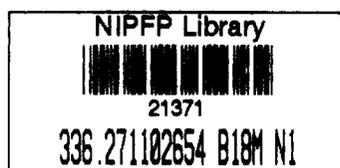




**A MODEL SALES TAX LAW
FOR
THE STATES IN INDIA**

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THE MODEL SALES TAX BILL, 1991

(BILL NO ----- OF 1991)

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MODEL SALES TAX BILL, 1991

A

BILL

To consolidate and amend the laws relating to the levy of tax on the sale or purchase of goods in the State

Be it enacted in the Forty second year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

1. Extent and Commencement - (1) This Act may be called the Sales Tax Act 1991.

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

(3) It shall come into force on such date as the State Government may, by a notification in the Official Gazette, appoint and the State Government may appoint different dates for the commencement of the different provisions of this Act.

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

- (1) "**appellate authority**" means the authority authorised by the State Government under subsection (5) of section 3 to hear and decide appeals under section 35;
- (2) "**appointed day**" means the date or dates appointed for the commencement of the provisions of this Act under subsection (3) of section (1);
- (3) "**assessing officer**" means any person appointed to assist the Commissioner under subsection (1) of section 3 to whom all or any of the powers of the Commissioner for the levy and collection of tax conferred by or under this Act or the rules framed thereunder have been delegated by the Commissioner under subsection (3) of that section;
- (4) "**assessment**" means an assessment or reassessment of tax payable under this Act;
- (5) "**business**" includes -
 - (i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with the motive to make gain or profit and whether or not any gain or profit accrues therefrom;

- (ii) the execution of any works contract or the transfer of the right to use any goods for any purpose under a lease; and
 - (iii) any transaction including the rendering of any services in connection with or incidental or ancillary to, such trade, commerce, manufacture, adventure, concern, works-contract or lease, or to the setting up of any such business.
- (6) "**Commissioner**" means a person appointed to be the Commissioner of Taxes under subsection (1) of section 3;
- (7) "**company**" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956);
- (8) "**contractee**" means any person at whose instance or for whose benefit a works-contract is executed;
- (9) "**contractor**" means any person executing a works-contract and includes a sub-contractor;
- (10) "**dealer**" means any person who carries on the business of selling or purchasing goods in the State and includes -
- (i) Government and local authority;
 - (ii) a co-operative society or a club or any association which supplies goods to its members or which sells goods supplied to it by its members;
 - (iii) a factor, a broker, a commission agent, a del credere agent, an auctioneer or any other mercantile agent, by whatever means called, and, whether of the same description as hereinbefore mentioned or not, who carries on the business of purchasing or selling goods and who has, in the customary of business, authority to purchase or sell goods for and on behalf of, or belonging to principals whether resident within or outside the State; and includes a person delivering goods on hire-purchase or any system of payment by instalments or making any sale within the meaning of clause (33) of this section;
 - (iv) a contractor or a lessor;
- (11) "**declared goods**" means goods declared under section 14 of the Central Sales Tax Act, 1956 (74 of 1956), to be of special importance in inter-State trade or commerce and the sale of which is taxable under this Act;
- (12) "**director**" in relation to a company has the meaning assigned to it in the Companies Act, 1956 (1 of 1956);
- (13) "**financial lease**" means a lease, normally irrevocable, that transfers substantially all the risks and rewards incidental to the ownership of an asset which may or may not be eventually transferred;

- (14) "**firm, partner and partnership**" have the meanings respectively assigned to them in the Indian Partnership Act, 1932 (9 of 1932);
- (15) "**goods**" means all kinds of movable properties other than newspapers, actionable claims, stocks, shares or securities.
- (16) "**Government**" means the Central Government or the Government of any State or Union Territory in the Indian Union;
- (17) "**gross turnover**" in respect of any period means the aggregate of the sale prices received or receivable or purchase prices paid or payable by the dealer in respect of all sales or purchases of goods effected by him during such period;
- (18) "**hire-purchase**" means an agreement under which goods are let on hire and the hirer has the option to purchase the goods in accordance with the terms of the agreement and under which -
- (i) possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments;
 - (ii) the property in the goods is to pass to such person on the payment of the last of such instalments; and
 - (iii) such person has the right to terminate the agreement at any time before the property so passes;
- (19) "**lease**" means any agreement or arrangement where by the right to use any goods for any purpose is transferred by one person to another whether or not for a specified purpose for cash, deferred payment or other valuable consideration without the transfer of ownership and includes a sub-lease but does not include any transfer on hire purchase or any system of payment by instalments;
- (20) "**lessee**" means any person to whom the right to use any goods for any purpose is transferred under a lease;
- (21) "**lessor**" means any person by whom the right to use any goods for any purpose is transferred under a lease;
- (22) "**manufacture**", with all its grammatical variations and cognate expressions means producing, making, extracting, altering, ornamenting, blending, finishing or otherwise processing, treating, or adapting any goods; but does not include a works contract or such manufacture or manufacturing processes as may be prescribed;
- (23) "**month**" means the month according to the English calendar;
- (24) "**Official Gazette**" means the official Gazette of the Government of the State;
- (25) "**operating lease**" means a lease other than a financial lease;

- (26) **"person"** means any individual, or association or body of individuals and includes a Department of the Government, a Hindu undivided or joint family, a firm and a company whether incorporated or not;
- (27) **"prescribed"** means prescribed by rules made under this Act;
- (28) **"principal officer"**, used with reference to a company or association, means the secretary, manager, managing agent or managing director of the company or the manager of the association and includes any person connected with the management of the affairs of the company or association upon whom the Commissioner has served a notice of his intention of treating him as the principal officer thereof;
- (29) **"public servant"** has the same meaning as in section 21 of the Indian Penal Code, 1860 (45 of 1860);
- (30) **"purchase price"** means the amount paid or payable by a dealer as valuable consideration for the purchase of goods determined in the prescribed manner;
- (31) **"registered dealer"** means a dealer registered under the provisions of this Act;
- (32) **"rules"** means the rules framed under this Act;
- (33) **"sale"** with all its grammatical variations and cognate expressions means any transfer of property in goods by any person for cash, deferred payment or other valuable consideration, and includes -
- (i) any transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration, or
 - (ii) any transfer of property in goods (whether as goods or in some other form) involved in the execution of a works-contract.
 - (iii) any delivery of goods on hire-purchase or any system of payment by instalments or under a financial lease;
 - (iv) any transfer of the use of any goods under an operating lease;
 - (v) any supply of goods by an unincorporated association or a body of persons to a member thereof for cash, deferred payment or other valuable consideration.
 - (vi) any supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration,

and such delivery, transfer or supply of any goods shall be deemed to be a sale of those goods by the person making the delivery, transfer or supply and a purchase of those goods by

the person to whom such delivery, transfer or supply is made, but does not include a mortgage, hypothecation, charge or pledge.

Explanation 1.

A sale or purchase shall be deemed to take place in the State,

- (a) in a case falling under subclause (ii), if the goods are in the State at the time of their use, application or appropriation for the execution of the works contract notwithstanding that the agreement for the works contract has been wholly or in part entered into outside the State or that the goods have been, wholly or in part been moved from outside the State;
- (b) in a case falling under sub clause (iii), if the goods are delivered for use in the State;
- (c) in a case falling under subclause (iv), if the goods are used by the lessee within the State during any period notwithstanding that the agreement for the lease has been made outside the State or that the goods have been delivered to the lessee outside the State;
- (d) in any other case if the goods are in the State -
 - (i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and
 - (ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller, whether the assent of the buyer to such appropriation is prior or subsequent to the appropriation;

Provided that, where there is a single contract of sale or purchase in respect of goods situated in the State as well as in places outside the State, the provisions of this Explanation shall apply as if there were a separate contract of sale or purchase in respect of goods situated in the State.

Explanation 2.

Notwithstanding anything contained in this Act, two independent sales or purchases shall, for the purposes of this Act, be deemed to have taken place.

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

- (i) to have sold the goods at one rate and passed on the sale proceeds to his principal at another rate; or
- (ii) to have purchased the goods at one rate and passed them on to his principal at another rate; or
- (iii) not to have accounted to his principal for the entire collection or deductions made by him, in the sales or purchases effected by him on behalf of his principal; or
- (iv) to have acted for a fictitious or non-existent principal.

(34) **"sale price"** means -

- (a) in respect of a sale falling under subclause (ii) of clause 33 the consideration received or receivable by the dealer in respect of any works contracts executed or under execution by him as increased by the market price of any goods supplied or to be supplied to him free of cost or the excess of the market price over the price charged of any goods supplied or to be supplied to him at a concessional rate by the contractee or any other person for use, application or appropriation in the works-contract;

Explanation

For the purposes of this subclause, all contracts in relation to the same works, whether between the same or different persons, shall be deemed to be a single contract, and the person, on whom the Commissioner has served a notice of his intention so to treat him, shall be deemed to be the contractor and all the other persons shall be deemed to be sub-contractors of such contractor.

- (b) in respect of a sale falling under subclause (iii) of clause (33), the price which the goods would have fetched if sold on the date they were delivered;
- (c) in respect of a sale falling under subclause (iv) of clause (33), the consideration received or receivable by the dealer in respect of the lease;

Explanation

For the purposes of this subclause the consideration received or receivable by the dealer shall include such amounts as may be determined in the prescribed manner in respect of any lumpsum payment of whatever nature received or receivable by him in consideration of the lease.

- (d) in respect of a sale falling under any other subclause of clause (33), the amount received or receivable by a dealer as valuable consideration for the sale of goods including any sum charged, whether stated separately or not, for anything done by the dealer in respect of the

goods at the time of or before delivery thereof or undertaken to be done after the delivery whether under the contract of sale or under a separate contract but excluding -

- (i) the cost of outward freight, delivery, or installation or interest when such cost or interest is separately charged, subject to such conditions and restrictions as may be prescribed, and
- (ii) any sum allowed as a cash discount according to ordinary trade practice:

Provided that in a case where there is no sale bill or the sale bill is, in the opinion of the assessing authority, for an amount substantially lower than the market price of the goods, the valuable consideration receivable by the dealer shall be taken to be the market price determined in the prescribed manner.

Explanation 1.

Any tax, cess or duty which is liable to be paid in respect of any goods before the buyer can obtain delivery and possession of such goods and all costs, expenses and charges incurred before the goods are put in a deliverable state shall, notwithstanding any agreement, covenant or understanding that such tax, cess, duty, costs, expenses or other charges be borne or paid by the buyer or any other person, be included in the sale price.

Explanation 2.

Where any goods are purchased or sold packed in containers or other packing materials of value which is small in comparison with the value of such goods or such packing is essential or customary for the purchase or sale of such goods then, notwithstanding any agreement to the contrary such containers or other packing materials shall be deemed to have been purchased or sold with such goods and their value whether charged for separately or not shall be included in the purchase or sale price of such goods and charged to tax at the rate, if any, applicable to such goods.

- (35) "**Special Tribunal**" means the Special Appellate Tribunal appointed under section 6;
- (36) "**State**" means the State of -----.
- (37) "**tax**" means the tax payable under this Act on the sale or purchase of goods and includes any tax payable on the transfer of property in goods (whether as goods or in any other form) involved in a works-contract or on the transfer of the right to use any goods for any purpose;
- (38) "**Tribunal**" means the Commercial Taxes Appellate Tribunal appointed under section 5;

(39) "**Works Contract**" means and includes any agreement for carrying out -

- (i) the construction, fitting out, improvement or repair of any building, road, bridge, dam or other immovable property; or
- (ii) the installation, fabrication, assembling, commissioning or repair of any plant or machinery, whether or not affixed to any building or other immovable property; or
- (iii) the overhaul or repair or dismantling of -
 - (a) any motor vehicle,
 - (b) any sea-going vessel,
 - (c) any other vessel propelled by mechanical means;
 - (d) any aircraft or
 - (e) any equipment or necessary part of any of the aforesaid items; or

(iv) the fitting out fabrication, assembling, altering, or re-assembling, blending, furnishing, improving, processing or otherwise treating or adapting any goods; and

(v) the supply of goods and provision of know-how, designs, labour, supervision, inspection, training or other services in connection with any of the operations mentioned in sub-clauses (i) to (iv) above.

Explanation

All contracts including subcontracts in relation to the same works, for the supply of goods or provision of services by any person shall whether they are between the same or different persons and whether any consideration is stipulated or not, be deemed to be a single contract constituting the works-contract and the provisions of this Act relating to taxation of the transfer of property in goods involved in a works-contract (whether as goods or in some other form) shall apply accordingly;

(40) "**year**" means the official financial year of the Government.

