treasury, in such manner and at such intervals as may be prescribed, the amount of tax due from him for the tax period covered under the return and, where he furnishes such return after the prescribed date, shall pay the tax so due alone with the amount of interest, penalty, or both as payable by him under section 34, and shall furnish a receipt from the Treasury showing the payment so made.(3)A registered dealer furnishing a revised return in accordance with sub-section (4) or sub-section (5) of section 33, which shows that a higher amount of tax is due than that was paid or payable in accordance with the original return, shall furnish alongwith such return a receipt showing payment of the differential amount of tax payable alongwith the interest, penalty, or both, as payable under section 34, in the manner provided in sub-section (2).(4)The amount of-(a)Tax due where return have been filed without full payment of tax due: or(b)Tax assessed under section 39, 40, 42, 43, 44, or 45 less the sum already paid in respect of any tax period, together with interest required to be paid and the penalty, if any, imposed under section 42, 43 or section 44; or(c)Penalty imposed under any provision of this Act not covered by clause (b); or(d)Any other dues under this Act,shall be paid by the dealer in the manner provided under sub-section (2) within thirty days from the date of service of the notice issued by the assessing authority for the purpose.(5)Where a dealer fails to make payment of the tax assessed, interest payable or penalty imposed or any other amount due from him under this Act within thirty days of the date of service of the notice of demand, the assessing authority shall, after giving the dealer a reasonable opportunity of being heard, direct that such dealer shall pay, in addition to the amount due for payment, by way of penalty, a sum equal to two per centum of such amount of tax, interest, penalty or any other amount due, for every month for which payment has been delayed by him after the date on which such amount was due to be paid :Provided that where any appeal under section 77 or 78 or revision under section 79 has been filed,(i)Such penalty shall be payable from the date so specified on the amount ultimately found due from the dealer; and(ii)If the tax or penalty, if any, is enhanced in such appeal or revision, such penalty on the excess amount shall be payable from the date by which the dealer is required to pay such excess amount.(6)When a dealer is in default in making the payment of any amount payable by him under sub-section (4) and (5) he shall be liable to pay simple interest on such amount at the rate of two per centum per month with effect from the date of such default till the payment of the amount.(7)All amounts that remain unpaid after the due date of payment in pursuance of the notice issued under sub-section (4) and sub-section (5) shall be

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

## **51. Special mode of recovery.**

(1)Notwithstanding anything contained in section 50 or any law or contract to the contrary, the assessing authority may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last address know, require-(a)Any person from who any money is due or may become due to a dealer, who has failed to comply with notice served under sub-section (4) or sub-section (5) of section 50 or has failed to pay any interest due from him under this Act; or(b)Any person who holds or may subsequently hold any money for or on account of such dealer, to pay into Government Treasury in the manner specified in the notice issued under this sub-section either forthwith or upon the money becoming due or being held, or at or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount of tax due from the dealer with the interest or penalty or both, as the case may be, as payable under this Act or the whole or the money when it is equal to or less than that amount.(2)The assessing authority may, at any time or from time to time, amend or revoke any notice issued under sub-section (1) or extend the time for making the payment in pursuance of such notice.(3)Any person making any payment in compliance with a notice issued under sub-section (1) shall be deemed to have made the payment under the authority of the dealer and the receipt from the Government Treasury shall constitute a good and sufficient discharged of the liability of such person to the dealer to the extent of the amount specified in the receipt.(4)Any person discharging liability to the dealer after service on him of the notice issued under sub-section (1) shall, if the liability is discharged in any manner other than that required under the said notice, be personally liable to the Government to the extent of the liability so discharged or to the extent of the liability of the dealer for the tax due under this Act alongwith the interest or penalty or both, as payable, whichever is less.(5)Where a person on whom a notice is served under sub-section (1) proves to the satisfaction of the assessing authority that the money demanded or any part thereof was not due to the dealer or that he did not hold any money for or on account of the dealer, at the time the notice was served on him, or that the money demanded or any part thereof is not likely to become due to, or to be held for or on account of, the dealer, nothing contained in this section shall be deemed to require such person to pay into Government Treasury any such money or part thereof, as the case may be.(6)Any amount of money which a person is required to pay under sub-section (1) or for which he is personally liable to the Government under sub-section (4) shall, if it remains unpaid, be

recoverable in the same manner as provided under sub-section (7) of section 50: Provided that nothing in this section shall operate to affect any action taken or that may have been taken or prevent any action that may be or is being taken under section 50 for recovery from the dealer the amount due from him.

## **52. Unauthorised and excess collection of tax by dealer.**

(1) Any person who, - (a) Not being a registered dealer, collects any sum by way of tax; or (b) Being a registered dealer, collects any amount by way of tax in excess of the tax payable by him, shall be liable to pay in addition to the tax for which he may be liable, a penalty equal to twice the sum so collected by way of tax. (2) If the assessing authority in the course of any proceeding under this Act or otherwise has reason to believe that any person has become liable to a penalty under sub-section (1), he shall serve on the person a notice in the prescribed form requiring him to show cause as to why a penalty as provided under sub-section (1) shall not be imposed on him. (3) On receipt of the reply, if any, to the notice served under sub-section (2), the assessing authority shall, after such enquiry as he may consider necessary make such order as he deems fit. (4) (a) The amount of tax collected by any person or dealer in contravention of section 35 shall be forfeited to the Government by an order of the assessing authority: Provided that no such order shall be made by the assessing authority without giving the person or, as the case may be, the dealer concerned an opportunity of being heard. (b) When any such order of forfeiture is made, the assessing authority shall publish a notice in the prescribed manner specifying the names and addresses of the persons from whom tax was collected in contravention of section 35 and other details, if any, relating thereto as may be prescribed and giving such persons an opportunity to file their claims, accompanied by such documentary or other evidence as each such person may furnish to establish his claim, within sixty days from the date of publication of the notice, for refund of the amount collected from them. (c) If, on receipt of any such claim, the assessing authority is satisfied that the whole or any part of the amount of such claim is refundable, he shall refund such amount to the person concerned within one month after the amount is collected or recovered from the person or dealer who collected the amount in contravention of section 35.

## **53. Consumer Welfare Fund.**

(1) The Orissa Consumer Welfare Fund established under the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) shall be deemed to have been established under this Act. (2) There shall be credited to the Fund, in such manner as may be prescribed all amounts forfeited under sub-section (4) of section 52 and all amounts of penalty paid pursuant to that section, including interest recovered, if any, on such amounts (except any amount refunded under clause (c) of sub-section (4) of the said section) and excluding the expenses of collection and recovery as determined by the Government. (3) The money credited to the Fund shall be utilised by the Government for the welfare of the consumers in accordance with such rules and the accounts and other relevant records in relation to the Fund shall be maintained in such manner, as may be prescribed.

## 54. Deduction of Tax at source from payment to works contractor.

(1) Notwithstanding anything contained in section 50 or any other law of contract to the contrary, any person responsible for making payment of any sum to any contractor (hereinafter referred to in this section as deducting authority) for carrying out any works contract, which involves transfer of property in goods, in pursuance of a contract between the contractor and—(a) The Central Government or any State Government, or (b) Any local authority, or (c) Any authority or corporation established by or under a statute, or (d) Any company incorporated under the Companies Act, 1956 (1 of 1956) including any State or Central Government undertaking, or (e) Any co-operative society, or any other association registered under the Societies Registration Act, 1860 (21 of 1860), shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or any other mode, whichever is earlier, deduct, subject to the certificate, if any, produced by the contractor in pursuance of sub-section (5), an amount towards tax equal to four per centum of such sum in respect of the works contract, if the value of works contract exceeds rupees fifty thousand. (2) While making deduction as referred to in sub-section (1), the deducting authority shall grant a certificate to the contractor in the form prescribed and send a copy thereof to the assessing authority within whose jurisdiction the work contract is executed within a period of thirty days of such deduction: Provided that where the tax is deducted from a registered dealer, the assessing authority who receives the certificate shall forward the same, along with the payment received, to the assessing authority under whose jurisdiction the dealer is registered in the manner prescribed. (3) The amount deducted from the bills or invoices shall be deposited into Government Treasury within one week from the date of deduction in such form or challan as may be prescribed. (4) Such deposit into Government Treasury shall be adjusted by the concerned assessing authority towards the tax liability of the contractor and shall constitute a good and sufficient discharge of liability of the deducting authority to the contractor to the extent of the amount deposited. (5) (a) Where, on an application being made by the contractor in this behalf, the assessing authority is satisfied that any works contract of the nature referred to in sub-section (1) involves both transfer of property in goods and labour or services, or involves only labour or services and accordingly, justifies deduction of tax on a part of the sum in respect of the works contract or as the case may be justifies no deduction of tax, he shall, after giving the contractor a reasonable opportunity of being heard, grant him such certificate as may be appropriate, in the manner prescribed: Provided that nothing in the said certificate shall affect the assessment of the tax liability of the contractor under this Act: Provided further that where the assessing authority, in consideration of the facts and circumstances of the case, is of the opinion that such certificate of no deduction or deduction of tax on a part of the sum as claimed is not justified he may, after allowing the dealer a reasonable opportunity of being heard, refuse to issue such certificate. (b) Where such a certificate is produced by a contractor before the deducting authority, until such certificate is cancelled by the assessing authority, the deducting authority shall either make no deduction of tax or make the deduction of the tax, as the case may be, in accordance with the said certificate. (6) If any person contravenes the provision of sub-section (1), (2) or (3) or of clause (b) of sub-section (5), the assessing authority shall, after giving him an opportunity of being heard, by an order in writing, impose on such person a penalty equal to twice the amount required to be deducted and deposited by him into Government Treasury. Explanation. - Nothing in sub-section (5) or any other provision of this section shall be construed as to authorise deduction of any amount towards tax on the value

of any property in goods transferred in the course of inter-State sales, sales outside the State or sales in the course of import.(7)Where any certificate issued under sub-section (5) is found to have been obtained on incorrect or fraudulent representation of facts, the assessing authority shall cancel the certificate with direction to the deducting authority to recover the tax, not deducted on the strength of such certificate, from the subsequent payment due to the works contractor:Provided that no such order of cancellation shall be issued without giving a reasonable opportunity of being heard to the works contractor.

## **55. Tax to be First charge on property.**

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

## **56. Period of limitation for recovery of tax.**

- Notwithstanding anything contained in any law for the time being in force, no proceedings for recovery of any amount under sub-section (7) of section 50 or under sub-section (6) of section 51 shall be initiated after the expiry of five years from the date the amount becomes due for payment :Provided that when an appeal or revision has been filed, the period of limitation shall run from the date on which the amount due is finally determined.

## **57. Refund.**

(1)Subject to other provisions of this Act and the rules, the assessing authority shall refund to a dealer, within a period of sixty days of the date of receipt of such order giving rise to such refund, the amount of tax, including interest or penalty or both, if any, paid by such dealer in excess of the amount due from him, through refund adjustment or through refund voucher:Provided that the assessing authority shall first adjust such excess amount towards the recovery of any amount due in respect of which a notice under sub-section (4) of section 50 has been issued, or any amount due for any period covered by a return but not paid and, thereafter, refund only the balance, if any.(2)Where any refund is due to any dealer according to return furnished by him for any period, such refund may provisionally be adjusted by him against the tax due or tax payable, as per the returns filed under section 33, for any subsequent period:Provided that the excess input tax credit for any tax period shall not be carried forward beyond a period of twenty four months from the close of the year to which that tax period relates for adjustment against the tax due for subsequent period or periods, except when the dealer exercises option in writing for further carry over:Provided further that the amount of tax, including interest or penalty or both, if any, due from, and payable by, the dealer on the date of such adjustment shall first be deducted from the amount of such refund before adjustment.(3)No claim for refund to any tax, including interest or penalty or both, if any, paid for any tax period or periods under this Act shall be allowed in any case where there in an order for reassessment for such period until such reassessment is completed.

## 58. Refund of tax under special circumstances.

(1)(a)Where any return filed under this Act shows any amount to be refundable to a dealer on account of sale referred to in clause (b), (c) and (d) of section 18, the dealer may make an application to the assessing authority for refund of that amount in the manner and form as may be prescribed:(b)As soon as may be, on receipt of the application for such refund, the assessing authority shall direct a tax audit under sub-section (2) of section 41 of the transactions pertaining to such refund as covered under the return referred to in clause (a) which shall be competent within a period of one month from the date of issue of such direction, to establish the correctness of such claim:Provided that if there is any delay in completing the audit under this clause due to non-co-operation of the dealer or non-production of evidence as may be required to be furnished in support of the claim of refund or any other lapse on the part of the dealer, the period of such delay shall be excluded while computing the period of limitation and such period shall not be reckoned for grant of interest, if any, admissible under section 59:Provided further that if such lapse on the part of the dealer persists without any valid reason, the assessing authority may reject the application for such refund after giving the dealer an opportunity of being heard.(c)Where, on assessment based on tax audit under clause (b), the amount of refund claimed is found to be inadmissible or more than what is admissible, then, the claim of refund of excess amount shall be disallowed and if, in consequence thereof, any amount is found due from the dealer, he shall be liable to pay interest at the rate of two per centum per month on that amount from the date of filing of the return giving rise to the refund till the date of the assessment.(d)The dealer may, by application made in this behalf, exercise option for grant of provisional refund pending audit, investigation and assessment.(e)Subject to the provisions of clause (b) and (c), the assessing authority may require a dealer exercising option under clause (d) to furnish Bank guarantee to the satisfaction of the assessing authority for an amount equal to the amount of refund claimed;(f)On receipt of such Bank guarantee, the assessing authority shall, subject to the procedure prescribed, grant the dealer a provisional refund of such amount as may be determined to be refundable;(g)Where a provisional refund has been granted, the assessing authority may, after an audit under section 41 and assessment under section 42 when so required as a result of such audit, grant final refund, and the excess amount, if any, allowed by provisional refund may be recovered as if it is a tax payable under this Act and, thereafter, release the Bank guarantee furnished by the dealer at the time of grant of provisional refund, in the manner prescribed:Provided that the Bank guarantee shall be forfeited, if-(i)The dealer is found to have made an incorrect claim of refund against which payment has already been made; or(ii)The dealer fails to produce evidence in support of the claim of refund; or(iii)The refund claim is reduced by any reason whatsoever and the dealer fails to pay the excess amount of refund provisionally allowed, to such extent and in such manner as may be prescribed, and, where the refund claim is reduced, the dealer shall be liable to pay interest at the rate of two per centum on the excess amount of refund so granted from the date of such grant to the date of its recovery.(h)Where any refund claimed is found to be admissible under this sub-section, it shall be granted within a period of ninety days from the date of application for such refund.(2)(a)Any foreign diplomatic mission or consulate in India or the United nations or any other similar international body, as may be notified by the Government, shall be entitled to refund of tax paid for goods purchased in the State and all such refunds shall be subject to the conditions and restrictions as may be prescribed.(b)Any person, who is authorised by the body referred in clause (a), entitled to refund

thereunder, may apply to the assessing authority for such refund in the manner and within the time as may be prescribed.(3)(a)Subject to the provisions of section 31, where a registered dealer closes down or discontinues his business and the net tax payable as a result of such closure or discontinuance of business, after taking into account the closing stock, is a negative value, the dealer shall make an application for refund to the assessing authority in such form and within such time as may be prescribed.(b)Any refund covered under clause (a) shall be granted in such manner and subject to such conditions and restrictions as may be prescribed.(4)(a)Where any excess input tax credit for a tax period is carried forward for adjustment against the tax due for subsequent tax period or periods and such credit or part thereof remains unadjusted even after a period of twenty four months from the close of the year to which the tax period for which the return showing the excess input tax credit relates, the dealer may opt to further carry forward the credit till final adjustment or may claim refund of the amount of such excess credit remaining unadjusted.(b)Where a dealer opts for refund under clause (a), he shall make an application to that effect to the assessing authority within such time and in such manner as may be prescribed.(c)Any refund covered under this sub-section shall be granted in such manner and subject to such conditions and restrictions as may be prescribed.

