

GOVERNMENT OF KARNATAKA

NO.SAMVYASHAE 47 SHASANA 2002 Karnataka Government secretariat
Vidhana Soudha,
Bangalore, dated 19-01-2005.

NOTIFICATION

Ordered that the translation of ಕರ್ನಾಟಕ ಮೌಲ್ಯವರ್ಧಿತ ತೆರಿಗೆ ಅಧಿನಿಯಮ, 2003 (2004ರ ಕರ್ನಾಟಕ ಅಧಿನಿಯಮ ಸಂಖ್ಯೆ 32) in the English language, be published as authorized by the Governor of Karnataka under clause (3) of Article 348 of the constitution of India in the Karnataka Gazette for general information.

The following translation of ಕರ್ನಾಟಕ ಮೌಲ್ಯವರ್ಧಿತ ತೆರಿಗೆ ಅಧಿನಿಯಮ, 2003 (2004ರ ಕರ್ನಾಟಕ ಅಧಿನಿಯಮ ಸಂಖ್ಯೆ 32) in the English language is published in the Official Gazette under the authority of the Governor of Karnataka under clause (3) of Article 348 of the Constitution of India.

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To:

The Compiler, Karnataka Gazette, Bangalore, for publication in Part-IVA of the Karnataka Gazette Extraordinary dated: 19th day of January, 2005 and supply spare copies as per standing Orders and supply 1000 copies to the Commissioner, Department of Commercial Taxes, 250 copies to Drafting Section, 250 copies to the Finance Department, 50 copies to the Publication Section and 50 copies to the Codification Section of the Department of Parliamentary Affairs and Legislation.

2. The Director of Translation, 3rd Floor, F Block, Cauvery
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Copy to:-

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Finance Department, Vidhana Soudha, Bangalore.
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KARNATAKA ACT NO. 32 OF 2004

(First published in the Karnataka Gazette Extraordinary on the twentythird day of December 2004)

THE KARNATAKA VALUE ADDED TAX ACT, 2003

(Received the assent of the President on the fifteenth day of December, 2004)

An Act to provide for further levy of tax on the purchase or sale of goods in the State of Karnataka.

Be it enacted by the Karnataka State Legislature in Fifty-fourth year of the Republic of India, as follows:-

Chapter I

Introduction

1. Short title, extent and commencement.- (1) This Act may be called the Karnataka Value Added Tax Act 2003.

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

(3) It shall come into force on such date as the Government may, by notification, appoint and different dates may be appointed for different provisions of the Act.

(4) The tax shall be levied on the sale or purchase of goods made after such date as the Government may, by notification, appoint and different dates may be appointed for different class or classes of goods.

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

(1) '**Agriculture**' with its grammatical variations includes horticulture, the raising of crops, grass or garden produce and grazing but does not include dairy farming, poultry farming, stock breeding and mere cutting of wood.

(2) '**Agriculturist**' means a person who cultivates land personally.

(3) '**Agricultural produce or horticultural produce**' shall not be deemed to include tea, beedi leaves, raw cashew, timber, wood, tamarind and such produce, except coffee as has been subject to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting or drying.

(4) '**Appellate Tribunal**' means the Karnataka Appellate Tribunal constituted under the Karnataka Appellate Tribunal Act, 1976 (Karnataka Act 59 of 1976).

(5) '**Assessment**' means an assessment made or deemed to have been made under this Act and includes a re-assessment.

(6) '**Business**' includes:-

(a) any trade, commerce, 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 in furtherance of gain or profit and whether or not any gain or profit accrues therefrom; and

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

(7) '**Capital goods**' means plant, including cold storage and similar plant, machinery, goods vehicles, equipments, moulds, tools and jigs whose total cost is not less than an amount to be notified by the Government or the Commissioner, and used in the course of business other than for sale.

(8) '**Commissioner**' means any person appointed to be a Commissioner of Commercial Taxes under Section 3 of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957).

(9) '**Company**' shall have the meaning assigned to it in the Companies Act, 1956 (Central Act 1 of 1956).

(10) '**To cultivate**' with its grammatical variations and cognate expressions means to carry on any agricultural operation;

(11) '**To cultivate personally**' means, to cultivate land on one's own account, -

- (a) by one's own labour, or
- (b) by the labour of one's own family, or
- (c) by servants on wages payable in cash or kind but not in crop share, or by hired labour under one's personal supervision or the personal supervision of any member of one's family.

Explanations.- (1) A person who is a widow or a minor or is subject to any physical or mental disability shall be deemed to cultivate the land personally if it is cultivated by her or his servants or by hired labour.

(2) In the case of undivided family, the land shall be deemed to have been cultivated personally, if it is cultivated by any member of such family.

(12) '**Dealer**' means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes-

- (a) an industrial, commercial or trading undertaking of the Government, the Central Government, a State Government of any State other than the State of Karnataka, a statutory body, a local authority, company, a Hindu undivided family, an Aliyasanthana Family, a partnership firm, a society, a club or an association which carries on such business;
- (b) a casual trader, a person who has, whether as principal, agent or in any other capacity, carries on occasional transactions of a business nature involving the buying, selling, supply or distribution of goods in the State, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration;
- (c) a commission agent, a broker or *del credere agent* or an auctioneer or any other mercantile agent by

whatever name called, who carries on the business of buying, selling , supplying or distributing goods on behalf of any principal;

- (d) a non-resident dealer or an agent of a non-resident dealer, a local branch of a firm or company or association situated outside the State ;
- (e) a person who sells goods produced by him by manufacture or otherwise;
- (f) a person engaged in the business of transfer otherwise than in pursuance of a contract of property in any goods for cash deferred payment or other valuable consideration.
- (g) a person engaged in the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (h) a person engaged in the business of delivery of goods on hire purchase or any system of payment by installments;
- (i) a person engaged in the business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

Explanations.- (1) A society (including a cooperative society), club or firm or an association which, whether or not in the course of business, buys, sells, supplies goods or distributes goods from or to its members for cash, or for deferred payment or for commission, remuneration or other

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

(2) The Central Government or a State Government or a local authority or a statutory body which whether or not, in the course of business, buys, sells, supplies or distributes goods, directly or otherwise, for cash or deferred payment or for commission, remuneration or other valuable consideration shall be deemed to be a dealer for the purposes of this Act.

(3) In respect of the transfer of the right to use feature films, the person who transfers such right to the exhibitor and from whom the exhibitor derives the right to make such use shall be deemed to be the dealer under this clause.

(4) (a) An agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally or a person who is exclusively engaged in poultry farming and sells the products of such poultry farm shall not be deemed to be a dealer within the meaning of this clause;

(b) Where the agriculturist is a company and is selling pepper, cardamom, rubber, timber, wood, raw cashew or coffee grown on land cultivated by it personally, directly or otherwise, such company, shall be deemed to be a dealer in respect of turnovers relating to sales of such produce.

(13) **'Document'** includes written or printed records of any sort, title deeds and data stored electronically in whatever form.

(14) **'Export'** means a sale of goods taking place in the course of export of the goods out of the territory of India only if the sale either occasions such export or is effected by a transfer of documents of title to the goods after the goods have

crossed the customs frontiers of India and includes the last sale of any goods preceding the sale occasioning the export of those goods out of the territory of India, if such last sale took place after, and was for the purpose of complying with the agreement or order for or in relation to such export.

(15) '**Goods**' means all kinds of movable property (other than newspaper, actionable claims, stocks and shares and securities) and includes livestock, all materials, commodities and articles (including goods, as goods or in some other form) involved in the execution of a works contract or those goods to be used in the fitting out, improvement or repair of movable property, and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale.

(16) '**Goods vehicle**' means any kind of vehicle used for carriage of goods either solely or in addition to passengers (other than aeroplanes and rail coaches) and includes push cart, animal drawn cart, tractor-trailer and the like.

(17) '**Government**' means the Government of Karnataka.

(18) '**Import**' means sale or purchase in the course of the import of goods into the territory of India if the sale or purchase either occasions such import or is effected by transfer of documents of title to the goods before the goods have crossed the customs frontiers of India and includes procurement of goods from outside the State either as a result of purchase or otherwise.

(19) '**Input**' means any goods including capital goods purchased by a dealer in the course of his business for re-sale

or for use in the manufacture or processing or packing or storing of other goods or any other use in business.

(20) '**Input tax**' has the meaning assigned to it in Section 10.

(21) '**Maximum retail price**' or '**MRP**' shall mean the price marked on the package in which the goods are contained.

(22) '**Output tax**' has the meaning assigned to it in Section 10.

(23) '**Place of business**' means any place where a dealer purchases or sells goods and includes, -

- (a) any warehouse, godown or other place where a dealer stores or processes his goods;
- (b) any place where a dealer produces or manufactures or processes goods;
- (c) any place where a dealer keeps his accounts including documents and in a case where a dealer carries on business through an agent (by whatever name called), the place of business of such agent.

(24) '**Prescribed authority**' means an officer of the Commercial Taxes Department, authorised by the Government or the Commissioner to perform such functions as may be assigned to him.

(25) '**Prevailing market price**' shall mean the published wholesale price in force in the market and in cases where there is no such published wholesale price, the prevailing market price of any goods.

(26) '**Published**' shall mean published in any newspaper, journal or periodical or notified by a market committee or any such authority.

(27) '**Registered dealer**' means a dealer registered under this Act.

(28) '**Return**' means any return prescribed or otherwise required to be furnished by or under this Act.

(29) '**Sale**' with all its grammatical variation and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration and includes,-

- (a) a transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;
- (b) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (c) a delivery of goods on hire purchase or any system of payment by installments;
- (d) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

Explanations.- (1) A transfer of property involved in the sale or distribution of goods by a society (including a co-operative society), club, firm, or any association to its

members, for cash, or for deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act.

(2) Every transaction of sale by way of or as a part of any service or in any other manner whatsoever, of goods, being food or any other article of human consumption or any drink (whether or not intoxicating) where such sale or service is for cash, deferred payment or other valuable consideration, shall be deemed to be a sale of those goods by the person making the sale and purchase of those goods by the person to whom such sale is made.

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

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

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

- (i) to have sold the goods at one rate and to have passed on the sale proceeds to his principal at another rate, or
- (ii) to have purchased the goods at one rate and to have passed them on to his principal at another rate, or
- (iii) not to have accounted to his principal for the entire collections or deductions made by him in

the sales or purchases effected by him on behalf of his principal, or

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

(4) Every transfer of property in goods by the Central Government, any State Government, a statutory body or a local authority for cash or for deferred payment or other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purposes of this Act.

(30) '**State Representative**' means any person appointed to be the State Representative under Section 58 and includes an officer empowered by the Commissioner under that Section to perform the functions of a State representative.

(31) '**Taxable sale**' means any sale of goods, which is taxable under the provisions of this Act.

(32) '**Tax invoice**' means a document specified under Section 29 listing goods sold with price, quantity and other information as prescribed.

(33) '**Tax period**' means such periods as may be prescribed.

(34) '**Taxable turnover**' means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of interstate trade or commerce or in the course of export of the goods out of the territory of

India or in the course of import of the goods into the territory of India and the value of goods transferred or despatched outside the State otherwise than by way of sale.

(35) '**Total turnover**' means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of interstate trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of goods transferred or despatched outside the State otherwise than by way of sale.

(36) '**Turnover**' means the aggregate amount for which goods are sold or distributed or delivered or otherwise disposed of in any of the ways referred to in clause (29) by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration, and includes the aggregate amount for which goods are purchased from a person not registered under the Act and the value of goods transferred or despatched outside the State otherwise than by way of sale, and subject to such conditions and restrictions as may be prescribed the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof.

Explanation.- The value of the goods transferred or despatched outside the State otherwise than by way of sale, shall be the amount for which the goods are ordinarily sold by

the dealer or the prevailing market price of such goods where the dealer does not ordinarily sell the goods.

(37) '**Works contract**' includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.

(38) '**Year**' means the year commencing on the first day of April.

Chapter II

The incidence and levy of tax

3. Levy of tax.- (1) The tax shall be levied on every sale of goods in the State by a registered dealer or a dealer liable to be registered, in accordance with the provisions of this Act.

(2) The tax shall also be levied, and paid by every registered dealer or a dealer liable to be registered, on the sale of taxable goods to him, for use in the course of his business, by a person who is not registered under this Act.

4. Liability to tax and rates thereof.- (1) Every dealer who is or is required to be registered as specified in Sections 22 and 24, shall be liable to pay tax, on his taxable turnover,

(a) in respect of goods mentioned in,-

(i) Second Schedule, at the rate of one per cent,

(ii) Third Schedule, at the rate of four per cent, and

(iii) Fourth Schedule, at the rate of twenty per cent.

(b) in respect of other goods, at the rate of twenty five per cent.

(2) Where goods sold or purchased are contained in containers or are packed in any packing material liable to tax under this Act, the rate of tax applicable to taxable turnover of such containers or packing materials shall, whether the price of the containers or packing materials is charged for separately or not, be the same as the rate of tax applicable to such goods so contained or packed, and where such goods sold or purchased are exempt from tax under this Act, the containers or packing materials shall also be exempt.

(3) The State Government may, by notification, reduce the tax payable under sub-section (1) in respect of any goods.

5. Exemption of tax.- Goods specified in the First Schedule and any other goods as may be specified by a notification by the State Government shall be exempt from the tax payable under this Act.

6. Place of sale of goods.- (1) The sale or purchase of goods, other than in the course of inter-State trade or commerce or in the course of import or export, shall be deemed, for the purposes of this Act, to have taken place in the State irrespective of the place where the contract of sale or purchase is made, if the goods are within the State.-

(a) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and

(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether

the assent of the other party is prior or subsequent to such appropriation.

(2) Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of clause (a) shall apply as if there were separate contracts in respect of goods at each of such places.

(3) Notwithstanding anything contained in the Sale of Goods Act, 1930 (Central Act 3 of 1930), for the purpose of this Act, the transfer of property of goods (whether as goods or in some other form) involved in the execution of a works contract shall be deemed to have taken place in the State, if the goods are within the State at the time of such transfer, irrespective of the place where the agreement for works contract is made, whether the assent of the other party is prior or subsequent to such transfer.