CHAPTER II

TAX AUTHORITIES, TRIBUNAL AND SPECIAL APPELLATE TRIBUNAL

3. Tax Authorities.— (1) For carrying out the purposes of this Act, the State Government may appoint a person to be the Commissioner of Taxes, together with such other persons to assist him as it thinks fit and may specify the area or areas over which they shall exercise jurisdiction.

(2) Persons appointed under sub-section (1) shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.

(3) Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers under this Act to any person appointed to assist him under sub-section (1).

(4) Notwithstanding anything contained in sub-section (1), the Commissioner may transfer any case or matter from any person appointed under sub-section (1) to assist him to any other person so appointed whether such other person has jurisdiction over the area to which the case or matter relates or not provided he is otherwise competent to deal with such case or matter in exercise or performance of the powers or duties referred to in sub-section (2).

(5) The State Government may authorise an officer not below the rank of an Assistant Commissioner, appointed to assist the Commissioner under subsection (1), to exercise the powers and perform the functions of the appellate authority under section 35.

(6) All persons appointed to assist the Commissioner under subsection (1) shall observe and follow the orders, instructions and directions of the Commissioner;

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of any appellate authority in the exercise of its appellate functions.

(7) Where any case is transferred to an assessing or appellate authority under subsection (4) such authority may deal with the case either de novo or from the stage at which it was transferred.

4. Jurisdiction of Tax Authority not to be Called in Question.— No person shall be entitled to call in question the jurisdiction of any authority under section 3 after the expiry of ninety days from the date of the receipt by him of any notice under this Act from such authority.

5. Appellate Tribunal.— (1) The State Government shall constitute a Tribunal to be called the Commercial Taxes Appellate Tribunal consisting of such number of members as the State Government may appoint.

(2) The State Government shall appoint one of the members of the Tribunal to be the President thereof.

(3) The qualifications, conditions of service and tenure of the members constituting the Tribunal shall be such as may be prescribed.

(4) No decision or action of the Tribunal shall be called in question merely on the ground of any vacancy in the Tribunal.

(5) The functions of the Tribunal may be discharged by any of the members sitting either singly, or in benches of two or more members, as may be determined by the President.

(6) If the members of a Bench are divided, the decision shall be the decision of the majority, if there be a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points to one or more of the members of the Tribunal; and such point or points shall be decided according to the majority of the members of the Tribunal who heard the case including those who first heard it:

Provided that, if at any time the Tribunal consists of only two members, the decision of the Tribunal shall be that of the President.

(7) Subject to such conditions and limitations as may be prescribed, the Tribunal shall have the power to award costs in any matter decided by it and the amount of such costs awarded against a dealer shall be payable by him as if it were tax due from him under this Act and, in case of default by him, it shall be recovered from him in the manner provided in Chapter VII and the amount of such costs awarded against any authority under this Act shall be payable to a dealer by such authority in such manner as may be prescribed.

(8) Subject to the previous sanction of the State Government, the Tribunal shall, for the purpose of regulating its procedure (including the place or places at which the Tribunal, the benches or the members thereof shall sit) and providing the rules of business, make regulations under this Act and the rules made thereunder:

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

6. Special Appellate Tribunal.- (1) The State Government may by notification in the Official Gazette, constitute for the State a Special Appellate Tribunal consisting of a Chairman and as many other members as it thinks fit for the adjudication of any disputes, complaints or offences with respect to the levy, assessment, collection and enforcement of any tax levied under this Act or under any other law of the State legislature for the time being in force, as may be specified by the State Government by notification in the Official Gazette.

(2) The qualifications, terms and conditions of the Chairman and members shall, from time to time, be prescribed by the State Government and shall be on par with those prevailing in the case of the Chairman or President and members of Tribunal set up under Article 323A or Article 323B of the Constitution of India.

(3) Subject to the provisions of this Act, the jurisdiction, powers and functions of the Special Appellate Tribunal may be exercised by Benches thereof constituted from time to time by the Chairman.

(4) Subject to the provisions of this Act, the Special Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of its functions, including the places at which the Benches shall hold their sittings.

(5) Where a Tribunal has been constituted under any other law of the State legislature providing for the adjudication or trial of any disputes, complaints or offences with respect to all or any of the matters specified in clause (2) of Article 323 B of the Constitution of India, the State Government may, by notification in the official Gazette authorise such Tribunal to exercise the powers and perform the functions of the Special Appellate Tribunal under this Act.

7. Persons appointed deemed to be public servants, etc.- (1) All persons appointed under subsection (1) of section 3, subsection (1) of section 5 or subsection (1) of section 6 shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

(2) Any proceeding under this Act before any authority referred to in subsection (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 (Act 45 of 1860).

CHAPTER III

INCIDENCE AND LEVY OF TAX

8. Liability to Tax.— (1) Subject to the other provisions of this Act, every dealer liable to pay tax under any of the earlier laws shall, with effect from the appointed day for the purpose of this section, be liable to pay tax under this Act on all sales or purchase of goods other than goods specified in Schedule I.

(2) Subject to the other provisions of this Act, every dealer to whom subsection (1) does not apply, shall be liable to pay tax under this Act on all sales or purchases of goods other than goods specified in Schedule I with effect from the date immediately following the date on which his gross turnover calculated from the commencement of any year ending after the appointed day first exceeds the taxable quantum at any time within such year:

Provided that such dealer shall not be liable to pay any tax under this Act during such year in respect of his turnover upto the taxable quantum.

(3) A dealer registered under the Central Sales Tax Act, 1956 (74 of 1956), who is not liable to pay tax under subsections (1) or (2) above, shall nevertheless be liable to pay on his sale of any goods in respect of which he has furnished a declaration under subsection (4) of section 8 of the said Act, or on the sale of any goods in the manufacture of which such goods have been used and every such dealer who is liable to pay tax shall be deemed to be a registered dealer.

(4) Nothing in subsections (1), (2) and (3) above, shall be deemed to render any dealer liable to tax on the sale or purchase of goods where such sale or purchase takes place:

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

(5) Every dealer who has become liable to pay tax under this Act shall continue to be liable until the expiry of three consecutive years during each of which his gross turnover has failed to amount to or exceed the taxable quantum and on the expiry of this period, his liability to pay tax under this Act shall cease.

(6) Every dealer whose liability to pay tax under this Act has ceased under the provisions of subsection (5) shall again be liable to pay tax with effect from the first of April of the year during which his gross turnover again amounts to or exceeds the taxable quantum:

Provided that such dealer shall not be liable to pay tax under this Act during such year in respect of his gross turnover upto the taxable quantum.

- (7) For the purpose of this section "taxable quantum" means
 - (i) in the case of a dealer who has more than one place of business in the State or, who is an importer or a manufacturer or a casual dealer or a non-resident dealer or an agent of a non-resident dealer.... Nil,
 - (ii) in the case of a dealer, being a lessor under an operating lease.....Rs.50,000;
 - (iii) in respect of any other dealer or contractor or lessor.....Rs.2,00,000

9. Charge of tax and rates.- (1) The tax leviable under section 8 for any year shall be charged on the taxable turnover during such year -

- (a) in respect of goods specified in Schedule II, at the first point of sale within the State, at the rate or rates specified in that Schedule;

Explanation

Where a person sells a substantial part of the goods manufactured by him or imported by him to another person for sale under the brand name of such other person, or for resale as distribution or selling agent or for resale after repacking or subjecting the goods to any other process not amounting to manufacture and the price charged on resale exceeds the sale price by more than such percentage as may be prescribed in respect of such goods or class of goods, the resale by such other person shall, subject to rules, if any, framed in this behalf, be deemed to be at the first point of sale within the State;

- (b) in respect of goods specified in Schedule III, at the point of last sale within the State, at the rates or rate specified in that Schedule;
- (c) in respect of goods specified in Schedule IV, at such point or points of sale and at such rate or rates as specified in that Schedule;
- (d) in respect of goods specified in Schedule V, at such point or points of purchase and at such rate or rates specified in that Schedule;
- (e) in respect of any transfer of property in goods (whether as goods or in any other form) involved in a works-contract of the nature specified in Schedule VI, at the rate or rates specified in that Schedule; and
- (f) in respect of any operating lease as specified in Schedule VII, at the rate or rates specified in that Schedule.

(2) The State Government may, by notification in the Official Gazette, add to or omit from any Schedule any entry or entries or transpose any entry or entries from one Schedule to

another or modify or vary any entry or entries or the rate or rates or the point or points of levy or the deductions specified in any Schedule and, thereupon, such Schedule or Schedules shall be deemed to have been amended accordingly.

Provided that, when a notification has been issued under this subsection or under sub-section (2) of section 10, there shall, unless the notification is in the meantime resented be introduced in the Legislative Assembly if it is in session then or if the Legislative Assembly is not then in session in the session next following, a Bill on behalf of the Government to give effect to the addition, deletion or alteration made by the notification and such notification shall cease to have effect when such Bill becomes law, whether with or without any modification but without prejudice to the validity of any thing previously done under such notification.

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

(3) For the purposes of this section "taxable turnover" means the gross turnover during the year as reduced by -

- (i) the turnover during such year of goods exempted under section 10;
- (ii) in respect of goods specified in Schedule II, the turnover during such year of goods which is shown, to the satisfaction of the assessing authority, to have been subjected to tax in the State;
- (iii) in respect of goods specified in Schedule III, the turnover during such year of sales to registered dealers of goods specified in the purchasing dealers' certificate of registration as being intended for resale within the State or of containers or other material for the packing of such goods;
- (iv) in respect of goods involved in any works-contract specified in Schedule VI -
 - (a) the turnover relating to declared goods; and
 - (b) so much of the labour and other charges incurred by the dealer after the transfer of property in the goods involved in the works contract or at the option of the dealer, such percentage towards labour and other charges of the gross turnover after deducting therefrom the turnover relating to declared goods as is specified in that Schedule;
- (v) such other amounts as may be prescribed; and
- (vi) from the resultant balance an amount arrived at by applying the following formula -

Rate of tax X Resultant balance as mentioned above

100 + rate of tax

Explanation.-

Where the taxable turnover of a dealer is taxable at different rates or the goods are specified in different Schedules, the aforesaid formula shall be applied separately in respect of each such part of the turnover.

(4) Notwithstanding anything contained in the foregoing provisions of this section, where a dealer shows to the satisfaction of the assessing authority that he has paid on the purchases made by him of raw materials, components or fuel used by him in the manufacture of any goods which have actually been sold by him within the State, tax exceeding an amount calculated at the rate of four percent on such purchases credit shall be allowed to him against the tax determined as payable by him on the sale of such manufactured goods of an amount equal to such excess or the tax so determined, whichever is less.

(5) Notwithstanding anything contained in the foregoing provisions of this section, tax shall be payable on the turnover of purchases in the following cases at the same rate at which but for the circumstances mentioned below tax would have been leviable under the foregoing provisions, namely:-

- (i) where a dealer, in the course of business, purchases any goods (the sale or purchase of which is liable to tax under this Act) from a registered dealer in circumstances in which no tax is payable under this section; or
 - (ii) where a dealer, in the course of business, purchases any goods (the sale or purchase of which is liable to tax under this Act) from a person other than a registered dealer; and such goods or the goods in the manufacture of which they have been used are not sold in the State within such period as may be prescribed.
- (6) Notwithstanding anything contained in the foregoing provisions of this section where the certificate of registration of a dealer is cancelled on the death of the dealer or the discontinuance or transfer of his business or, where the dealer is a Hindu undivided family, company, firm or other body of individuals, on disruption, liquidation or dissolution, as the case may be or on the discontinuance or transfer of business, subject to such exceptions as may be prescribed, tax shall be payable on all purchases made by the dealer in the State after registration as remain unsold at the time of such cancellation.

10. Exemptions.- (1) Subject to the conditions and exceptions, if any, set out in Schedule I, the sales of goods specified therein shall be exempt from tax under this Act.

(2) The State Government may, by notification in the Official Gazette, add to, amend or otherwise modify, the said Schedule and thereupon the said Schedule shall be deemed to have been amended accordingly.

(3) The State Government may, by notification in the Official Gazette, make an exemption or reduction in rate in respect of any tax or interest payable under this Act on the sale or purchase of any specified class of goods -

- (i) at all or any specified point or points of sale in a series of sales by successive dealers; or
- (ii) by any specified class of persons in regard to the whole or any part of their turnover:

Provided that any such exemption or reduction may extend to the whole of the State or to any specified area or areas therein and be subject to such restrictions and conditions as may be specified in the notification.

Provided further that any notification issued under this subsection shall cease to have effect on the expiration of a period of three years from the date of its issue.