## **59. Interest on amount refunded.**

(1)(a)A registered dealer entitled to refund in pursuance of any order under this Act including an order of assessment under sections 40, 42 and 43 or in pursuance of any order of a Court shall, in addition to the refund, be paid in the prescribed manner simple interest at the rate of eight per centum per annum for the period commencing immediately after the expiry of sixty days of receipt of the order till the date on which the refund is granted:Provided that interest as applicable under this section shall be admissible after the expiry of the period of ninety days from the date of receipt of the application for grant of refund under sub-section (1) of section 58 till the date of its sanction.(b)The interest payable under clause (a) shall be calculated on the amount of refund as due after deducting therefrom any tax, interest, penalty or any other dues payable by the dealer under this Act.(c)If, as a result of any order passed under this Act, the amount of such refund is enhanced or reduced, such interest shall be enhanced or reduced accordingly, and where the interest is reduced, the excess amount of interest granted, if any, shall be recovered as if it is an arrear of tax under this Act.(2)Where, as a result of any final order, the amount of tax including penalty, if any, is-(a)Found to be not due or not defaulted, the interest paid, if any, on that account shall be refunded; or(b)Reduced, the interest payable on that account shall be calculated accordingly and the excess amount of interest paid, if any, shall be refunded:Provided that where any amount of tax payable is enhanced by any such final order, interest shall be payable on the amount by which the tax is enhanced after the expiry of a period of three months from the date of the order:Provided further that where the realisation of any amount remains stayed by the order of any Court or authority competent under this Act and such order is subsequently vacated, interest shall be payable also for any period during which such order remained in operation.(3)If, as a result of an appeal or revision, any change becomes necessary in the assessment order, and the appellate authority or the revisional authority directs the assessing authority to amend the assessment order accordingly and, thereupon, the amount paid in excess, if any, shall be refunded to him without interest.



## **60. Power to withhold refund in certain cases.**

(1)Where any order giving rise to a refund is the subject matter of an appeal or further proceeding, or where any other proceeding under this Act is pending, and the Commissioner is of the opinion that the grant of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may withhold the refund till the final order is passed in such appeal or proceeding.(2)Where a refund is withheld under sub-section (1), the dealer shall be entitled to interest as provided under sub-section (1) of section 59, if he becomes entitled to the refund as a result of the appeal or further proceeding or, as the case may be, any other proceeding, under this Act.

## **Chapter VII**

### **Accounts and Records**

## **61. Maintenance of accounts and records etc.**

(1)Every registered dealer or a dealer to whom a notice has been served to furnish return under sub-section (2) of section 33 shall maintain, in such form as may be prescribed, a true and up to date account of the value of goods purchased or manufactured and sold by him or goods held by him in stock.(2)Every registered dealer shall keep, at his place of business as recorded in the certificate of registration, all accounts, registers and documents maintained in the course of business:Provided that if any such dealer has established branch officers of the business at different places of the State other than the principal place of his business, the relevant account, registers and documents in respect of each such branch shall be kept by him at the concerned branch.(3)If the Commissioner is of the opinion that the accounts maintained by any dealer or class of dealers are not sufficient for verification of the returns referred to in sub-section (1) of section 33 or that the assessment cannot be made on the basis thereof, he may require such dealer or class of dealer to keep such accounts, in such form and in such manner as he may, subject to rules, direct.(4)If the Commissioner is satisfied that dealers of any class are not in a position to maintain accounts in accordance with the provisions of sub-section (1), he may, for reasons to be recorded in writing, exempt such class of dealers from maintaining such accounts.(5)If a dealer fails to make available the books of account as specified under sub-section (1) at his principal place of business or the branch office, as the case may be, to any officer appointed under section 3 to assist the Commissioner for inspection other than audit, the Commissioner may impose on such dealer a penalty of rupees five thousand, after giving him an opportunity of being heard.

## **62. Tax invoice.**

(1)Every registered dealer making a taxable sale to another registered dealer shall provided that purchaser, at the time of sale, with a tax invoice containing such particulars in such manner as may be prescribed and retain a copy thereof:Provided that-(i)A tax invoice shall not be issued by a registered under to a retailer registered under this Act who is paying turnover tax under section 16; and(ii)Not more than one tax invoice shall be issued for any taxable sale.(2)Except when tax invoice

is issued under sub-section (1), if a registered dealer sells any goods exceeding such amount in value as may be prescribed, in any single transaction to any person, he shall issue to the purchaser a retail invoice containing such particulars in such manner as may be prescribed and retain a copy thereof.(3)Tax invoice shall have both original and counterfoil of which the original shall be issued to the purchaser or the persons taking delivery of the goods, as the case may be, and the counterfoil shall be retained by the selling dealer.(4)Retail invoice shall have original and counterfoil of which the original shall be issued to the purchaser and the counterfoil shall be retained by the selling dealer.(5)Every dealer as referred to in sub-section (1) shall preserve the books of account including tax invoice and retail invoice until the expiry of five years after the end of the year to which they relate or for such further period as may be prescribed, or until the assessment reaches its finality, whichever is later:Provided that where such dealer is a party to any appeal or revision under this Act, the person shall retain, until the appeal or revision is finally disposed of, every record and accounts that pertain to the subject matter of the appeal or revision.(6)If a registered dealer fails, without any reasonable cause, to issue tax invoice or retail invoice, as the case may be, in accordance with the provisions of sub-section (1) or sub-section (2), the Commissioner may, after giving an opportunity of being heard, direct the dealer to pay, by way of penalty, a sum of rupees one thousand or twice the amount of tax due in that invoice, whichever is higher, for each occasion of such failure.(7)Where any tax invoice or retail invoice issued is found to be incorrect or false, the selling dealer shall be liable to pay the tax as passed on to the purchaser on the strength of such invoice with a penalty equal to twice the amount of such tax.

### **63. Electronic record.**

(1)Every dealer required under this Act to keep or maintain records, may retain them in the form of electronic records for the period specified in sub-section (5) of section 62.(2)The Commissioner may, for the purposes of sub-section (1), establish an electronic data processing system at the head quarters level and at any other level including the check-gates, as may be prescribed, for implementing the provisions of this Act and the rules.(3)For the smooth functioning of the system referred to in sub-section (2) and effective regulation of the interactions between the dealers, authorities appointed under this Act and the Government Treasury, the Commissioner may issue appropriate instruction, from time to time.(4)Subject to the procedure as may be prescribed, a dealer or a person may issue computer generated tax invoice or retail invoice containing the required particulars.

### **64. Requirement to provide document and information.**

- Notwithstanding anything to the contrary in this Act, the Commissioner may, for any purpose related to the administration or enforcement of the provisions of this Act, by notice, require any person to furnish to the Commissioner, within such reasonable time as may be specified in the notice,-(a)Any information or additional information including a return under this Act, or(b)Any document including electronic records.

## **65. Accounts to be audited in certain cases.**

(1) If, in respect of any particular year, the gross turnover of a dealer exceeds rupees forty lakh or any other amount as the Commissioner may specify by notification in the Commercial Tax Gazette, then such dealer shall get his accounts in respect of such year audited by an Accountant within a period of six months from the date of expiry of that year and obtain within that period a report of such audit in the prescribed form containing the prescribed particulars duly signed and verified by such Accountant and, in every such case, a true copy of such report shall be furnished by such dealer to the Commissioner by the end of the month following the expiry of the said period of six months. Explanation. - The expression "Accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949) or a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959) and includes a person who is entitled to be appointed to act as an auditor of companies under sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956). (2) If any dealer liable to get his accounts audited under sub-section (1) fails to furnish a true copy of such report within the time specified in sub-section (1), the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, impose on him a penalty of rupees one hundred per each day of default.

## **66. Dealer to declare the name of manager, etc. of business.**

(1) Every dealer, liable to pay tax, shall furnish a declaration at the time of registration or at such other time in any case, and in such manner, as may be prescribed, stating the name of the person or persons who shall be deemed to be manager or managers of the business of such dealer for the purposes of this Act and such declaration shall be subject to revision in the prescribed manner when there is any change of manager or managers of such business : Provided that the declaration furnished under this sub-section shall also contain the name and address, with designation, of such other persons who are authorised to receive notice and other documents under this Act in relation to the business and when any notice is served on any such person it shall be binding on the dealer.

## **Chapter VIII**

### **Liability in Special Cases**

## **67. Liability in case of transfer of business.**

(1) Where a dealer liable to pay tax under this Act, transfers his business in whole or in part, by sale, lease or license, hire or in any other manner whatsoever, the dealer and the person to whom the business is so transferred shall jointly and severally be liable to pay tax, including any interest and penalty, due from the dealer upto the time of such transfer, whether such tax including interest and penalty has been determined before or after such transfer. (2) Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the sale of goods effected by him with effect from the date of such transfer and shall, if he is an existing registered dealer, apply within the prescribed time for amendment of his certificate of registration.

## **68. Liability in case of company under liquidation.**

(1)Every person-(a)Who is a liquidator of any company liable for any dues under this Act which is being wound up, whether under the orders of a Court or otherwise; or(b)(b)Who has been appointed as the receiver of any assets of a company liable for any dues under this Act (hereinafter referred to as liquidator),shall, within thirty days after he has become such liquidator, intimate the fact of his appointment as such to the Commissioner.(2)The Commissioner shall, after making such inquiries or calling for such information as he may deem necessary, notify to the liquidator within three months from the date on which he received the intimation of the appointment of the liquidator, the amount which, in the opinion of the Commissioner, would be sufficient to discharge the liability of the company for any tax including interest and penalty, if any, which is then, or is likely thereafter to become, payable by the company.(3)The liquidator shall not part with any of the assets of the company or the properties in his hand, until he has been notified by the Commissioner under sub-section (2) and, on being so notified, he sets aside an amount equal to the amount notified:Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties in compliance with any order of a court or for the purpose of payment of tax, interest and penalty, if any, payable by the company under this Act or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Commissioner reasonable.(4)If the liquidator fails to intimate in accordance with sub-section (1) or fails to set aside the amount as notified by the Commissioner under sub-section (3) or parts with any assets of the company or the properties in his hand in contravention of the provisions of sub-section (3), he shall be personally liable for the payment of tax including interest and penalty, if any, which the company would be liable to pay under this Act:Provided that where the amount of tax including interest and penalty, if any, payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.(5)Where there are more than one liquidator, the obligations and liabilities attached to the liquidator under this section shall be attached to all the liquidators jointly and severally.(6)When any private company is wound up and any tax including interest and penalty, if any, determined under this Act on the Company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company, except the Government nominee directors, if any, at any time during the period for which the tax including interest and penalty is due, shall be jointly and severally liable for payment of such dues, if any, unless he proves to the satisfaction of the Commissioner that non-recovery cannot be attributed to any wilful neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.(7)The provisions of this section shall have effect notwithstanding anything to the contrary in any other law for the time being in force.(8)For the purposes of this section, the expression 'Company' and 'Private company' shall have the meaning respectively assigned to them under Clauses (i) and (ii) of sub-section (1) of section 3 of the Companies Act, 1956 (1 of 1956).

## **69. Liability of partners to firm to pay tax.**

- Notwithstanding any contract to the contrary, where any firm is liable to pay any tax including penalty under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment:Provided that where any such partner retires from the firm, he shall

intimate the date of his retirement to the Commissioner in writing and shall be liable to pay tax including penalty remaining unpaid at the time of his retirement and any tax including penalty due upto the date of his retirement though not assessed on that date: Provided further that if no such intimation is given within fifteen days from the date of retirement, the liability of the partners under the first provision shall continue until the date on which the intimation is received by the Commissioner.

## **70. Liability of guardians, trustees, etc.**

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

## **71. Liability in other cases.**

(1) Where a dealer is a firm or an association of persons or a Hindu Undivided Family, and such firm, association or Family has discontinued business—(a) The tax payable by such firm, association or Family up to the date of such discontinuance may be assessed as if no such discontinuance had taken place: and (b) Every person who was at the time of such discontinuance a partner of such firm or a member of such association or Family, shall, notwithstanding such discontinuance, be liable jointly and severally for the payment of tax penalty and interest, if any, payable by such firm, association or Family, whether such tax has been assessed and penalty imposed prior to or after such discontinuance. and, subject to as aforesaid, the provisions of this Act shall, so far as may be applicable, apply as if every such person or partner or member were himself a dealer: Provided that where a partner of a firm liable to pay such tax including penalty and interest, if any, dies, the provisions contained in sub-section (4) shall apply. (2) Where a change has occurred in the constitution of a firm or an association of persons, the partners or members of the firm or association as it existed before and as it exists after its reconstitution shall, without prejudice to the provisions of section 69, jointly and severally be liable to pay tax including penalty due from such firm or association for any period before its reconstitution. (3) The provisions of sub-section (1) shall apply where the dealer, being a firm or association of persons, is dissolved or where the dealer, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it any, accordingly, references in that sub-section to discontinuance shall be construed as reference to dissolution or, as the case may be, to partition. (4) Where a dealer liable to pay tax under this Act dies, then,—(a) If the business carried on by the dealer is continued after his death by his legal representative or any other person, he shall be liable to pay tax including penalty due from the dealer under this Act, whether such tax has been assessed, penalty imposed and interest levied before his death but has remained unpaid, or is assessed, imposed and levied after his death; and (b) If the business carried on by the dealer is discontinued after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent the estate is

capable of meeting the charge, the tax including penalty and interest due from the dealer under this Act, whether such dues have been determined before his death but has remained unpaid, or is determined after his death. and the provisions of this Act shall, so far as may be, apply to such legal representative or other person as if he were the dealer himself. Explanation. - For the purpose of this sub-section, "legal representative" shall have the same meaning as assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908). (5) Where a dealer liable to pay tax under this Act is succeeded in the business by any person in any manner described in clause (a) of sub-section (4) or sub-section 67, then such person shall be liable to pay tax on the sales or purchases of goods made by him on and after the date of succession. (6) (a) Where any person sells or purchases any taxable goods as a commission agent on behalf of his principal, such commission agent and his principal shall both be jointly and severally liable to pay tax on the turnover of such sales or purchases, as the case may be. (b) Where the commission agent has sold or purchased any goods on behalf of the principal and it is shown to the satisfaction of the Commissioner that the tax has been paid by such commission agent on such goods the principal shall not be liable to pay the tax again in respect of the same transaction. (c) Where a manager or agent of a non-resident dealer sells or purchases any goods on behalf of that non-resident dealer in the State, the non-resident dealer and the manager or agent residing in the State shall be jointly and severally liable to pay tax on the turnover of such sales or purchases, as the case may be: Provided that if the non-resident dealer shows to the satisfaction of the Commissioner that the tax payable in respect of such sale or purchase has been paid by the manager or agent residing in the State, the non-resident dealer shall not be liable to pay tax in respect of the same transaction. (7) (a) When two or more companies are to be amalgamated by the order of a Court or of the Central Government and the order is to take effect from a date earlier to the date of order and any two or more such companies have sold or purchased any goods to or from each other in the period commencing on the date from which the order is to take effect and ending on the date of order, then such transactions of sale or purchase will be included in the turnover of sales or of purchases, as the case may be, of the respective companies and will be assessed to tax accordingly. (b) Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies and shall also be treated as such for all periods upto the date of the said order, and the registration certificate of the company, which merged, shall be cancelled with effect from the date of the said order. Explanation. - Words and expressions used in this sub-section, but not defined, shall have the respective meanings as assigned to them in Companies Act, 1956 (1 of 1956).