(4) Notwithstanding anything contained in the Sale of Goods Act, 1930 (Central Act 3 of 1930), for the purpose of this Act, the transfer of the right to use any goods for any purpose (whether or not for a specified period) shall be deemed to have taken place in the State, if such goods are for use within the State irrespective of the place where the contract of transfer of the right to use the goods is made.

7. Time of sale of goods.- (1) Notwithstanding anything contained in the Sale of Goods Act, 1930 (Central Act 3 of 1930), for the purpose of this Act, and subject to sub-section (2), the sale of goods shall be deemed to have taken place at the time of transfer of title or possession or incorporation of the goods in the course of execution of any works contract whether or not there is receipt of payment:

Provided that where a dealer issues a tax invoice in respect of such sale within fourteen days from the date of the sale, the sale shall be deemed to have taken place at the time the invoice is issued.

(2) Where, before the time applicable in sub-section (1), the dealer selling the goods issues a tax invoice in respect of such sale or receives payment in respect of such sale, the sale shall, to the extent that it is covered by the invoice or payment, be deemed to have taken at the time the invoice is issued or the payment is received.

(3) The Commissioner may on an application of any dealer exempt such dealer subject to such conditions as he may specify, from the time specified in sub-section (1).

8. Agents liable to pay tax.- (1) Notwithstanding anything contained in any law for the time being in force including this Act, every person who, for an agreed commission or brokerage, buys or sells on behalf of any principal who is a resident of the State shall be liable to tax under this Act at the rate or rates leviable thereunder in respect of such purchase or sale, notwithstanding that such principal is not a dealer or that the turnover of purchase or sale relating to such principal is less than the minimum specified in sub-sections (1), (2) and (3) of Section 22.

(2) The principal shall not be liable to tax on his turnover in respect of which the agent is liable to tax under sub-section (1), and the burden of proving that the turnover has been effected through an agent liable to tax under the said sub-section, shall be on such principal.

9. Collection of tax by registered dealers, Governments and statutory authorities.- (1) Every registered dealer liable to pay tax under the Act shall collect such tax at the rate or rates at which he is liable to pay tax, and the tax collected shall be accounted for under the provisions of this Act and rules made thereunder.

(2) The Central Government, a State Government, a statutory body or a local authority shall, in respect of any taxable sale of goods effected by them, collect by way of tax any amount which a registered dealer effecting such sale would have collected by way of tax under this Act, issue a tax invoice, pay the tax so collected into the Government Treasury or any designated bank and furnish monthly returns, as specified under Section 35, to the prescribed authority.

10. Output tax, input tax and net tax.- (1) Output tax in relation to any registered dealer means the tax payable under this Act in respect of any taxable sale of goods made by that dealer in the course of his business, and includes tax payable by a commission agent in respect of taxable sales of goods made on behalf of such dealer subject to issue of a prescribed declaration by such agent.

(2) Subject to input tax restrictions specified in Sections 11,12,14, 17, 18 and 19, input tax in relation to any registered dealer means the tax collected or payable under this Act on the sale to him of any goods for use in the course of his business, and includes the tax on the sale of goods to his agent who purchases such goods on his behalf subject to the manner as may be prescribed to claim input tax in such cases.

(3) Subject to input tax restrictions specified in Sections 11, 12, 14, 17, 18 and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and shall be accounted for in accordance with the provisions of Chapter V.

(4) For the purpose of calculating the amount of net tax to be paid or refunded, no deduction for input tax shall be made unless a tax invoice, debit note or credit note, in relation to a sale, has been issued in accordance with Section 29 or Section 30 and is with the registered dealer taking the deduction at the time any return in respect of the sale is furnished, except such tax paid under sub-section (2) of Section 3.

(5) Subject to input tax restrictions specified in Sections 11, 12, 14, 17, 18 and 19, where under sub-section (3) the input tax deductible by a dealer exceeds the output tax payable by him, the excess amount shall be adjusted or refunded together with interest, as may be prescribed.

11. Input tax restrictions.- (a) Input tax shall not be deducted in calculating the net tax payable, in respect of:

- (1) tax paid on purchases attributable to sale of exempted goods exempted under Section 5, except when such goods are sold in the course of export out of the territory of India;
- (2) tax paid on purchase of goods that are despatched outside the State, other than as a direct result of

sale or purchase in the course of inter-State trade or commerce;

- (3) tax paid on goods including capital goods as specified in the Fifth Schedule and any other goods as may be notified by the Government or the Commissioner, purchased or put to use for purposes other than for re-sale;
- (4) tax paid on purchase of capital goods other than those falling under clause (3), except as provided in Section 12;
- (5) tax paid on purchase of goods used as inputs in the manufacture, processing or packing of other taxable goods despatched to a place outside the State not as a direct result of sale or purchase in the course of inter-State trade, except as provided in Section 14;
- (6) tax paid on purchases attributable to naphtha, liquified petroleum gas, furnace oil, light diesel oil, superior kerosene oil, kerosene and any other petroleum product, when used as fuel in motor vehicles, but when used as fuel in production of any goods for sale in the course of export out of the territory of India or taxable goods or captive power, input tax shall be deducted as provided in Section 14.
- (7) tax paid under sub-section (2) of Section 3 on the purchase of fuel;
- (8) tax paid under sub-section (2) of Section 3 on the purchase of goods excluding fuel, until output tax is

payable on such goods or other goods in which such goods are put to use except when the said goods are exported out of the territory of India;

(9) tax paid on goods purchased by a dealer who is required to be registered under the Act, but has failed to register.

(b) Input tax shall not be deducted by an agent purchasing or selling goods on behalf of any other person other than a non-resident principal.

12. Deduction of input tax in respect of Capital goods.- (1) Deduction of input tax shall be allowed to the registered dealer in respect of the purchase of capital goods for use in the business of sale of any goods in the course of export out of the territory of India and in the case of any other dealer in respect of the purchase of capital goods wholly or partly for use in the business of taxable goods.

(2) Deduction of input tax under this Section shall be allowed only after commencement of commercial production, or sale of taxable goods or sale of any goods in the course of export out of the territory of the India by the registered dealer and shall be apportioned over a specified period, as may be prescribed.

13. Pre-registration purchases.- Deduction of input tax shall be allowed to the registered dealer, subject to the restrictions of Section 11, in respect of tax charged to him by a seller on taxable sale of goods made to him for the purpose of the business within three months prior to the date of his registration provided that no input tax shall be allowed in

respect of goods which have been sold or otherwise disposed of prior to the date of registration.

14. Special rebating scheme.- Deduction of input tax shall be allowed on the difference between the rate of input tax charged at a rate higher than four per cent and the rate specified in Third Schedule on purchases specified in sub-section (5) and sub-section (6) of Section 11.

15. Composition of tax.- (1) Subject to such conditions and in such circumstances as may be prescribed, any dealer other than a dealer who purchases or obtains goods from outside the State or from outside the territory of India, liable to pay tax as specified in Section 4 and,

- (a) whose total turnover in a period of four consecutive quarters does not exceed fifteen lakh rupees; or
- (b) who is a dealer executing works contracts; or
- (c) who is a hotelier, restaurateur, caterer; or
- (d) who is a mechanised crushing unit producing granite metals;

may elect to pay in lieu of the net amount of tax payable by him under this Act by way of composition, an amount at such rate not exceeding five per cent on his total turnover or on the total consideration for the works contracts executed or not exceeding two lakh rupees for each crushing machine per annum as may be prescribed.

(2) For the purposes of sub-section (1) a quarter shall mean any period ending on final day of the months of March, June, September and December.

(3) Any dealer eligible for composition of tax under sub-section (1) may report, to the prescribed authority, the exercise of his option and he shall pay such amount due and furnish a return in such manner as may be prescribed.

(4) Any dealer opting for composition of tax under sub-section (1) shall not be permitted to claim any input tax on any purchases made by him.

16. Special accounting scheme.- Where a dealer liable to pay tax under Section 4 is unable to identify each individual sale, its value or the rate of tax, he may apply to the prescribed authority to pay net tax under Section 10 under a special method to be mutually agreed by such authority in such manner as may be prescribed.

17. Partial rebate.- Where a registered dealer deducting input tax.-

(1) makes sales of taxable goods and goods exempt under Section 5, or

(2) in addition to the sales referred to in clause (1), despatches taxable goods or goods exempted under Section 5 outside the State not as a direct result of sale or purchase in the course of inter-State trade, or

(3) puts to use the inputs purchased in any other purpose (other than sale, manufacturing, processing, packing or storing of goods), in addition to use in the course of his business,

apportionment and attribution of input tax deductible between such sales and despatches of goods or such purpose, shall be made in accordance with Rules or by special

methods to be approved by the Commissioner or any other authorised person and any input tax deducted in excess shall become repayable forthwith.

18. Transitional provisions.- Transitional provisions covering relief on Sales Tax on stock in hand for manufacture and resale at the date of commencement of this Act shall be as prescribed.

19. Change in use after deduction of input tax.- (1) Where a registered dealer has deducted input tax on any goods and those goods are not used in the course of his business or lost or destroyed, any input tax deducted becomes repayable in the period following the date on which those goods were put to such other use.

(2) Where such goods have been wholly or mainly used or are intended for use in sale of taxable goods or in sale of any goods in the course of export out of the territory of India prior to the change of use, tax shall be calculated on the prevailing market value of such goods at the time of change of use.

20. Deduction of input tax on exports and interstate sales, etc..- (1) Tax paid under this Act by any dealer on purchase of inputs in respect of,-

- (a) any goods sold in the course of export out of the territory of India, or
- (b) any goods taxable under the Act, sold in the course of interstate trade or commerce, or

- (c) any goods sold to a dealer who is a unit located in any special economic zone established under authorisation by the authorities specified by the Central Government in this behalf, or
- (d) any goods sold to a dealer who is an Export Oriented Unit,

shall be deducted as provided under Section 10, from output tax payable by such dealer.

(2) Goods sold by a registered dealer to any other registered dealer who is a unit located in any special economic zone established under authorisation by the authorities specified by the Central Government in this behalf or who is an Export Oriented Unit, shall be exempt from the tax payable under this Act.

Explanation 1.- For the purposes of this section, the expression "special economic zone" has the meaning assigned to it in clause (iii) to Explanation 2 to the proviso to section 3 of the Central Excise Act, 1944 (Central Act 1 of 1944).

Explanation 2.- For the purpose of this section, "Export Oriented Unit" means a unit certified as such by the Central Government.

21. Reimbursement of tax.- Tax collected under this Act on purchases made by specialised agencies of the United Nations Organisation and Consulates or Embassies of any other country located in the State shall be reimbursed in such manner and subject to such conditions as may be prescribed.

Chapter III

Registration

22. Liability to register.- (1) Every dealer whose total turnover exceeds or who reasonably expects his total turnover to exceed two lakh rupees, as computed under the provisions of the Karnataka Sales Tax Act 1957 (Karnataka Act 25 of 1957), in the year ending Thirty First day of March 2003 shall be liable to be registered and report such liability on such date as may be notified by the Government.

(2) Every dealer who at any time has reason to believe that his taxable turnover is likely to exceed two lakh rupees during any year after the year ending Thirty First day of March 2003 shall be liable to be registered and report such liability forthwith or on such date as may be notified by the Government.

(3) Every dealer whose taxable turnover exceeds fifteen thousand rupees in any one month after the date from which the tax shall be levied, in accordance with Section 3, and every dealer executing a works contract whose receipts or amounts receivable by way of consideration towards work executed exceed fifteen thousand rupees in any one month after the date from which the tax shall be levied, shall register forthwith.

(4) Every dealer to whom a business or part of a business is transferred by another dealer who is liable to be registered under this Act, shall apply for registration from the date of that transfer, if he is not already registered.

(5) Every dealer liable to register under sub-sections (2), (3) or (4) shall report his liability to be registered in the

prescribed manner at the end of the month on which that liability arises or on such date as may be notified under sub-section (2).

(6) Every dealer who obtains or brings taxable goods from outside the State, whether as a result of purchase or otherwise, shall be liable to be registered after such first purchase or procurement irrespective of the value of goods purchased or procured and shall report such liability at the end of the month in which such purchase or procurement takes place.

(7) Every dealer who exports taxable goods is liable to register after the first export and shall report such liability at the end of the month in which such export takes place.

(8) Every dealer who effects sale of taxable goods in the course of interstate trade or commerce or dispatches taxable goods to a place outside the State is liable to register after the first sale or dispatch and shall report such liability at the end of the month in which such sale or dispatch takes place.

(9) Every casual trader and every non-resident dealer or his agent shall be liable to register after his first sale irrespective of the value of the taxable goods sold and shall report such liability forthwith.

(10) In determining whether a person is liable to be registered under sub-sections (1), (2) or (3), the prescribed authority may have regard to the total or taxable turnover or total receipts of any other person where both persons are associates, and, where the prescribed authority deems that any business has been deliberately broken up into smaller businesses to avoid

registration, the prescribed authority may issue a notice requiring those businesses to be registered as one business entity.

23. Voluntary registration.- A dealer who sells taxable goods, though not liable to register under Section 22 but who desires to register voluntarily, shall make an application to the prescribed authority in such form and in such manner as may be prescribed, giving correct and complete particulars.

24. *Suo motu* registration.- Where a dealer liable to be registered has failed to inform the competent authority of his liability to be registered, the competent authority may after conducting such survey, inspection or enquiry as may be prescribed, proceed to register such person under Section 22.

25. Registration.- (1) The form of application to register under Section 22 or 23, the time and manner of making application, and the fee, payable shall be as may be prescribed.

(2) On receipt of an application to register under Section 22 or 23, the prescribed authority shall register any such dealer and grant him a certificate of registration, if he is satisfied that the applicant is a bona fide dealer and that he complies with the requirements of this Act, with effect from the first day of the month following the month in which such application is made or from such earlier date as may be mutually agreed.

(3) The prescribed authority may refuse to grant a certificate of registration to the applicant for any good and sufficient reasons to be recorded in writing, after allowing the applicant to show cause in writing against such refusal.

(4) In respect of the Central Government, any State Government, any statutory body or any local authority liable to collect tax under sub-section (2) of Section 9, the Commissioner may authorise issue of a certificate of registration to such body in the manner as may be prescribed.

26. Security.- (1) The prescribed authority may, for the proper payment of the tax, from time to time demand from a registered dealer or from a dealer who has applied for registration under this Act, reasonable security not exceeding a prescribed amount to be paid in the prescribed manner.