(4) The State Government may, from to time by notification in the Official Gazette frame one or more schemes for the grant of relief to any class of industries newly established within the State or within any specified part of the State on or after such date as may be specified in such scheme and producing such goods as may be specified therein by way of full or partial exemption of any tax payable under this Act on the raw materials or other inputs purchased by them within the State or on the manufactured goods sold by them within the State or in the course of inter-State trade or commerce for such period or periods as may be specified or by way of deferment of the tax payable by them under this Act for such period as may be specified and subject to such other restrictions and conditions as may be provided in such scheme or schemes.

11. Burden of proof.— (1) The burden of proving that in respect of any sale or purchase effected by a dealer, he is not liable to tax under this Act or is liable to tax at a lower rate of tax, or that he is entitled to a deduction in determining the taxable turnover, shall be on him.

(2) Without prejudice to the generality of the foregoing provisions, the State Government may, in respect of the matters falling under subsection (1), by rules prescribe the type of transactions in relation to which and the circumstances and manner in which and the conditions and restrictions subject to which a dealer shall have to furnish documentary evidence by way of a declaration in a prescribed form obtained in the prescribed manner, or otherwise, and such declaration or other document shall constitute prima facie evidence of the facts stated therein.

CHAPTER IV

REGISTRATION OF DEALERS, ETC

12. Compulsory Registration.— (1) Every dealer liable to pay tax under the provisions of this Act shall get himself registered with the Assessing Officer and shall possess a certificate of registration.

(2) Every dealer required by subsection (1) to be registered shall apply for registration to the Assessing Officer in the prescribed manner and obtain a certificate of registration.

(3) On receipt of an application under subsection (2) the Assessing Officer shall, if he is satisfied after such inquiry as may be deemed necessary that the application is in order, register the applicant.

13. Registration by Assessing Officer.— (1) The Assessing Officer may, in addition to taking any other action under the provisions of this Act, require any dealer who, in his opinion, is liable to registration but has not made an application in this behalf, to apply for registration and register him:

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

(2) The State Government may by rules provide that such classes of dealers carrying on business in such goods or such classes of goods as may be specified therein shall also seek registration notwithstanding that they may not be liable to pay tax under this Act if their gross turnover exceeds such limits as may be prescribed.

(3) Registration made under subsection (1) or subsection (2) shall take effect as if it had been made on application under subsection (2) of section 12.

14. Voluntary Registration.— (1) Subject to such restrictions and conditions as may be prescribed, any dealer whose total gross turnover during a year amounts to or exceeds such amount as may be prescribed and any person who intends to establish a business in the State for the purpose of manufacturing goods of a value exceeding such amount as may be prescribed may, notwithstanding that he may not be liable to pay tax under section 3 apply in the manner referred to in subsection (2) of section 12 for registration under this Act.

(2) The provisions of subsection (3) of section 12 and of section 15 shall apply in respect of applications for registration under subsection (1) of this section.

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

(4) The registration effected under the provisions of this section shall be in force for a period of not more than three complete years and shall be deemed to have been cancelled on the expiry of the said three years unless the Assessing Officer on an application made by the dealer in the prescribed manner is satisfied that the provisions of section 12 have since become applicable to him.

(5) A dealer registered under this section may, subject to the provisions of subsection (4), apply not less than six months before the end of a year to the Assessing Officer for cancellation of such registration to take effect at the end of the year in which the application for such cancellation is made; and the said authority shall, unless the dealer is liable to pay tax under section 8, cancel the registration accordingly.

15. Certificate of registration.- (1) A dealer registered under section 12 or section 13 or section 14 shall be granted a certificate of registration in such form as may be prescribed, which shall specify the class or classes of goods in which at the time of the grant of the said certificate the dealer carries on business, or the nature of his business as a contractor or lessor, as the case may be, and such other particulars as may be prescribed.

(2) Subject to any rules framed in this behalf the Assessing Officer may, on petition or otherwise, cancel or amend from time to time any certificate of registration.

(3) The Assessing Officer shall cancel the certificate of registration when -

- (i) the business in respect of which the certificate was issued has been discontinued or transferred, or
- (ii) the liability to pay tax in respect of such business has ceased under this Act.

16. Security to be furnished or licence permit, etc. to be obtained in certain cases.- (1) Subject to any rules framed in this behalf the Assessing Officer may, as a condition of the grant of registration to a dealer or at any time after such grant, for reasons to be recorded in writing and after giving the dealer an opportunity of being heard, require him to furnish in the prescribed manner and within the time specified by him such security or such additional security as may be considered necessary-

- (a) for the proper and timely payment of the amount of any tax or other sum payable under this Act; or
- (b) for the proper use and safe custody of any declaration furnished or any form prescribed under subsection (2) of section 11 supplied under this Act.

(2) The Assessing Officer may, for good and sufficient cause and after giving the dealer an opportunity of being heard, by order forfeit the whole or any part of the security furnished under subsection (1) for the recovery of any amount referred to in clause (a) of subsection (1) or subsection (4) remaining unpaid or of any loss caused to the Government by any negligence or wilful default on his part in ensuring the proper use or safe custody of any declaration or form referred to in clause (b) of that subsection.

(3) Where, by reason of an order under subsection (2), the security furnished by the dealer is forfeited in whole or is rendered insufficient, he shall 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 the order.

(4) Without prejudice to the requirements under this Chapter, the State Government may, with a view to preventing avoidance or evasion of tax or for facilitating the assessment and collection of tax, by rules made in this behalf, require any dealer or class or classes of dealers to obtain from the Assessing Officer, a licence, permit, approval, authorisation or recognition or any other document by whatever name called in respect of such dealings in such goods as may be provided in the rules in such manner and within such time as may be prescribed and further require that such dealer or class of dealers to furnish such security or additional security as may be prescribed.

CHAPTER V

RETURN, ASSESSMENT AND RE-ASSESSMENT

17. Payment of tax and return.— (1) Tax payable under this Act shall be paid in such manner and at such intervals as may be prescribed:

Provided that different intervals may be prescribed for different categories of dealers.

(2) Any payment of tax made under subsection (1) shall be accompanied by a statement in the prescribed form of the turnover of sales or of purchases in respect of which the tax is paid.

(3) Every registered dealer and every dealer who may be required so to do by the Assessing Officer by notice issued in the prescribed manner shall furnish in addition to the statement or statements if any furnished under subsection (1) an annual return in the prescribed form accompanied by such statements as may be prescribed within such time as may be prescribed.

Provided that the State Government may, by rules framed in this behalf, require any dealer or class or classes of dealers to file, apart from the annual return, a quarterly return in such form, in such manner and within such time limits as may be prescribed.

(4) If any dealer has not furnished a return within the time allowed under subsection (3) or, having furnished a return under that subsection, discovers any omission or other errors therein, he may, without prejudice to the charge of any interest or penalty under Chapter VI, furnish a return or a revised return, as the case may be, at any time before the assessment is made and such return shall be accompanied by a receipt showing payment of tax due, if any, on the basis of such return.

(5) Every return under this section shall be signed and verified in the prescribed manner -

- (a) in the case of an individual, by the individual himself, and where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
- (b) in the case of a Hindu undivided family by the Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs by any other adult member of such family;
- (c) in any case of a company or local authority, by the principal officer thereof;
- (d) in the case of a firm by any partner thereof;
- (e) in the case of any other association by any member of the association or the principal officer there; and
- (f) in the case of any other person by that person or by some person competent to act on his behalf.

18. Assessment.- (1) The amount of tax payable by a dealer under this Act shall ordinarily be assessed separately for each year:

Provided that the Assessing Officer, if he considers it necessary so to do, may, subject to rules, if any, made in this behalf, make an assessment of the tax due from any dealer for a part of the year or a provisional or advance assessment on the basis of the estimated turnover before the expiry of any year.

(2) Where a return has been furnished under section 17, the Assessing Officer may, in the case of such classes of registered dealers as may be prescribed and subject to such conditions as may be prescribed, make an assessment of the tax payable by the dealer on the basis of the return furnished by him and the documents accompanying such return, without requiring the presence of the dealer or the production by him of any evidence in support of the return.

(3) The Assessing Officer may -

- (a) in a case where an assessment has been made under subsection (2), subject to such conditions as may be prescribed, and
- (b) in a case not falling under subsection (2) whether a return has been furnished or not,

serve on the dealer a notice in the prescribed form requiring him, on the date and at the place specified therein, to appear before him and to produce or cause to be produced any evidence on which he may rely in support of his return, or produce or cause to be produced such accounts or documents as the Assessing Officer may specify in such notice.

(4) On the day specified in the notice issued under subsection (3), or as soon afterwards as may be, after considering such evidence as the assessee may produce and such other evidence on specified points as the Assessing Officer may, in the course of the hearing require and after taking into account all relevant material which he has gathered, make an assessment or, in a case where an assessment has been made under subsection (2) a fresh assessment of the tax payable by the dealer.

(5) If any dealer fails to comply with all the terms of a notice issued under subsection (3), the Assessing Officer may, after taking into account all relevant material on record make an assessment to the best of his judgement, of the tax payable by the dealer.

(6) If upon information which has come into his possession the Assessing Officer is satisfied that any dealer who is liable to pay taxes under this Act for any period has failed to get himself registered in the manner provided in Chapter IV or otherwise has remained unregistered he may, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgement the amount of tax due from such dealer for such period.

19. Turnover escaping assessment.- (1) Where after a dealer has been assessed under section 18 for any year or part thereof, the Assessing Officer has reason to believe that the whole or any part of the turnover of a dealer in respect of any period has escaped assessment to tax or has been under-assessed or has been assessed at a rate lower than the rate at which he is assessable, or any exemption or deduction or relief has been wrongly allowed or allowed in excess, the Assessing Officer may -

- (a) in a case where the dealer has concealed, omitted or failed to disclose fully and truly the particulars of such turnover or furnished incorrect or incomplete particulars of his turnover or the rate of tax applicable to any part thereof or made incorrect claim for any exemption, deduction or relief, within eight years from the date of the relevant year for which or part of which the assessment or reassessment is required to be made; and
- (b) in any other case, within four years from the end of the relevant year for which or part of which an assessment or re-assessment is required to be made;

serve a notice on the dealer and, after giving the dealer an opportunity of being heard and making such inquiry as he considers necessary, proceed to determine to the best of his judgement, the amount of tax due from the dealer in respect of such turnover:

Provided that, no such notice shall be issued in a case falling under clause (a) after the expiry of four years from the end of the year in which an assessment under section 18 for the relevant year was first made in his case unless the Commissioner is satisfied on the reasons recorded that it is a fit case for the issue of such notice:

Provided further that notwithstanding anything contained in subsection (4) of section 3, the powers of the Commissioner to accord sanction for the issue of a notice as aforesaid shall not be delegated by him to any person appointed to assist him under subsection (1) of section 3.

Provided also that a notice under the foregoing provisions may be issued at any time for the purpose of giving effect to any finding or direction contained in an order passed in any proceeding under this Act by way of appeal, revision or reference.

Explanation

For the purposes of this section production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of this section

(2) A notice issued under subsection (1) may contain all or any of the requirements which may be included in a notice under subsection (3) of section 17; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that subsection.

20. Time limit for completion of assessment and reassessments.- (1) No assessment shall be made under section 18 after the expiry of two years from the end of the year in respect of which or part of which the assessment is made or, in a case where the dealer has

furnished a return or a revised return under subsection (4) of section 17, after the expiry of one year from the end of the year in which such return or revised return is received by the Assessing Officer, whichever is later.

Provided that, in a case falling under subsection (6) of section 18 the assessment may be made at any time before the expiry of eight years from the end of the year in respect of which or part of which the assessment is made under that subsection.

- (2) No reassessment under section 19 shall be made -
 - (a) in a case falling under clause (a) of that section, after the expiry of three years; and
 - (b) in a case falling under clause (b) of that section, after the expiry of one year,

from the end of the year in which the notice under that section is served on the dealer.

(3) Notwithstanding anything contained in subsection (1) or subsection (2) an assessment, reassessment or recomputation to give effect to any order or direction in appeal revision or reference, may be made at any time before the expiry of two years from the end of the year in which the order in appeal revision or reference is communicated to the Assessing Officer.

Explanation

In computing the period of limitation for the purposes of subsection (1) or subsection (2) the period during which the assessment proceeding is stayed by an order or injunction or any court or other authority shall be excluded and such proceeding may be completed within one year from the end of the year in which the stay was vacated as if the limitation period had not expired.