## Chapter IX

### Liability to Produce Accounts and Supply of Information

#### 72. Survey of unregistered dealers.

(1) With a view to identifying dealers who are liable to pay tax under this Act, but have remained unregistered, the Commissioner shall from time to time cause survey of unregistered dealers to be undertaken. (2) For the purpose of such survey, the Commissioner may- (a) by general or special notice, require any dealer or class of dealers to furnish the names, addresses and such other particulars as he may find necessary relating to the persons and dealers who have purchased any

goods from or sold any goods to such dealer or class of dealers during any given period;(b)Call for details and particulars regarding the services provided by public utilities or any person which, in his opinion, are relevant and useful and cause the results of the survey to be published, from time to time, in any manner as he deems fit; and(c)Enter any place where a person is engaged in business, but is not registered or has not applied for grant of certificate of registration under this Act, whether such place is the principal place of business or not and require any person, whether the owner of the business or not, including any employee or any other person who at the time and place be attending in any manner to, or helping in, the business-(i)To afford him the necessary facility to inspect such books of account or other documents as the Commissioner may require from him and which he may be maintaining in course of business at such place, and(ii)To furnish such information as he may require as to any matter which according to him is useful for, or relevant to, any proceeding under this Act.Explanation. - For the purposes of this clause, a place where the person is engaged in business shall also include any other place in which the person engaged in business or the employee or other person attending to or helping in the business states that any of the books of account or other documents or any part of the cash, stock or other valuable articles or things relating to the business are kept or are reasonably believed to have been kept.(3)The Commissioner may under the place where the person is carrying on the business only during the hours at which such place of business is open for business and after sunrise and before sunset, and make or cause to be made extracts or copies from books of account and other documents inspected by him, make an inventory of any cash, stock or other valuable articles or things checked or verified by him, take samples of goods available at the time of inspection and record the statement of any such person which, according to him, may be useful for, or relevant to, any proceeding under this Act.(4)The Commissioner while exercising powers under this section shall, on no account, remove or cause to be removed from the place where he has entered, any books of account, other documents, cash, stock or other valuable articles or things without giving receipt thereof.

### **73. Production and inspection of accounts and search of premises.**

(1)The Commissioner may, subject to such conditions as may be prescribed, require any dealer or any other person to-(a)Produce before him such books of account, registers and documents:(b)Furnish such information relating to the stock of goods or purchases, sales or deliveries of goods, or any other information relating to his business, as may be deemed necessary for the purpose of this Act;(c)Allow access to the electronic records, if maintained by the dealer.(2)All books of account, registers and documents relating to the stock of goods, purchases, sales or deliveries of goods by any dealer and all goods and cash kept in any place of business or warehouse, if any, by him or at any other place for and n behalf of him shall at all reasonable times be open to inspection by the Commissioner, and the Commissioner may take or cause to be taken such copies or extracts of the said books of account, registers or documents and such inventory of the goods found along with samples of such goods, as may be necessary for the purposes of this Act.(3)Where the Commissioner, upon information in his possession or otherwise, is of the opinion that-(a)Any person, to whom a notice under this Act was issued to produce or cause to be produced any books of account or other documents, has failed to produce or cause to be produced such books of account or other documents as required by or under such notice; or(b)Any person, to whom a notice as aforesaid has been or may be issued, may not produce or cause to be produced any books

of account or other documents considered to be useful for, or relevant to, any proceeding under this Act; or (c) Books of account, registers or documents of any dealer may be destroyed, mutilated, altered, falsified or secreted or any sales by that dealer have been or may be suppressed, or any goods have not been or may not be accounted for in the books of account, registers or other documents required to be maintained under this Act, with a view to evading or attempting to evade payment of tax due under this Act, the Commissioner or any other person appointed under section 3 if so authorised by the Commissioner may—

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

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

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

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

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

(7) Notwithstanding anything contained in sub-section (6), the accounts, registers or documents impounded under sub-section (5) or seized under sub-section (6) may be retained beyond a period of six months and upto a maximum period of two years from the date of impounding or seizure, as the case may be, by such officer, after having obtained permission in writing from the Commissioner: Provided that where the books or documents impounded or seized form a part of the record of assessment, the limitation as provided under this sub-section shall not apply.

(8) The officer authorised by the Commissioner under sub-section (3) may seize any goods liable to tax which are found in the possession of a dealer or in the possession of any person on behalf of such dealer and which are not accounted for in his accounts, registers or documents



maintained in the course of his business, and a list of goods so seized shall be prepared by such officer and a copy thereof shall be given to the dealer to the dealer or any other person from whose custody such goods are seized.(9)Where it is not feasible to seize any accounts, registers or documents under sub-section (6) or any goods under sub-section (8), the officer concerned may under sub-section (6) or any goods under sub-section (8), the officer concerned may serve on the owner or the person, who is in immediate possession or control thereof, an order that he shall not remove, part with or otherwise deal with them except with the previous permission of such officer, and, after serving such order, may take such steps as may be deemed necessary under the circumstances.(10)The officer referred to in sub-section (8) may, after giving the dealer an opportunity of being heard and after holding such further enquiry as he may consider necessary, impose on him for the possession of goods not accounted for, whether seized or not under sub-section (8), a penalty equal to five time of the tax leviable or twenty percent of the value of such goods, whichever is higher, and such officer may release the goods, if seized, on payment of the penalty imposed.(11)The Commissioner shall have the power to confiscate any goods, whether or not they have been seized under this Act, of any dealer or person which are found in any officer, shop, godown, vehicle, vessel or any other place of the dealer but not accounted for by him in his accounts, registers and other documents maintained in the course of business:Provided that no such order for confiscation of goods shall be made without giving the dealer or person concerned an opportunity of being heard.(12)(a)The officer referred to in sub-section (8) may require any person-(i)Who transports or holds in custody any goods of a dealer, to give any information in his possession in respect of such goods or to allow inspection thereof; and(ii)Who maintains or has in his possession any accounts, registers or documents relating to the business of a dealer, to produce such accounts, registers or documents for inspection.(b)If the officer authorised under sub-section (6) has reason to suspect that any transporter, bailee, or the owner or lessee of a warehouse to whom the goods are delivered for transportation is attempting to contravene the provisions of clause (a), or evade payment of any tax due from him under this Act, he may, for reasons to be recorded in writing, seize any accounts, registers or documents as referred to in sub-clause (ii) of the said clause, of the transporter, bailee or, as the case may be, the owner or lessee of the warehouse as may be necessary, granting a receipt for the same and, on such seizure, he shall retain the same as long as may reasonably be necessary for examination thereof or for appropriate legal action.(c)The powers conferred under clause (b) shall include the power to break open any almirah or box or receptacle in which in account, register or other documents of the transporter, bailee or the owner ow lessee of a warehouse are believed to have been kept, or to break open the doors of any premises where any such account, register or documents of any goods referred to in the said clause are believed to have been kept.(d)The powers under clause (c) shall not be exercisable by an officer below the rank of a Sales Tax officer appointed under this Act.(e)The Commissioner shall have the power to seize any goods vehicle or seize and confiscate any goods of any transporter, bailee or owner or lessee of a warehouse, which are found in any officer, shop, godown, vehicle or vessel or any other place while in transit but not accounted for by the transporter, bailee, or the owner or lessee of the warehouse, as the case may be, in his accounts, registers and other documents maintained in respect of such goods:Provided that before taking action for the confiscation of goods under this sub-section, the Commissioner shall give the affected person an opportunity of being heard and make an enquiry in the prescribed manner:Provided further that where an affected person makes payment to the Commissioner the amount of tax at the appropriate rate payable in respect of such goods, to be

assessed in the prescribed manner, with a penalty equivalent to twenty per centum of the value of the goods seized, the goods, and the vehicle so seized shall be released.(13)If a dealer fails to produce books of account and such other records necessary cooperation to facilitate smooth conduct of audit or prevents, in any manner, the conduct of audit, the Commissioner may, after giving the dealer an opportunity of being heard, impose a penalty not exceeding rupees twenty five thousand on the dealer.

#### **74. Establishment of Check-posts and inspection of goods while in transit.**

(1)The Government may, with a view to preventing or checking avoidance or evasion of tax, by notification, direct the establishment of a check-post or barrier or both at such places as may be specified in the notification and specify any of the officers appointed under sub-section (2) of section 3 to be in charge of every such check-post or barrier.(2)The driver or person-in-charge of every vehicle or carrier of goods in transit shall-(a)Carry with him the records of the goods including "Challan" and "Billies" bills of sale or despatch memos and prescribed declaration form or way bill duly filled in and signed by the consignor of goods carried;(b)Stop the vehicle or carrier at every check-post or barrier set up under sub-section (1) or at any other place when so required by an officer authorised by the Commission in this behalf;(c)Produce all the documents, including the prescribed way bill relating to the goods, before the officer-in charge of the check-post or barrier or the authorised officer,(d)Give all the information in his possession relating to the goods" and(e)Allow the inspection of the goods or search of the vehicle by the officer-in-charge of the check-post or barrier or the authorised officer.(3)Where any goods are in transit within the territory of the State, an officer authorised by the Commissioner in this behalf may stop the vehicle or the carrier or the person carrying such goods, for inspection, at any place within his jurisdiction and the provisions of sub-section (2) shall apply mutatis mutandis for such inspection.(4)Where any goods in transit are without documents, or are not supported by documents as referred to in sub-section (2), or documents produced appear to be false or forged, the officer-in-charge of the check-post or barrier, as the case may be, or the officer authorised under sub-section (3), may-(a)Direct the driver or the person in charge of the goods or carrier of the goods not to part with the goods in any manner including transportation or re-booking the same till a verification of, or an enquiry into such goods is made, which shall be completed within a period of seven days: and(b)Seize the goods for reasons to be recorded in writing giving receipt for the goods so seized to the person from whose possession or control the goods are seized.(5)The officer-in-charge of the check-post or barrier or the officer authorised under sub-section (3), after giving the driver or person in charge of the goods a reasonable opportunity of being heard and holding such enquiry as he may deem fit, may impose, for possession or movement of goods (in transit), whether seized or not, in violation of the provisions of clause (a) of sub-section (2) or for submission of false or forged documents or way bill either covering the entire goods or a part of the goods carried, a penalty equal to five times, of the tax leviable on such goods, to twenty per centum of the value of goods, whichever is higher, in such manner as may be prescribed.(6)During the pendency of the proceeding under sub-section (5), if any one prays for being impleaded as a party to the case on the ground of involvement of his interest therein, the officer-in-charge or the authorised officer referred to in that sub-section may, if satisfied, permit him to be so impleaded, and, thereafter all the provisions of this section shall mutatis mutandis apply to him.(7)Subject to such rules as may be prescribed, the officer-in-charge

of the check-post or barrier or the officer authorised under sub-section (3) may release the goods to the owner of the goods or to any person duly authorised by such owner, on payment of the penalty imposed under sub-section (5) in addition in tax payable thereon.(8)Where the driver or person in charge of the vehicle or the carrier is found guilty of violation of the provisions of clause (b), (c), (d) or (e) of sub-section (2), subject to the provisions of clause (a) of sub-section (4), the officer-in-charge of the check-post or barrier or the officer authorised under sub-section (3) may detain such vehicle or carrier and after affording an opportunity of being heard to such driver or person in charge of the goods or the carrier, may impose a penalty on him as provided under sub-section (5),(9)Where a transporter, while transporting goods, is found to be in collusion or is likely to be in collusion with a dealer to avoid or evade tax, the officer-in-charge of the check-post or barrier or the officer authorised under sub-section (3) shall detain the vehicle or barrier of such transporter and, after affording him an opportunity of being heard and with the approval in writing of the Commissioner, may seize and confiscate such vehicle or carrier.(10)When a vehicle or boat carrying goods, coming from any place outside the State and bound for any other place outside the State, passes through the State, the driver or other person in charge of such vehicle or boat shall.(a)Declare, in such form and manner before the officer-in-charge of the first check-post or barrier, as the case may be, after his entry into the State, that the goods under transport shall not be unloaded, delivered or sold inside the State;(b)Obtain, in the prescribed manner, a transit pass in such form containing such particulars as may be prescribed, from the said officer; and(c)Deliver the transit pass so obtained to the officer-in-charge of the last check-post or barrier before his exit from the State, failing which, it shall be presumed that the goods carried thereby have been sold within the State by the owner or person in charge of the vehicle or boat:Provided that where the goods carried by such vehicle or boat are, after their entry into the State, transported outside the State by any other vehicle, boat or conveyance, the onus of proving that the goods have actually been moved out of the State shall be on the owner or person-in-charge of the vehicle or boat.Explanation. - Where a vehicle or boat owned by a person is hired for transportation of goods by any other person, the hirer of that vehicle or boat shall, for the purpose of this section, be deemed to be the owner of the vehicle or boat, as the case may be.(11)The officer-in-charge of any check-post or barrier or any other officer, duly authorised by the Commissioner, may detain any vehicle or boat and keep it stationary as long as may reasonably be necessary for examination of the contents therein and the records relating to the goods under transport by such vehicle or boat, and seize the same if,-(a)It is presumed under clause (c) of sub-section (10) that the goods carried by the vehicle or boat, as the case may be, has been sold inside the State; or(b)The driver or the other person-in-charge of the vehicle or boat, as the case may be, fails, without reasonable cause, to produce or deliver the transit pass required under sub-section (10); or(c)He has reason to believe that the goods carried by the vehicle or boat, as the case may be, has been unloaded, delivered or sold inside the State in contravention of the declaration furnished under sub-section (10).and, thereafter, he may direct the driver or the other person in charge of the vehicle or boat, as the case may be, to pay within a specified period, by way of penalty, a sum equivalent to twenty per centum of the value of the goods under transport by such vehicle or boat, as the case may be, or rupees twenty thousand, whichever is higher, in addition to tax as otherwise payable under this Act, failing which, the said officer may seize and confiscate the goods under transport or seize the vehicle or boat carrying such goods in the prescribed manner to recover such tax and penalty:Provided that-(i)Before taking any action for confiscation of the goods, the officer shall give the driver or the person in charge of the vehicle or

boat, as the case may be, an opportunity of being heard and, if necessary, may make an enquiry in the manner prescribed ; and(ii)Where the goods under transport are not available at the time of seizure of the vehicle or boat, as the case may be; the officer may detain the vehicle or boat until such penalty and tax are paid and shall take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle or boat, and the registered owner or the person having possession or control of such vehicle of boat and the driver or boatmen, as the case may be, thereof shall be bound to comply with orders and directions as the said officer may, in respect of the movement of such vehicle or boat, issue for giving effect to such seizure.(12)Where the goods seized are of a perishable nature they shall be sold in the prescribed manner.(13)Where any goods seized under this section are sold, the sale proceeds thereof, after deduction of the tax including penalty payable under this section and the expenses incurred for such sale, be paid to the person from whom the goods are seized.(14)No order of penalty shall be made under this section in respect of goods which are not liable to payment of tax under this Act.

## **75. Restriction on movement of goods through railways, water ways, air, postal and courier services.**

(1)No person shall transport from any railway station, steamer station, air port, post office, courier office or from any other place whatsoever as the Government may, by notification, specify, any consignment of such goods exceeding such quantity as may be specified in the notification, except in accordance with such conditions as may be prescribed and such conditions shall be made with a view to ensuring that there is no evasion of tax payable under this Act.(2)Any officer who may be authorised by the Commissioner in this behalf, may for the purpose of verifying whether any goods are being transported in contravention of the provisions of sub section (1) and subject to such restrictions as may be prescribed, intercept, detain and search any road vehicle or river craft or any load carried by persons.(3)Notwithstanding anything contained in this Act, where any transporter or bailee happens to be the railways, air ways, river craft, postal or courier services to whom goods are delivered for transportation keep such goods before delivery thereof in any office, warehouse, vessel, boat, receptacle or any other place, the Commissioner may subject to appropriate permission where necessary, enter into and search such officer, warehouse, vessel, boat, receptacle or other place, and, thereupon, the person-in-charge of such goods and records relating thereto shall give all facilities for such examination and inspection and shall produce all relevant information as may be required relating to the goods.