(2) The prescribed authority may, by order, forfeit the whole or any portion of the security furnished by a dealer,

- (a) for collecting any amount of tax, interest or penalty that is payable by such dealer, or
- (b) if such dealer is found to have misused any prescribed certificate or declaration or has failed to keep or retain them in the prescribed manner.

(3) No order shall be passed under sub-section (2), without giving the dealer an opportunity of showing cause in writing against such forfeiture.

27. Cancellation of registration.- (1) In any case where,

- (a) any business of a registered dealer has been discontinued, transferred fully or otherwise disposed of; or
- (b) there is any change in the status of the ownership of the business; or

- (c) the taxable turnover of sale of goods of a registered dealer has, during any period of twentyfour consecutive months, not exceeded two lakh rupees; or
- (d) a dealer issues tax invoices without effecting any taxable sales; or
- (e) a dealer being an individual, registered under this Act dies,

and for any other good and sufficient reason, the prescribed authority may, either on its own motion or on the application of the dealer, or in the case of death, on the application of the legal heirs, made in the prescribed manner, cancel the registration certificate from such date, including any anterior date, as it considers fit having regard to the circumstances of the case.

(2) The cancellation of a certificate of registration under this Section shall not affect the liability of the dealer to pay tax, any penalty and interest due for any period prior to the date of cancellation whether or not such tax, penalty and interest is assessed before the date of cancellation but remains unpaid, or is assessed thereafter.

(3) On cancellation of registration, except where the businesses is transferred as a whole to another registered dealer as specified, a dealer who has availed deduction of input tax, shall be liable to pay tax on any taxable goods held by him at their prevalent market price.

(4) A dealer liable to pay tax under sub-section (3) shall furnish a final return at such time as may be prescribed.

28. Obligation of registered dealer to inform changes after registration.- (1) Where,-

- (a) a registered dealer sells or otherwise disposes of his business or any part thereof, or
- (b) there is any other change in the ownership of the business including any change in the status, or
- (c) a registered dealer discontinues his business or changes his place of business or opens a new place of business, or
- (d) a registered dealer changes the name or nature of the business,

such registered dealer or, in case of his death his legal representative, shall within the prescribed time, inform the prescribed authority accordingly.

(2) Where,-

- (a) a change of ownership of the business takes place on account of transfer of business from one registered dealer to another, the dealer succeeding to the business, or
- (b) there is any change in the status of the ownership of the business,

such registered dealer shall surrender the certificate of registration already issued in respect of the business and apply for registration afresh in the prescribed manner.

(3) On any application for amendment of a certificate of registration or upon his own motion, the prescribed authority may amend the registration certificate of a dealer or reject the

application within thirty days of the date of receipt of such application, after making such enquiry as it deems fit and after giving the dealer the opportunity of showing cause in writing against such amendment or rejection.

(4) Any amendment of a certificate shall take effect from the date of the event referred to in sub-section (1) where applicable and in all other cases the amendment shall take effect from the date of application.

(5) Where any change in registration other than of death of the registered dealer is not reported to the prescribed authority within the prescribed time, it shall be deemed that no such change has occurred and the dealer as registered shall be liable to tax that is payable in respect of any business carried on.

Chapter IV

Accounts and documents

29. Tax invoices and bills of sale.- (1) A registered dealer effecting a taxable sale, or sale of exempt goods along with any taxable goods, shall issue at the time of the sale, a tax invoice marked as original for the sale, containing the particulars prescribed, and shall retain a copy thereof.

(2) A tax invoice marked as original shall not be issued to any registered dealer in circumstances other than those specified in sub-section (1), and in a case of loss of the original, a duplicate may be issued where such registered dealer so requests.

(3) A registered dealer selling non-taxable goods or a dealer opting to pay tax by way of composition under Section

15 selling goods in excess of the prescribed value shall issue a bill of sale containing the particulars prescribed.

30. Credit and Debit Notes.- (1) Where a tax invoice has been issued for any sale of goods and within six months from the date of such sale the amount shown as tax charged in that tax invoice is found to exceed the tax payable in respect of the sale effected, the registered dealer effecting the sale shall issue forthwith to the purchaser a credit note containing particulars as prescribed.

(2) Where a tax invoice has been issued for sale of any goods and the tax payable in respect of the sale exceeds the amount shown as tax charged in such tax invoice, the registered dealer making the sale, shall issue to the purchaser a debit note containing particulars as prescribed.

(3) Any registered dealer who receives or issues credit notes or debit notes shall modify his return for the period in which the credit note or debit note is issued and pay any tax due on such return.

31. Accounts.- (1) Every registered dealer and every dealer liable to pay tax under this Act shall keep and maintain a true and correct account, in Kannada or English or Hindi or in such other language as the Government may, by notification, specify, of all his purchases, receipts, sales, other disposals, production, manufacture and stock showing the values of goods subject to each rate of tax under this Act including input tax paid and output tax payable.

(2) If the Commissioner or prescribed authority is of the opinion that the accounts kept and maintained by any dealer or any class of dealers do not sufficiently enable him or it to verify

the returns required under this Act or to make any assessment under it, he or it may, by order, require any dealer or class of dealers, to keep such accounts and records including tax invoices of manufacture, sales, purchases, disposals or transfers of stock other than by way of sales in such form and in such manner as he or it may direct.

(3) If the Commissioner considers that any class of dealers is not in a position to keep and maintain accounts in accordance with the provisions of this Section, he may, for reasons to be recorded in writing, permit such class of dealers to maintain accounts in the prescribed manner.

(4) Every dealer whose taxable turnover in a year exceeds twenty five lakh rupees shall have his accounts audited by a Chartered Accountant or a Tax Practitioner subject to such conditions and such limits as may be prescribed and shall submit to the prescribed authority a copy of the audited statement of accounts and prescribed documents in the prescribed manner.

32. Period of retention of accounts.- (1) Every dealer required under this Act to keep and maintain books of account or other records including tax invoices relating to his purchases and sales shall retain them until the expiration of five years after the end of the year to which they relate or for such other period as may be prescribed or until the assessment reaches finality, whichever is later.

(2) Where such dealer is a party to an appeal or revision under this Act, he shall retain, until the appeal or revision and any appeal therefrom is finally disposed of, every

record and accounting document that pertains to the subject matter of the appeal or revision.

33. Electronic records.- Every dealer required to keep and maintain records and accounts pursuant to Section 31 and who does so by electronic means shall retain them in an electronically readable format for the retention period specified in Section 32.

34. Requirement to provide documents and information.- Notwithstanding anything to the contrary contained in this Act, the prescribed authority may, for any purpose related to the administration or enforcement of this Act, by notice, require any person to provide the prescribed authority, within such reasonable time as is stipulated in the notice, with any information or additional information, including a return under this Act, or any other document, whether inside or outside the State.

Chapter V

Administration and collection of tax

35. Returns.- (1) Subject to sub-sections (2) to (4), every registered dealer, and the Central Government, a State Government, a statutory body and a local authority liable to pay tax collected under sub-section (2) of Section 9, shall furnish a return in such form and manner, including electronic methods, and shall pay the tax due on such return within twenty days after the end of the preceding month or any other tax period as may be prescribed.

(2) The tax on any sale or purchase of goods declared in a return furnished shall become payable at the expiry of the

period specified in sub-section (1) without requiring issue of a notice for payment of such tax.

(3) Subject to such terms and conditions as may be specified, the prescribed authority may require any registered dealer.-

(a) to furnish a return for such periods, or

(b) to furnish separate branch returns where the registered dealer has more than one place of business.

(4) If any dealer having furnished a return under this Act, other than a return furnished under sub-section (3) of Section 38, discovers any omission or incorrect statement therein, other than as a result of an inspection or receipt of any other information or evidence by the prescribed authority, he shall furnish a revised return within six months from the end of the relevant tax period except when such revised return is on issue of a debit note under Section 30, subject to sub-section (2) of Section 72.

36. Interest in case of failure to furnish returns or to pay tax declared on returns or other amounts payable.-

(1) Every dealer shall be liable to pay simple interest on any amount of tax which should have been declared on a return, but which has been omitted from it, unless that omission is corrected within three months of the omission subject to sub-section (2) of Section 72, and such interest is payable from the date the tax should have been declared, and the dealer shall declare his liability to pay that interest in such form and manner as may be prescribed.

(2) If a dealer required to furnish a return under this Act.-

- (a) fails to pay any amount of tax or additional tax declared on the return, or
- (b) furnishes a revised return more than three months after tax became payable, declaring additional tax, but fails to pay any interest declared to be payable under sub-section (1), or
- (c) fails to declare any tax or interest which should have been declared, or
- (d) fails to make a return,

such dealer shall be liable to pay interest in respect of the tax and additional tax payable as declared by him or the tax payable and interest payable under sub-section (1) for the period for which he has failed to furnish a return.

(3) Where any other amount is payable under this Act is not paid within the period specified in Section 42, interest shall be payable on such amount from such period.

(4) The interest shall also be payable under this Section during any period during which recovery of any tax or other amount payable under the Act is stayed by an order of any authority or Court in any appeal or other proceedings disputing such tax or amount.

37. Rate of interest.- (1) The rate of simple interest payable under Section 36 shall be two per cent per month:

- (a) from the date the tax had become payable to the date of its payment or to the date of any

assessment under this Act, whichever is earlier;
and

(b) from the date on which any amount payable under this Act was due.

(2) For the purpose of this Section interest in respect of parts of a month shall be computed proportionately and month shall mean any period of thirty days.

38. Assessment of tax.- (1) Every dealer shall be deemed to have been assessed to tax based on the return filed by him under Section 35, except in cases where the Commissioner may notify the dealer of any requirement of production of accounts in support of a return filed for any period.

(2) Where a registered dealer fails to furnish his monthly or final return on or before the date provided in this Act or the rules made thereunder, the prescribed authority shall issue an assessment to the registered dealer to the best of its judgement and the tax assessed shall be paid within ten days from the date of issue of the assessment.

(3) Where an assessment has been made under subsection (2) and the dealer subsequently furnishes a return for the period to which the assessment relates, the prescribed authority may withdraw the assessment but the dealer shall be liable to penalties and interest as applicable.

(4) Where the dealer furnishes a return under subsection (3), such return shall be furnished within one month of issue of such assessment.

(5) The prescribed authority on any evidence showing a liability to tax coming to its notice may issue a protective assessment in the case of a dealer registered under this Act or a dealer liable to be registered under this Act, if the prescribed authority has reason to believe that such dealer will fail to pay any tax, penalty or interest so assessed and such tax, penalty or interest shall become payable forthwith.

39. Re-assessment of tax.- (1) Where the prescribed authority has grounds to believe that any return furnished which is deemed as assessed is incorrect or that any assessment issued under Section 38 understates the correct tax liability of the dealer, it, -

- (a) may, based on any information available, re-assess, to the best of its judgement, the additional tax payable together with any penalty and interest ; and
- (b) shall issue a notice of re- assessment to the registered dealer demanding that the tax shall be paid within ten days of the date of service of the notice after giving the dealer the opportunity of showing cause against such re-assessment in writing.

(2) Where after making a re-assessment under this Section, any further evidence comes to the notice of the prescribed authority, it may make any further re-assessments in addition to such earlier re-assessment.

40. Period of limitation for assessment.- (1) An assessment under Section 38 or re-assessment under Section

39 of an amount of tax due for any prescribed tax period shall not be made after the following time limits.-

- (a) five years after the end of the prescribed tax period;
or
- (b) three years after evidence of facts, sufficient in the opinion of the prescribed authority to justify making of the re-assessment, comes to its knowledge,

whichever is later.

(2) If any tax is fraudulently evaded attracting punishment under Section 79, an assessment may be made as if in sub-section (1), reference to five years was a reference to ten years.

(3) In computing the period of limitation specified for assessment or re-assessment, as the case may be under this Act, the period taken for disposal of any appeal against an assessment or other proceeding by the appellate authority, a tribunal or competent court shall not be taken into account in computing such period for assessment or reassessment as the case may be.

41. Power of rectification of assessment or re-assessment in certain cases.- (1) Where any assessment or re-assessment or an order of an appellate authority or a revisional authority other than a court or tribunal, is found to be erroneous in so far as it is prejudicial to the interest of the public revenue by a judgement or an order of any court, then notwithstanding anything contained in this Act, authority concerned may proceed to rectify such assessment or re-assessment or order and determine the tax payable by the dealer in accordance with such judgement or order at any time

within a period of three years from the date of such judgement or order.

(2) Where any court makes an order or gives judgement to the effect that any tax assessed under this Act or any other law should have been assessed under a provision of a law different from that under which it was assessed, then in consequence of such order or judgement or to give effect to any finding or direction contained in any such order or judgement, such turnover or part thereof, may be assessed or re-assessed to tax, as the case may be, at any time within five years from the date of such order or judgement, notwithstanding any limitation period which would otherwise be applicable under the law applicable to that assessment or re-assessment.

(3) Where any proceedings for the recovery of any tax, penalty, interest or any part thereof remaining unpaid, have been commenced in a court and the amount of tax, penalty or interest is subsequently modified, enhanced or reduced in consequence of any decision made or order passed in the appeal, the prescribed authority may, in such manner and within such period as may be prescribed, inform the dealer or the person and the authority under whose order the recovery is to be made, and thereupon such proceedings may be continued with the modified, enhanced or reduced amount of tax, penalty or interest therein substituted.

(4) No order of rectification under this Section shall be passed without giving the dealer an opportunity of showing cause in writing against such rectification.

42. Payment and recovery of tax, penalties, interest and other amounts.- (1) Every registered dealer shall furnish returns to the prescribed authority, and the tax payable shall be paid in such manner as may be prescribed, within the period specified and on an application by a dealer, the Government or Commissioner may permit, subject to such conditions as may be prescribed, payment of tax or any other amount payable, in such instalments and at such intervals as may be prescribed.

(2) Every registered dealer shall, on receipt of a Notice from the prescribed authority, pay any penalty or interest due in such manner as may be prescribed.

(3) (a) The Government may, in such circumstances and subject to such conditions as may be prescribed, by notification, defer payment by any new industrial unit of the whole or any part of the tax payable in respect of any period and also permit payment of such tax before the expiry of any deferred period, subject to the condition that in respect of such industrial unit the Government has already notified exemption of tax or deferred payment of tax under the provisions of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957).