21. Composition of tax payable.- The Commissioner may, in such cases or classes of cases and subject to such conditions and restrictions as may be prescribed permit any dealer or class of dealers to pay in lieu of the amount of the tax payable by him under any of the foregoing provisions a lump sum determined in the prescribed manner, by way of composition and any order made by the Assessing Officer in pursuance of such determination shall be deemed to be an assessment duly made under this Act.

22. Assessment deemed to be made in certain cases.- Where a return has been furnished by a dealer for any period and no assessment has been made under any of the foregoing provisions within the time limits specified in section 24 then, notwithstanding anything contained in that section the assessment for that period shall be deemed to have been completed on the last day on which an assessment could have been made in respect of the return under the provisions of that section and the provisions of this Act shall, so far as may be apply accordingly.

CHAPTER VI

CHARGE OF INTEREST AND IMPOSITION OF PENALTY

23. **Interest payable by dealer.**-- (1) Where a dealer fails to pay the full amount of the tax payable by him in accordance with the statements furnished by him under subsection (2) of section 17 or the return furnished by him under subsection (3) of section 17 on or before the date or dates on which such payments were due to be paid under subsection (1) of that section, he shall pay simple interest at the rate of one and one-half per centum for each month on the amount of the tax remaining so unpaid at the commencement of each such month from the first day of the month next following the date on or before which such tax was payable upto the end of the month immediately preceding the month in which such amount is paid in full or upto the end of the month immediately preceding the month in which an assessment is made, whichever is earlier.

(2) Where a dealer fails to make payment of the full amount of the tax due on the basis of a notice of demand issued under subsection (1) of section 26 on or before the date fixed for its payment under subsection (2) of that section, he shall pay simple interest at the rate of one and one-half per centum for each month on so much of such tax as remains unpaid at the commencement of each such month from the first day of the month next following the aforesaid due date upto the month immediately preceding the month in which the full amount of the assessed tax is paid, or upto the month preceding the month in which any proceeding under section 28 is commenced, whichever is earlier, whether or not the payment of such tax has been stayed or time for its payment allowed by a court or by any authority under this Act.

(3) Where the amount of tax referred to in sub-section (2) exceeds by twenty per centum or more the amount of tax payable by him in accordance with the statement furnished by him under sub-section(2) of section 17 or the return furnished by him under sub-section (3) of section 17, or where no such statement or return has been furnished, the dealer shall pay, in addition to any interest payable by him under sub-section (1) or sub-section (2) simple interest at the rate of one and one-half per centum for each month on such excess or, as the case may be, on the entire amount of the tax referred to in sub-section(2), from the first day of the month immediately following the period for which the assessment is made upto the end of the month immediately preceding the month in which the assessment is made.

(4) Where any interest payable by any dealer under the foregoing provisions is not paid in full, the Assessing Officer shall determine the amount payable by an order in writing.

(5) If as a result of any proceeding under this Act the amount of tax in respect of which interest is payable by the dealer under the foregoing provisions is varied the Assessing Officer shall correspondingly reduce or enhance, as the case may be, the interest so payable.

24. **Penalties imposable.**-- (1) If a person or dealer -

- (a) being liable to pay tax under this Act, fails to get himself registered; or
- (b) not being a registered dealer, represents, when purchasing goods, that he is a registered dealer; or
- (c) being a registered dealer, represents when purchasing goods or class of goods not covered by his certificate

- of registration that such goods are covered by such certificate; or
- (d) contravenes the terms of any declaration made by him under subsection (2) of section 11 or violates any condition or furnishes inaccurate particulars in any document furnished by him under that section; or
 - (e) fails to furnish without reasonable cause any return or statement as required under section 17 in the prescribed manner and within the prescribed time; or
 - (f) fails to pay without reasonable cause the tax payable by him under subsection (1) of section 17 or under any notice of demand issued under section 26 within the time allowed for such payment; or
 - (g) conceals any part of his gross turnover or taxable turnover or any particulars thereof or furnishes incorrect particulars of such turnover in any return or statement furnished under section 17 or make any incorrect claim for exemption, reduction in the tax payable or other relief under any provision of this Act; or
 - (h) transports any goods in contravention of the provisions of section 48, or
 - (i) being liable to deduct tax at source and pay the same to the credit of the State Government under section 28 omits to do so.

the Assessing Officer may after giving such person or dealer, a reasonable opportunity of being heard, by an order in writing setting forth such particulars as may be prescribed, direct that he shall, in addition to any tax or interest payable by him, pay by way of penalty a sum -

- (i) in a case falling under clause (a), not exceeding the amount of the assessed tax;
- (ii) in a case falling under clause (b) or clause (c) or clause (d) or clause (g), not exceeding one and one-half times the amount of tax sought to be thereby evaded;
- (iii) in a case falling under clause (e), not exceeding one-half of the amount of the assessed tax;
- (iv) in a case falling under clause (f), not exceeding the amount of tax remaining unpaid on the expiry of the time allowed for its payment;
- (v) in a case falling under clause (h), an amount not exceeding twenty five per cent of the value of the goods determined in the prescribed manner; and
- (vi) in a case falling under clause (i), an amount not exceeding the amount omitted to be deducted and paid.

Explanation

For the purpose of this section 'assessed tax' means the amount of tax determined as payable on the basis of an assessment or reassessment made under this Act.

(2) No proceeding for the levy of penalty for any default under this section shall be commenced after the expiry of two years from the end of the year during which the proceeding in the course of which the Assessing Officer is satisfied that such default has been committed was completed and the penalty proceeding shall be completed within two years from the end of the year in which such proceedings became final.

CHAPTER VII

PAYMENT, COLLECTION, RECOVERY AND REFUND OF TAX OR OTHER SUMS

25. Rounding off tax, interest and penalty.— (1) For the purpose of calculation of tax, the taxable turnover, and where different portions of the taxable turnover are liable to tax at different rates, each such portion, shall be rounded off to the nearest multiple of ten rupees and, for this purpose, where such amount contains a part of ten rupees, if such part is five rupees or more, it shall be increased to ten rupees and, if such part is less than five rupees, it shall be ignored.

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

Provided that nothing contained in this subsection or subsection (1) shall apply for the purpose of collection of any amount by way of tax under this Act.

(3) In calculating interest payable to or by the State Government, 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 and, for this purpose, where such amount contains a part of one hundred rupees, if such part is fifty rupees or more, it shall be increased to one hundred rupees and, if such part is less than fifty rupees, it shall be ignored.

26. Notice of demand and payment. - (1) When any tax, interest, penalty or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the dealer or person liable to pay such tax, interest, penalty, or other sum a notice of demand in the prescribed form specifying the amount or amounts so payable.

(2) Any amount specified as payable in the notice of demand issued under subsection (1) shall be paid within the time specified in such notice and where no time is specified, within 30 days of the service of such notice, and in such manner and at such place as may be prescribed.

(3) On an application made before the expiry of the due date under subsection (2), the Assessing Officer may, in respect of any particular dealer or person and for reasons to be recorded in writing, extend the time for payment or allow payment by instalments or grant stay subject to payment of interest under subsection (2) or subsection (3) of section 23 and, on such terms and conditions as the Assessing Officer may think fit to impose in the circumstances of the case.

(4) If the amount specified in the demand notice is not paid within the time specified in subsection (2) or extended under subsection (3), as the case may be, the dealer or the person liable therefor shall be deemed to be in default in respect of that amount.

(5) In a case where payment by instalments is allowed under subsection (3) and the dealer or the person liable for such payment commits default in paying any one of the instalments within the time fixed under that subsection, the dealer or the person aforesaid shall be deemed to be in default in respect of the whole of the amount then outstanding and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

27. Special mode of recovery. - (1) Notwithstanding anything contained in any law or contract to the contrary, the Assessing Officer may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last known address, require any person including the Government or a local authority.

- (a) from whom any amount of money is due, or may become due, to a dealer or person liable on whom notice has been served under subsection (1) of section 26; or
- (b) who holds or may subsequently hold money for or on account of such dealer or person liable.

to pay to the Assessing Officer, either forthwith upon the money becoming due or being held or within the time specified in the first mentioned notice (but not before the money becomes due or is held as aforesaid) so much of the money as is sufficient to pay the amount due by the dealer or person liable in respect any amount payable under this Act, or the whole of the money where it is equal to or less than that amount

Explanation

For the purposes of this subsection, the amount of money due to a dealer or a person from, or money held for or on account of a dealer or person by, any person, shall be calculated by the Assessing Officer after deducting therefrom such claims, if any, lawfully subsisting, as may have fallen due for payment by such dealer or person liable to such person.

(2) The Assessing Officer may amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

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

(4) Any person discharging any liability to the dealer or person liable after receipt of the notice referred to in this section, shall be personally liable to the Assessing Officer to the extent of the liability discharged or to the extent of the liability of the dealer or person liable for tax, whichever is less and the provisions of this Act shall, so far as may be, apply as if such person were a dealer in default.

(5) Where any person to whom a notice under this section is sent, proves to the satisfaction of the Assessing Officer that the sum demanded or any part thereof is not due to the dealer or person liable or that he does not hold any money for or on account of the dealer or person liable, then nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Assessing Officer.

(6) Any amount of money which the aforesaid person is required to pay to the Assessing Officer, or for which he is personally liable to the Assessing Officer under this section shall, if it remains unpaid, be recoverable as arrear of tax payable under this Act.

(7) The Assessing Officer may apply to the court in whose custody there is money belonging to the dealer or person liable for payment to him of the entire amount of such money or, if it is more than the amount of tax, penalty or other sum due, an amount sufficient to discharge such amount:

Provided that any dues or property exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure 1908 (Act 5 of 1908) shall be exempt from any requisition made under this section.

(8) Where a security other than in the form of a surety bond has been furnished by a dealer under subsection (1) of section 16 the Assessing Officer may for good and sufficient reasons in writing, realise any amount of tax, interest, penalty or other sum remaining unpaid as aforesaid or part thereof by ordering forfeiture of the whole or any part of such security.

(9) Where the amount of tax interest penalty or other sum payable under subsection (1) of section 26 remains unpaid, it may be recovered as an arrear of land revenue and for this purpose the State Government may, by notification in the Official Gazette empower the Commissioner or any person appointed to assist the Commissioner under subsection (1) of section 3 to exercise the power under the Land Revenue Recovery Code for the purpose of recovering the sums referred to in subsection (1).

28. Special provisions relating to deduction of tax at source in certain cases. - (1) Notwithstanding anything contained in any other provisions of this Act -

- (a) every person (not being an individual or a Hindu undivided family) responsible for making any payment or discharging any liability on account of any amount

- payable for the transfer of property in goods (whether as goods or in some other form) involved in a works contract specified in Schedule VI or for the transfer of the right to use any goods for any purpose,
- (b) every person responsible for paying sale price or consideration or any amount purporting to be the full or part payment of sale price or consideration in respect of any sale or supply of goods liable to tax under this Act to the State Government or to a company, corporation, board, authority, undertaking or any other body by whatever name called, owned, financed or controlled wholly or substantially by the State Government, or a public company shall, at the time of credit to the account of or payment to the payee of such amount in cash, by cheque, by adjustment or in any other manner whatsoever, deduct tax therefrom in the prescribed manner at the prescribed rate:

Provided that no deduction shall be made under this subsection where the amount paid or credited by such person in any financial year does not exceed the prescribed amount.

(2) Any tax deducted under subsection (1) shall be paid to the account of the State Government in such manner and within such time as may be prescribed.

(3) The person making any deduction of tax under subsection (1) and paying it to the account of the State Government shall issue a certificate of tax deduction to the payee in such manner and in such form as may be prescribed.

(4) Any tax deducted under subsection (1) and paid to the account of the State Government shall, on production of the certificate of tax deduction under subsection (3) by the payee, be deemed to be tax paid by the payee for the relevant period and shall be given credit in his assessment accordingly.

29. Period for commencing recovery proceedings. - Save as otherwise provided, no proceedings for the recovery of tax interest, penalty or other sum payable under this Act shall be commenced after the expiration of two years from the last day of the year in which the dealer or person liable is deemed to be in default.

Explanation. 1

In computing the aforesaid period of two years, any period during which the payment of the tax, interest, penalty or other sum is stayed by an order of a court or by any authority under this Act shall be excluded.

Explanation. 2

A proceeding for the recovery of any tax interest penalty or other sum shall be deemed to have been commenced within the meaning of this section if some action is taken to recover the whole or any part of such tax, interest, penalty or other sum within the period herein before referred to.