## **76. Control on clearing, forwarding or booking agent and any person transporting goods and furnishing of information by such agent or person.**

(1)Every clearing, forwarding or booking agent or broker or a person transporting goods who, in the course of his business, handles document of title to goods, transports goods or takes delivery of goods for or on behalf of a dealer, shall furnish information about his places of business to such authority, within such time, in such form, as may be prescribed.(2)Every agent, broker or person referred to in sub-section (1) shall maintain true and complete accounts, registers and documents in respect of the goods handled by him and the documents and title relating thereto, and shall furnish

true and complete particulars and information relating to the transaction of goods of any dealer to any officer appointed under sub-section (2) of section 3 authorised by the Commissioner for the purpose and shall produce such accounts, registers and documents before such officer as and when required by him.(3)Where any agent, broker or person referred to in sub-section (1) contravenes the provisions of the said sub-section or sub-section (2), the Commissioner may, after giving such agent, broker or person an opportunity of being heard, direct him to pay by way of penalty-(a)Rupees two thousand for contravention of the provision of sub-section (1); and(b)An amount equal to three times of the tax payable in respect of the goods involved in the transactions of a dealer which appears to have been evaded by such dealer, if the contravention pertains to the provisions of sub-section (2).Explanation. - The expression-(i)"Clearing, forwarding, booking agent or broker" referred to in sub-section (1) shall include a person who renders his services for clearing, forwarding or booking of or taking delivery of consignment of goods at railway premises, air cargo complex, container depot, booking agency, goods transport company officer or any place of loading or unloading of goods or contrives, makes and concludes, bargains and contracts for or on behalf of any dealer for a fee, reward, commission, remuneration or other valuable consideration or otherwise; and(ii)"Person transporting goods" referred to in sub-section (1) shall include the owner, the manager, agent, driver and employee of the owner, a person who is in charge of a place of loading or unloading of goods, or of goods carrier carrying such goods for despatch to other places, or who gives delivery of any consignment of such goods to the consignee.(4)Without prejudice to the provisions contained in sections 74 and 75, where a transporter or a bailee or the owner or lessee of a warehouse to whom goods are delivered for transportation keeps such goods before delivery thereof in any office, shop, warehouse, godown, vessel boat, receptacle, vehicle or any other place, the Commissioner shall have the power to enter into and search such office, shop, godown, vessel, receptacle, vehicle or other place, as the case may be, and to examine the goods and inspect all records relating thereto and, in every such case, the transporter, bailee, owner or lessee of the warehouse or the person-in-charge of such goods and records shall give all facilities for such examination and inspection and shall produce the bills of sale or such other documents as may be required relating to the goods and give his name and address and the name and address of the transporter, bailee, owner or lessee of the warehouse or the person-in-charge of such goods and records, as the case may be.Explanation. - For the purposes of this section, where goods are delivered to a transporter, bailee or the owner or lessee of a warehouse for transmission, the movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from the transporter, bailee or the owner or lessee of the warehouse, as the case may be.(5)If the Commission has reason to suspect that any transporter, bailee or the owner or lessee of a warehouse is attempting to contravene the provisions of sub-section (4) or to evade payment of any tax due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the transporter, bailee or, as the case may be, the owner or lessee of the warehouse, as may be necessary, by issuing a receipt for the same, and shall retain the same as long as may reasonably be necessary for examination thereof or for a prosecution.(6)The power conferred under sub-section (5), shall include the power to break open any box, almirah or other receptacle in which any account, register or other documents of the transporter, bailee or the owner or lessee of a warehouse or to break open the doors of any premises where any such account, register or documents or any goods may be kept.(7)The powers exercisable under sub-section (6) shall not be delegated to any officer below the rank of a Sales Tax Officer

appointed under this Act.(8)The Commissioner shall have the power to seize any goods vehicle or seize and confiscate any goods of any transporter, bailee or the owner or lessee of a warehouse, which are found in any office, shop, godown, vehicle or vessel or any other place while on transit but not accounted for by the transporter, bailee or the owner or lessee of a warehouse, as the case may be, in his accounts, registers and other documents maintained in respect of such goods:Provided that before taking action for the confiscation of goods under this sub-section, the Commissioner shall give the person affected an opportunity of being heard and make such enquiry as found necessary for the purpose:Provided further that where the person affected makes payment to the Commissioner of the amount of tax payable in respect of such goods to be assessed in the prescribed manner, with a penalty equivalent to twenty per centum of the value of the goods seized, the goods and the vehicle seized as aforesaid shall be released.

## **Chapter X**

### **Appeal, Revision and Rectification**

#### **77. Appeals.**

(1)Any dealer aggrieved by an order passed under section 34, 40, 42, 43, 44, 45 or 52 may prefer an appeal to such authority as may be prescribed.(2)Notwithstanding anything contained in sub-section (1), no appeal shall lie against-(a)A notice issued under this Act calling upon a dealer for assessment or any person to show cause as to why he shall not be prosecuted for an offence under this Act; or(b)An order pertaining to the seizure or retention of any books of account, registers and other documents of a dealer; or(c)An order sanctioning prosecution of a dealer under this Act; or(d)An interim order passed in the course of any proceeding under this Act.(3)The appeal under sub-section (1) shall be preferred with thirty days from the date on which the order is served on the dealer.(4)No appeal against any order shall be entertained by the appellate authority, unless it is accompanied by satisfactory proof of payment of admitted tax in full and twenty per centum of the tax or interest or both, in dispute.(5)Subject to the provisions contained in sub-section (4), the appellate authority may, on application in that behalf failed by the dealer within the period as provided in sub-section (3), stay the realisation of the balance of tax, interest or penalty, as the case may be, under dispute either in part or in full till disposal of the appeal.(6)The appeal shall be preferred in the prescribed form and shall be verified in the prescribed manner.(7)In disposing of an appeal, the appellate authority may, after giving the appellant a reasonable opportunity of being heard and after causing such enquiry as he may deem necessary-(a)Confirm, reduce or annul the assessment of tax, or the imposition of interest or levy of penalty, if any; or(b)Enhance the assessment including any part thereof whether or not such part is the subject matter in the appeal; or(c)set-aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed.(8)Every order passed in an appeal under this section shall, subject to the provisions of section 79, be final.

## **78. Appeal to Tribunal and stay of recovery of dues during pendency of appeal.**

(1) Any dealer or, as the case may be, the Government, if not satisfied with an order passed under sub-section (7) of section 77 may, within sixty days from the date of receipt of such order, prefer an appeal in the prescribed manner to the Tribunal: Provided that an appeal preferred after a period of sixty days may be admitted by the Tribunal, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period. (2) The dealer or the Government, as the case may be, on receipt of notice that an appeal has been preferred under sub-section (1) may, notwithstanding that such dealer or the Government may not have appealed against such order or any part thereof, within sixty days of the service of the notice, file a memorandum of cross objections and such memorandum shall be disposed of by the Tribunal, as if it were an appeal presented within time under sub-section (1). (3) The appeal or the memorandum of cross objections shall be in the prescribed form and shall be verified in the prescribed manner and, in case where appeal has been preferred by any dealer or person other than the Government, it shall be accompanied by a fee of rupees one hundred. (4) The Tribunal shall, after giving both parties to the appeal a reasonable opportunity of being heard, dispose of the appeal. (5) For the purpose of sub-section (4), the Tribunal shall have the same powers and shall be subject to the same conditions as provided in sub-section (7) of section 77, and any order passed under sub-section (4) shall be final. (6) Where a dealer has referred an appeal under sub-section (1), the Commissioner may, stay realisation, either in part or in full, the amount of tax, interest or penalty, as the case may be, remaining outstanding for recovery as a result of the disposal of appeal under sub-section (7) of section 77, on application in that behalf filed by the dealer within the period as provided in sub-section (1).

## **79. Revisional power of commissioner.**

(1) Subject to rules and for reasons to be recorded in writing, the Commissioner may, on his own motion, revise any order passed under this Act or the rules by any person, other than the Tribunal, appointed under sub-section (2) of section 3 to assist the Commissioner. (2) Subject to rules and for reasons to be recorded in writing, the Commissioner may, upon application filed within the prescribed period, revise any order, other than an order of the Tribunal, passed by any person appointed under sub-section (2) of section 3 to assist the Commissioner. (3) The Commissioner shall not entertain any application for revision under sub-section (1), if the dealer or person filing the application, having a remedy by way of appeal under section 77 or section 78, did not avail of such remedy or did not file the application within the prescribed period. (4) The Commissioner shall not revise, under sub-section (1), any order, if—(a) Period for filing of appeal against the order as provided under section 77 or 78 has not expired; or (b) The order has been made a subject matter of appeal under section 77 or 78; or (c) More than five years have expired after the order sought to be revised was passed. (5) Notwithstanding anything contained in sub-section (4), the Commissioner may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (b) of sub-section (4) before the expiry of the period specified in clause (c) of the said sub-section. (6) If the Commissioner proposes to reject an application for revision made under sub-section (2), he shall record the reasons for such rejection. (7) Any dealer or person

or, as the case may be, the Government, aggrieved by any order passed by the Commissioner under sub-section (1) may, within sixty, days from the date of receipt of such order, prefer an appeal-(a)If the order is passed by the Commissioner, to the High Court; and(b)If the order is passed by any authority subordinate to the Commissioner, to the Commissioner.(8)All orders passed under sub-section (1) shall, subject to orders passed in an appeal, if any, be final.(9)Any dealer or person likely to be affected prejudicially by any order passed under sub-section (1) shall be given a reasonable opportunity of being heard before such order is made.

## **80. Revision by high court in certain cases.**

(1)Within sixty days from the date on which an order under sub-section (4) of section 78 was served affecting liability of any dealer to pay tax, interest or penalty under this Act, such dealer by petition in writing accompanied by a fee of rupees one hundred, or the Commissioner by petition in writing, may move the High Court against the order on grounds of any question of law arising out of such order of the Tribunal:Provided that the High Court may admit a petition preferred after the period of sixty days as aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within that period.(2)The petition shall be in the prescribed form and shall be verified in the prescribed manner.(3)If the High Court, in perusing the petition, considers that there is no sufficient ground for interfering, it may dismiss the petition:Provided that no petition shall be dismissed without giving the petitioner a reasonable opportunity of being heard.(4)(a)If the High Court does not dismiss the petition under sub-section (3), it shall, after giving both the parties to the petition a reasonable opportunity of being heard, determine the question or questions of law raised and reverse, confirm or amend the order against which the petition was preferred or remit the matter to the Tribunal with the opinion of the High Court on the question or questions of law raised or pass such other order in relation to the matter as the High Court thinks fit.(b)Where the High Court remits the matter to the Tribunal under clause (a) with its opinion on the question or questions of law raised, the latter shall amend the order passed by it in conformity with such opinion.(5)Before passing an order under sub-section (4), the High Court may, if it considers necessary to do so, remit the petition with its findings on any specific question or issue.(6)Notwithstanding that a petition has been moved under sub-section (1), the tax or any other dues under Act shall be paid in accordance with the order against which the petition has been moved:Provided that if, as a result of the petition, any change in the assessment becomes necessary, the High Court may direct the assessing authority to amend the assessment and the assessing authority shall amend the assessment accordingly and, there upon, the excess amount paid, if any, by the assessee shall be refunded to him without interest or the additional amount of tax or other dues payable by him shall be collected in accordance with the provisions of this Act, as the case may be.(7)(a)The High Court may, on the application of either party to the petition, review any order passed by it under sub-section (4), on the basis of facts, which were not before it when it passed the order.(b)The application for review shall be preferred within such time and in such manner as may be prescribed and shall, where it is preferred by any person other than the Commissioner, be accompanied by a fee of rupees one hundred.



## **81. Rectification of mistakes.**

(1) With a view to rectifying any arithmetical or clerical mistake or any error apparent on the face of record, the assessing authority, appellate authority or revisional authority or the Tribunal may, at any time within five years from the date of an order passed by it, amend such order: Provided that an amendment which has the effect of enhancing an assessment or otherwise increasing the liability of the assessee shall not be made unless the assessing authority, appellate authority or revisional authority or the Tribunal, as the case may be, has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard. (2) Where any order, sought to be rectified under sub-section (1) by amendment, has been considered and decided in any proceedings by way of appeal or revision, then, notwithstanding anything contained in any law for the time being in force, the authority acting under the said sub-section shall not make any amendment in relation to any matter which has been so considered and decided. (3) An order passed under sub-section (1) shall be deemed to be an order passed under the same provisions of law under which the original order containing the mistake or error was passed.

## **Chapter XI**

## **Offences, Prosecution and Composition of Offences**

## **82. Offences and penalties.**

(1) Whoever—(a) Knowingly furnishes a false return; or (b) Not being a registered dealer, falsely represents that he is a registered dealer at the time when he sells or purchases goods; or (c) Knowingly produces false bill, invoice, cash memorandum, voucher, declaration, certificate or other documents for evading tax payable under this Act; or (d) Knowingly keeps false account of the value of the goods purchased or sold by him in contravention of the provisions of this Act; or (e) Knowingly produces false accounts or documents, or furnishes false information; or (f) Issues to any person, certificate, declaration or tax invoice under this Act or any false bill, cash-memorandum, voucher, delivery challan, lorry receipt or other document which he knows or has reasons to believe to be false; or (g) Wilfully attempts, in any manner whatsoever, to evade any tax, interest or penalty payable under this Act, shall, on conviction, be punished—(i) Where the amount of tax, interest or penalty, or all of them together involved is less than rupees fifty thousand in a year, with imprisonment of either description for a term which shall not be less than three months but which may extend to one year and with fine; and (ii) In any other case, with imprisonment of either description for a term which shall not be less than six months but which may extend to two years and with fine. (2) Whoever aids, abets or induces any person in commission of any act specified in clauses (a) to (g) of sub-section (1) shall, on conviction, be punished with imprisonment of either description which shall not be less than three months but which may extend to one year and with fine. (3) Whoever—(a) Is engaged in any business as a dealer without being registered in wilful contravention of section 24; or (b) Fails, without sufficient cause, to keep any accounts or record as directed in accordance with the provisions of this Act; or (c) Fails, without sufficient cause, to keep such records as required by the Commissioner under sub-section (3) of section 61; or (d) Fails, without sufficient cause, to comply with any requirements made of him under

section 73; or (e) Voluntarily obstructs any officer making inspection or search or seizure under section 73, 74 or 75, shall, on conviction, be punished with imprisonment of either description for a term which shall all not be less than six months but which may extend to one year and with fine. (4) Whoever fails, without sufficient cause, to furnish any return for any tax period by the date and in the manner prescribed under this Act shall, on conviction, be punished with imprisonment of either description for a term which may extend to one year and with fine which shall not be less than—(a) Rupees two thousand, if the tax due for the period covered by the return, not so furnished, does not exceed rupees twenty thousand; (b) Rupees five thousand, if the tax due for the period covered by the return, not so furnished, exceeds rupees twenty thousand but does not exceed rupees one lakh; (c) Rupees ten thousand, if the tax due for the period covered by the return, not so furnished, exceeds rupees one lakh. (5) Whoever commits any of the acts specified in sub-section (1) to (4) and when such act is a continuing one, he shall, on conviction, be punished with daily fine amounting to not less than rupees one hundred during the period of the continuance of the offence, in addition to the punishment provided under this section. (6) Notwithstanding anything contained in sub-section (1) to (5), no person shall be prosecuted under any of these sub-section for any act referred to therein, if the total amount of tax evaded or attempted to be evaded is less than rupees two hundred during the period of a year. (7) When a dealer accused of an offence specified in sub-section (1) to (5), the person declared to be the manager of the business or the person holding power of attorney of such dealer or the person who in any manner acts for or on behalf of such dealer shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission thereof. (8) In any prosecution for an offence under this section, which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state, but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Explanation. - In this sub-section "culpable mental state" includes intention, motive, knowledge of a fact and belief on, or reason to believe, a fact.

### **83. Offences by companies and Hindu Undivided Families.**

(1) Where any act specified in section 82 has been committed by a company, every person other than a nominated director who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly; Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation. - For the purpose of this section.—(a) "Company" means any body corporate and includes a firm or other association of individuals; and (b) "Director", in relation to the firm, means partner in the firm. (3) Where any offence under this Act has been committed by a Hindu

Undivided Family, the Karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly; Provided that nothing contained in this sub-section shall render the Karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised due diligence to prevent the commission of such offence: Provided further that where an offence under this Act has been committed by a Hindu Undivided Family and it is proved that the offence has been committed with the consent or connivance of or is attributable to, any neglect on the part of any adult member of the family, such member shall also be deemed to be guilty and shall be liable to be proceeded against and punished accordingly.

#### **84. Cognizance of offence.**

(1) No Court shall take cognizance of any offence under this Act or the rules, except with the previous sanction of the Commissioner and no Court inferior to that of a Magistrate of the first class shall try such offence. (2) The offences punishable under sub-section (1), (2) and clause, (c) of sub-section (3) of section 82 shall be cognizable and non-bailable and other offences punishable under the said section shall be cognizable.