(b) Notwithstanding anything contained in this Act but subject to such conditions as the Government may, by general or special order specify, where a dealer to whom incentives by way of deferment offered by the Government in its orders issued from time to time has been granted by virtue of eligibility certificate and where liability equal to the amount of

any such tax payable by such dealer has been created as a loan by the Department of Industries and Commerce of the Government of Karnataka, then such tax shall be deemed, in the public interest, to have been paid.

(c) Notwithstanding anything contained in this Act, the deferred payment of tax under clause (a) shall not attract interest under sub-section (2) of Section 36, provided the conditions laid down for payment of the tax deferred are satisfied.

(4) Any other amount due under this Act shall be paid within ten days from the date of service of the order or proceedings imposing such amount, unless otherwise specified.

(5) The Commissioner or the Government may, subject to such conditions as they may specify, remit by an order the whole or any part of the interest payable in respect of any period by any person or class of persons.

(6) Where the amount paid falls short of the aggregate of the tax or any other amount due and interest payable, the amount so paid shall first be adjusted towards interest payable and the balance, if any, shall be adjusted towards the tax or any other amount due.

(7) A registered dealer, furnishing a revised return in accordance with this Act which shows a greater amount of tax to be due than was paid or payable in accordance with the original return, shall pay with that revised return the tax so payable in such manner as may be prescribed.

(8) Any amount, which remains unpaid under this Act after the due date of payment, shall be recoverable from a dealer in the manner specified under this Act.

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

(a) as if it were an arrears of land revenue; or

(b) by attachment and sale or by sale without attachment of any property of such dealer or any other person by the prescribed authority or the prescribed officer in the prescribed manner, and any prescribed certificate issued towards such sale shall be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court; or

(c) notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), on application to any Magistrate, by such Magistrate as if it were a fine imposed by him.

(10) Where a dealer or other person who has appealed or applied for revision of any order made under this Act and has complied with an order made by the appellate or the revising authority in regard to the payment of the tax or other amount, no proceedings for recovery under this Section shall be taken or continued until the disposal of such appeal or application for revision.

(11) The High Court may, either suo motu or on an application by the Commissioner or any person aggrieved by

the order, revise any order made by a Magistrate under clause (c) of sub-section (9).

43. Duties of Receivers.- (1) A receiver appointed by any court shall notify the Commissioner in writing within fourteen days after being appointed to the position of receiver or taking possession of an asset in the State whichever is earlier.

(2) The Commissioner may notify the receiver in writing of the amount which appears to be sufficient to provide for any tax which is or will become payable by the person whose assets are in the possession of the receiver.

(3) A receiver shall not part with any asset in the State, which is held by the receiver in his capacity as receiver without the prior written permission of the Commissioner or any other officer authorised by him.

(4) A receiver.-

(a) shall set aside, out of the proceeds of sale of an asset, the amount notified by the Commissioner under sub-section (2), or such lesser amount as may subsequently be fixed by the Commissioner;

(b) is liable to the extent of the amount set aside for the tax payable by the person who owned the asset; and

(c) may pay any debt that has priority over the tax referred to in this Section notwithstanding any provision of this Section.

(5) A receiver is personally liable to the extent of any amount required to be set aside under sub-section (4) for the

tax referred to in sub-section (2) if and to the extent that, the receiver fails to comply with the requirements of this Section.

(6) In this Section, "receiver" includes a person, who with respect to an asset in the State is, -

- (a) a liquidator of a company; or
- (b) a receiver appointed out of court or by a court; or
- (c) a trustee for a bankrupt person; or
- (d) a mortgagee in possession; or
- (e) an executor of a deceased estate; or

any other person conducting the business of a person legally incapacitated.

44. Special provisions relating to companies.- (1) Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), when any tax due from or assessed on a company under this Act for any period cannot be recovered, then, every person who is or was a director of the 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.

(2) (a) If the person committing an offence under this Act is a company, the company as well as every person in charge of, or responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(b) No such person referred to in clause (a) shall be liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

(3) When two or more companies are to be amalgamated by an order of a Court or of the Central Government, and the order is to take effect from a date earlier to the date of the order, and any two or more such companies have sold or purchased any goods to or from each other in the period commencing on the date from which the order is to take effect and ending on the date of the order, then such transactions of sale or purchase will be included in the turnover of the sales or purchase of the respective companies and will be assessed to tax accordingly, and the said two or more companies shall be treated as distinct companies for all periods up to the date of the said order, and the registration certificates of the said companies shall be cancelled, where necessary, with effect from the date of the said order.

45. Recovery of tax, penalty, or any other amount, from certain other persons.- (1) The prescribed authority

may at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last address known to the prescribed authority, require any person from whom money is due or may become due to the dealer or any person who holds or may subsequently hold money for or on account of the dealer to pay to the prescribed authority, either forthwith upon the money becoming due or being held at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due by the dealer in respect of arrears of tax or penalty or the whole of the money when it is equal to or less than that amount.

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

(3) Any person making any payment in compliance with a notice under this Section shall be deemed to have made the payment under the authority of the dealer and the receipt of the prescribed authority shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount referred to in the receipt.

(4) Any person discharging any liability to the dealer after receipt of the notice referred to in this Section shall be personally liable to the prescribed authority to the extent of the liability discharged or to the extent of the liability of the dealer for the amount due under this Act, whichever is less.

(5) Where any person to whom a notice under this Section is sent, proves to the satisfaction of the prescribed authority issuing such notice or any other officer to whom the

matter is referred for verification, that the sum demanded or any part thereof is not due by him to the dealer or that he does not hold any money for or on account of the dealer, then nothing contained in this Section shall be deemed to require such person to pay the sum demanded or any part thereof, to the prescribed authority.

(6) Any amount which a person is required to pay to the prescribed authority or for which he is personally liable to the prescribed authority under this Section shall, if it remains unpaid, be a charge on the properties of the said person and may be recovered as if it were an arrear of land revenue.

(7) For the purpose of this Section, the amount due to a dealer or money held for or on account of a dealer by any person shall be computed after taking into account such claims, if any, as may have fallen due for payment by such dealer to such person and as may be lawfully subsisting.

46. Tax payable on transfer of business, assessment of legal representatives, etc.-(1) When the ownership of the business of a dealer is transferred, the transferor and the transferee shall jointly and severally be liable to pay any tax or penalty or any other amount remaining unpaid at the time of transfer or that may become payable in respect of such business after the date of transfer but relating to the years up to the date of transfer and for the purpose of recovery from the transferee, such transferee shall be deemed to be the dealer liable to pay the tax or penalty or other amount due under this Act.

(2) When a firm liable to pay the tax or penalty is dissolved, the assessment of the tax and imposition of penalty

shall be made as if no dissolution of the firm had taken place, and every person who was at the time of dissolution a partner of the firm and the legal representative of any such person who is deceased shall be jointly and severally liable to pay the tax or penalty assessed or imposed.

(3) Where any firm is liable to pay any tax or penalty or any other amount under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.

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

(5) When an undivided Hindu family or Aliyasanthana family liable to pay the tax or penalty is partitioned, the assessment of the tax and the imposition of penalty shall be made as if no partition of the family had taken place, and every person who was a member of the family before the partition shall be jointly and severally liable to pay the tax or penalty assessed or imposed.

(6) Where a dealer dies, his executor, administrator or other legal representative shall be deemed to be the dealer for the purposes of this Act and the provisions of this Act shall apply to him in respect of the business of the said deceased dealer, provided that, in respect of any tax, penalty or fee assessed as payable by any such dealer or any tax, penalty or fee, which would have been payable by him under this Act if he

had not died, the executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hands.

47. Payment and disbursement of amounts wrongly collected by dealer as tax.- (1) Subject to Section 30, where any amount is collected by way of tax or purporting to be way of tax from any person by any dealer, whether knowingly or not, such dealer shall pay the entire amount so collected, to the prescribed authority within twenty days after the close of the month in which such amount was collected, notwithstanding that the dealer is not liable to pay such amount as tax or that only a part of it is due from him as tax under this Act.

(2) If default is made in payment of the amount in accordance with sub-section (1), -

- (a) the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the dealer;
- (b) the dealer liable to pay the amount shall pay interest at the rate of two per cent of such amount for each month of default and
- (c) the whole of the amount remaining unpaid along with the interest calculated under clause (b) of this sub-section shall be recoverable in the manner specified in Section 42.

(3) Notwithstanding anything contained in this Act, or in any other law for the time being in force, any amount paid or payable by any dealer under sub-section (1), shall, to the extent it is not due as tax be forfeited to the Government and

be recovered from him and such payment or recovery shall discharge him of the liability to refund the amount to the person from whom it was collected.

(4) Where any amount is paid or recovered by or from any dealer under sub-section (1) or (3), a refund of such amount or any part thereof can be claimed from Government by the person from whom, it was realized by way of tax provided an application in writing in the prescribed form is made to the Commissioner, within two years from the date of the order of forfeiture. On receipt of any such application, the Commissioner shall hold such inquiry as he deems fit and if the commissioner is satisfied that the claim is valid and admissible, and that the amount so claimed as refund is actually paid or recovered, he shall refund the amount or any part thereof, which is found due to the person concerned.

48. Tax to be first charge on property.-

Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person on account of tax, penalty or interest or any amount which a dealer is required to pay or deduct from payment or for which he is personally liable to the Government shall be a first charge on the property of the dealer or such person, as the case may be.

49. Period of limitation for recovery of tax.- (1)

Notwithstanding anything contained in any law for the time being in force, no proceedings for the recovery of any amount under this Act shall be initiated after the expiry of twelve years from the end of the relevant tax period or from the date of the relevant assessment, provided that when an appeal or application for revision has been filed, the period of limitation

shall run from the date on which the amount due is finally determined.

(2) The period of limitation specified under sub-section (1) shall not apply to any case in which, during the course of recovery proceedings initiated under any clause of sub-section (3) of Section 42 or under Section 45, any other fresh proceedings are initiated.

50. Payment of interest on refunds.- (1) Where any amount refundable to any person under an order made, or proceedings taken, under any provision of this Act or Rules made thereunder is not refunded to him within thirty five days,

(a) of the date of such order, if that order is made by the refunding authority, or

(b) of the date of receipt of such order by the refunding authority, if that order is made by an authority other than the refunding authority,

the refunding authority, being any officer of the Commercial Taxes Department authorized to make any refund under this Act, shall pay such person simple interest at the rate of twelve percent per annum on the said amount from the day immediately following the expiry of the said thirty five days to the day of the refund.

(2) The interest calculable under sub-section (1) shall be on the balance of the amount remaining after adjusting out of the refundable amount any tax, interest or other amount due under this Act, for any year by the person on the date from which such interest is calculable.

(3) In computing the period of thirty five days referred to in sub-section (1), such periods as may be prescribed shall be excluded.

(4) The interest payable for a part of month shall be proportionately determined.

51. Power to withhold refund in certain cases.- (1) Where an order giving rise to a refund is the subject matter of an appeal or any other proceedings under this Act, the prescribed authority may, if, to the best of its judgement it is of the opinion that the grant of a refund is likely to prejudice the public revenue, withhold the refund until such time as it deems proper.

(2) The dealer shall be paid interest under sub-section (1) of Section 50 on the amount of refund ultimately determined to be due to the dealer as a result of such proceedings for the period commencing from the expiry of thirty five days from the date of the order referred in sub-section (1) to the date of refund.

52. Production and inspection of documents and powers of entry, search and seizure.- (1) Any officer authorised by the Commissioner in this behalf shall have the power.-

(a) to enter and inspect the place of business of any dealer, or any other place, where it is believed by such Officer that business is being carried on or accounts including documents are being kept by such dealer.

- (b) to direct such dealer to produce at such time and at such place accounts, registers and documents relating to his business activities for examination.
- (c) to enter and inspect the goods in the possession of the dealer or in the possession of any other person on behalf of such dealer, wherever such goods are kept.
- (d) to enter and search such places including the dealer's place of residence, and including the search of the dealer or person acting on behalf of the dealer found there, where concealment of facts relating to the business are suspected.
- (e) to seize any accounts, registers or documents from the dealer, where he has reason to suspect that a dealer is attempting to avoid or evade tax or is concealing his tax liability in any manner, after recording such reasons in writing, and give the dealer or any other person from whose custody such accounts, records or documents are seized, a receipt for and, if requested, copies of the same and may retain them in his custody for examination, inquiry, prosecution or other legal proceedings for such period as he considers necessary.
- (f) to seal any box or receptacle, godown or building or any part of the godown or building in which accounts or taxable goods are suspected to be kept or stored, where the owner or the person-in-charge of the business or any other person-in-charge of the business or any other person-in-occupation either

leaves the premises or is not available or fails or refuses to open any box or receptacle, godown or building or any part of the godown or building when called upon to do so.

- (g) to break open the receptacle, godown or building or part of the godown or building where the owner or the person-in-charge of the business or the person in occupation leaves the premises or, after an opportunity having been given to him to do so, fails to open the receptacle, godown or building or part of the godown or building, and to prepare a list of the goods and documents found therein.
- (h) to record the statement of any dealer or his manager, agent or servant, to take extracts from the records found in any premises and to put identification marks on accounts, registers, documents or goods.
- (i) to take samples of goods from the possession of any dealer, where he considers it necessary to protect the revenue against mistake or fraud, and provide a receipt for any samples so taken, and the samples shall, except where an offence is found, be returned to the dealer or be disposed of by the Commissioner with the consent of such dealer.
- (j) to seize any stock of goods liable to tax, which are found in possession of a dealer or in the possession of any person on behalf of a dealer and which are not accounted for in his accounts, records or documents maintained in the course of his

business, the value of which shall not exceed his tax liability and any penalty, including interest, and a list of goods so seized shall be prepared by such officer and a copy thereof shall be given to the dealer or any other person from whose custody such goods are seized.

(k) in circumstances where it is not possible to seize the accounts, records or documents under sub-section (1) or the goods under sub-section (3), to serve on the owner or the person who is in immediate possession or control thereof, an order that he shall not remove, part with or otherwise deal with them except with the prior consent of such Officer, and after serving such order to take such steps as are deemed necessary to secure the items referred to in the order.