30. Recovery by suit or under other law not affected. - The several modes of recovery specified in this Chapter shall not affect in any way -

- (a) any other law for the time being in force relating to the recovery of debts due to the State Government ; or
- (b) the right of the State Government to institute a suit for the recovery of the arrears due from the assessee;

and it shall be lawful for the Assessing Officer or the State Government, as the case may be, to have recourse to any such law or suit, notwithstanding that the tax, interest, penalty or other sum due is being recovered from the assessee by any mode specified in this Chapter.

31. Certain transfers to be void :- (1) Where, during the pendency of any proceeding for the determination of any liability in respect of tax, interest, penalty or other sum payable by him under this Act or after the completion thereof, any dealer or person liable to pay any tax, interests, penalty or any other sum 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, such charge or transfer shall be void as against any claim in respect of such tax, interest, penalty or other sum payable by such dealer or person as a result of the completion of the said proceeding or otherwise:

Provided that such charge or transfer shall not be void if it is made -

- (i) for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax, interest, penalty or other sum payable by such dealer or person: or
- (ii) with the previous permission of the Assessing Officer.

(2) This section applies to cases where, in the opinion of the Assessing Officer the amount of tax, interest, penalty or other sum payable or likely to be payable or the value of the assets charged or transferred exceeds fifty thousand rupees.

Explanation

In this section, "assets" means land building machinery plant, motor vehicles, shares, securities and fixed deposits in banks, to the extent to which any of the assets aforesaid do not

form part of the stock-in-trade of the business of the assessee or otherwise do not become liable to tax under this Act on their sale or transfer.

32. Refunds. - (1) Subject to any rules made in this behalf, the Assessing Officer shall, on a claim being made in that behalf before the expiry of four years from the end of the period to which such payment relates, refund to the dealer the amount of any tax, interest penalty or other sum paid by such dealer in respect of any period in excess of the amount due from him under this Act for that period either by payment or by deduction or adjustment of such excess from the amount of tax, interest, penalty or other sum due from him in respect of any other period:

Provided that where any such refund arises as a result of any proceeding under this Act not being an assessment, made on the basis of the return furnished by the dealer without requiring his presence, the Assessing Officer shall grant the same without any application from the dealer in that behalf.

(2) Where any tax is levied under this Act on the sale or purchase of any goods referred to in section 14 of the Central Sales Tax Act, 1956 (Act 74 of 1956) and such goods are subsequently sold in the course of inter-State trade or commerce, the dealer paying tax on such sales under that Act shall be entitled to get the amount of tax paid under this Act refunded to him on application by him to the Assessing Officer in the prescribed manner within one year from the date of such sale and the Assessing Officer shall, if the application is in order, refund the amount in such manner as may be prescribed.

(3) Nothing contained in subsection (1) or subsection (2) shall be deemed to empower the Assessing Officer to amend, vary or rescind any assessment or to amend, vary or rescind any order passed in any other proceedings under this Act or to confer on a dealer any relief in addition to what has been allowed to him in the assessment or other proceedings.

33. Powers to withhold refunds in certain cases. - Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or, where any other proceeding under this Act is pending and the Assessing Officer is of the opinion that the grant of refund is likely to adversely affect the revenue, he may, with the previous approval of the Commissioner, withhold the refund till such time as may be deemed necessary by the Commissioner.

34. Interest on refunds. - (1) Any person entitled to a refund of tax under subsection (1) or subsection (2) of section 32 shall be entitled to receive simple interest from the State Government at the rate of one and one-half per centum on the amount of the refund for each month calculated,

- (a) in a case where such refund relates to any excess paid before or at the time of furnishing the return under subsection (3) of section 17 from the first day of the month next following the month in which such return is actually furnished, and
- (b) in any other case, from the first day of the month next following the month in which such payment was actually made.

upto the month immediately preceding the month in which the refund is actually granted to him.

(2) If, as a result of any proceeding under this Act, the amount in respect of which interest is payable by the State Government under the foregoing provisions is varied, the Assessing Officer shall correspondingly enhance or reduce, as the case may be, the interest so payable.

CHAPTER VIII

APPEAL, REVISION, DETERMINATION AND RECTIFICATION

35. Appeal to appellate authority and Tribunal.- (1) A dealer or a person aggrieved by any final order passed by the Assessing Officer in the exercise or powers conferred on him by or under this Act may appeal to the appellate authority against such order within thirty days from the date on which the said order was served on him.

Explanation.-

In this subsection and in subsections (3) and (4) "final order" means an order, not being in the nature of an administrative order or interlocutory order, which determines the issues arising under this Act before the authority passing the order finally in so far as that authority is concerned.

(2) An appeal to the Tribunal shall lie -

- (a) by a dealer or a person aggrieved by any final order passed under this Act by the Commissioner in so far as such order relates to the assessment of turnover or the tax payable or to the imposition of any penalty under this Act or to any determination under section 40; and
- (b) by a dealer or a person or the Commissioner aggrieved by any final order passed in appeal by the appellate authority in so far as such order relates to the assessment of turnover or the tax payable or to the imposition of any penalty under this Act within sixty days from the date on which such order was served on him.

(3) Notwithstanding anything contained in subsection (1) or subsection (2), no appeal shall lie against -

- (a) an assessment made under subsection (2) of section 18; or
- (b) a determination of tax made under section 21; or
- (c) an order levying interest under section 23; or
- (d) an order withholding a refund under section 33; or
- (e) an order in revision made by the Commissioner under subsection (2) of section 38; or
- (f) an order passed by the Commissioner under section 39; or
- (g) an order pertaining to the seizure or retention of account books, registers and other documents under section 47; or
- (h) an order under section 48; or
- (i) an order sanctioning prosecution under any provision of this Act or compounding or refusing to compound any offences under section 73; or
- (j) such other orders as may be prescribed.

(4) Every appeal under subsection (1) or subsection (2) shall be in the prescribed form and verified in the prescribed manner and shall be accompanied by such documents as may be prescribed.

(5) The appellate authority or the Tribunal may admit an appeal after the expiration of the aforesaid period mentioned in subsection (1) or, as the case may be, in subsection (2) if it is satisfied that the appellant had sufficient cause for not presenting the appeal within that period.

(6) No appeal under subsection (1) or subsection (2) against an order of assessment of tax with or without penalty or against an order imposing penalty shall lie unless such appeal is filed accompanied by satisfactory proof of the payment of tax including penalty, if any, which is admitted to be due or twenty per cent of the amount of tax including penalty, if any, which has been assessed or levied whichever is higher:

Provided that the appellate authority or the Tribunal may, if it thinks fit, for reasons to be recorded in writing, and subject to furnishing of such security as such authority may deem fit, admit an appeal against such order with part payment or without any payment of the disputed amount of tax including penalty, if any, required under this subsection with a view to mitigating undue hardship which is likely to be caused to the dealer or person if the payment of such disputed amount is insisted on.

(7) The appellate authority or the Tribunal before whom an appeal is pending may, during the pendency of such appeal and subject to the provisions of subsection (6) stay recovery of the balance amount of tax or penalty which is not admitted by the appellant to be due from him on such terms and such conditions as may be specified in the order granting such stay.

(8) Any party to an appeal before the appellate authority may, within sixty days of the receipt of a notice that an appeal against the order of the prescribed authority has been preferred by the other party to the Tribunal, file a memorandum of cross objections in the prescribed manner against any part of the order passed by the appellate authority and such memorandum shall be disposed of by the Tribunal as if it were an appeal.

36. Procedure in appeal.— (1) The appellate authority, or, as the case may be, the Tribunal shall fix a day and place for the hearing of the appeal and shall give notice of the same to both the parties to the appeal.

(2) The appellate authority, or, as the case may be, the Tribunal may, at the hearing of the appeal, after giving the authority which passed the order under appeal an opportunity of being heard, allow the appellant to go into any ground of appeal not specified in the grounds of appeal or to produce any evidence, whether oral or documentary, not produced at any earlier stage in the proceedings in so far as such ground or evidence does not relate to any facts not furnished to or to any claim not made

before the lower authority if it is satisfied that the omission of the ground in the form of appeal or the failure to produce the evidence at the earlier stage was not wilful or unreasonable.

(3) In disposing of an appeal against any order, appellate authority or as the case may be, the Tribunal may -

- (a) summarily reject the appeal unless the requirements of section 35 and any rules framed thereunder have been duly complied with; or
- (b) confirm or annul the order; or
- (c) vary the order so as either to enhance or reduce the tax, penalty or any other sum payable by the dealer; or
- (d) set aside the order and issue directions for a fresh order to be made; or
- (e) pass such other order as he or it thinks fit.

(4) The order of the appellate authority or as the case may be, the Tribunal, shall be in writing and state the points for determination, the decision thereon and the reasons for the decision.

(5) On the disposal of the appeal, the appellate authority or as the case may be, the Tribunal shall communicate the order passed by him or it to both the parties to the appeal.

(6) Save as provided in section 37 every order passed by the Tribunal in appeal under the section shall be final.

37. Appeal to Special Appellate Tribunal.- (1) The Commissioner or any person aggrieved by any order of the Tribunal may, within ninety days of the date on which he is served with the notice of such order, prefer an appeal against such order to the Special Appellate Tribunal on any question of law:

Provided that the Special Appellate Tribunal may, on an application made in this behalf before the expiry of the said period of ninety days, permit by order, the appeal to be presented within such further period as may be specified therein, if the applicant satisfies the Special Appellate Tribunal that he has sufficient cause for not being able to present the appeal within the said period of ninety days.

(2) An appeal under subsection (1) shall be heard by a Bench of not less than two members of the Special Appellate Tribunal and shall be decided in accordance with the opinion of such members or of the majority, if any, of such members:

Provided that where there is no such majority the members shall state the point or points of law upon which they differ and the case shall be referred by the chairman of the special appellate tribunal for hearing on such point or points by one or more other members of the special appellate tribunal and the case shall then be heard upon that point or these points only and shall be decided according to the opinion of the majority of the members who have heard the case including those who first heard it.

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

(4) The costs of any appeal under this section shall be in the discretion of the Special Appellate Tribunal.

(5) Notwithstanding that an appeal has been made to the Special Appellate Tribunal, tax shall be payable in accordance with the assessment made in the case.

38. Revision of order by the Commissioner.— (1) The Commissioner may call for and examine the records of any proceeding under this Act and if he considers that any order passed therein by any person appointed under subsection (1) of section 3 to assist him is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the dealer or the person to whom the order relates an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order as the circumstances of the case justify, including an order enhancing or modifying the assessment of tax or penalty or cancelling such order and directing that a fresh order should be made:

Provided that no order under this subsection shall be made after the expiry of three years from the end of the financial year in which the order sought to be revised was made.

Explanation

The provisions of this subsection shall apply, notwithstanding that the order sought to be revised has been made the subject of any proceedings by way of appeal, in respect of matters not actually considered and decided in such proceedings.

(2) In the case of any order passed by a person appointed to assist the Commissioner under subsection (1) of section 3, not being an order to which subsection (1) applies, and not being an order against which on appeal under section 35 has been filed or an order in respect of which the time allowed for appeal under section 35 has not expired, the Commissioner may, either of his own motion or on an application made in the prescribed manner by the dealer or person affected by such order, call for the record of any proceedings under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, pass such orders thereon, not being an order prejudicial to the dealer or person to whom the order relates, as he thinks fit:

Provided that the Commissioner shall not revise any order under this subsection after the expiry of two years from the end of the financial year in which such order was made:

Provided further that where an application for revision has been made before the expiry of two years as aforesaid the order in revision may be made at any time.

(3) Notwithstanding anything contained in subsection (4) of section 3, the Commissioner shall not delegate any of the powers or functions under this section to any officer appointed to assist him under subsection (1) of that section who is below the rank of a Joint Commissioner.

39. Waiver of interest and penalty by Commissioner.- (1) Where an order has been made charging interest or levying penalty under any provision of this Act the Commissioner may, subject to such conditions and restrictions as may be prescribed, of his own motion or on an application made by the dealer or the person affected by such order, within two years from the end of the financial year in which such order was made and after recording his reasons for so doing, waive or reduce the amount of interest or penalty payable by such dealer or person, if he is satisfied that -

- (i) to do otherwise would cause genuine hardship to such dealer or person having regard to the circumstances of the case; and
- (ii) such dealer or person has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

(2) Every order made under this section shall be final and shall not be called into question by any Court or any other authority.