#### **85. Investigation of offences.**

(1) Subject to conditions, if any, as may be prescribed, the Commissioner may authorise either generally or in respect of a particular case or class of cases, any officer appointed under sub-section (2) of section 3 to investigate all or any of the offences punishable under this Act. (2) Every officer so authorised shall, in the conduct of such investigation, exercise the powers, conferred by the Code of Criminal Procedure, 1973 upon an officer in charge of a police station for the investigation of a cognizable offence.

#### **86. Compounding of offences.**

(1) The Commissioner may, either before or after the institution of proceedings of any offence punishable under section 82, accept, by way of composition, from any person charged with any offence under sub-section (1), (3) or (4) of the said section a sum not exceeding three times the amount of tax which would have been payable on the sale or purchase turnover to which the offence relates or rupees ten thousand, whichever is higher. (2) On payment of such sum as may be determined by the Commissioner under sub-section (1), no further proceedings shall be taken against the accused person in respect of the same offence and any proceeding, if already taken, shall not be proceeded with further.

#### **87. Offences against officers.**

- Any person who obstructs or assaults an officer appointed under sub-section (2) of section 3 to assist the Commissioner in or during the performance of his duties as are or may be conferred or imposed by or under the provisions of this Act, or does anything which is likely to prevent or

obstruct the performance of any of such duties including recording of evidence, shall be liable for prosecution and, on conviction, be punished with rigorous imprisonment which may extend upon six months or fine not exceeding rupees twenty-five thousand or both.

## **Chapter XII**

### **Miscellaneous**

#### **88. Bar to certain proceeding.**

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

#### **89. Disclosure of information by public servant.**

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the provisions of this Act and rules or in any record of evidence given in the course of any proceedings under this Act and the rules, other than proceedings before a criminal Court, shall, save as provided in sub-section (3), be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1972, no Court shall, save as aforesaid be entitled to require any Government servant to produce before it any such statement, return, account, document or record or any part thereof, or to give evidence before it in respect thereof. (2) Save as provided in sub-section (3), if any Government servant disclosed any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months and shall also be liable to fine. (3) Nothing in this section shall apply to the disclosure of-

(a) Any of the particulars referred to in sub-section (1) for the purpose of investigation or prosecution under this Act or the Indian Penal Code, 1860 or any other enactment for the time being in force; or

(b) Such facts to an officer of the Central Government or any State Government as may be necessary for verification of such facts or for the purposes of enabling that Government to levy or realise any tax imposed by it; or

(c) Any such particulars when such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand; or

(d) Any such particulars to a Civil Court in any suit or proceeding to which the Government or any authority under this Act is a party and which relates to any matter arising out of any proceeding under this Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or

(e) Any such particulars by any public servant when the disclosure is occasional by the lawful exercise by him of his powers under the Indian Stamp Act, 1899 to impound an insufficiently stamped document; or

(f) Any such particulars to the Reserve Bank of India as are required by that Bank to enable it to compile financial statistics; or

(g) Any such particulars to any officer appointed by the Comptroller and Auditor General of India for the purpose of audit of tax receipts or refunds; or

(h) Any such particulars relevant to any inquiry into to charge of misconduct in connection with income tax proceedings against a legal practitioner or chartered Accountant, to the authority empowered to take disciplinary action against members of the profession to which he belongs; or

(i) Such particulars to the officer of the Central Government or

any State Government for such other purposes, as the State Government may, by general or special order direct; or(j)Any information relating to any class of dealers or class of transactions for publication if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

## **90. Publication and disclosure of information in respect of dealers and other persons in public interest.**

(1)Notwithstanding anything contained in section 89, if the Government is of the opinion that it is necessary or expedient in the public interest to publish or disclose the names of any dealer or other persons or any other particulars relating to any proceeding under this Act in respect of such dealers and persons, it may publish or disclose such names or particulars in such manner as it thinks fit.(2)No publication or disclosure under this section shall be made in relation to any tax levied or penalty imposed or interest levied or any conviction for an offence connected with any proceeding under this Act, until the time for appeal to the appropriate appellate authority has expired without an appeal having been filed or the appeal, if filed, has been disposed of.

## **91. Appearance before any authority in proceedings.**

(1)Any person, who is entitled or required to appear before any authority in connection with any proceeding under this Act, may attend-(a)By a person, who is entitled or required to appear before any authority in connection with any proceeding under this Act, may attend-(b)By a legal practitioner or chartered Accountant or a cost Accountant who is not disqualified by or under sub-section (2); or(c)By a tax practitioner who possesses the prescribed qualification and is enrolled by the Commissioner for the purpose and who is not disqualified by or under sub-section (2).(2)The Commissioner may, by order in writing, for reasons to be recorded therein, disqualify for such period as may be stated in the order from attending before any such authority, any tax practitioner, legal practitioner, chartered Accountant or cost Accountant-(a)Who has been removed or dismissed from Government service, or(b)Who, being a legal practitioner or chartered Account or cost Accountant, is found guilty of misconduct in connection with any proceeding under this Act by an authority empowered to take disciplinary action against the members of the profession to which he belongs; or(c)Who, being a tax practitioner enrolled by the Commissioner, is found guilty of any misconduct.(3)No order of disqualification under sub-section (2) shall be made in respect of any particular person, unless he has been given a reasonable opportunity of being heard.(4)Any person against whom an order of disqualification is made under sub-section (2) may, within one month of the date of communication of such order, appeal to the Government to have the order cancelled.(5)The order of the Commissioner shall not take effect until one month of the making thereof or, when an appeal is preferred, until the appeal is decided.(6)The Commissioner may, at any time, suo motu or on an application made to him in this behalf, revoke any order made against any person under sub-section (2) and thereupon such person shall cease to be disqualified.

## **92. Power to summon and take evidence on oath, etc.**

(1)The Commissioner, the Tribunal and any person appointed under sub-section (2) of section 3 to assist the Commissioner shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely-(a)Enforcing attendance of any person and examining him on oath or affirmation;(b)Compelling the production of accounts and documents; and(c)Issuing summons for the examination of witnesses.(2)Any proceeding under this Act before the Commissioner or the Tribunal or person referred in sub-section (1) shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 and for the purposes of section 196, of the Indian Penal Code, 1860.

## **93. Transfer of assets during pendency of proceedings to be void.**

- Where, during the pendency of any proceeding under this Act or under the Act repealed by section 104 of this Act, any person creates a charge on or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever, of any of his assets in favour of any other person with the intention to defraud revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by such person as a result of completion of the said proceeding.

## **94. Power to make rules.**

(1)The Government may, by notification, make rules, with prospective or retrospective effect, for carrying out the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which under any provision of this Act are required to be prescribed or to be provided for by rules.

## **95. Burden of proof.**

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

godown, warehouse, vehicle or vessel over which he has ultimate control does not relate to his business, the burden of so proving shall be on him and, for the purpose of proving one or all or any of the claims, he shall produce or furnish such documents containing such particulars, within such time, before such authority and in such manner, as may be prescribed and such authority may, for sufficient reasons, require him to produce such further evidence as it may deem necessary, and where no document has been prescribed, such authority may require such evidence to be produced before it as it may deem necessary.

## **96. Manner of payment of tax, interest, penalty, etc.**

- Where the manner of payment of any tax, interest or penalty payable by a person, or any sum determined by the Commissioner in compounding any offence under this Act, is not provided specified elsewhere in the Act, such tax, interest, penalty or sum shall be paid into a Government Treasury in the manner prescribed: Provided that the Government may, by notification, specify such different manner of payment of tax, interest, penalty or sum payable under this Act in respect of any individual dealer or class of dealers.

## **97. Power of Government to prescribe fees.**

(1) There shall be paid, upon every memorandum of appeal, application for revision and other miscellaneous application or petition, other than an application referred to in sub-section (1) of section 78 and a petition referred to in sub-section (1) of section 80, for any relief under this Act, such fees as may be prescribed: Provided that any fee prescribed under this section shall not exceed rupees one thousand. (2) The fee as aforesaid shall be paid in court-fee stamps to be affixed to the memorandum of appeal, application for revision or other miscellaneous application or petition, as the case may be, referred to in sub-section (1).

## **98. Assessment proceedings, etc. not to be invalid on certain grounds.**

(1) No return, assessment, appeal, rectification, notice, summons or other proceedings accepted, made, issued or taken, or purposed to have been accepted, made, issued or taken in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such return, assessment, appeal, rectification, notice, summons or other proceedings, if such return, assessment, appeal, rectification, notice or other proceedings are, in substance and effect, in conformity with or according to the intents, purposes and requirements of this Act. (2) The service of any notice, order or communication shall not be called in question if the notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication. (3) No order, including an order of assessment, revision or rectification passed by any authority under any provision of this act shall be invalid merely on the grounds that the action could also have been taken by any other authority under any other provision of this Act.

**99. Clearance certificate.**

- Notwithstanding anything contained in any other law for the time being in force, no dealer shall be entitled to undertake any contract with any Government, local authority or other corporate body, unless he obtains a certificate in the prescribed manner from the Commissioner to the effect that he has no liability to pay tax nor he has defaulted under this Act.

**100. Provisional attachment.**

(1) Notwithstanding anything contained in any law for the time being in force or any contract to the contrary, the Commissioner, during the course of inquiry in any proceedings including proceedings related to recovery of any amount due, in respect of any person or dealer or during any inspection or search in relation to the business of any person or dealer under this Act, if he is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, may attach provisionally by notice in writing the stock in trade held by such person or dealer during such enquiry, inspection or search: Provided that the Commissioner may, by order, revoke such notice if the dealer furnishes to the Commissioner, such security, for such period and within such time, as may be specified in the said order. (2) Every such provisional attachment shall cease to have effect after the expiry of one year from the date of service of the notice issued under sub-section (1): Provided that the Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he may think fit to do so, however that the total period of such extension shall not in any case exceed one year. (3) Where a notice under sub-section (1) is served upon any person or dealer provisionally attaching the stock in trade held by him, such person or dealer shall be personally liable, so long as the attachment notice is not revoked or has not ceased to have effect, to pay, to the Commissioner, the amount of money covered under such attachment.

**101. Special provision relating to under-invoicing.**

(1) Where the Commissioner has, for the purpose of any proceeding under this Act, reasons to believe that any goods kept in stock or being carried by a document relating to such goods produced before him, he may, after causing such enquiry as he considers necessary in the circumstances, intimate such dealer or person, by a notice in the prescribed form, the prevailing market price of such goods and direct such dealer or person to pay tax under this Act on the basis of the prevailing market price. (2) Where the goods referred to in sub-section (1) are being carried, the officer-in-charge of the check-gate or barrier or an officer authorised under sub-section (3) of section 74, as the case may be, may detain the vehicle carrying such goods until the tax demanded under sub-section (1) is paid. (3) Where the goods referred to in sub-section (1) are found in stock and the dealer or the person on behalf of the dealer, on whom the notice under that sub-section was served, fails to pay the tax in terms of such notice, or where the tax demanded is not paid under sub-section (2), the Commissioner may offer to purchase such goods at a price at ten per centum above the purchase value or the value disclosed by the principal or agent in the case of goods received on consignment basis plus actual transportation charges and entrust such goods to the Orissa State Civil Supplies Corporation Ltd. or any co-operative society as may be notified for sale for sell it through public auction in the prescribed manner. (4) The dealer or the person on being



directed under sub-section (3) shall be bound to sell the goods to the Commissioner and if he refuses, fails, or does not he shall be liable to penalty, which shall be equal to twenty per centum of the value of the goods at the prevailing market price.(5)No penalty under sub-section (4) shall be imposed without allowing such dealer or person, as the case may be, an opportunity of being heard.(6)If, in pursuant to the notice issued under sub-section (4), the dealer or the person delivers the goods to the Commissioner he shall be paid the price of such goods as determined under sub-section (3) along with the cost of transportation within fifteen days of the delivery of the goods.(7)Any person aggrieved by the order or notice, as the case may be, under sub-section (3) or under sub-section (4) may file an application for revision before the prescribed authority within thirty days from the date of receipt by him of the decision, in such form and in such manner as may be prescribed:Provided that the said prescribed authority may admit an application made after the expiry of the period of thirty days, if he is satisfied that the applicant had sufficient cause for not making the application within the said period.

## **102. Settlement of disputed tax under appeal or revision.**

- Notwithstanding anything contained in any law for the time being in force, the Government may, subject to such conditions and restriction as may be specified in the notification, any case pending in appeal under section 77 or 78 or in revision in the High Court under section 80 to the Commissioner to settle the disputed amount under appeal or revision, as the case may be, in the manner prescribed.

## **103. Power to remove difficulties.**

(1)If any doubt or difficulty arises in giving effect to any of the provisions of this act, in consequence of the transition to the said provisions from the corresponding provisions of the Act repealed by section 104, or otherwise, the Government may, as the occasion may require, by order, do anything not inconsistent with the provisions of this Act or the rules, which appears to it necessary for the purpose of removing the doubt or difficult:Provided that no order shall be issued under this section after the expiry of a period of two years from the date of commencement of this Act.(2)Any order made under this section shall be laid before the Legislative Assembly.

## **Chapter XIII**

## **Repeal and Savings, Adoption and Transitional Provisions**

### **104. Repeal and savings.**

(1)The Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) is hereby repealed.(2)The repeal of the Orissa Sales Tax Act, 1947 (hereinafter referred to as the repealed Act) under sub-section (1) shall not-(a)Revive anything not in force or existing at the time at which the repeal takes effect; or(b)Affect the previous operation of the repealed Act or anything duly done or suffered thereunder; or(c)Affect any right, privilege, obligation, or liability acquired, accrued or incurred under the repealed Act; or(d)Affect any tax, surcharge, penalty, interest as are due or may become due or any

forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the repealed Act; or(e)Affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy in respect of any such tax, surcharge, penalty, interest, right, privilege, obligation, liability, forfeiture of punishment, as aforesaid, and any such investigation, enquiry, assessment proceeding, other legal proceeding or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, forfeiture or punishment may be levied or imposed as if this Act had not been enacted.

## **105. Adaptations.**

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

## **106. Transitional provisions.**

(1)A dealer registered under the repealed Act, who would have continued to be liable to pay tax under that Act had this Act not come into force, shall be deemed to be a registered dealer under this Act.(2)Notwithstanding anything contained elsewhere in this Act and until specified, so or otherwise prescribed or notified or done in accordance with the provisions of this Act,-(a)Any person appointed by the Government as the Commissioner of Sales Tax under sub-section (1) of section 3 of the repealed Act and continuing in office as such on the day immediately before the appointed day shall, on and from the appointed day, be deemed to have been appointed as the Commissioner of Sales Tax under sub-section (1) of section 3 of this Act and he shall exercise such powers and discharge such functions as are or may be conferred or imposed by or under the provisions of this Act;(b)Such other persons who have been appointed by the Government under sub-section (3) of section 3 of the repealed Act as Additional Commissioner of Sales Tax, Special Additional Commissioner of Sales Tax, Assistant Commissioner of Sales Tax, Sales Tax Officer, Assistant Sales Tax Officer and Inspector of Sales Tax to assist the Commissioner under the said Act and continuing as such in office on the day immediately before the appointed days shall, on and from the appointed day, be deemed to have been, respectively, so appointed under sub-section (2) of section 3 of this Act.Explanation. - The designation by which such other persons shall be deemed to have been appointed under clause (b) shall, for the purposes of sub-section (2) of section 3, be deemed to be the prescribed designations, until otherwise prescribed;(c)All such power and duties, as have been conferred or imposed by or under the provisions of the repealed Act or the rules made and notifications issued thereunder or the persons appointed under any designation prescribed under the said Act to assist the Commissioner, and are exercised and performed on the day immediately before appointed days within or over a Circle or a Range or the State, as have been assigned to them by the Commissioner, shall, on and from the appointed day, for all intents and purposes, be deemed to have been conferred or imposed by or under the corresponding provisions of this Act on the

persons who, under clause (b) are deemed to have been appointed under such designation to assist the Commissioner under this Act and shall be exercised and performed by them within or over the same circle or Range or the State as the case may be, as if such area has been assigned to them by the Commissioner in accordance with the provisions of this Act for purpose of exercising their jurisdiction.