(l) to issue an protective assessment as specified in sub-section (5) of Section 38.

(2) Where the records and accounts under Sections 31 and 33 are maintained by electronic means, the dealer shall provide such access to such accounts and records as may be required by the officer authorised under sub-section (1).

(3) The powers conferred on the officer under clauses (d) to (g), (i) and (j) of sub-section (1) shall be exercised in accordance with the provisions of the Code of Criminal Procedure, 1973, (Central Act 2 of 1974) and the power to enter a dealer's place of residence shall be authorized by an officer not below the rank of a Joint Commissioner.

(4) The accounts, registers, records, including computer hardware and software, and other documents seized under sub-section (1) shall not be retained by such officer for a period exceeding one hundred and eighty days from the date of seizure, unless the reasons for retaining the same beyond the said period are recorded by him, in writing and the approval of the next higher authority is obtained and such approval in any case shall not be for more than sixty days at a time.

(5) There shall be a presumption in respect of goods, accounts, registers or documents found at any place of business that they relate to that business, unless the contrary is proved by the dealer whose business occupies that place.

(6) The dealer or person from whom goods have been seized under clause (j) of sub-section (1) shall have a period of seven days to appeal against seizure of the goods.

(7) Subject to sub-section (6), after the expiry of the prescribed period, if any tax assessed or penalty or interest due is not paid, the officer shall dispose of the goods in public auction and adjust the sale proceeds towards any such amount due, and the excess amount shall, after deducting the charges incurred by the State, be refunded in the manner prescribed.

53. Establishment of check posts and inspection of goods in movement.- (1) If the Government or the Commissioner considers it necessary, with a view to prevent or check evasion of tax under this Act in any place or places in the State, it or he may, by notification, direct the establishment

of a check post or the erection of a barrier, or both, at such place or places as may be notified.

(2) The owner or person in charge of a goods vehicle or a boat, ship or similar vessel shall:

- (a) carry with him a goods vehicle record, a trip sheet or a log book, as the case may be; and
- (b) carry with him a tax invoice or a bill of sale or a delivery note or such other documents as may be prescribed, in respect of the goods carried in the goods vehicle or boat, ship or similar vessel; and
- (c) produce the documents referred to in sub-clauses (a) and (b) before any officer-in-charge of check post or barrier, or any other officer as may be empowered by the Government in this behalf, and obtain the seal of such officer affixed thereon, and, in respect of a bill of sale, give one copy thereof and, in respect of a delivery note, give a copy marked as original, to such officer and carry and retain with him the other copy until termination of movement of the goods; and
- (d) on entering the State limits, report at the first situated check post or barrier and, on leaving the State limits, report at the last situated check post or barrier and give a declaration containing such particulars as may be prescribed in respect of the goods carried in the goods vehicle or boat, ship or similar vessel, before any officer-in-charge of the check post or barrier or any other officer as may be empowered by the Government in this behalf; and

(e) stop the vehicle or boat, ship or similar vessel, as the case may be, and keep it stationary as long as may be required by the officer-in-charge of the check post or barrier or the officer empowered as aforesaid, to examine the contents in the vehicle or boat, ship or similar vessel and inspect all records relating to the goods carried, which are in the possession of such driver or other person-in-charge, who shall, if so required, give his name and address and the name and address of the owner of the vehicle or boat, ship or similar vessel.

(3) Where any goods vehicle is intercepted by the officer empowered at any place other than a check post or barrier, such officer may, if he deems it necessary, direct the owner or person-in-charge of the goods vehicle to take it to the nearest check post or police station, and such owner or person-in-charge of the goods vehicle shall comply with such direction.

(4) (a) Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. Where, before delivery is taken from him, a carrier or bailee to whom goods are delivered for transmission keeps the said goods in any office, shop, godown, vessel, receptacle, vehicle, any other place of business or any building or place, any officer empowered as aforesaid shall have power to enter into and search such office, shop, godown, vessel, receptacle, vehicle, other place of business or building or place and to

examine the goods and inspect all goods relating to such goods.

(b) The carrier or bailee or the person-in-charge of the goods and records shall give all facilities for such examination or inspection and, if so required, produce the bill of sale or delivery note or other documents referred to in sub-section (2), giving a declaration containing such particulars as may be prescribed regarding the goods, together with his name and address and the name and address of the carrier or the bailee and the consignee.

(c) The power conferred by clause (a) shall also include.-

- (i) the power to seal any box or receptacle, godown or building or any part of the godown or building in which accounts or taxable goods are suspected to be kept or stored, where the carrier or bailee or person in charge of the place of business either leaves the premises or is not available or fails or refuses to open any box or receptacle, godown or building or any part of the godown or building when called upon to do so; and
- (ii) the power to break open any box or receptacle, godown or building or part of the godown or building where the carrier or bailee or the person in charge of the place of business leaves the premises or, after an opportunity has been given to him to do so, fails to open the box, receptacle, godown or building or part of the godown or building.

(d) The officer acting under item (ii) of sub-clause (c) shall prepare a list of the goods and documents found in such box, receptacle, godown or building or part of the godown or building.

(5) (a) If any officer, empowered to enter into and search any office, shop, godown, vessel, receptacle, vehicle, any other place of business or any building or place where a carrier or bailee keeps the goods delivered to him for transmission, has reason to suspect that such carrier or bailee has colluded with the owner of the goods in evading payment of any tax, he may, for reasons to be recorded in writing, seize accounts, registers, records or other documents of the bailee or carrier as he may consider necessary and shall give a receipt for the same. The account, registers, records and other documents seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act.

(b) The accounts, registers, records and other documents so seized shall not be retained by such officer for a period exceeding one hundred and eighty days from the date of seizure, unless the reasons for retaining the same beyond the said period are recorded by him in writing and the approval of the next higher authority is obtained, and such approval in any case shall not be for more than sixty days at a time.

(c) Where such officer, upon examining the accounts registers, records or other documents seized under clause (a), has reason to believe that any dealer has attempted to evade payment of any tax, he may issue a protective assessment on such dealer in accordance with sub-section (5) of Section 38.

(6) All searches and seizures under sub-section (4) or (5) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(7) No person shall tamper with any seal put under sub-clause (i) of clause (c) of sub-section (4).

(8) Where the officer-in-charge of the check post or barrier, or the officer empowered as aforesaid, on interception of the goods vehicle or on inspection of any godown, is of the opinion that further verification is necessary with respect to either the accuracy of the particulars furnished in the documents accompanying the goods under transport or in transit, or as to the sufficiency and the cause adduced in respect of any contravention of sub-section (2), he may verify the particulars himself or, if it is necessary to cause it to be verified by referring the matter to any other officer and if such verification is not likely to be completed within a reasonable time, he may direct, in writing, the carrier or the person in charge of the goods vehicle or the godown not to deliver the goods until permitted to do so by him or such other officer to whom the matter is referred for verification, and allow the intercepted vehicle, if any, to pass through.

(9) The verification under sub-section (8) shall be completed within a period of fifteen days from the date of the direction issued under that sub-section and, where such verification cannot be completed within the aforesaid period, the officer who has issued such direction or, as the case may be, the officer to whom the matter is referred for verification, shall obtain the permission in writing of the next higher authority to extend such period for completion of the

verification. However, such extension shall not be permitted for a period exceeding fifteen days at a time.

(10) Where such officer or other officer to whom the matter is referred, upon such verification, is of the opinion that there is a non-compliance with sub-section (2), punishable under sub-section (12), he may proceed, in respect of such goods in the custody of the carrier or the person-in-charge of the vehicle or the godown, in accordance with sub-sections (12) and (14).

(11) Where the officer-in-charge of the check post or any empowered officer has issued a notice for contravention of any of the provisions of this Section, further proceedings in pursuance to such notice may, subject to such conditions and in such manner as may be prescribed, be continued by any other officer empowered by the Commissioner in this behalf, from the stage at which it is pending.

(12) (a) The officer in charge of a check post or a barrier or any other officer in respect of any contravention of, or noncompliance with, the provisions of sub-section (2), for which sufficient cause is not furnished, levy a penalty which, -

- (i) shall not be less than the amount of tax leviable but shall not exceed one and half of the amount of tax leviable in respect of the goods under transport in contravention of clause (e) and clause (d) of sub-section (2), if a dealer registered under the Act accepts that he is the consignor or consignee of the goods,
- (ii) in cases other than those falling under item (i), shall not be less than double the amount of tax leviable

but not exceed three times the amount of tax leviable in respect of the goods under transport .

(b) Where the amount of penalty leviable is more than the value of the goods, the amount of penalty leviable shall be restricted to such value.

(c) In proceedings under sub-section (10), where the penalty levied is not paid, the carrier or bailee or person-in-charge of the goods vehicle shall jointly and severally be liable to pay such penalty.

(d) Before levying any penalty under this sub-section, the officer shall give the person-in-charge of the goods vehicle or boat, ship or similar vessel, the carrier, the bailee, or dealer registered under the Act, as the case may be, a reasonable opportunity of being heard.

(13) Where the destination of the goods to be delivered in the State is not less than one hundred kilometers from the check post or barrier or any other place at which the goods vehicle or boat, ship or similar vessel is intercepted, a period of not less than ten days shall be given to the person concerned to show cause against the proceedings initiated under sub-section (12).

(14) (a) Where the penalty levied is not paid, the officer levying the penalty shall have power to take possession of so much of the goods as in his opinion would be sufficient to meet the amount of penalty levied and retain the same with him until the penalty levied is paid or for ten days, whichever is earlier.

(b) Where it is not practicable to take possession of only so much of the goods as would be sufficient to meet the amount of penalty levied for the reason that the goods vehicle

is a tanker carrying goods in liquid or gaseous form or that the goods form a single unit not separable into any part or parts thereof, the officer levying the penalty shall have power to take possession of the goods vehicle or the entire goods, as the case may be, and retain the same with him until the penalty levied is paid or for ten days, whichever is earlier.

(c) After the expiry of the period of ten days, if the penalty is not paid, the officer shall dispose of the goods in public auction and adjust the sale proceeds towards penalty, and the excess amount shall, after deducting the charges incurred by the State Government, be refunded in the manner prescribed.

(d) Before taking possession, or within ten days after taking possession, of the goods or the goods vehicle, as the case may be, if the owner or person-in-charge of the goods vehicle or the dealer registered under the Act, furnishes for the amount of penalty a Bank Guarantee, having validity until realization of the penalty or disposal of an appeal, if any, made under Section 62, the officer taking such possession shall forthwith return the goods or the goods vehicle to the person furnishing such Bank Guarantee.

(e) In the case of perishable goods, the officer may dispose of the same before the expiry of the period of ten days, if in his opinion such disposal is necessary.

(15) Any person aggrieved by the levy of penalty under this Section may appeal within thirty days from the date on which the order of penalty was served on the person to the prescribed authority.

54. Transit of goods by road through the State and issue of transit pass.- (1)Where a vehicle is carrying goods taxable under this Act,

- (a) from any place outside the State and bound for any place outside the State and passes through the State ; or
- (b) imported into the State from any place outside the country and such goods are being carried to any place outside the State,

the driver or any other person-in-charge of such vehicle shall furnish the necessary information and obtain a transit pass in duplicate containing such particulars as may be prescribed, from the officer-in-charge of the first check post or barrier after his entry into the State or after movement has commenced from the State, as the case may be, or from the officer empowered for the purposes of sub-section (3) of Section 52, upon interception of the goods vehicle after its entry into the State or after movement has commenced, as the case may be.

(2) The driver or the person-in-charge of the vehicle shall deliver within the stipulated time a copy of the transit pass obtained under sub-section (1) to the officer-in-charge at the last checkpost or barrier before his exit from the State.

(3) (a) If for any reason the goods carried in a goods vehicle are after entry into the State, or after commencement of movement, as the case may be, not moved out of the State within the time stipulated in the transit pass, the owner of the goods vehicle shall furnish to the officer empowered in this behalf the reasons for such delay and other particulars, if any,

thereof and such officer shall after due enquiry extend the time of exit by suitably amending the transit pass.

(b) Where the goods carried by a vehicle are, after their entry into the State, or after commencement of movement, as the case may be, transported outside the State by any other vehicle or conveyance, the onus of proving that the goods have actually moved out of the State shall be on the owner of the vehicle who originally brought the goods into the State.

(4) If the driver or any other person-in-charge of the vehicle does not comply with sub-section (2), it shall be presumed that the goods carried thereby have been sold within the State by the owner of the vehicle and shall, irrespective of whether he is a taxable person, be assessed to tax by the officer empowered in this behalf in the prescribed manner.

(5) If the owner of the vehicle, having obtained the transit pass as provided under sub-section (1), fails to deliver the same as provided under sub-section (2), he shall be liable to pay by way of penalty a sum not exceeding twice the amount of tax leviable on the goods transported.

(6) The amount of tax and the penalty levied under this Section shall be recovered in the prescribed manner.

(7) Where the owner of the vehicle who is assessed to tax under sub-section (4), is carrying after such assessment, any goods taxable under this Act in a goods vehicle from any place outside the State, or from within the State, as the case may be, and bound for any other place outside the State and is passing through the State, the prescribed authority may demand from such owner an amount equivalent to twice the

amount of tax leviable on such goods under this Act as security.

(8) The prescribed authority after being satisfied that the goods carried in the goods vehicle in respect of which the security amount under sub-section (7) was collected, has passed through the State, shall refund such security amount to the owner.

(9) The prescribed authority may by an order adjust the whole or any part of security amount towards any amount of tax or penalty payable under this Section by such owner.

(10) In case where a vehicle owned by a person is hired for transportation of goods by some other person, the hirer of the vehicle shall for the purpose of this Section, be deemed to be the owner of the vehicle.

55. Penalty in case of under-valuation of goods.- (1) Where, in respect of goods liable to tax under this Act carried in a goods vehicle or boat, ship or similar vessel, or held in stock by any dealer or on his behalf by any other person, or held in the custody of any transporter, the prescribed authority, or any officer empowered under Section 53, has reason to believe that the value shown in the document accompanying the goods in transit or in the purchase invoice is lower than the prevailing market price or Maximum Retail Price, by a difference of thirty per cent or more, such authority or officers, for reasons to be recorded in writing and after allowing the person or dealer a reasonable opportunity of being heard, may impose a penalty of a sum not exceeding twice the amount of the tax due on such goods.