40. Determination of disputed questions.- (1) If any question arises, otherwise than in any proceedings before a Court, or before any proceedings are commenced for the assessment or reassessment of a dealer under section 18 or 19, whether, for the purposes of this Act -

- (a) any person, society, club or association or any firm or any branch or department of any firm, is a dealer; or
- (b) any particular thing done to any goods amounts to or results in the manufacture of goods, within the meaning of that term; or
- (c) any transaction is a sale or purchase, or where it is a sale or purchase, the sale price or the purchase price, as the case may be, therefor; or
- (d) any particular dealer is required to be registered; or
- (e) any tax is payable in respect of any particular sale or purchase or, if tax is payable, the rate thereof,

the Commissioner shall on an application made in the prescribed manner by the person in whose case such question has arisen make an order determining such question.

Explanation.-

For the purposes of this subsection the proceedings shall be deemed to have been commenced for the assessment or reassessment of a dealer under section 18 or section 19 when the dealer is served with any notice under subsection (3) of section 18 or, as the case may be, subsection (1) of section 19.

(2) The Commissioner may direct that the determination shall not affect the liability of any person under this Act, as regards any sale or purchase effected prior to the determination.

(3) If any such question arises from any order already passed under this Act or any earlier law, no such question shall be entertained for determination under this section; but such question may be raised in appeal against, or by way of revision of, such order.

(4) Notwithstanding anything contained in subsection (4) of section 3, the Commissioner shall not delegate the powers conferred on him by or under subsection (1) to any officer appointed to assist him under subsection (1) of section 3.

(5) A determination under this section shall, subject to an appeal before the Tribunal under subsection (2) of section 35, be final.

41. Rectification of assessments and orders.- (1) The authority which made an assessment or order or passed an order in appeal or revision in respect thereof may, at any time within three years from the end of the financial year in which such assessment or order was made and of its own motion, rectify any arithmetical mistake or other mistake of a factual nature apparent from the record of the case, and shall even beyond such period, rectify any such mistake as is brought to its notice by a dealer or person affected by such order before the expiry of such time limit:

Provided that no such rectification shall be made having the effect of enhancing the assessment unless the authority concerned has given notice to the dealer or person of its intention so to do and has allowed him a reasonable opportunity of being heard.

(2) Where as a result of any order in appeal or revision under this Act any change becomes necessary in the order of assessment or penalty, the appellate or revising authority may direct the appropriate authority to amend the order of assessment or penalty accordingly.

(3) Where a rectification under subsection (1) or amendment under section (2) has the effect of reducing the tax or penalty or other sum payable by the dealer, a refund shall be due to the dealer and where any further amount of tax, penalty or other sum becomes payable, the same shall be collected in accordance with the provision of this Act.

(4) Where any such rectification has the effect of enhancing the assessment, a notice of demand shall be issued for the sum payable.

42. Exclusion of time taken for obtaining copy. - In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the notice of the order complained of was served and, if the dealer or person aggrieved by the order

was not furnished with a copy of the order when the notice of the order was served on him, the time required for obtaining a copy of such order, shall be excluded.

43. Bar to certain proceedings. - (1) Save as provided in this Chapter no assessment made and no order passed under this Act or the rules made thereunder shall be called in question before any Court and no prosecution, suit or other proceeding shall lie against the State Government or any officer thereof for anything in good faith done or intended to be done under this Act.

(2) No writ shall lie in the High Court to set aside or modify any proceedings or order taken or made by any person, authority or Tribunal referred to in Chapter II or with respect to any other matter which is by or under this Act required to be decided by such person authority or Tribunal.

CHAPTER IX

ACCOUNTS, INSPECTION, SEARCH AND SEIZURE, RESTRICTIONS ON MOVEMENT OF GOODS AND POWER TO CALL FOR INFORMATION

44. Maintenance of accounts and other documents. - (1) Every dealer liable to pay tax under this Act shall keep at his place of business a true account of the value and quantity of goods purchased or sold by him or held in stock and, if the Commissioner considers that such account is not sufficiently clear and intelligible to enable him to make a proper determination of such dealer's liability to tax, he may require such dealer by notice in writing to keep such account (including the records of purchases, sales and stock) as may be specified therein.

(2) The State Government may, by rules framed in this behalf, direct any class of dealers generally to keep such accounts (including records of purchases, sales and stock) in such manner and such form and subject to such conditions and restrictions as may be specified in such rules.

(3) If a registered dealer -

- (a) sells goods to another registered dealer, or
- (b) makes sales in the course of inter-State trade or commerce, or
- (c) sells any goods in any one transaction exceeding in value such amount as may be prescribed in respect of any class or classes of goods or class or classes of dealers,

he shall, if the value of the goods sold in any one transaction exceeds the prescribed amount, issue to the purchaser a bill or cash memorandum serially numbered, signed and dated by him or his servant, manager or agent and showing therein his name and address and such other particulars as may be prescribed and he shall keep a duplicate or copy of such bill or cash memorandum duly signed and dated.

45. Preservation of accounts, documents, etc.:- All books of account and documents referred to in subsection (1) or subsection (2) or subsection (3) of section 44 and all declarations or other documents prescribed under subsection (2) of section 11 shall be preserved by the dealer for a period of not less than twelve years from the end of the year to which they relate:

Provided that where an assessment, re-assessment, appeal, reference, revision or any other proceeding under this Act in respect of any period is pending at the end of the aforesaid period of twelve years, such books of account, documents and declarations shall be preserved till such pending proceedings are finally disposed of.

46. Inspection and production of accounts and other documents:-
(1) All books of accounts, registers, vouchers and documents relating to the stock of goods of or purchases, sales and

deliveries of goods by, any dealer, and all goods kept in any place of business or warehouse of any dealer, shall, at all reasonable times, be open to inspection by the Commissioner or by any person appointed to assist the Commissioner under subsection (1) of section 3 and the Commissioner or such person may take or cause to be taken such copies or extracts of the said book of accounts, registers, vouchers or documents and such inventory of the goods found as appear to him necessary for the purposes of this Act.

(2) The Commissioner or any person appointed to assist him under subsection (1) of section 3 may, subject to such conditions as may be prescribed, require any dealer or person -

- (a) to appear and produce before him such books of accounts, registers or documents, or
- (b) to furnish such information relating to the stocks of goods of, or purchases, sales or deliveries of goods by the dealer or any other information relating to his business.

as may be deemed necessary for the purposes of this Act.

47. Power to search, seize and seal:- (1) If the Commissioner or any person appointed to assist the Commissioner under subsection (1) of section 3 authorised in this behalf, upon information received or otherwise, has reason to suspect that a dealer or person is attempting to evade payment of any tax under this Act or abetting such evasion, he may, subject to such restrictions and conditions as may be prescribed and after recording his reasons for so doing -

- (a) enter and search any place of business, warehouse or any other place where he has reason to suspect that such dealer or person keeps or is for the time being keeping any accounts, registers, documents or records of his business or any stock of goods for sale or for use in the manufacture or packing of any goods for sale or any money or other valuable article relating to his business;
- (b) seize such accounts, registers, documents or vouchers as may be considered necessary for the purposes of determination of any liability under this Act; or
- (c) make an inventory of such goods, money or other valuable articles; or
- (d) seal any room, warehouse, almshouse, safe, box or container in which he has reason to suspect that the dealer keeps or is for the time being keeping any accounts, registers, vouchers or documents of his business or any stock of goods for sale or for use in the manufacture or packing or any goods for sale or any money or other valuable article relating to his business.

(2) Notwithstanding anything contained in subsection (1), the Commissioner or the authorised officer under subsection (1) may, either before entering and searching or in the course of

search or any plan of business or warehouse of any dealer or any other place as referred to in clause (a) of subsection (1), if he considers it necessary so to do break open such room, warehouse, almirah, safe, box or container as is referred to in clause (c) of subsection (1).

(3) The Commissioner or the authorised officer under subsection (1) may requisition the services of any police officer or any other officer of the State Government, or of both to assist him for all or any of the purposes specified in subsection (1) or subsection (2) and it shall be the duty of every such officer to comply with such requisition.

(4) The Commissioner or the authorised officer under subsection (1) shall grant a receipt for any of the accounts, registers vouchers or documents seized by him under subsection (1) and retain them for such period as may be necessary for examination thereof or for prosecution or for any other purposes of this Act:-

Provided that -

- (a) the Commissioner shall not retain any of the accounts registers, documents or vouchers seized by him under subsection (1) for a period exceeding one year from the date of the seizure unless he records in writing the reasons therefor; and
- (b) the authorised officer under subsection (1) or the assessing officer, to whom, if he is not himself the authorised officer, the accounts registers, documents or vouchers may be handed over, shall not retain any of the accounts, registers, documents or vouchers seized by him under subsection (1) for a period exceeding one year from the date of seizure unless he records his reasons for so doing in writing and obtains the sanction in writing of the Commissioner in respect thereof.

(5) Where any books of account, other documents, goods money or other valuable article or thing are or is found in the possession of any person in the course of a search, it may be presumed -

- (i) that such books of account, other documents, goods, money or other valuable article or thing relates or related to a business carried on by such person;
- (ii) that the contents of such books of account and other documents are true; and
- (iii) that the signature and every other part of such books of account or other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of any particular person are in the handwriting of that person and, in the case of a document stamped, executed and attested that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(5) Where any books of account, other documents, goods money or other valuable article or thing has or have been taken into custody by any officer or authority under any other law for the time being in force and the Commissioner is of the opinion that such books of account or other documents or the information relating to such goods, money or other valuable article or thing will be relevant for determining the liability to tax of any person, he may require such officer or authority -

- (i) to deliver to the assessing officer such books of account or other documents either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his custody; or
- (ii) to furnish to the assessing officer certified copies of the whole of or of extracts from such books of account or documents or certified inventories of such goods, money or other valuable article or things

and thereupon such books of account or other documents or the extracts therefrom or the information relating to such goods, money or other valuable article or thing shall be deemed to have been obtained in the course of a search made by the Commissioner or the authorised officer as the case may be and the provisions of this Act shall, so far as may be, apply accordingly.

(7) The provisions of the Code of Criminal Procedure, 1973 relating to searches and seizure shall apply, so far as may be, to searches and seizure under this section.

(8) The State Government may make rules in relation to any search or seizure under this section and, in particular and without prejudice to the generality of such power, such rules may provide for the procedure to be followed by the officers carrying out the search -

- (i) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available; or
- (ii) for ensuring the safe custody of any books of accounts or other documents seized.

48. Restrictions on the movement of goods:- (1) No person shall transport or authorise the transport from any railway station, steamer station, airport, post office or any other place whether of a similar nature or otherwise notified in this behalf by the State Government, any consignment of such goods as may be specified by the State Government from time to time by notification in the Official Gazette exceeding such quantities and except in accordance with such conditions as may be specified in such notification, with a view to ensuring that there is no evasion of any tax payable under this Act.

(2) For the purposes of subsection (1) the State Government may, by notification in the Official Gazette, set up a check post or barrier or both at such place or places with such boundaries as may be specified in such notification.

(3) The Commissioner or any officer appointed to assist him under subsection (1) of section 3 authorised in this behalf may, for the purpose of verifying whether any goods referred to in subsection (1) are being transported in contravention of the provisions of that subsection and subject to such restrictions as may be prescribed -

- (a) intercept detain and search any road vehicle aircraft, river craft or any load carried by a person at the check post or barrier referred to in subsection (2) or at any other place; and
- (b) seize any such goods which he has reason to suspect are being transported in contravention of the provisions of subsection (1) together with any container or other materials for the packing of such goods
- (c) require any transporter or carrier or the driver or other person in charge of the vehicle claiming that the goods referred to in subsection (1) are in transit through that State to another State to obtain a transit pass on his entry into the State in the prescribed manner and surrender it before leaving the State to the prescribed authority or to furnish evidence in such manner and in such form as may be prescribed in support of such claim.

(4) The provisions of subsection (3), (5) and (6) of section 44 shall apply, so far as may be, in respect of any interception, detention, search or seizure under subsection (3).

(5) Any goods seized under clause (b) subsection (3) shall be released only in the prescribed manner and on payment of any penalty that may be imposed under clause (g) of subsection (1) of section 24.

(6) If the penalty imposed under clause (g) of subsection (1) of section 24 is not paid by the date specified for such payment, the Commissioner or the authorised officer under subsection (3) may, in such manner and subject to such restrictions and conditions as may be prescribed, sell the goods seized under clause (b) of subsection (3) in open auction and remit the sale proceeds in such manner as may be prescribed.

(7) Notwithstanding anything contained in subsection (5), the appellate or revisional authority, pending final disposal of an appeal or application for revision against an order for imposition of penalty referred to therein, or the Commissioner, for reasons to be recorded in writing, may direct release of the goods seized under clause (b) of subsection (3) on such terms and conditions as it or he may consider fit and proper.