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

(d) The Chairman or any member of the Orissa Sales Tax Tribunal constituted under the repealed Act and continuing in office as such immediately before the appointed day, shall, on and from the appointed day, be deemed to have been respectively appointed as the Chairman or member of the Tribunal and shall exercise such powers and perform such functions as are conferred or imposed by or under the provisions of this Act;

(e) All forms including way bill and transit pass prescribed under the repealed Act or the rules made or notifications issued thereunder and in force and use for any purpose on the day immediately before the appointed day, shall be used for the same purpose under the provisions of this Act.

(f) Any application for issue of way bill, pending on the day immediately before the appointed day, shall for all intent and purposes of this Act be deemed to have been made under this Act and shall be disposed of in accordance with the provisions of this Act;

(g) Any way bill referred to in clause (e) which is valid on the day immediately before the appointed day and endorsed for the transport of goods into or outside the State shall continue to be valid for all intends and purposes of this Act on and from the appointed day if the period of validity of such way bill has not expired;

(h) A dealer, required to furnish a return for any period by a specific date to the prescribed authority under the provisions of the repealed Act or the rules made or notice issued thereunder, shall furnish such return under this Act by the said date to the corresponding authority as if he is so required to furnish the return under the provisions of this Act; Provided that if the appointed day falls during the period for which the return is required to be furnished, he shall furnish separate returns for the period ending on the day immediately before the appointed day and for the period commencing on the appointed day, respectively in accordance with the provisions of the repealed Act and this Act;

(i) For the purposes of clauses (a) to (b), all rules made or notification or notices issued or orders passed under or in pursuance of the provisions of the repealed Act shall be deemed to have been made, issued or passed under or in pursuance of the corresponding provisions of this Act, unless they are inconsistent with this Act;

(j) A registered dealer, who was eligible to the benefit of deferment of tax in terms of a notification issued under the repealed Act on the day immediately before the appointed day and who would have continued to be so eligible on appointed day under the repealed Act had this Act not come into force, shall be allowed the benefit of such deferment in respect of tax payable by him under this Act, by the Commissioner, for the balance unexpired period subject to the limit of such percentage of gross value of the fixed capital investment to which such dealer would have been entitled and the same restrictions and conditions as specified in such notification;

(k) Nothing contained in clause (j) shall prevent the Commissioner from withdrawing the benefit of deferment of tax, if the registered dealer eligible for such deferment violates the restrictions and conditions subject to which such deferment was allowed;

(l) A registered dealer, who was eligible to the benefit of, or was entitled to exemption from payment of tax on purchase of raw materials, spare parts, packing materials and sale of its finished products under the repealed Act on the day immediately before the appointed day, shall, on and from the appointed day, be allowed the

benefits of deferment of tax, in lieu of such exemption subject to such restrictions and conditions as the Government may, by notification, specify in this behalf.

### **107. Input tax credit in respect of stock held on the appointed day.**

(1) Within a period of one month from the appointed day, all dealers whose registration has been continued under sub-section (5) of section 25, other than those who are liable to pay turnover tax under section 16, shall furnish a statement of their opening stock of raw materials, finished goods, semi-finished goods including capital goods, if any, and goods for resale held on the date of such appointed day to the Commissioner in the prescribed form. (2) In respect of that part of the opening stock of goods on the appointed day, purchased within a period of twelve months immediately preceding the appointed day, which suffered tax under section 3-B of the repealed Act or on which tax has been paid under section 8 of that Act, input tax credit shall be admissible at such rate and in such manner as may be prescribed. (3) The part of the opening stock of goods which is not covered under sub-section (2), when sold inside the State after the appointed day shall be subject to output tax as applicable under this Act and in respect of such goods, subsequent input tax credit in accordance with the provisions contained therein shall be available. (4) If the Commissioner is satisfied that a dealer has claimed input tax credit in excess of what is admissible or to which he is not entitled under sub-section (3), the Commissioner may, after allowing the dealer a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum equal to ten times the amount of input tax credit which is not so admissible or to which he is not so entitled. (5) For the purpose of sub-section (4), the dealer shall, in support of his claim, produce before the Commissioner, if so deemed necessary, the sale vouchers in original under the repealed Act or the Central Sales Tax Act, 1956 against the purchases or the relevant document showing despatch of goods from outside the State otherwise than by way of sales to that dealer.

## **A**

(See section 17) List of Goods Exempted From Value Added Tax

Sl. No.	Description of goods	Conditions of exemptions
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.	Charkha, Amar Charkha, handlooms and handloom 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 including potato, onion, lemon and fresh 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. Meal, Fish, dry fish, prawn, add other aquatic products, eggs and livestock and animal hair
25. National flag.
26. Organic manure
27. Non-judicial stamp paper old by Government Treasuries, postal items like envelope, post card etc. sold by Government; rupee note, 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. State, state pencils, educational maps, globes and charts.
32. Tender green coconut.
33. Toddy, Neera nad Arak.
34. Unbranded bread.
35. Unprocessed and unbranded salt.
36. Water other than-  
(i) Aerated, mineral, distilled, medicinal, ionic, battery, demineralised water, and  
(ii) Water sold in sealed container.
37. Articles manufactured from Palm juice, Palm leaves and Coconut leaves such as Baskets, Brushes and Mats.

Meat, fish dry fish, prawn, and other aquatic products, when not cured or frozen shall be exempted.

38. Bhoga meant for being offered to the Deity and "Prasad" of any kind including 'Mahaprasad of kind' sold within the compound of Sri Jagannath Temple at Puri and the Lingaraj Temple and Ananta Basudeva Temple at Bhubaneswar.
39. Flattened or beaten rice, commonly known as Chud/Hudumba, Puffed rice, commonly known as Mudhi, parched rice, commonly known as Khai,
40. Handicraft goods including hand made coir products.
41. Sabai Grass and rope made thereof.
42. Siali leaves, Sal leaves and leaf plates and cups pressed or stitched.

When sold inside the compound of any temple or religious institution governed under the Orissa Hindu Religious Endowments Act, 1951.

## B

(See section 14) List of Goods Subject to Value Added Tax on Turnover of Sales or Purchases

### Part I – Goods Taxable at The Rate of 1%

- | Sl. No. | Description of goods   |
|---------|--|
| 1.      | Bullion  |
| 2.      | Gold Articles  |
| 3.      | Precious stones including synthetic gems and pearls of all types |
| 4.      | Silver articles  |

### Part II – Goods Taxable at the Rate of 4%

- | Sl. No. | Name of the Commodity  |
|---------|--|
| 1.      | Agricultural implements not operated manually or not driven by animal  |
| 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. |
| 3.      | All intangible goods like copyright, patent, rep license etc.  |
| 4.      | All kinds of bricks including fly ash bricks, refractory bricks and asphaltic roofing, earthen tiles.  |
| 5.      | All types of yarn other than cotton and silky yarn in hank and sewing thread.  |
| 6.      | Aluminium utensils and enamelled utensils.   |
| 7.      | Areca nut powder and betel nut   |

8. Bamboo
9. Bearings.
10. Beedi leaves.
11. Beltings.
12. Bicycles, tricycles, cycle rickshaws & parts
13. Bitumen
14. Bone meal
15. Branded bread.
16. Bulk drugs
17. Capital goods.
18. Castings
19. Centrifugal, monobloc and submersible pumps and parts thereof.
20. Chemical fertilizers, pesticides, weedicides and insecticides
21. Coffee beans and seeds, cocoa pod, green tea leaf and chicory
22. Coir and Coir products excluding coir mattresses and hand made coir products
23. Cotton and cotton waste.
24. Crucibles
25. Declared goods as specified in section 14 of the Central Sales Tax Act, 1960
26. Drugs and medicines.
27. Edible oils, oil cake and de-oiled cake
28. Electrodes
29. Exercise book, graph book and laboratory notebook.
30. Ferrous and non-ferrous metals and alloys; non-metals such as aluminium, copper, zinc and extrusions of those.
31. Fibres of all types and fibre waste.
32. Flour, atta, maida, suji, besan, etc.
33. Fried grams
34. Gur, jaggery and edible variety of rub gur
35. Hand pumps and spare parts
36. Herb, bark, dry plant, dry root, commonly known as jari booti and dry flower
37. Hose pipes
38. Hosiery goods
39. Husk and bran of cereals.
40. Ice
41. Incense sticks commonly known as, agarbatti, dhupkathi or dhupbati
42. Industrial cables (High voltage cables, XLPE Cables, Jelly filled cables, optical fibres)
43. IT products including computers, telephone and parts thereof, teleprinter and wireless

- equipment and partsthereof, cellular phone, SIM card.
44. kerosene oil sold through PDS
  45. Industrial inputs and packing materials as maybe notified by the State Government.
  46. Napa Slabs (Rough Flooring stones)
  47. Newars
  48. Ores and minerals
  49. Paddy, rice, wheat and pulses
  50. Paper and newsprint.
  51. Pipes of all varieties including GI pipes, CIpipes, ductile pipes and PVC pipes
  52. Plastic footwear
  53. Printed material including diary, calendar etc.
  54. Printing ink excluding toner and cartridges.
  55. Processed and branded salt
  56. Pulp of bamboo, wood and paper
  57. Rail coaches engines and wagons
  58. Ready made garments
  59. Renewable energy devices and spare parts
  60. Safety matches
  61. Seeds.
  62. Sewing machines
  63. Ship and other water vessels
  64. Silk fabrics (subject to abolition of rentalagreement)
  65. Skimmed milk power
  66. Solvent oils other than organic solvent oil
  67. Spices of all varieties and forms includingcumin seed, aniseed, turmeric and dry chillies.
  68. Sports goods excluding apparels and footwear.
  69. Starch
  70. Sugar and Khandasari
  71. Tamarind
  72. Textile fabric
  73. Tobacco
  74. Tractors, Threshers, harvesters and attachmentsand parts thereof.
  75. Transmission towers.
  76. Umbrella except garden umbrella
  77. Vanaspati (Hydrogeneted Vegetable Oil)
  78. Vegetable oil including gingili oil, bran oil
  79. Writing instruments.



Explanation. - The goods "Sugar", "Textile Fabric" and "tobacco" appearing against Sl. Nos. 70, 72 and 73 shall not be subject to levy of tax under this Act until such goods are subject to levy of duties of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957.

## Part III – Goods Taxable at The Rate of 12.5%

(All other goods except those specified in Schedule C)

### C

(See section 14) List of Goods Subject to Tax at a Single Point on Turnover of Sales or Purchases

Sl. No.	Description of goods	Rate of tax as applicable
1	2	3
1.	Liquor including Country Liquor	20%
2.	Molasses	20%
3.	Motor spirit including petrol, High Speed Diesel and Aviation Turbine Fuel and Light Diesel Oil.	20%
4.	Narcotics	20%
5.	Rectified Spirit	20%

### D

(See sub-section (8) of section 2 and sub-section (5) of section 20)

Sl.No.	Description of goods
1.	Capital goods purchased or paid prior to 1.4.2005
2.	Capital expenditure incurred prior to the date of registration under VAT
3.	Capital goods not connected with the business of the dealer.
4.	Capital goods used in manufacture of goods or providing services or trading activities which are not liable to tax under VAT.
5.	Capital goods used in energy/power including captive power.
6.	Capital or other expenditure on land, civil structure or construction.
7.	Second hand purchase or subsequent purchases of capital goods.
8.	Vehicles for conveyance and transportation.

### E

Procedure for Recovery of Tax [See sub-section (7) of section 50]

## Part I – General Provisions

### 1. Definitions. - In this Schedule, unless the context otherwise requires,-

(a)"Certificate" means a certificate received by the Tax Recovery Officer under rule 2:(b)"Defaulter" means the assessee or dealer or any other person mentioned in the certificate;(c)"Execution" in relation to a certificate, means recovery of arrears in pursuance of the certificate;(d)"Form" means a form given in the Annexure to this Schedule;(e)"Movable property" includes growing crops;(f)"Rule" means a rule contained in this Schedule;(g)"Share in a company" includes stock, debentures or bonds; and(h)"Tax Recovery Officer" means any Officer of the Government not below the rank of Sales Tax Officer who may be authorised by the Government, by general or special notification, to exercise the powers of a Tax Recovery Officer and Government may appoint more than one such Officer and specify their local jurisdiction;

**2. Issue of certificate and the validity and amendment thereof. - (1) Where an assessee or dealer or any other person is in default or is deemed to be in default in making a payment of tax of any other amount due under this Act, the assessing authority may forward to the Tax Recovery Officer, a certificate in Form I under his signature specifying the amount of tax and any other amount due from the assessee or dealer or any other person and the Tax Recovery Officer shall, on receipt of such certificate, proceed to recover from such assessee, dealer or other person the amount specified therein in accordance with the provisions in this Schedule.**

(2)The assessing authority may issue a certificate under sub-section (1) notwithstanding that proceedings for recovery of the amount by any other mode has been taken.(3)When the assessing authority sends a certificate to the Tax Recovery Officer under this rule, it shall not be open to the assessee or dealer or such other person, as the case may be, to dispute before the Tax Recovery Officer the correctness of assessment of the tax including interest, if any, or of the order imposing penalty, and no objection to the certificate on any ground shall be entertained by the Tax Recovery Officer.(4)Notwithstanding the issue of a certificate to the Tax Recovery Officer, the assessing authority shall have power to withdraw or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Tax Recovery Officer.(5)Where an assessee has property within the jurisdiction of more than one Tax Recovery Officer to whom a certificate is sent by an assessing authority:-(a)Is not able to recover the entire amount by the sale of the property, whether movable or immovable or both, within his jurisdiction; or(b)Is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount under this Schedule, it is necessary so to do.he may send the certificate or, where only a part of the amount is to be recovered a copy of certificate certified in the prescribed manner and specifying the amount to be recovered to a Tax Recovery Officer within whose jurisdiction the assessee resides or has property, and thereupon that Tax Recovery Officer shall also proceed to recover the amount under the Schedule as if the certificate or the copy thereof had been a certificate sent to him by the assessing authority.

**3. Issue of notice. - When a certificate has been received by the Tax Recovery Officer from the assessing authority for the recovery of arrears, the Tax Recovery Officer shall cause to be served upon the defaulter a notice in Form 2 requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default, steps would be taken to realise the amount under this Schedule.**

**4. When certificate may be executed. - No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice under rule 3:**

Provided that if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a Civil Court and that the realisation of the amount of the certificate would in consequence be delayed or obstructed, he may, at any time direct, for reasons to be recorded in writing, attachment of the whole or nay part of such property: Provided further that if the defaulter whose property has been so attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment shall be cancelled form the date on which such security is accepted by the Tax Recovery Officer.

**5. Made of recovery. - If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant, he shall proceed to realise the amount by one or more of the following modes, namely :-**

(a) By attachment and sale of the defaulter's moveable property; (b) By attachment and sale of the defaulter's immovable property; or (c) By arrest of the defaulter and his detention in prison.

**6. Interest, costs and charges recoverable. - There shall be recoverable in the said proceedings in execution of every certificate,-**

(a) Interest at the rate of eighteen per centum per annum from the day commencing after the end of the period specified in rule 3; and (b) All charges incurred in respect of- (i) The service of notice upon the defaulter to pay the arrears and of warrants and other processes; and (ii) All other proceedings taken for realising the arrears.

**7. Purchaser's title. - (1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified.**

(2) Where immovable property is sold in execution of a certificate and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

**8. Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff. - (1) No suit shall be maintainable against any person claiming title under a purchase certified by the Tax Recovery Officer in the manner laid down in this Part on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.**

(2) Nothing in this rule shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser or interfere with the right of a third person to proceed against that property though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

**9. Disposal of proceeds of executions. - (1) Whenever assets are realised by sale or otherwise in execution of a certificate, they shall be disposed of in the following manner, namely :-**

(a) There shall first be paid to the assessing authority the costs incurred by him; (b) There shall, in the next place, be paid to the assessing authority the amount due under the certificate in execution of which the assets were realised; (c) If there remains a balance after payment of the sums referred to in clauses (a) and (b), there shall be paid to the assessing authority therefrom any other amount recoverable under the procedure provided by this Act which may be due on the date on which the assets were realised; and (d) The balance, if any, remaining after the payment of the amount, if any, referred to in clause (c) shall be paid to the defaulter. (2) If the defaulter disputes any claim made by the assessing authority to receive any amount referred to in clause (c), the Tax Recovery Officer shall determine the dispute.