(2) The amount of tax and the penalty levied under this Section shall be recovered in the manner specified under sub-Section (14) of Section 53.

(3) The value of goods in transit shall be the total price as mentioned in the invoice, challan, delivery note, or any other related document, plus the cost of transportation of the goods incurred up to the time of its interception.

(4) In determining whether or not the price shown in the invoice, challan, delivery note, or any other related document involves under-valuation, in the case of owner of the goods other than an owner carrying on business in packaged goods, the authority exercising the power under sub-section (1) shall apply the prevailing market price or fair market value and in the case of an owner carrying on business in packaged goods, shall apply the Maximum Retail Price.

(5) Any person objecting to an order affecting him under this Section may appeal to the prescribed authority.

(6) Such appeal shall be dealt with as if it were an appeal filed under Section 62 or Section 64, as the case may be, and all the provisions of those Sections shall *mutatis mutandis* apply to such appeal.

56. Liability to furnish information by certain agents.- (1) Every person or a clearing or forwarding house or agency, transporting agency, shipping agency, shipping-out agency or steamer agency or air-cargo agency or courier agency engaged in the business of transporting taxable goods in the State shall furnish to the prescribed authority information relating to any taxable goods cleared, forwarded, transported

or shipped by him or it during any period or relating to any dealer as may be required by the prescribed authority.

(2) The authority prescribed in this behalf, shall have the power to call for and examine the books of account or other documents in the possession of such person or agency with a view to verify the correctness of the information furnished under sub-section (1).

(3) Any person failing to comply with the provisions of sub-sections (1) and (2) without valid reason shall be liable to penalty under Section 75.

57. Special evidential requirements relating to banks.- The prescribed authority may require any bank or any officer thereof to furnish such information, document or statement for the purpose of any proceedings under this Act, and any person failing to comply with such requirement without valid reason shall be liable to penalty under Section 75.

Chapter VI

Authorities and Appellate Tribunal

58. Appointment of Commissioner, Additional Commissioners, Joint Commissioners, Deputy Commissioners, Assistant Commissioners, State Representatives and Commercial Tax Officers.- (1) The State Government may appoint a Commissioner of Commercial Taxes and as many Additional Commissioners, Joint Commissioners, Deputy Commissioners, Assistant Commissioners, State Representatives and Commercial Tax Officers, as they think fit for the purpose of performing the functions, respectively conferred on them by or under this Act or by or under any other law for the time being in force.

(2) The Commissioner may, empower an officer not below the rank of an Assistant Commissioner or an Advocate or a Chartered Accountant or a Tax Practitioner enrolled in the prescribed manner to perform the functions of a State Representative.

(3) In proceedings before the Appellate Tribunal, the State Representative shall be competent, -

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

59. Instructions to Subordinate Authorities.- (1) The Government and the Commissioner may from time to time, issue such orders, instructions and directions to all officers and persons employed in the execution of this Act as they may deem fit for the administration of this Act, and all such officers and persons shall observe and follow such orders, instructions and directions of the Government and the Commissioner.

(2) No such orders, instructions, or directions shall be issued under sub-section (1) so as to interfere with the discretion of any appellate authority in the exercise of its appellate functions.

(3) All officers and persons employed in the execution of this Act, shall observe and follow such administrative instructions as may be issued to them for their guidance by the Additional Commissioner or Joint Commissioner within whose jurisdiction they perform their functions.

(4) Without prejudice to the generality of the foregoing power, the Commissioner may, on his own motion or on an application by a registered dealer liable to pay tax under the Act, if he considers it necessary or expedient so to do, for the purpose of maintaining uniformity in the work of assessments and collection of revenue, clarify the rate of tax payable under this Act in respect of goods liable to tax under the Act, and all officers and persons employed in the execution of this Act shall observe and follow such clarification.

(5) No such application under sub-section (4) shall be entertained unless it is accompanied by proof of payment of such fee, paid in such manner, as may be prescribed.

60. Clarification and Advance Rulings.- (1) The Commissioner may constitute an 'Authority for Clarification and Advance Rulings', consisting of three Additional Commissioners, to clarify the rate of tax in respect of any goods or the exigibility to tax of any transaction under the Act .

(2) Any registered dealer seeking clarification or advanced ruling under this Section shall make an application to the Authority in such form and accompanied by proof of payment of such fee, paid in such manner as may be prescribed.

(3) No officer or any other authority of the Department or the Appellate Tribunal shall proceed to decide any issue in

respect of which an application has been made by an applicant under this Section.

(4) The order of the authority shall be binding only on the applicant who seeks clarification and only in respect of the goods or transaction in relation to which a clarification is sought and also only on all the subordinate officers.

(5) The order of the Authority under this Section shall be binding as aforesaid unless there is a change in law or facts on the basis of which the order was passed.

(6) Where the authority finds, on a representation made to it by any officer or otherwise, that an order passed by it was obtained by the applicant by fraud or mis-representation of facts, it may, by order, declare such order to be *void ab initio* and thereupon all the provisions of this Act shall apply to the applicant as if such order had never been made.

(7) Subject to the provisions of Section 66, every order passed under this Section shall be final.

61. Jurisdiction of officers and change of incumbent of an office.- (1) The Additional Commissioners, Joint Commissioners, Deputy Commissioners, Assistant Commissioners and Commercial Tax Officers shall perform their functions in respect of such areas or of such dealers or classes of dealers or of such cases or classes of cases as the Commissioner may direct.

(2) The word 'case' in relation to any dealer specified in any order or direction issued thereunder means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes

also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

(3) Whenever in respect of any proceeding under this Act, any prescribed authority ceases to exercise jurisdiction and is succeeded by another who may exercise that jurisdiction, the authority or officer so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.

(4) The person concerned may demand that before the proceeding under sub-section (3) is so continued, the previous proceeding or any part thereof be reopened or that before any order is passed against him, he be reheard.

Chapter VII

Appeals and Revision

62. Appeals.- (1) Any person objecting to any order or proceedings affecting him passed under the provisions of this Act by the prescribed authority may appeal to the prescribed appellate authority.

(2) The appeal shall be preferred,

(a) in respect of an order of assessment, within thirty days from the date on which the notice of assessment, was served on the appellant, and

(b) in respect of any other order, within thirty days from the date on which the order was communicated to the appellant:

(3) The appellate authority may admit an appeal preferred after the period as aforesaid but within a further period of one

hundred and eighty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

- (4) (a) No appeal against an order of assessment shall be entertained by the appellate authority unless it is accompanied by satisfactory proof of the payment of tax and penalty not disputed in the appeal.
 - (b) The tax or other amount shall be paid in accordance with the order against which an appeal has been preferred.
 - (c) The appellate authority may, in its discretion, give such directions as it thinks fit in regard to the payment of tax or other amount payable under clause (b), if the appellant furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.
 - (d) Where an order staying proceedings of recovery of any tax or other amount is passed in any proceedings relating to an appeal under sub-section (1), the appellate authority shall dispose of the appeal within a period of one hundred twenty days from the date of such order.
 - (e) If such appeal is not so disposed of within the period specified in clause (d), the order of stay shall stand vacated after the expiry of the said period.
- (5) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(6) In disposing of an appeal, the appellate authority may, after giving the appellant a reasonable opportunity of being heard,

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

- (i) confirm, reduce or enhance the assessment including any part thereof whether or not such part is objected to in the appeal;
- (ii) pass such other orders as it may think fit; and

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

(7) Every order passed on appeal under this Section shall, subject to the provisions of Sections 63 to 67, be final.

63. Appeal to the Appellate Tribunal.- (1) Any officer empowered by the Government in this behalf or any other person objecting to an order passed by the appellate authority under Section 62 may appeal to the Appellate Tribunal within a period of sixty days from the date on which the order was communicated to him.

(2) The Appellate Tribunal may admit an appeal preferred after the period of sixty days referred to in sub-section (1), but within a further period of one hundred and eighty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

(3) The officer authorized under sub-section (1) or the person against whom an appeal has been preferred, as the case may be, on receipt of notice that an appeal against the

order of the appellate authority has been preferred under sub-section (1) by the other party, may, notwithstanding that he has not appealed against such order or any part thereof, file, at any time before the appeal is finally heard, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the appellate authority, and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (1).

(4) The appeal, or the memorandum of cross-objections, shall be in the prescribed form, shall be verified in the prescribed manner, and, in the case of an appeal preferred by any person other than an officer empowered by the Government under sub-section (1) shall be accompanied by a fee equal to two percent of the amount of assessment objected to, provided that the sum payable in no case be less than two hundred rupees or more than one thousand rupees.

(5) (a) The Appellate Tribunal shall, after giving both parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

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

(c) If as a result of the appeal any change becomes necessary in the assessment, which is the subject matter of the appeal, the Appellate Tribunal may authorize the prescribed authority to amend the assessment, and the prescribed authority shall amend the assessment accordingly and thereupon, any amount over paid by the dealer shall be refunded to him without interest, or any additional amount of tax due from him shall be collected in accordance with the provisions of the Act, as the case may be.

(6) (a) Notwithstanding that an appeal has been preferred under sub-section (1), tax shall be paid in accordance with the assessment made in the case.

(b) The Appellate Tribunal may, except in case of an appeal against an order passed by the appellate authority under Section 62, in its discretion, give such directions as it thinks fit, in regard to the payment of tax, if the appellant furnishes sufficient security to its satisfaction in such form and manner as may be prescribed.

(7) (a) The Appellate Tribunal may, in case of appeal against an order passed by the appellate authority under Section 62, , in its discretion, stay payment of one half of tax or any other amount disputed, if the appellant makes payment of the other half of the amount disputed.

(b) The Appellate Tribunal shall dispose of such appeal falling under clause (a) within a period of one hundred eighty days from the date of the order staying proceedings of recovery of one half of tax or other amount disputed and, if such appeal is not so disposed of within the period specified, the order of stay shall stand vacated after the said period.

(8) (a) The Appellate Tribunal may, on the application either of the appellant or of the respondent, review any order passed by it under sub-section (5) on the basis of facts which were not before it when it passed the order.

(b) No such application under clause (a) shall be preferred more than once in respect of the same order.

(c) The application for review shall be preferred in the prescribed manner within six months from the date on which the order to which the application relates was communicated to the applicant; and where the application is preferred by any person other than an officer empowered by the State Government under sub-section (1), it shall be accompanied by a fee equal to that which has been paid in respect of the appeal.

(d) If the application for review is preferred within ninety days from the date on which the order to which the application relates is communicated to the applicant, the application shall be accompanied by half the fee which had been paid in respect of the appeal.

(9) (a) With a view to rectifying any mistake apparent from the record, the appellate Tribunal may, at any time, within five years from the date of any order passed by it under sub-section (5) or sub-section (8), amend such order.

(b) No order under this sub-section shall be made without giving both parties affected by the order a reasonable opportunity of being heard.

(10) Except as provided in the rules, the Appellate Tribunal shall not have powers to award costs to either of the parties to the appeal or review.

(11) Every order passed by the Appellate Tribunal under sub-section (5) or (8) or (9) shall be communicated to the appellant, the respondent, the appellate authority on whose order the appeal was preferred and the Commissioner.

(12) Every order passed by the Appellate Tribunal under sub-section (5) shall, subject to the provisions of sub-section (8), sub-section (9) and Section 65, be final and every order passed by it under sub-section (8) shall, subject to the provisions of sub-section (9) and Section 65, be final.

64. Revisional powers of Additional Commissioner and Commissioner.- (1) The Additional Commissioner may on his own motion call for and examine the record of any order passed or proceeding recorded under this Act and if he considers that any order passed therein by any officer, who is not above the rank of a Joint Commissioner, is erroneous in so far as it is prejudicial to the interest of the revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or canceling the assessment or directing a fresh assessment.

(2) The Commissioner may on his own motion call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue, he may if necessary, stay the operation of such order for such period as he deems fit and after giving the person concerned an opportunity of being

heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or canceling the assessment or directing a fresh assessment.

(3) The Additional Commissioner or the Commissioner shall not exercise any power under sub-section (1) or sub-section (2), as the case may be, if.-

- (a) the time for appeal against the order has not expired;
- (b) the matter has been subject to an appeal under Section 63 or a revision in the High Court; or
- (c) more than four years have expired after the passing of the order sought to be revised.

(4) Notwithstanding anything contained in sub-section (3), the Additional Commissioner or the Commissioner may pass an order under sub-section (1) or (2), as the case may be, on any point which has not been raised and decided in an appeal or revision referred to in clause (b) of sub-section (3), before the expiry of a period of one year from the date of the order in such appeal or revision or before the expiry of a period of four years referred to in clause (c) of that sub-section, whichever is later.

(5) Every order passed in revision under sub-section (1) shall, subject to the provisions of sub-section (2) of this Section and Sections 66 and 67, be final.

(6) Every order passed in revision under sub-section (2) shall, subject to the provisions of Sections 65 and 66, be final.

(7) If the order passed or proceedings recorded by the appropriate authority referred to in sub-section (1) or (2), involves an issue on which the High Court has given its decision adverse to the revenue in some other proceedings and an appeal to the Supreme Court against such decision of the High Court is pending, the period spent between the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period referred to in clause (c) of sub-section (3).

(8) In computing the period of limitation for the purpose of sub-section (3), any period, during which any proceeding under this Section is stayed by an order or injunction of any court, shall be excluded.

(9) For the purposes of this Section, 'record' shall include all records relating to any proceedings under this Act available at the time of examination by the Additional Commissioner or the Commissioner.

65. Revision by High Court in certain cases.- (1) Within one hundred and twenty days from the date on which an order under sub-section (5) or (8) or (9) of Section 63 was communicated to him, the appellant or the respondent may prefer a petition to the High Court against the order on the ground that the Appellate Tribunal has either failed to decide or decided erroneously any question of law:

(2) The High Court may admit a petition preferred after the period of one hundred and twenty days aforesaid if it is

satisfied that the petitioner has sufficient cause for not preferring the petition within that period.

(3) The petition shall be in the prescribed form, shall be verified in the prescribed manner, and shall, when it is preferred by any person other than an officer empowered by the Government under sub-section (1) of Section 63, be accompanied by a fee of one hundred rupees.