(8) Notwithstanding anything contained in subsection (5) or subsection (6), the Commissioner or the authorised officer under subsection (3) may, subject to such rules as may be made in this behalf, where the goods seized under clause (b) of subsection (3) are -

- (a) of perishable nature; or
- (b) required to be used by a specified date.

sell such goods in open auction after the expiry of such period as he may consider fit and proper, if he is of opinion that such goods may become unusable or unsaleable on detention, or destroy such goods if they become unusable before the sale in open auction actually takes place.

(9) The proceeds of sale of the goods referred to in subsection (6) or subsection (8) shall be applied in the prescribed manner for payment in the following order of priority -

- (a) firstly, for incidental charges, if any, relating to the auction sale;
- (b) secondly, for expenses if any, for storage of the goods seized under clause (b) of subsection (3);
- (c) thirdly, for penalty imposed under clause (g) of subsection (1) of section 24;

and the balance, if any, shall be paid to the owner of the goods if his particulars are available or, if such particulars are not available, to the person from whom the goods were seized under clause (b) of subsection (3), upon application made in the prescribed manner within one year from the date of sale or within such further period as may be allowed by the Commissioner or the authorised officer under subsection (3) for cause shown to his satisfaction.

(10) Where any transporter or carrier or the driver or other person in charge of any vehicle claims to be in transit through the State fails to furnish evidence to the satisfaction of the Commissioner or the authorised officer under subsection (3) in the manner and form required by or under clause (c) of subsection (3) he shall be deemed to have sold the goods within the State and all the provisions of this Act shall, so far as may be, apply as if such transporter or carrier or the driver or other person in charge of the vehicle were a dealer within the meaning of clause (10) of section 2.

49. Power to call for information:- (1) For carrying out the purposes of this Act, the Commissioner may, subject to such restrictions and conditions as may be prescribed and subject to the provisions of any other law for the time being in force, require any person including a banking company or post office or railway or any transporter or carrier or clearing, forwarding or transporting agent to furnish such information or statement as may be useful for or relevant to any investigation or the inquiry into any alleged or suspected evasion of any tax payable under this Act by any dealer or person or to any proceedings under this Act or examine any accounts, registers, documents or other records in the possession of such person.

(2) The State Government may by rules require a carrier or a clearing, forwarding or transporting agent to obtain a licence in the prescribed manner and to furnish to the Commissioner from time to time such information as may be prescribed.

50. **Power to take evidence or oath etc.** - (1) The authorities specified in Chapter II of this Act shall for the purposes of this Act have the same powers as are vested in a Court under the Code of Civil Procedure 1908 (Act 5 of 1908) when trying a suit in respect of the following matters, namely -

- (a) discovery and inspection;
- (b) enforcing the attendance of any person including any officer of a banking company and examining him on oath or affirmation;
- (c) compelling the production of books of accounts or other documents;
- (d) issuing commission.

(2) Without prejudice to any other law for the time being in force, where a person to whom a summon is issued either to attend to give evidence or produce books of accounts or other documents at a certain place and time, intentionally omits to attend or produce the books of accounts or documents at the place or time, the authority referred to in subsection (1) may impose upon him such fine not exceeding five hundred rupees as he thinks fit.

(3) Subject to any rule made in this behalf any authority referred to in subsection (1) may impound or retain in his custody for such periods as he thinks fit any books of account or other documents produced before him in any proceedings under this Act:

Provided that a person appointed to assist the Commissioner under subsection (1) of section (3) shall not -

- (a) impound any books of account or other documents without recording his reasons for so doing, or
- (b) retain in his custody any such books or documents for a period exceeding thirty days (exclusive of holidays) without obtaining the approval of the Commissioner thereof.

CHAPTER X

RESPONSIBILITIES AND LIABILITIES OF A DEALER IN SPECIAL CIRCUMSTANCES

51. Furnishing information regarding change in the business. - If any dealer liable to pay tax -

- (a) sells or otherwise disposes of his business or any part of his business or effects or comes to know of any other change in the ownership of the business; or
- (b) transfers his business by way of lease; or
- (c) discontinues his business or changes his place of business or the location of his warehouse or opens a new place of business or warehouse; or
- (d) changes the name or nature of his business or effects any change in the class or classes of goods in which he carries on his business and which, in the case of a registered dealer is or are specified in his certificate of registration; or
- (e) succeeds to any business by bequest, inheritance or otherwise; or
- (f) being a company, society, club, firm or other association or body, effects any change in its constitution or the constitution of its Board of Directors, he or it shall, within the prescribed time and in the prescribed manner, inform such authority as may be specified in the rules in writing accordingly, and if any dealer dies, his legal representative shall in like manner inform the said authority.

52. Information regarding officers responsible for the affairs of the business. - Every registered dealer shall in the prescribed manner and within the prescribed time send to such authority as maybe specified in the rules a declaration in the prescribed manner and form stating the names of the principal officer, manager and of all officers of other designation who are responsible for ensuring compliance with the provisions of this Act for and on behalf of such dealer.

53. Transfer of business. - (1) Where the business of a dealer registered under this Act is transferred by sale, gift, bequest, inheritance or otherwise or is transferred by way of lease and the transferee or the lessee carries on such business, either in its old name or in some other name, the transferee or the lessee shall for all purposes of this Act (except for liabilities under this Act already discharged by such dealer) be deemed to be and to have always been registered (in the case of a lease for so long as the lease subsists) as if the certificate of registration of such dealer had initially been granted to the transferee or the lessee; and the transferee or the lessee shall be entitled to apply to the Assessing Officer within the prescribed time for the amendment of the certificate of registration accordingly:

(2) Where the business of a dealer not registered under this Act is transferred by any of the modes referred to in subsection (1) the transferee or lessee, as the case may be, whether he is a registered

dealer or not, shall be liable to pay any tax, interest, penalty or other sum payable by the transferor which remains unpaid on the date of such transfer (except liabilities under this Act already discharged by the transferor) and all the provisions of this Act shall, so far as may be, apply accordingly.

(3) In a case to which the provisions of subsection (1) or subsection (2) apply, the transferor shall also, jointly and severally with the transferee, be liable to pay the tax, interest, penalty or other sum, if any, payable for the period upto the date of such transfer whether such tax, interest, penalty or other sum has been assessed before or after such transfer.

54. Legal representative of deceased person :- (1) Where a dealer or person dies, his legal representative shall be liable to pay any tax, interest, penalty or other sum which the deceased would have been liable to pay if he had not died, in like manner and to the same extent as the deceased and all the provisions of this Act shall, so far as may be, apply as if such legal representative were a dealer or person liable to pay tax under this Act.

(2) For the purpose of subsection (1) -

- (a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased; and
- (b) any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representative.

(3) Every legal representative shall be personally liable for any tax, interest, penalty or other sum payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the assets so charged, disposed of, or parted with.

(4) The liability of a legal representative under this section shall be limited to the extent to which estate is capable of meeting the liability.

Explanation

In this section legal representative has the meaning assigned to it in clause (11) of section 23 of the Code of Civil Procedure, 1908 (Act 5 of 1908) and includes an executor, administrator or other person administering the estate of a deceased person.

55. Assessment after partition of Hindu undivided family, disruption or dissolution of a firm or an association of persons. - Where a dealer is a Hindu undivided family, firm or other association of persons, and such family, firm or association is partitioned or disrupted or dissolved, as the case may be, -

- (a) the tax, interest penalty or any other sum payable under this Act by such family, firm or association of persons for the period up to the date of such death, partition, disruption or dissolution shall be assessed or imposed as if no partition, disruption or dissolution had taken place, and all the provisions of this Act shall apply accordingly, and
- (b) every person who was at the time of such partition, disruption or dissolution a member or partner of Hindu undivided family, association of persons or firm and the legal representative of any such person who is deceased shall, notwithstanding such partition, disruption or dissolution, be jointly and severally liable for the payment of the tax, interest, penalty or other sum payable under this Act by such family, firm or association or persons for the period upto the date of such partition, disruption or dissolution, whether the assessment of such tax or the levy of such interest, penalty or other sum is made prior to or after such death, partition, disruption or dissolution.

56. Company in liquidation. - (1) Subject to the provisions of any other law for the time being in force, every person -

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

shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Assessing Officer who is entitled to assess the company.

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

(3) The liquidator -

- (a) shall not, without the leave of the Assessing Officer part with any of the assets or the company or the properties in his hands until he has been notified by the Assessing Officer under subsection (2); and
- (b) on being so notified, shall set aside an amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands:

Provided that nothing contained in this subsection shall debar the liquidator from parting with such assets or properties for the purpose of the payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting reasonable costs and expenses of the winding up of the company.

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

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

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

(6) When any private company or a public company which was previously a private company is wound up and any tax assessed on the company under this Act for any period when it was a private company whether before, or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

CHAPTER XI

OFFENCES AND PROSECUTION

57. Failure to furnish security, maintain or preserve accounts, furnishing information, etc:- Whoever -

- (a) carries on business as a dealer without furnishing the security required to be furnished under section 16; or
- (b) fails to comply with the provisions of section 44 or section 45 or any rule framed in that behalf; or
- (c) refuses to comply with any requisition made under section 46; or
- (d) neglects to furnish any information required to be furnished under section 49 or section 51

shall be punishable with simple imprisonment for a term which may extend to six months or with fine not exceeding one thousand rupees or with both.

58. Failure to get registered, etc. - Whoever -

- (a) being liable to pay tax under this Act, fails to get himself registered; or
- (b) not being a registered dealer represents when purchasing goods, that he is a registered dealer; or
- (c) not being a registered dealer, collects any sum purporting to be by way of tax under this Act or being a registered dealer collects any sum purporting to be by way of tax on the sale of goods in respect of which he is not liable to pay tax or at a rate exceeding the rate at which he is liable to pay tax; or
- (d) being a registered dealer represents when purchasing goods or class of goods not covered by his certificate of registration, that such goods are covered by such certificate; or
- (e) contravenes the requirement of subsection (4) of section 16 or the rules made thereunder; or
- (f) obstructs or prevents any authority under this Act from making an inspection under section 46 or exercising the power to search seize or seal under section 47 or contravenes the provisions of section 48 or any requirement or condition of any rule framed under section 46 or section 47 or section 48; or
- (g) contravenes the provisions of section 56.

shall be punishable with imprisonment of either description for a term which may extend to one year or with fine or with both.

59. Failure to furnish return. - If a dealer or person wilfully fails to furnish in due time the statement or return which he is required to furnish under section (2) or subsection (3) of section 17 and pay the tax due thereon, he shall be punishable -

- (i) in a case where the amount of tax which would have been evaded if the failure had not been discovered, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine:

Provided that a dealer or a person shall not be proceeded against under this section if -

- (a) the statement or return is furnished by him before the expiry of one year from the end of the year in which it was due and the tax due thereon has been paid; or
- (b) the tax payable by him determined on assessment does not exceed three thousand rupees.

60. False statement in verification, etc. - If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement or return which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable -

- (i) in a case where the amount of tax, which would have been evaded if the statement or account or return had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

61. Wilful attempt to evade tax etc :- (1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall be punishable -

- (i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

Explanation

For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person

- (i) has in his possession or control any books of accounts, declarations or other documents (being books of accounts, declarations or other documents relevant to any proceeding under this Act) containing false entry or statement; or
- (ii) makes or causes to be made any false entry or statement in such books of account, declarations or other documents; or
- (iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account, declarations or other documents; or
- (iv) has in his possession any form prescribed by any rule made under this Act which has not been obtained by him by his principal or his agent in accordance with the provisions of this Act or any rules made thereunder; or
- (v) has in his possession any letter heads, bill books, receipt books or other forms in any fictitious name or in the name of a business which is not genuine; or
- (vi) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

52. Abetment of false return. - If a person abets or induces in any manner another person to make and deliver an account or a statement or return or declaration relating to any tax payable under this Act which is false and which he either knows to be false or does not believe to be true or to commit an offence under section 61, he shall be punishable -

- (i) in a case where the amount of tax, penalty or interest which would have been evaded if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds one lakh rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
- (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

Explanation :-

The provision of the Explanation below subsection (2) of section 61 shall, so far as may be, apply to any offence under this section as they apply to an offence under that section.

63. Punishment for section and subsequent offences and continuing offences. - (1) If any dealer or person convicted of an offence under section 59 or section 60 or section 61 or section 62 is again convicted of an offence under any of the aforesaid provisions, he shall be

punishable for the second and for every subsequent offence with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

(2) If a dealer or person liable to be convicted for an offence under section 57 or section 58 or section 59 which is of a continuing nature continues to default, the fine imposable on him under the aforesaid provisions shall be a sum calculated at a rate which shall not be less than fifty rupees or more than one-hundred rupees for every day during which the default continues.