**10. General bar to jurisdiction of Civil Court, save where fraud alleged. - Except as otherwise expressly provided in this Act, every question arising between the assessing authority and the defaulter or their representatives relating to the execution, discharge or satisfaction of a certificate or relating to the confirmation or setting aside of a sale held in execution of such certificate shall be determined, not by suit, but by the order of the Tax Recovery Officer before whom such question arises:**

Provided that a suit may be brought in a Civil Court in respect of any such question upon the ground of fraud.

**11. Property exempt from attachment. - (1) All such property, as is by the Code of Civil Procedure, 1908 exempted from attachment and sale in execution of a decree of a Civil Court, shall be exempt from attachment and sale under this Schedule.**

(2)The decision of the Tax Recovery Officer as to what property is so entitled to exemption shall be conclusive.

**12. Investigation by Tax Recovery Officer. - (1) Where any claim is preferred to, or any objection is made to the attachment or sale of an property in execution of a certificate on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:**

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.(2)Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it, pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer deems fit.(3)The claimant or objector shall adduce evidence to show that-(a)In the case of immovable property, at the date of the service of notice issued under this Schedule to pay the arrears; or(b)In case of movable property, all the date of the attachment, he had some interest in, or was possessed of, the property in question.(4)Where upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him or that being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.(5). Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.(6)Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a Civil Court to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order of the Tax Recovery Officer shall be conclusive.

**13. Removal of attachment on satisfaction or cancellation of certificate. - Where-**

(a)The amount due with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Tax Recovery Officer; or(b)The

certificate is cancelled. The attachment shall be deemed to be withdrawn and in the case of immovable property the withdrawal shall, if the defaulter so desires be proclaimed at his expense and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property.

**14. Authority entitled to attach and sale. - The attachment and sale of property shall be made by Tax Recovery Officer.**

**15. Defaulting purchaser answerable for loss on resale. - Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, shall be certified by the Tax Recovery Officer and shall, at the instance of either the assessing authority or the defaulter, be recoverable from the defaulting purchaser under the procedure provided by this Schedule :**

Provided that no such application shall be entertained unless filed within fifteen days from the date of resale.

**16. Adjournment or stoppage of sale. - (1) The Tax Recovery Officer may adjourn any sale hereunder to a specified day and hour.**

(2) Where a sale of immovable property is adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it. (3) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the Tax Recovery Officer.

**17. Private alienation to be void in certain cases. - (1) Where a notice has been served on a defaulter under rule 3, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any Civil Court issue any process against such property in execution of a decree for the payment of money.**

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

**18. Prohibition against bidding or purchase by officer. - No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.**

**19. Prohibition against sale on holidays. - No sale under the Schedule shall take place on a Sunday or other general holiday recognised by the Government or any day which has been notified by the Government to be a local holiday for the area in which the sale is to take place.**

**20. Assistance by police. - The Tax Recovery Officer may direct to the officer-in-charge of the nearest police station for such assistance as may be necessary in the discharge of his duties and upon such direction, the officer-in-charge shall depute a sufficient number of police officers for furnishing such assistance.**

## **Part II – Attachment and Sale of Movable Property**

**21. Warrant. - When any movable property is to be attached the Tax Recovery Officer shall prepare a warrant under his signature in Form 3 specifying the name of the defaulter and the amount to be realised and cause a copy of the warrant to be served on the defaulter.**

**22. Attachment. - If, after service of the copy of the warrant, the amount is not paid forthwith the Tax Recovery Officer shall proceed to attach the movable property of the defaulter.**

**23. Property in defaulter's possession. - Where the property proceeded against is movable property (other than agricultural produce) in the possession of the defaulter, it shall be attached by actual seizure and the Tax Recovery Officer shall keep the property in his custody or in the custody of one of this subordinates who shall be responsible for due custody thereof;**

Provided that when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the Tax Recovery Officer may take steps for sale of the property at once.

**24. Agricultural produce. - Where the property proceeded against is agricultural produce, it shall be attached by affixing a copy of the warrant-**

(a)Where such produce is growing crop, on the land on which such crop has grown; or(b)Where such produce has been cut or gathered on the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited.and another copy on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides, or on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is know to have last resided or carried on business or personally worked for gain; and the produce shall, thereupon, be deemed to have passed into the possession of the Tax Recovery Officer.

**25. Provisions as to agricultural produce under attachment. - (1) Where agricultural produce is attached, the Tax Recovery Officer shall make such arrangement for the custody, watching, tending, cutting and gathering thereof as it may deem sufficient, and the assessing authority shall bear such amount as the Tax Recovery Officer shall require in order to defray the cost of such arrangements.**

(2)Subject to such conditions as may be imposed by the Tax Recovery Officer in this behalf, either in the order of attachment or in any subsequent order, the defaulter may tend, cut, gater and store the produce and do any other act necessary for maturing or preserving it; and if the defaulter fails to do all or any of such acts, and the costs incurred by him shall be recoverable from the defaulter as if they were included in the certificate.(3)Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.(4)Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Tax Recovery Officer may suspend the execution of the order for such time as he thinks fit and may make a further order prohibiting the removal of the crop pending execution of the order of attachment.(5)A growing crop, which from its nature does not admit of being stored, shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

**26. Debts and shares etc. - (1) In the case of-**

(a)A debt not secured by a negotiable instrument,(b)A share in a company, or(c)Other movable property not in the possession of the defaulter except property deposited in, or in the custody of any court.the attachment shall be made by a written order in Form 4 prohibiting-(i)In the case of debt, the creditor from recovering the debt and debtor from making payment thereof until further order of the Tax Recovery Officer,(ii)In the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon, and(iii)In case of any other movable property (except as aforesaid), the person in possession of the same from giving it over to



the defaulter.(2)A copy of such order shall be affixed on some conspicuous part of the office of the Tax Recovery Officer and another copy shall be sent, in the case of debt, to the debtor; in the case of share, to the proper officer of the company; and in the case of other movable property (except as aforesaid), to the person in possession of the same.(3)A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to the Tax Recovery Officer and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

**27. Attachment of decree. - (1) Where the property proceeded against is a decree of a Civil Court for the payment of money or for sale in enforcement of a mortgage or chare, the attachment shall be made by issue, to the Civil Court, of a notice in Form 5 requesting the Civil Court to stay the execution of the decree unless and until-**

(i)The Tax Recovery Officer cancels the notice; or(ii)The assessing authority or the defaulter applies to the Court receiving such notice to execute the decree.(2)Where a Civil Court receives an application under clause (ii) of sub-rule (1), it shall, on the application of the assessing authority or the defaulter and subject to the provisions of the Code of Civil procedure, 1908 proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.(3)The assessing authority shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

**28. Share in movable property. - Where the property proceeded against consists of the share or interest of the defaulter in movable property belonging to him and another as co-owners, the attachment shall be made by a notice in Form 6 to the defaulter prohibiting him from transferring the share or interest or charging it in any way.**

**29. Attachment of negotiable instrument. - Where the property is a negotiable instrument not deposited in a Court nor in the custody of a public officer, the attachment shall be made by actual seizure.**

**30. Attachment of property in custody of Courts or public officer. - Where the property proceeded against is in the custody of any Court or public officer, the attachment shall be made by a notice in Form 7 to such Court or Officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued :**

Provided that where such property is in the custody of a Court, any question of title or priority arising, between the assessing authority and any other person, not being the defaulter, claiming to

be interested in such property by virtue of any assignment, attachment or otherwise shall be determined by such Court.

**31. Attachment of partnership property. - (1) Where the property proceeded against consists of an interest of the defaulter, being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.**

(2) The other person shall be at liberty at any time to redeem the interest charged or in the case of a sale being directed, to purchase the same.

**32. Attachment not to be excessive. - The attachment by seizure shall not be excessive, that is to say, the property seized shall be as nearly as possible proportionate to the amount specified in the warrant.**

**33. Inventory. - In the case of attachment of movable property by actual seizure, the Tax Recovery Officer, shall after seizure of the property, prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept, and a copy of the inventory shall be delivered to the defaulter.**

**34. Seizure between sunrise and sunset. - Attachment by seizure shall be made after sunrise and before sunset; and not otherwise.**

**35. Power to break open door, etc. - The Tax Recovery Officer may break open any inner or outer door of any building and enter any building in order to seize any movable property, after giving all reasonable opportunity to women to withdraw, if he has reasonable grounds to believe that such building contains movable property liable to seizure under the warrant and he has notified his authority and intention of breaking open if admission is not given.**

**36. Sale. - The Tax Recovery Officer may direct that any movable property attached under this Schedule or such portion thereof as may seem necessary to satisfy the certificate shall be sold.**

**37. Issue of proclamation. - Where any sale of movable property is ordered by the Tax Recovery Officer it shall issue a proclamation in Form 8 in the local language of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.**

**38. Manner of making proclamation. - (1) Such proclamation shall be made by beat of drum or other customary mode, -**

(a) In the case of property attached by actual seizure.-(i) In the village in which the property was seized, or, if the property was seized in the town or city, then in the locality in which it was seized, and(ii) At such other places as the Tax Recovery Officer may direct, and(b) In the case of property attached otherwise than by actual seizure, in the office of the Tax Recovery Officer.

**39. Sale after fifteen days. - Except where the property is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, no sale of movable property under this Schedule shall, without the consent in writing of the defaulter take place until after the expiry of at least fifteen days calculated from the date on which a copy of the sale proclamation was affixed in the office of the Tax Recovery Officer.**

**40. Sale of agricultural produce. - (1) Where the property to be sold is agricultural produce, the sale shall be held-**

(a) If such produce is a growing crop, on or near the land on which such crop has grown, or(b) If such produce has been cut or gathered, at or near the threshing floor or place for treading out grain or the like, or fodder-stack on or in which it is deposited. Provided that the Tax Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.(2) Where, on the produce being put up for sale.-(a) A fair price, in the estimation of the Tax Recovery Officer, is not offered for it; and(b) The owner of the produce or a person authorised to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, till the next market day, the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.

**41. Special provisions relating to growing crops. - (1) Where the property to be sold is a growing crop and the crop for its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit**

**of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.**

(2)Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe stage, as in the case of green wheat, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop.

**42. Sale to be by public auction. - The property shall be sold by public auction in one or more lots as the Tax Recovery Officer may consider advisable and if the amount to be realised by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder of the lots.**

**43. Procedure of sale by public auction. - (1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the Tax Recovery Officer directs, and in default of payment, the property shall forthwith be resold.**

(2)On payment of the purchase money, the Tax Recovery Officer holding the sale shall grant a certificate specifying the property purchased, the price paid and the name of the purchaser and the sale shall become absolute.(3)Where the movable property to be sold is a share in goods belonging to the defaulter and a co-owner and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

**44. Irregularity not to vitiate sale, but any person injured may sue. - No irregularity in publishing or conduction the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person, may institute a suit in a Civil Court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.**

**45. Negotiable instruments and shares in a company. - Notwithstanding anything contained in this Schedule where the property in be sold is a negotiable instrument or a share in a company, the Tax Recovery Officer may, instead of selling it by public auction, sell such instrument or share**

through a broker.

**46. Order for payment of coin or currency notes to the Tax Recovery Officer. -** Where the property attachment is current coin or currency notes, the Tax Recovery Officer may, at any time during the continuance of the attachment, direct that such coin or notice, or a part thereof sufficient to satisfy the certificate, be paid over to the assessing authority.

### **Part III – Attachment and Sale of Immovable Property**

**47. Attachment. -** Attachment of immovable property of the defaulter shall be made by an order in Form 9 prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

**48. Service of notice of attachment. -** A copy of the order of attachment shall be served on the defaulter.

**49. Proclamation of attachment. -** The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode and a copy of the order shall be fixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

**50. Attachment to relate back from the date of service of notice. -** Where any immovable property is attached under this Schedule, the attachment shall relate back to and take effect from, the date on which the notice to pay the arrears, issued under this Schedule was served on the defaulter.

**51. Sale and proclamation of sale. - (1)** The Tax Recovery Officer may direct that any immovable property which has been attached or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold the Tax Recovery Officer shall cause a proclamation in Form 8 of the intended sale to be made in the local language.

**52. Content of proclamation. - A proclamation of sale of immovable property shall be drawn up after notice to defaulter and shall state the time and place of sale and shall specify, as fairly and accurately as possible,-**

(a)The property to be sold;(b)The Revenue, if any, assessed upon the property or any part thereof;(c)The amount for the recovery of which the sale is ordered; and(d)Any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

**53. Mode of making proclamation. - (1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.**

(2)Where the Tax Recovery Officer so directs, such proclamation shall also be published in the official Gazette or in a local newspaper, or in both, and the cost of such publication shall be deemed to be cost of the sale.(3)Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Tax Recovery Officer. otherwise be given.

**54. Time of sale. - No sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least thirty days calculated from the date on which a copy of the proclamation of the sale has been affixed on the property or in the office of the Tax Recovery Officer, whichever is later.**

**55. Sale to be by auction. - The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer.**

**56. Deposit by purchaser and resale in default. - (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per centum of the amount of his purchase money, to the Tax Recovery Officer and in default of such deposit, the property shall forthwith be resold.**

(2)The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

**57. Procedure in default of payment. - In default of payment within the period mentioned in rule 56, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sales, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.**

**58. Authority to bid. - All persons bidding at the sale shall be required to declare if they are bidding on their behalf or on behalf of their principals, and, in the latter case, they shall be required to deposit their authority and in default their bids shall be rejected.**

**59. Application to set aside sale of immovable property on deposit. - (1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing-**

(a)For the payment to the assessing authority, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of twelve per centum per annum calculated from the date of proclamation of sale to the date when the deposit is made; and(b)For the payment to the purchaser, as penalty, a sum equal to five per centum of the purchase money, but not less than one rupee.(2)Where a person makes an application under rule 60 for setting aside the sale of his immovable property, he shall not unless he withdraws that application, be entitled to make or prosecute an application under this rule.

**60. Application to set aside sale of immovable property on ground of non-service of notice or irregularity. - Where immovable property has been sold in execution of a certificate, the assessing authority, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule on the ground of a material irregularity in publishing or conducting the sale:**

Provided that-(a)No sale shall be set aside on any such ground, unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and(b)An application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in execution of the certificate.

**61. Setting aside sale where defaulter has no saleable interest. - At any time within thirty days of the sale the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.**

**62. Confirmation of sale. - (1) Where no application is made for setting aside the sale under the forgoing rules or where such an application is made and disallowed by the Tax Recovery Officer, he shall (if the full amount of the purchaser money has been paid) make an order confirming the sale and thereupon, the sale shall become absolute.**

(2)Where such application is made and allowed and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale:Provided that no order shall be made unless notice of the application has been given to the persons affected thereby.

**63. Return of purchase money in certain cases. - When a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchaser together with the penalty, if any, deposited for the payment to the purchaser, and such interest as the Tax Recovery Officer may allow, shall be paid to the purchaser.**

**64. Sale certificate. - (1) Where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate in Form 10 specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser.**

(2)Such certificate shall state the date on which the sale became absolute.

**65. Postponement of sale to enable defaulter to raise amount due under certificate. - (1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper, to enable him to raise the amount.**



(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale: Provided that all money payable under sub mortgage, lease or sale shall be paid, not to the defaulter, but to the Tax Recovery Officer. provided further that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Tax Recovery Officer.

**66. Fresh proclamation before resale. - Every resale of immovable property in default of payment of the purchaser money within the period allowed for such payment shall be made after the issue of a fresh proclamation in the manner and for the period herein before provided for the sale.**

**67. Bid of co-sharer to have preference. - When the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.**

## **Part IV – Arrest and Detention of the Defaulter**

**68. Notice to show cause. - (1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice in Form 11 upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer, for reasons recorded in writing, is satisfied-**

(a) That the defaulter, with the object or effect of obstructing the execution of the certificate has, after the receipt of the certificate in the office of the Tax Recovery Officer, dishonestly transferred, concealed, or removed any part of his property; or (b) That the defaulter has, or had since the receipt of the certificate in the office of the Tax Recovery Officer, the means to pay the arrears of some substantial part thereof and refuses or neglects or has refused or neglected to pay the same. (2) Notwithstanding anything contained in sub-rule (1), a warrant for the arrest of the defaulter may be issued by the Tax Recover Officer if he is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdictions of the Tax Recovery Officer. (3) Where appearance is not made in obedience to a notice issued and served under sub-rule (1), the Tax Recovery Officer may issue a warrant in Form 12 for the arrest of the defaulter. (4) Every person arrested in pursuance of a warrant of arrest under sub-rule (2) or sub-rule (3) shall be brought before the Tax Recovery Officer as soon as practicable and in any event within twenty four hours of his arrest (exclusive of the time required for the journey): Provided that if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him such officer shall at once release

him.