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

(5) The High Court shall not dismiss any petition unless the petitioner has had a reasonable opportunity of being heard in support thereof.

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

(b) Where the High Court remits the matter to the Appellate Tribunal under clause (a) with its opinion on questions of law raised, the latter shall amend the order passed by it in conformity with such opinion.

(7) Before passing an order under sub-section (6) the High Court may, if it considers necessary so to do remit the petition to the Appellate Tribunal and direct it to return the petition with its finding on any specific question or issue.

(8) Notwithstanding that a petition has been preferred under sub-section (1), the tax shall be paid in accordance with the assessment made in the case.

(9) If as a result of the petition, any change becomes necessary in such assessment, the High Court may authorize the prescribed authority to amend the assessment and the prescribed authority shall amend the assessment accordingly and thereupon the amount overpaid by the person concerned shall be refunded to him without interest or the additional amount of tax due from him shall be collected in accordance with provisions of this Act, as the case may be.

(10) (a) The High Court may, on the application of either party to the petition, review any order passed by it under sub-section (6) on the basis of facts which were not before it when it passed the order.

(b) The application for review shall be preferred within such time and in such manner as may be prescribed, and shall where it is preferred by any person other than an officer empowered by the Government under sub-section (1) of Section 63 be accompanied by a fee of one hundred rupees.

(11) (a) With a view to rectifying any mistake apparent from the record, the High Court may, at any time within five years from the date of the order passed by it under sub-section (6), amend such order.

(b) The High Court shall not pass an order under this sub-section without giving both parties affected by the order a reasonable opportunity of being heard.

(12) In respect of every petition preferred under sub-section (1) or (10), the costs shall be in the discretion of the High Court.

66. Appeal to High Court.- (1) Any person objecting to an order passed by the Commissioner or the Additional Commissioner under Section 64 may appeal to the High Court within sixty days from the date on which the order was communicated to him.

(2) The High Court may admit an appeal preferred after the period of sixty days aforesaid, if it is satisfied that the person had sufficient cause for not preferring the appeal within that period.

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

(4) The High Court shall, after giving both parties to the appeal a reasonable opportunity of being heard, pass such order thereon as it thinks fit.

(5) The provisions of sub-sections (6) to (12) of Section 65, shall apply in relation to appeals preferred under sub-section (1) as they apply in relation to petitions preferred under sub-section (1) of Section 65.

67. Objections to Jurisdiction.- No objection as to the territorial or pecuniary jurisdiction of any prescribed authority shall be entertained or allowed by any Court, Tribunal or authority in an appeal or revision, unless such objection was taken before the prescribed authority at the earliest possible opportunity.

68. Petitions, applications and appeals to High Court to be heard by a Bench of not less than two judges.-

Every Petition, application or appeal preferred to the High Court under Section 65 or 66 shall be heard by a bench of not less than two Judges, and in respect of such petition, application or appeal, the provisions of Section 98 of the Code of Civil Procedure, 1908 (Central Act V of 1908), shall apply.

69. Rectification of mistakes.- (1) With a view to rectifying any mistake apparent from the record, the prescribed authority, appellate authority or revising authority, may, at any time within five years from the date of an order passed by it, amend such order.

(2) Any amendment which has the effect of enhancing an assessment or otherwise increasing the liability of the person concerned shall not be made unless the prescribed authority, appellate authority or revising authority, as the case may be, has given notice to the person concerned of its intention to do so and has allowed the person concerned the opportunity of showing cause in writing against such amendment.

(3) Where an order has been considered and decided in any proceedings by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(4) An order passed under sub-section (1), shall be deemed to be an order passed under the same provision of

law under which the original order, the mistake in which was rectified, has been passed.

70. Burden of proof.- (1) For the purposes of payment or assessment of tax or any claim to input tax under this Act, the burden of proving that any transaction of a dealer is not liable to tax, or any claim to deduction of input tax is correct, shall lie on such dealer.

(2) Where a dealer knowingly issues or produces a false tax invoice, credit or debit note, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to be taxed, or liable to tax at a lower rate, or that a deduction of input tax is available, the prescribed authority shall, on detecting such issue or production, direct the dealer issuing or producing such document to pay as penalty:

- (a) in the case of first such detection, three times the tax due in respect of such transaction or claim; and
- (b) in the case of second or subsequent detection, five times the tax due in respect of such transaction or claim.

(3) Before issuing any direction for the payment of the penalty under this Section, the prescribed authority shall give to the dealer the opportunity of showing cause in writing against the imposition of such penalty.

Chapter VIII

Penalties, Offences and Power to make Rules

71. Penalties relating to registration.- (1) A dealer who, without reasonable cause, fails to apply for registration within the time prescribed in sub-sections (1) or (2) or (3) of Section 22 shall be liable to a penalty of five thousand rupees in addition to the interest chargeable on the tax payable at the rate provided under Section 37.

(2) A dealer who fails to report to the prescribed authority a change in circumstances as required by Section 28 shall be liable to a penalty of five thousand rupees.

(3) The power to levy the penalties shall be vested in the registering authority as prescribed.

72. Penalties relating to returns.- (1) A dealer who fails to furnish a return or who fails to pay the tax due on any return furnished as required under Section 35 shall be liable to a penalty of two hundred rupees for each day of default in addition to a further penalty of a sum not less than ten per cent but not exceeding fifty per cent of the amount of tax due, together with any tax or interest due.

(2) A dealer who for any prescribed tax period furnishes a return which understates his liability to tax or overstates his entitlement to a tax credit by more than five per cent of his actual liability to tax, shall after being given the opportunity of showing cause in writing against the imposition of a penalty, be liable to a penalty equal to twenty per cent of the amount of such tax under or overstated.

(3) A dealer who furnishes a return which is incomplete or incorrect in any material particular, shall be liable to a penalty of two hundred rupees for each day the return remains incomplete or incorrect.

(4) In any case where a dealer who has failed to furnish a return has been issued with an assessment showing less than his actual liability to tax and he pays such tax as assessed, such dealer, after being given the opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty equal to fifty per cent of the amount of the tax under-assessed.

(5) The power to levy the above penalties shall be vested in the prescribed authority to which returns are required to be furnished.

73. Penalties in relation to unauthorised collection of tax.- (1) If any dealer, not being registered under this Act, collects any amount by way of tax or purporting to be by way of tax under this Act, he shall be liable to remit to the prescribed authority such amount, whether or not that amount would be payable under the provisions of this Act, and also liable to a penalty of an amount equal to the amount so collected, after being given the opportunity of showing cause in writing against repayment of the tax and the imposition of such penalty.

(2) The power to levy the above penalty shall be vested in the assessing authority as prescribed.

74. Penalties relating to the keeping of records:- (1) Any dealer who fails to keep and maintain proper records, in accordance with Sections 31 or by order of the prescribed authority shall be liable to a penalty of five thousand rupees and, in addition, two hundred rupees per day for so long as the failure continues after being given an opportunity to show cause against such imposition of penalty.

(2) Any dealer who fails to retain records and accounts in accordance with Sections 32 and 33, after being given the opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty of ten thousand rupees.

(3) The power to levy the above penalty shall be vested in the officer authorised under Section 52.

75. Penalties relating to production of records and furnishing of information.-Any dealer or person who on demand by the prescribed authority fails to produce any records or furnish any information in accordance with the requirements of this Act, after being given the opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty of five thousand rupees and, in addition, two hundred rupees per day for so long as the failure continues.

76. Penalties relating to tax invoices, credit notes and debit notes.- (1) A registered dealer who.-

- (a) fails to provide a tax invoice as required by sub-section (1) of Section 29 or a credit or debit note as required by sub-section (1) or sub-section (2) of Section 30, or
- (b) provides a tax invoice otherwise than in accordance with the provisions of Section 29 or a credit or a debit note as provided in Section 30,

shall be liable to a penalty of not less than five thousand rupees or an amount equivalent to the tax payable on the transaction, whichever is higher.

(2) The power to levy the above penalty shall be vested in the officer authorised under Section 52.

77. Penalties relating to seals and to unaccounted stocks.- (1) Any person who removes, or in any way tampers with, a seal attached under the provisions of clause (f) of sub-section (1) of Section 52, and sub-section (4) of Section 53, shall be liable on conviction by a Court, not inferior to that of a Magistrate of the First Class, to a fine of not less than five thousand rupees but not exceeding fifty thousand rupees and imprisonment for a period not less than fifteen days but not exceeding one year.

(2) Any person or dealer who is found to be in possession of unaccounted stocks of any taxable goods under the provisions of clause (j) of sub-section (1) of Section 52, after being given the opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty of five thousand rupees.

(3) The power to levy the penalty under sub-section (2) shall be vested in the officer authorised under Section 52.

78. Offences against officers. -Any person who obstructs, hinders, molests or assaults an authorised officer or any other public servant assisting him in the performance of his duties under this Act, or does anything which is likely to prevent or obstruct any search or production of evidence, shall be liable on conviction by a Court, not inferior to that of a Magistrate of the First Class, to a fine of not less than five thousand rupees but not exceeding fifty thousand rupees and imprisonment for a period not less than fifteen days but not exceeding one year.

79. Fraudulent evasion of tax.- Without prejudice to the provisions of Sections 71 to 77, if any person is knowingly concerned, in or in the taking of steps with a view to the fraudulent evasion of tax by him or any other person, he shall be liable to a fine of one lakh rupees or double the amount of the tax evaded, whichever is the greater or to imprisonment for a minimum term of six months but not exceeding five years, or to both.

80. Cognizance of offences.- (1) No Court shall take cognizance of any offence punishable under Sections 79 except with the previous sanction of the Joint Commissioner, and no Court inferior to that of a Magistrate of the First Class, shall try any such offence.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), all offences punishable under Sections 79 shall be cognizable and bailable.

81. Disclosure of information.- (1) All particulars contained in any statement made, returns furnished or accounts or documents produced in accordance with this Act, other than proceedings before a criminal court, shall, save as provided in sub-section (2), be treated as confidential and not withstanding anything contained in the Indian Evidence Act, 1872, no court shall save as aforesaid be entitled to require any officer of the Government to produce before it any such statement, return, account, document or record or any part thereof to give evidence before it in respect thereof.

(2) The Commissioner may furnish or cause to be furnished to:

- (a) any officer, authority or body performing any function under any law relating to the imposition of any tax, duty, cess or fee; or
- (b) any such officer, authority or body performing any function under any other law as the Government in the public interest may by notification specify,

any such information relating to any person in respect of any assessment made under this Act as may, in the opinion of the Commissioner be necessary for the purpose of enabling the officer, authority or body to perform his or its function under that law.

(3) If the Government or Commissioner is of the opinion that it is necessary or expedient in the public interest to publish name of any person along with his photograph or any other particulars relating to any proceeding under this Act in respect of such person, it may cause to be published such name along with his photograph and particulars in such manner as it thinks fit.

(4) No publication under this Section shall be made relating to any penalty imposed or any conviction for any offence connected with any proceeding under this Act, until the time for presenting an appeal to the Appellate Authority has expired without any appeal having been presented or the appeal has been disposed of.

82. Compounding offences.- (1) Where any dealer has committed an offence under sub-section (1) of Section 77 or Section 79, the prescribed authority may, on admission by such dealer in writing and upon his option to compound at any time prior to the commencement of the court proceedings

relating thereto, compound such offence and order the dealer to pay such sum of money as specified by the prescribed authority, which shall not exceed the amount of the fine prescribed for the offence, in addition to any tax and interest due.

(2) Furnishing of a cheque or any other instrument towards payment of a sum by any such dealer shall be deemed to be an application for compounding the offence.

(3) Where the prescribed authority compounds an offence under this Section, the order referred to in sub-section (1),

- (a) shall be in writing and specify the offence committed, the sum of money to be paid and the due date for the payment; and
- (b) shall be served on the dealer who committed the offence; and
- (c) shall be final and not subject to any appeal; and
- (d) may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order.

(4) When the prescribed authority compounds an offence under this Section, the dealer concerned shall not be liable to prosecution in respect of such offence or to any further penalty under this Section and such dealer shall not appeal against the said proceedings.

83. Validity of assessments not to be questioned in prosecution.- The validity of the assessment of any tax or of

the levy of any fee or other amount, made under this Act, or the liability of any person to pay any tax, fee or other amount so assessed or levied shall not be questioned in any Criminal Court in any prosecution or other proceeding, whether under this Act or otherwise.

84. Bar and limitation to certain proceedings.- (1)

No suit, prosecution or other proceeding shall lie against any officer or servant of the Government, for any act done or purported to be done under this Act without the previous sanction of the Government.

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

(3) No suit shall be instituted against the State Government and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the State Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of.

85. Courts not to set aside or modify assessments except as provided under this Act.- Notwithstanding anything contained in any law for the time being in force, no suit or other proceedings shall be entertained by any court, except as expressly provided for under this Act, to set aside or modify any assessment or other proceedings commenced by virtue of the provisions of this Act, and no such court shall

question the validity of any assessment, levy of penalty or interest nor grant any stay of proceedings or allow recovery of any amount due under this Act.

86. Appearance before any Authority in proceedings.- Any person who is entitled to appear before any authority other than the High Court in connection with any proceeding under this Act, may be represented before such authority-

- (a) by his relative or a person regularly employed by him if such relative or person is duly authorized by him in writing in this behalf;
- (b) by a legal practitioner; or
- (c) subject to such conditions as may be prescribed, by an Accountant or by a person enrolled in the prescribed manner as a Tax Practitioner by the Commissioner, and duly authorized by the person whom he represents.

87. Power to summon persons to give evidence.- (1) The officers empowered by Rules made in this behalf shall have all the powers conferred on a Court by the Code of Civil Procedure, 1908 (Central Act V of 1908), for the purpose of securing attendance of persons or the production of documents in any enquiry under this Act.

(2) The Commissioner or the assessing, appellate or revising authority shall, in securing the attendance of any dealer as a witness before the Tribunal or High Court or for production of any document for the purposes of this Act at

such proceedings, have the same powers as those conferred on a civil court under the provisions of the Civil Procedure Code, 1908 (Central Act 5 of 1908).

88. Power to make rules.- (1) The Government may, subject to the condition of previous publication, make rules, by notification, to carry out the purposes of this Act.