64. Offences by Hindu undivided families. - (1) Where an offence under this Act has been committed by a Hindu undivided family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

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

(2) Notwithstanding anything contained in subsection (1) 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 member of the Hindu undivided family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

65. Offences by companies :- (1) Where an offence under this Act has been committed by a company, every person 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 subsection shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (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 purposes of this section, -

- (a) **"company"** means a body corporate, and includes -
(i) a firm; and

(ii) an association of persons or a body of individuals whether incorporated or not; and

(b) **"director"**, in relation to -

(i) a firm, means a partner in the firm; and

(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.

66. Presumption as to books of account, assets, etc., in certain cases. - Where any books of account or other documents or the information relating to any goods, money or other valuable article or thing referred to in subsection (1) or subsection (6) of section 47 is or are tendered as evidence against any person for an offence under this Act, the provisions of subsection (5) of that section shall, so far as may be, apply in relation to such books of account, other documents, goods, money or other valuable article or thing.

67. Presumption as to culpable mental state :- (1) In any prosecution for any offence under this Act 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 subsection, "culpable mental state" includes intention, motive or knowledge or a fact or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

68. Proof on entries in records or documents. - Entries in the records or other documents in the custody of any authority referred to in Chapter II shall be admitted in evidence in any proceedings for the prosecution of any person for an offence under this Chapter and all such entries may be proved either by the production of the records or other documents in the custody of such authority containing such entries or by the production of a copy of the entries certified by such authority under its signature and stating that it is a true copy of the original entries and that the original entries are contained in the records or other documents in its custody.

69. Prosecution to be at instance of Commissioner. - (1) No person or dealer shall be proceeded against for an offence under any of the foregoing provisions except at the instance of the Commissioner.

(2) A dealer or person shall not be proceeded against for an offence under this Chapter in relation to a default in respect of which the penalty imposed or imposable has been waived under section 39.

70. Cognizance of offences. - No Court inferior to that of a Metropolitan Magistrate or a Magistrate of the First Class shall try any offence under this Act.

71. Certain offences to be cognizable and non-bailable. - The offences punishable under clause (f) of section 58, section 59, section 60, section 61 and section 62 shall be cognizable and non-bailable while the offences under the other provisions of any of the foregoing sections shall be cognizable and bailable.

72. Section 360 of the Code of Criminal Procedure, 1973, and the Probation of Offenders Act, 1958, not to apply. - Nothing contained in section 360 of the Code of Criminal Procedure, 1973, or in the Probation of Offenders Act, 1958, shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.

73. Compounding of offences. - (1) The Commissioner may, subject to such conditions as may be prescribed, compound an offence under any of the foregoing provisions either before or after the institution of proceedings by requiring the person proceeded against to pay by way of composition a sum not exceeding such sum as may be prescribed.

(2) On payment of the full composition money under subsection (1) -

(a) no proceedings under any of the foregoing provisions shall be commenced against such person; or

(b) if any such proceedings have already been commenced they shall not be further proceeded with.

74. Disclosure by public servant :- (1) If a public servant furnishes any information or produces any document in contravention of the provisions of subsection (1) of section 76 he shall be punishable with imprisonment which may extend to six months and shall also be liable to a fine not exceeding one thousand rupees.

(2) No prosecution shall be instituted under this section except with the previous sanction of the State Government.

CHAPTER XII

MISCELLANEOUS

75. Service of notice. - (1) Any notice which is issued under the provisions of the Act or the rules or which is required to be issued for carrying out the purposes of the Act may be served on a dealer or a person by any of the following methods, namely -

- (i) personally upon the addressee, if present;
- (ii) by messenger; and
- (iii) by registered post:

Provided that if the authority issuing the notice is satisfied that an attempt has been made to serve a notice by any one of the above mentioned methods and the dealer is avoiding service or that for any other reason the notice cannot be served by any of the above mentioned methods, the said authority may, after recording his reasons for so doing, cause such notice to be served by affixing a copy thereof in some conspicuous place in his office and also upon some conspicuous part of the last notified place of business of the dealer or person, and a notice so served shall be deemed to have been duly served.

(2) When a notice is sent by registered post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by a registered letter in transit unless the contrary is proved.

(3) Where a Hindu undivided family has been partitioned, any notice under this Act in respect of the business of the Hindu undivided family shall be served on the person who was the last manager of the Hindu undivided family or, if such person is dead, then on any adult member who was a member of the Hindu undivided family immediately before the partition.

(4) Where a firm or other association of persons is dissolved, notices under this Act in respect of the business of the firm or association may be served on any person who was a partner of the firm or member of the association, as the case may be, immediately before its dissolution.

76. Returns etc. to be confidential. - (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act or any earlier law, other than proceedings before a criminal court shall, save as provided in subsection (2) be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872 (Act 1 of 1872), no Court shall, save as aforesaid, require any authority under this Act 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) Nothing in this section shall apply to the disclosure of any of the particulars referred to in subsection (1) -

- (a) for the purposes of prosecution under this Act or any earlier law, the Indian Penal Code, 1860 (Act 45 of 1860), the Prevention of Corruption Act, 1947 (Act 2 of 1947) or any other enactment for the time being in force or for any preliminary enquiry or investigation for ascertaining whether such prosecution lies;
- (b) to a civil court in any suit or proceeding to which the Government or any authority under this Act or any earlier law is a party and which relates to any matter arising out of any proceeding under this Act or any earlier law;
- (c) in connection with an inquiry concerning allegations of corruption or official misconduct against any Government servant or for the purpose of taking disciplinary action against such Government servant;
- (d) in connection with an inquiry into charges of misconduct in the course of any proceedings under this Act or any earlier law against a legal practitioner or chartered accountant or other person entitled to appear before the authorities under this Act or any earlier law, to the authority competent to take disciplinary action against such legal practitioner, chartered accountant or other person;
- (e) to an officer of the Central Government or of a State Government as may be necessary for the purpose of levy or realisation of any tax, duty or penalty imposed by it;
- (f) to an officer of the Central Government or the State Government for the audit of receipts and refunds of the tax, interest, penalty or other sum imposed under this Act or any earlier law;
- (g) to any officer of the State Government to enable such officer to perform his executive functions relating to the affairs of the State;
- (h) in connection with the publication in any established law journal of a part or the whole of any judgment or order passed by the Tribunal or the Special Tribunal under this Act or any earlier law;
- (i) to any person where such disclosure is necessary for the purposes of this Act or any earlier law; and
- (j) to any person for purposes other than those referred to in clauses (a) to (i), if the State Government, by a general or special order, directs such disclosure in the public interest.

(3) Notwithstanding anything contained in subsection (1), the Commissioner may publish or cause to be published in the Official Gazette and in such other manner as he may deem fit such particulars as may be prescribed of dealers -

- (a) who are granted registration or whose certificate of registration has been amended or cancelled under any provision of this Act or any earlier law; or
- (b) who are granted any licence, permit, approval, authorisation, recognition, or any other document by whatever name called under subsection (4) of section 16 or under a corresponding provision of any earlier law; or
- (c) who are convicted of any offence under this Act or any earlier law; or
- (d) whose turnover or the tax payable by whom under this Act or any earlier law exceeds prescribed limits.

77. Return etc. not to be invalid on certain grounds. - No return, statement, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return, assessment, notice, summons or other proceeding if such return, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

78. Appearance by authorised representative. - (1) A dealer or a person who is entitled or required to appear before an authority in connection with any proceedings under this Act, otherwise than when required under section 50 to attend personally for examination on oath or affirmation, may attend by an authorised representative.

(2) For the purposes of this section, "authorised representative" means a person authorised in writing by such dealer or person to appear on his behalf, being -

- (a) a relative or a person regularly employed by him; or
- (b) a legal practitioner who is entitled to practice in any civil court in India; or
- (c) an accountant; or
- (d) a person who has acquired such educational qualifications as may be prescribed and has been registered by the Commissioner as a tax practitioner in the prescribed manner.

Explanation -

In this connection, "accountant" means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (Act 38 of 1949) or a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 and includes a person who by virtue of the provisions of sub-section (2) of section 126 of the Companies Act, 1956 is entitled to be appointed to act as an auditor of companies registered in the State.

- (3) No person -
- (a) who has been dismissed or removed from Government service; or
 - (b) who has been convicted for an offence connected with any proceedings under this Act or under any earlier law or under the Income-tax Act, 1961; or
 - (c) who being a tax practitioner registered under clause (d) of sub section (1) is found by the Commissioner, after enquiries conducted in the prescribed manner, guilty of misconduct in connection with any proceedings under this Act or under any earlier law; or
 - (d) who has become an insolvent.

shall be qualified under sub section (1) to represent a dealer or a person for a period of five years from the date of dismissal, removal, conviction or order adjudging a person guilty of misconduct or as insolvent, as the case may be.

(4) No order of disqualification shall be made by the Commissioner in respect of a person under clause (d) of sub section (2) unless he is given a reasonable opportunity of being heard.

(5) Notwithstanding anything contained in sub section (3), the Commissioner may, upon an application made to him in this behalf and for reasons to be recorded in writing, reduce the period of disqualification as referred to in sub-section (3) by such period as he considers fit.

(6) Notwithstanding anything contained in this section, a person who was formerly employed as an authority under Chapter II of this Act, not below such rank as may be prescribed, and who has retired or resigned from such employment, shall not be entitled to represent a dealer or a person for a period of one year from the date of his retirement or resignation, as the case may be.

79. Power to make rules. - (1) The State Government may 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 -

- (i) all matters expressly required or allowed by this Act to be prescribed;
- (ii) such other matters which, in the opinion of the State Government require to be regulated by rules for the prevention of any avoidance or evasion of tax or for facilitating the efficient levy and collection of any tax, interest, penalty or other sum payable under this Act.

80. Laying of rules and certain notifications before the State legislature. - The State Government shall cause every rule made under section 79 and every notification amending any Schedule or making any exemption or reduction in rate under subsection (2) of section 9 or subsection (2) subsection (3) of section 10 issued under this Act to be laid, as soon as may be, after it is made or issued before the House of the State Legislature while it is in session for a total period of thirty days, which may be comprised in one or more sessions immediately following and, if before the expiry of the session in which it is so laid or the session immediately following, the House agrees in making any modification in the rule or notification or agrees that the rule or notification should not be made, the rule or the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

81. Repeals and savings. - (1) The following laws are hereby repealed:

[The earlier laws will be enumerated here.]

(2) Notwithstanding the repeal of the aforesaid laws by this Act and save as otherwise provided in sub section (3), the repealed laws (in this Act referred to as the earlier laws) and all rules, notifications, registrations or other documentations, forms and notices made or prescribed or issued thereunder which were in force immediately before the appointed day, and all proceedings for the assessment or reassessment of any dealer or person in respect of such period may be taken or continued as if this Act had not been passed.

(3) Notwithstanding anything contained in sub-section (2), in respect of the following matters relating to any period ending before the appointed day, the provisions of this Act shall apply, namely -

- (a) an appeal or application for refund, rectification or revision, in respect of any period ending before the appointed day shall be under this Act if no such appeal or application had been made and the time limit for such appeal or application had not expired before the appointed day;
- (b) any proceedings by way of rectification or revision in respect of any period ending before the appointed day may be commenced and disposed of under this Act if the time limit for such rectification or revision had not expired before the appointed day;
- (c) where any return, statement or account relating to any period ending before the appointed day is delivered furnished or produced on or after the appointed day or where any proceedings have been taken under Chapter IX on or after the appointed day, the provisions of this Act relating to penalties in section 24 and those relating to offences and prosecution in Chapter XI shall apply;
- (d) where any tax levied under any of the earlier laws remains unpaid on the appointed day, the provisions of sub-section (2), (3), (4) and (5) of section 23 of this Act relating to charge of interest shall, so far as may be, apply in relation to such tax;
- (e) any tax, interest penalty or other sum remaining unpaid on the appointed day may be collected or recovered under the provisions of Chapter VII;
- (f) where any tax relating to any period ending before the appointed day is refundable on or after the appointed day, the provisions of sections 32, 33 and 34 shall, so far as may be, apply in relation to such refund.

82. Power to remove difficulties. - (1) If any difficulty arises in giving effect to the provisions of sub section (2) or sub section (3) of section 81, the State Government may by order published in the Official Gazette, make such provisions or give such direction, not inconsistent with the provisions of this Act, as appears to be necessary or expedient for the purpose of removing that difficulty.

(2) No order under sub section (1) shall be made after the expiry of two years from the appointed day.