**69. Hearing. -** When a defaulter appears before the Tax Recovery Officer in obedience to a notice to show cause or is brought before the Tax Recovery Officer under rule 68, the Tax Recovery Officer shall proceed to hear the assessing authority and take all such evidence as may be produced by him in support of execution by arrest, and shall then give the defaulter an opportunity of showing cause why he should not be committed to the civil prison.

**70. Custody pending hearing. -** Pending the conclusion of the enquiry, the Tax Recovery Officer may order the defaulter to be detained in the custody of such officer as he may think fit or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance when required.

**71. Order of detention. - (1)** Upon the conclusion of the enquiry the Tax Recovery Officer may make an order for the detention of the defaulter in the civil prison and shall, in that event, issue a warrant of detention in Form 13 and cause him to be arrested if he is not already under arrest :

Provided that in order to give the defaulter an opportunity of satisfying the arrears, the Tax Recovery Officer may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days, or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance at the expiration of the specified period if the arrears are not so satisfied.(2)When the Tax Recovery Officer does not make an order of detention under sub-rule (1), it shall, if the defaulter is under arrest, direct his release.

**72. Detention in and release from prison. - (1)** Every person detained in the civil prison in execution of a certificate may be so detained-

(a)Where the certificate is for a demand of an amount exceeding two hundred and fifty rupees, for a period of six months; and(b)In any other case, for a period of six weeks;Provided that he shall be released from such detention-(i)On the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison, or(ii)On the request of the assessing authority who has issued the certificate or of the Tax Recovery Officer on any ground other than the grounds mentioned in rules 73 and 74:Provided further that where he is to be released on the request of the assessing authority, he shall not be so released without the order of the Tax Recovery Officer.(2)A defaulter released from detention under this rule shall not, merely by reason of his release, be discharged from his liability for the arrears, but he shall not be liable to be re-arrested under the

certificate in execution of which he was detained in the civil prison.

**73. Release. - (1) The Tax Recovery Officer may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Tax Recovery Officer and that he has not committed any act of bad faith.**

(2) If the Tax Recovery Officer has ground for believing the disclosure made by a defaulter under sub-rule (1) to have been untrue, it may order the re-arrest of the defaulter in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 72.

**74. Release on ground of illness. - (1) At any time after a warrant for the arrest of a defaulter has been issued, the Tax Recovery Officer may cancel it on the ground of his serious illness.**

(2) Where defaulter has been arrested, the Tax Recovery Officer may order him to be detained in the civil prison. (3) Where a defaulter has been committed to the civil prison, he may be released therefrom by the Tax Recovery Officer on the ground of existence of any infectious or contagious disease or on the ground of his suffering from any serious illness. (4) A defaulter released under this rule may be re-arrested but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 72. (5) An order of release under second proviso to sub-rule (1) of rule 72 or sub-rule (1) of rule 73 or under this rule shall be made in Form 14

**75. Entry into dwelling house. - For the purpose of making an arrest under this Schedule,-**

(a) No dwelling house shall be entered after sun-set and before sunrise: (b) No outer door of a dwelling house shall be broken open, unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or any other occupant of the house refuses or in any way prevents access thereto, but when the person executing any warrant has duly gained access to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there; and (c) no room which is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, shall be entered into, unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

**76. Prohibition against arrest of women, minors, etc. - The Tax Recovery Officer shall not order the arrest and detention in the civil prison of-**

(a) A woman, or (b) Any person who, in his opinion, is a minor or of unsound mind.

**77. Subsistence allowance. - (1) When a defaulter is arrested or detained in the civil prison, the sum payable for the subsistence of the defaulter from the time of arrest until he is released shall be borne by the assessing authority.**

(2) Such sum shall be calculated on the scale fixed by the Government for the subsistence of judgement-debtors arrested in execution of a decree of a Civil Court. (3) Sums payable under this rule shall be deemed to be costs in the proceeding: Provided that the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable.

## **Part V – Miscellaneous**

**78. Power to take evidence. - The Tax Recovery Officer shall have the powers of a Civil Court while trying a suit for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.**

**79. Appeal. - (1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, shall lie to the Commissioner.**

(2) Every appeal under this rule must be presented within thirty days from the date of the order appealed against. (3) Pending the decision of any appeal, execution of the certificate may be stayed if the Commissioner so directs, but not otherwise.

**80. Review. - Any order passed under this Schedule may, after notice to all persons interested, be reviewed by the Officer who made the order, or by his successor in office on account of any mistake apparent from the record.**

**81. Recovery from surety. - Where any person has under this Schedule become surety for the amount due by the defaulter, he may be proceeded against under this Schedule as if he were the defaulter.**

**82. Saving regarding charge. - Nothing in this Schedule shall affect any provision of this Act where under the tax is a first charge upon any asset.**

Annexure Form 1 (See rule 2) Certificate of tax, etc., due to the Tax Recovery Officer..... Sir, This is to certify that Sri..... doing business as ..... (owner/proprietor/partner karta director etc.) of (name & style of business) of M/s..... at (place)..... is in arrears of tax/penalty/interest as shown in the following Table. I request you to take action to

recover the said amount of Rs..... under sub-section (7) of section 50 of the Orissa Value Added Tax Act, 2004. Table

Year of assessment	Date of assessment order	Date of service of demand notice	Amount in arrears	Whether tax or penalty or interest
1	2	3	4	5

Total

Total Yours faithfully. Assessing Authority Dated the ..... 20..... Form 2 (See rule 3) Notice Take notice that you have failed to pay Rs..... being the arrears of tax/penalty/interest levied on you under the Orissa Value Added Tax Act, 2004 and/or the details of which are furnished in the following Table. If the said amount is not paid within a period of fifteen days from the date of service of the notice, it shall be recovered by attachment and sale of your movable or immovable property. In addition to the said amount you will also be liable to pay the expenses involved in the attachment and/or sale of your movable and / or immovable property. Table

Assessment year to which the amount in arrears relate	Whether the amount due is tax or penalty or interest	The amount in arrears (tax or penalty or interest) should be shown separately	Date of service of the demand notice in respect of the amount in arrear	Date on which the amount became due
1	2	3	4	5

Tax Recovery Officer Dated the ..... 20..... Form 3 (See rule 21) Warrant of attachments Whereas Shri..... has failed to pay Rs..... being the tax/penalty/ interest the details of which are furnished in the Table below, the movable property of the said Shri..... as set forth in the Schedule here into annexed or which shall be found by the undersigned shall be attached and sold unless the said Shri..... pays the said sum of Rs..... (in words)..... with Rs..... towards the cost of this attachment. Table

Amount in arrears Whether tax/ penalty/ interest

1 2

## Schedule 6

Dated the ..... 20 ..... Tax Recovery Officer Form 4 (See rule 26) Attachment of a debt not secured by negotiable instrument/ share in a Company/ movable property not in the possession of the defaulter except property in the custody of a Court. To..... Whereas Shri..... has failed to pay Rs..... being the tax/ penalty/ interest, it is ordered that said Shri ..... be and is hereby prohibited and restrained, until further order by the undersigned. \* (i) From receiving from you the debt alleged now to be due from you to the said Shri..... and that you are hereby prohibited and restrained until further order by the undersigned from making payment of the said debt or any part thereof to any

person whomsoever or otherwise than to the undersigned.\* (ii) From making any transfer of shares in ..... company or from receiving payment of any dividend thereon, and you are hereby prohibited and restrained from permitting any such transfer or making any such payment.\* (iii) From receiving you the following property in your possession to which defaulter Shri..... is entitled and you are hereby prohibited and restrained until further order by the undersigned from delivering the said property to any person or persons whomsoever. Description of property..... Date the..... 20..... Tax Recovery Officer\* Strike off whichever is not applicable. Form 5 (See rule 27) Attachment of a decree To The Munsif/..... Judge of the Court of..... Sir, I have the honour to inform you that the decree obtained in your Court on the day of ..... 20..... by Shir..... in Suit No..... of 20 ..... has been attached by the undersigned in execution of a certificate issued by the assessing authority. You are therefore requested to stay the execution of the decree of your court until you receive an intimation from the undersigned that the present notice has been cancelled or until execution of the said decree is applied for by the assessing authority, i.e..... or by Sri..... Yours faithfully, Tax Recovery Officer Dated the ..... 20..... Form 6 (See rule 28) Attachment of the share or interest in movable property To Shri..... Whereas you have failed to pay Rs..... being the tax/ penalty/ interest, you are hereby prohibited and restrained until further order by the undersigned from transferring the share or interest you have in the property specified below or from charging it in any way. Description of the property..... Dated the ..... 20 ..... Tax Recovery Officer Form 7 (See rule 30) Prohibitory order To..... Sir, The assessing authority, i.e..... has issued a certificate under rule 2 of Schedule E to the Orissa Value Added Tax Act, 2004 for recovery of Rs..... from Shri..... It is stated that Rs..... is due by you to said Shri..... on account of ..... (Specify how much money is due and on what account) ..... I request that you will hold the said money subject to the further order by me. Yours faithfully, Dated the ..... 20..... Tax Recovery Officer Form 8 (See rules 37 and 51) Proclamation of sale Name and address of the defaulter ..... Whereas an order has been made by the undersigned for the sale of the attached property specified in the Schedule below in satisfaction of the certificate issued by the assessing authority ..... under rule 2 of the Schedule E to the Orissa Value Added Tax Act, 2004 for Rs..... interest thereon and costs of this execution. The sale will be by public auction and the property shall be put up for sale in the lots specified in the Schedule below. The sale will be of the right, title and interest of the defaulter said Shri..... and the liabilities are those specified in the Schedule below against each lot. In the absence of any order of postponement the sale will be held at ..... at ..... A.M. In the event however the entire amount due is tendered or paid before the knocking down of any lot the sale will be stopped. The sale will be subject to and in accordance with the Schedule E to the Orissa Value Added Tax Act, 2004. In the case of movable property the price of each lot shall be paid at the time of sale or as soon as after the undersigned directs and in default of payment the property shall forthwith be again put up and resold. In the case of immovable property the person declared to be the purchaser shall pay immediately after such declaration twenty-five percent of the amount of his purchase money to the undersigned and in default the property shall forthwith be resold. The balance purchase money shall be paid by the purchaser to the undersigned on or before the fifteenth day of

the date of the sale of the property, or, if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

## Schedule 7

Number of lists	Description of the property with name of the owner	Assessment paid and nature of the interest in the property	Encumbrances to which the property is liable	Claims put forward
1	2	3	4	5

Dated the.....20.....Tax Recovery Officer Form 9 (See rule 47) Notice of attachment of immovable property

### Part 1 – To

.....(Defaulter) Take notice that you have failed to pay the amount of Rs..... being the arrears of tax/ penalty/ interest payable by you under the provisions of the Orissa Value Added Tax Act, 2004 within the time specified in the recovery notice served on you on ..... The immovable property mentioned in the following Table are, therefore, hereby attached and they will be sold for the recovery of the said amount. You are hereby prohibited from transferring or charging the said property in any way and any transfer or charge created by you shall be invalid. Table

Sl. No.	Survey No.	Boundaries	Village	Taluk	District	Name of the defaulter who holds the property
1	2	3	4	5	6	7

### Part II – To

The General Public A copy of the notice of attachment issued to Shri..... is enclosed herewith. The immovable property mentioned therein have been attached by the undersigned in exercise of the powers conferred by sub-section (7) of section 50 of the Orissa Value Added Tax Act, 2004 and the rules made thereunder. The said owner of the property has been prohibited from transferring or charging the said property in any way. Notice is hereby given to the general public that any transfer or delivery of the said property or of any interest therein and any payment to the said defaulter of the debt, dividend or other moneys contrary to such attachment shall be void against all claims enforceable under the attachment. Dated the.....20.....Tax Recovery Officer Form 10 (See rule 64) Sale certificate This is to certify that the following property :-

Sl. No.	Survey No.	Boundaries	Village	Tahsil and district	Extent	Name of the defaulter who held the property
1	2	3	4	5	6	7

has been sold to ..... at ..... in public auction of the property held under section 50(7) of the Orissa Value Added Tax Act, 2004 and the rules on..... for Rs..... and the said (purchaser) ..... has been declared to be the purchaser of the said property at the time of the sale. The sale price of the said property was received on ..... The sale was confirmed and became absolute. Dated the.....20.....Tax Recovery Officer Form 11(See rule 68) Notice to show cause why a warrant of arrest should not be issued To.....Whereas a certificate has been drawn up by the ..... (Assessing Authority) for recovery of arrears from you under sub-section (7) of section 50 of the Orissa Value Added Tax Act, 2004; and And whereas you have failed to pay the amount specified in the Notice in Form 2 served on you and it is proposed to execute the above certificate by arrest and imprisonment of your person: You are hereby directed to appear before the undersigned on the ..... day of .....20 ..... at ..... A.M./P.M. and show cause why you should not be committed to the civil prison in execution of the said certificate. Dated the.....20.....Tax Recovery Officer Form 13(See sub-rule (3) of rule 68) Warrant of arrest To.....Whereas a certificate was drawn up by the ..... (Assessing Authority) for recovery of arrears from Shri..... (address) ..... and as per the said certificate an amount of Rs..... it to be recovered from the defaulter, and the sum of Rs..... as noted below, is due from the said defaulter in respect of the said certificate :-

Rs. P

Certificate amount/ Specified amount	.....
Cost and charges	.....
Interest up to the date of issue of this warrant	.....

Total

And whereas the said sum of Rs..... has not been paid in satisfaction of the said certificate; You are hereby directed to arrest the said defaulter and produce him before the undersigned as soon as practicable and in any event within twenty four hours of his arrest (exclusive of the time required for the journey), unless the defaulter pays to you the said amount of Rs. .... together with further interest on Rs..... (at the rate of two per centum per month) for the period commencing immediately after the date of issue of this warrant and Rs. .... for the cost of executing this process. You are hereby further directed to return the warrant on or before the ..... day of ..... 20 ..... with an endorsement certifying the day on which and the manner in which it has been executed or the reason why it has not been executed. Dated the ..... 20.....Tax Recovery Officer Form 13 Warrant of detention in Civil Prison To The Superintendent/ Officer-in-charge ..... Jail. Whereas Shri..... has been brought before the undersigned under a warrant in execution of a certificate drawn up by the ..... (Assessing Authority) for recovery of arrears from him and whereas he has not satisfied the undersigned that he is entitled to be discharged from custody and has not paid the amount due from him as detailed below :-

Rs. P

Certificate amount/ Specified amount	.....
--------------------------------------	-------



Cost and charges	.....
Interest	.....
Total	

Whereas the undersigned is satisfied that Shri..... should be committed to the civil prison and an order to that effect has been passed by the undersigned on the ..... day of ..... 20..... You are hereby directed and required to take and receive Shri..... into the civil prison and to keep him imprisonment therein for a period of ..... days or until the amount aforesaid, together with further interest on Rs..... (at the rate of two per centum per month) for the period commencing immediately after the date of issue of this warrant payable under sub-section (6) of section 50 of the Orissa Value Added Tax Act, 2004, is paid to you or until you receive an order of release from the undersigned. The undersigned does hereby fix Rs..... P..... per diem as the rate for subsistence allowance of Shri ..... during his confinement under this warrant. Dated the..... 20..... Tax Recovery Officer Form 14 (See sub-rule (5) of rule 74) Order of release To The Superintendent/ Officer-in-charge ..... Jail. Under orders passed by the undersigned this day. You are hereby directed to forthwith set free Shri..... who is now in your custody as a result of the warrant of detention issued by the undersigned on the ..... day of ..... 20..... Dated the ..... 20..... Tax Recovery Officer