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

- (a) all matters expressly required or allowed by this Act to be prescribed;
- (b) estimation of turnover for purposes of registration on the basis of inventory of goods found at the time of inspection or during survey
- (c) the assessment to tax under this Act of business which are discontinued or the ownership of which has changed;
- (d) the procedure for assessment of Central and State Government Departments, Statutory Bodies and Local Authorities;
- (e) the assessment to tax under this Act of business owned by minors and other incapacitated persons or by persons residing outside the State;
- (f) the assessment of a business owned by any person whose estate or any portion of whose estate is under the control of the court of Wards, the Administrator-General, the Official trustee or any receiver or manager, including any person whatever his designation who in fact manages property on

behalf of another, appointed by or under any order of a Court;

- (g) the administration of the checkposts set up and the barriers erected under this Act and the regulation of work therein;
- (h) the assessment to tax under this Act of any turnover which has escaped assessment;
- (i) compelling the submission of returns and the production of documents and enforcing the attendance of persons and examining them on oath or affirmation;
- (j) securing that returns furnished or accounts or documents produced or evidence of any kind given under this Act before any prescribed authority or an appeal or revision from any decision of such authority are kept confidential;
- (k) the procedure to be followed and the powers exercisable in proceedings for recovery under Section 42;
- (l) the duties and powers of officers appointed for the purpose of enforcing the provisions of this Act;
- (m) the term of office and conditions of service of the members of the Appellate Tribunal;
- (n) the fees payable for the grant of duplicate certificates of registration or licences or copies of such certificates and licences or of any other document;

- (o) the maintenance of purchase bills or accounts of purchases and sales by dealers and the time for which they should be preserved;
- (p) the issue of delivery notes or way bills in respect of goods delivered or transferred to retail dealers in pursuance of sales effected to them, the form and manner of their issue and the time for which they should be preserved;
- (q) the extent of liability of commission agent, broker, del credere agent, auctioneer or any other mercantile agent, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;
- (r) the qualifications and disqualifications of Tax Practitioners, the procedure for their enrolment, the fees payable for enrolment and the fees payable for annual renewal of such enrolment;
- (s) generally regulating the procedure to be followed and the forms to be adopted in proceeding under this Act;
- (t) any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the Government, necessary for giving effect to the purposes of this Act.

(3) In making a rule under sub-section (1) or sub-section (2), the Government may provide that a person guilty of breach thereof shall, on conviction by a Magistrate of the first class, be punishable with fine which may extend to five

thousand rupees and where the breach is a continuing one, with further fine which may extend to one hundred rupees for every day after the first breach during which the breach continues.

(4) Any rule under this Act may be made to have effect retrospectively and when any such rule is made, a Statement specifying the reasons for making such a rule shall be laid before both Houses of the State Legislature along with the rule under Section 90, and all rules, shall, subject to any modification made under Section 90, have effect as if enacted in this Act.

89. Laying of Rules and notifications before the State Legislature.- Every rule made under this Act and every notification issued under Section 88 shall be laid as soon as may be after it is published before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the sessions immediately following, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

90. Power to remove difficulties.- (1) If any difficulty arises in giving effect to the provisions of this Act in consequence of the transition to the said provisions of this Act from the provisions of the Acts in force immediately before the

commencement of this Act, the Government may by Notification in the Official Gazette make such provisions as appear to it to be necessary or expedient for removing difficulty.

(2) If any difficulty arises in giving effect to the provisions of the Act, otherwise than in relation to the transition from the provisions of the Acts in force before the commencement of this Act, the Government may, by notification, make such provisions, not inconsistent with the purposes of this Act, as appear to it to be necessary or expedient for removing the difficulty.

FIRST SCHEDULE

(Goods exempted from tax under Section 5)

Serial Number	Description of Goods
1	2
1.	Petrol including special boiling spirit.
2.	Diesel.
3.	Aviation turbine fuel.
4.	Sugar cane.
5.	Lottery tickets.
6.	Agricultural implements manually operated or animal driven.
7.	Aids and implements used by handicapped persons.
8.	Animal feed and feed supplements, namely, processed commodity sold as poultry feed, cattle feed, pig feed, fish feed, fish meal, prawn feed, shrimp feed and feed supplements and mineral mixture concentrates, intended for use as feed supplements.

1	2
9.	Betel leaves.
10.	Books, Periodicals and journals.
11.	Charakha, Ambar Charaka, handloom fabrics and Gandhi Topi.
12.	Charcoal and firewood.
13.	Coarse grains and their flour excluding paddy, rice and wheat and their flour.
14.	Condoms and contraceptives.
15.	Cotton and silk yarn in hank.
16.	Curd and butter milk.
17.	Earthen Pots.
18.	Electrical energy.
19.	Fish seeds, Prawn seeds, Shrimp seeds, fishing nets and twine, country made non-mechanised boats and fishing requisites including purse-seiners and gill netters, but excluding trawlers and other mechanized boats.
20.	Fresh milk and pasteurised milk
21.	Fresh plants, saplings, fresh flowers, plantain leaves, patravali (dinner leaves) and their products.
22.	Fresh Vegetables & fresh fruits.
23.	Garlic, ginger, green chillies, onions, potatoes, sweet potatoes, tapioca and their seeds.
24.	Glass bangles.

1	2
	25. Hay (green or dry).
	26. Human blood and blood plasma.
	27. Kumkum, bindi and sindhur.
	28. Meat including flesh of poultry, fish, prawns, shrimps and lobsters, except when sold in sealed containers; eggs, livestock including poultry, but excluding horses; animal hair including raw wool.
	29. National flag.
	30. Organic manure, Compost manure, fish manure and poultry manure.
	31. Non-judicial stamp paper sold by the Government Treasuries and authorized vendors; postal items like envelopes, post card including greeting cards and stamps sold by the Government; rupee note when sold to the Reserve Bank of India; cheques, loose or in book form.
	32. Semen including frozen semen.
	33. Silkworm eggs, silkworm pupae, silkworm cocoons and raw silk including raw silk yarn, but excluding raw silk imported from outside the country.
	34. Slates, slate pencils and chalk crayons.
	35. Tender coconuts.
	36. Toddy, Neera and Arrack

1	2
	37. Unprocessed salt.
	38. Water other than- <ul style="list-style-type: none"> (i) aerated, mineral, distilled , medicinal , ionic , battery and de-mineralised water; and (ii) water sold in sealed container.
	39. Liquor including Beer, Fenny, Liqueur and Wine
	40. Rectified spirit.

SECOND SCHEDULE
GOODS TAXABLE AT ONE PER CENT

[Section 4(1)(a)(i)]

Serial Number	Description of goods
1	2
1.	Bullion and specie
2.	Jewellery and articles of gold, silver and other noble metals whether or not studded with precious or semi-precious stones.

THIRD SCHEDULE
GOODS TAXABLE AT FOUR PER CENT

[Section 4(1)(a)(ii)]

Serial Number	Description of goods
1	2
1.	Agricultural implements not operated manually or not driven by animal.
2.	All kinds of bricks including fly ash bricks; refractory bricks and the like; asphaltic roofing sheets; earthen tiles.
3.	All kinds of yarn other than cotton and silk yarn in hank; sewing thread.
4.	Aluminium utensils and enamelled utensils.
5.	Arecanut.
6.	Bamboo.
7.	Bearings of all kinds.
8.	Beedi leaves.
9.	Beltings, namely, Transmission, conveyor or elevator belts or belting of vulcanized rubber whether combined with any textile material or otherwise.
10.	Bicycles, tandem cycles, cycle combinations, cycle-rickshaws, perambulators, children's tricycles and similar articles and parts and accessories thereof including their tyres, tubes and flaps.

1	2
	11. Bitumen.
	12. Bone meal.
	13. Bread and bun.
	14. Bulk drugs.
	15. Capital goods as may be notified.
	16. Chemical fertilizers and chemical fertilizer mixtures; Insecticides, pesticides, rodenticides, fungicides, weedicides, herbicides, plant regulators and plant growth nutrients.
	17. Coffee beans and seeds (whether raw or roasted); cocoa pods and beans; green tea leaf and chicory.
	18. Coir and Coir products excluding rubberised coir products.
	19. Cotton waste and cotton yarn waste.
	20. Declared goods as specified in Section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).
	21. Edible oils (Non-refined and refined), oil cake and de-oiled cake.
	22. Exercise books, student note books, graph books and laboratory note books.
	23. Exim scrips, REP licenses, special import licenses (SIL), value based advance licenses (VABAL), Export quotas, copyrights, patents and the like.
	24. Fibres of all kinds and fibre waste.

1	2
	25. Flour (atta), poha, maida, soji of rice, wheat and maize; flour of pulses.
	26. Fried gram.
	27. Hand pumps and parts thereof.
	28. Hose pipes.
	29. Hosiery goods.
	30. Husk and bran of cereals and pulses.
	31. Ice.
	32. Incense sticks such as, agarbathi, dhupkathi and dhupbam.
	33. Indian musical instruments namely, Veena, violin, tambura, mridanga, ghatam, khanjira, harmonium, flute, star, sarod, santoor, dilruba, nadaswara, dolu, tabla, shehnai, pakwaz, vichitra veena, gotu vadyam, morsing, chande, triangle, rudraveena and sarangi and parts and accessories thereof.
	34. Industrial cables namely High voltage cables, XLPE Cables, jelly filled cables and optical fibres.
	35. Industrial inputs and packing materials as may be notified.
	36. IT Products including telecommunication equipments as may be notified.
	37. Jaggery.

1	2
	38. Kerosene oil sold through Public Distribution System (PDS).
	39. Leaf plates and cups other than those falling under First Schedule.
	40. Medicinal plants, roots, herbs and barks used in the preparation of Ayurvedic medicines.
	41. Mandakki (Parched or puffed rice) and Avalakki (Beaten Rice).
	42. Non-ferrous Castings.
	43. Non-ferrous metals and alloys; Ingots, slabs, blocks, billets, sheets, circles, hoops, strips, bars, rods, rounds, squares, flats of Aluminium, brass, bronze, copper, cadmium, lead and zinc.
	44. Ores and minerals including lumps and fines.
	45. Paper of all kinds including ammonia paper, blotting paper, carbon paper, cellophane, PVC coated paper, stencil paper, water proof paper, art boards, card boards, corrugated boards, duplex boards, pulp boards, straw boards, triplex boards and the like, but excluding photographic paper; waste paper, paper waste and newsprint.
	46. Pipes, tubes and fittings of all kinds excluding conduit pipes and its fittings.
	47. Plastic footwear.

1	2
	48. Printed materials other than books meant for reading; stationary articles namely, Account books, paper envelopes, diaries, calendars, race cards, catalogues, greeting cards, invitation cards, humour post cards, picture post cards, cards for special occasions, photo and stamp albums.
	49. Printing ink excluding toner and cartridges.
	50. Processed and branded salt.
	51. Pulp of bamboo, wood and paper.
	52. Rail coaches, engines and wagons.
	53. Readymade garments.
	54. Renewable energy devices and parts thereof.
	55. Safety matches.
	56. Seeds.
	57. Sewing machines.
	58. Ship and other water vessels.
	59. Skimmed milk powder.
	60. Solvent oils other than organic solvent oil.
	61. Spices in all forms including jeera (cumin seeds), methi, poppy seeds (kaskas), Corriander (dhaniya), shajeera, somph, katha, azwan, kabab chini, bhojur phool, tejpatha, japatri, nutmeg (marathamoggu), kalhoovu, aniseed, turmeric, cardamom, pepper, cinnamon, dal chinny, cloves, tamarind and dry chillies.

1	2
62. Sports goods (indoor and out door) including body building equipments, but excluding wearing apparels and footwear.	
63. Starch.	
64. Tractors and Power tillers, their parts and accessories including trailers, but excluding batteries, tyres, tubes and flaps.	
65. Transmission towers (electrical).	
66. Umbrellas excluding garden and beach umbrellas.	
67. Vanaspathi (Hydrogenated Vegetable Oil).	
68. Vegetable oil including gingili oil and bran oil excluding vegetable oil used as toilet are.	
69. Welding Electrodes of all kinds, graphite electrodes including anodes, welding rods, soldering rods and soldering wires	
70. Writing instruments such as pens, pencils and the like.	

FOURTH SCHEDULE
GOODS TAXABLE AT TWENTY PER CENT

[Section 4(1)(a)(iii)]

Serial Number	Description of goods
1	2
1.	Narcotics
2.	Molasses

FIFTH SCHEDULE
INPUT TAX RESTRICTED GOODS

(Section 11(3))

Serial Number	Description of Goods
1	2
1.	Motor vehicles of all kinds, aeroplanes, helicopters or any other type of flying machine, parts and accessories thereof including tyres, tubes and flaps.
2.	Articles of food and drinks, including cakes, biscuits and confectionery; ready to serve foods; processed or semi-processed or semi-cooked food-stuffs; fruits, fruit and vegetable products sold in any kind of sealed containers; dressed chicken, meat, fish, prawns, shrimps and lobsters sold in any kind of sealed containers; aerated water, including soft drinks; sweets and sweet meats; instant mixes; soft drink concentrates; spice powders, pastes and the like; tobacco and tobacco products.
3.	All electrical or electronic goods and appliances including air conditioners, air coolers, telephones, fax machines, duplicating machines, photocopiers and scanners, parts and accessories thereof, other than those for use in the manufacture, processing, packing or storing of goods for sale and those for use in computing, issuing tax invoice or sale bills, security and storing information.

1	2
4.	Textiles, crockery, cutlery, carpets, paintings and artifacts.
5.	Furniture including slotted angles and ready to assemble parts of furniture, stationery articles including paper, sanitary fittings, cement and other construction materials including bricks, timber, wood, glass, mirrors, roofing materials, stones, tiles and paints, toilet articles.

The above translation of the ಕರ್ನಾಟಕ ಮೌಲ್ಯವರ್ಧಿತ ತೆರಿಗೆ ಅಧಿನಿಯಮ 2003 (2004ರ ಕರ್ನಾಟಕ ಅಧಿನಿಯಮ ಸಂಖ್ಯೆ 32) be published in the Official Gazette under clause (3) of Article 348 of the Constitution of India.

T.N.CHATURVEDI
Governor of Karnataka

By order and in the name of the
Governor of Karnataka,

G.DAKSHINA MOORTHY
Secretary to Government
Department of Parliamentary
Affairs and Legislation