

# THE KERALA VALUE ADDED TAX ACT, 2003

{UPDATEION UPTO FINANCE ACT 2010}

An Act to consolidate and amend the law relating to the levy of tax on the sale or purchase of goods based on the concept of Value Added Tax in the State of Kerala.

**Preamble.-** WHEREAS it is expedient to consolidate and amend the law relating to the levy of tax on the sale or purchase of goods based on the concept of value added tax in the State of Kerala:

Be it enacted in the Fifty-fourth Year of the Republic of India as follows:-

## CHAPTER - I PRELIMINARY

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

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

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

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

(i) “Agriculture” with all its grammatical variations cognate expressions, includes floriculture, horticulture, the raising of crops, grass or garden produce, and also grazing; but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man made forest or rearing of seedlings or plants;

(ii) “Agriculturist” means a person (not being a company or a firm) or society including a co-operative society or association of individuals whether incorporated or not, who cultivates land personally, for the purpose of agriculture.

(iii) “Appellate Tribunal” means the Appellate Tribunal appointed under

section 4;

(iv) "Assessee" means any person by whom tax or any other sum of money is payable under this Act and includes every person in respect of whom any proceedings under this Act have been taken for the assessment of tax payable by him;

(v) "Assessing authority" means any person authorized by the Commissioner to perform the functions of an assessing authority under this Act;

(vi) "Assistant Commissioner" means any person appointed to be an Assistant Commissioner of Commercial Taxes under sub-section (3) of section 3;

(via) "Assistant Commissioner(Appeals)" means any person appointed to be an Assistant Commissioner(Appeals) under sub section(3) of section 3.

(vii) "Awardee" means any person who awards any works contract to a contractor for execution"

(viii) "Books of accounts" include ledgers, day book, cash book, account books and other records whether kept in the written form or as print outs of data stored in a floppy, disc, tape or any other forms of electromagnetic data storage device."

(ix) "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 with a motive to make gain or profit and whether or not any profit accrues from such trade commerce, manufacture, adventure or concern; and

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

(x) "Capital goods" means plant, machinery, equipments including pollution / quality control, lab and cold storage equipments used in manufacture, processing, excluding for job works or rendering of services, packing or storage of goods in the course of business and delivery vehicles but

shall not include such goods and civil structure as may be notified by Government.

(xi) “Casual trader” means a person who whether as principal, agent or in any other capacity, has occasional transactions involving buying, selling, supplying or distributing goods in the State, whether for cash or for deferred payment, or for commission, remuneration, or other valuable consideration.

(xii) “Commissioner” means the Commissioner of Commercial Taxes appointed as such by the Government;

(xiii) “Commercial Tax Officer” means any person appointed to be a Commercial Tax Officer under sub-section (3) of section 3;

(xiv) “Contractor” means any person who undertakes any works contract for execution and includes a sub-contractor.

(xv) “dealer” means any person who carries on the business of buying, selling, supplying or distributing goods, executing works contract, delivering any goods on hire-purchase or on any system of payment by installments; transferring the right to use any goods or supplying by way of or as part of any service, any goods directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration not being an agriculturist and includes: -

(a) a casual trader;

(b) a commission agent, a broker or a delcredere agent or an auctioneer or any other mercantile agent, by whatever name called, of such dealer;

(c) a non-resident dealer or an agent of a non-resident dealer, or a local branch of a firm or company or association or body of persons whether incorporated or not situated outside the State;

(d) a person who, whether in the course of business or not, sells

(i) goods produced by him by manufacture or otherwise; or

(ii) trees which grow spontaneously and which are agreed to be severed before sale or under the contract of sale;

(e) a person who whether in the course of business or not:

(i) transfers any goods, including controlled goods whether in pursuance of a contract or not, for cash or for deferred payment or for other valuable consideration;

(ii) supplies, by way of or as part of any service or in any other manner whatsoever, goods, being food or any other articles for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

**Explanation I :** - A society (including a co-operative society, club or firm or an association or body of persons, whether incorporated or not) which whether or not in the course of business, buys, sells, supplies 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;

**Explanation II :-** The Central Government or a State Government, which whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, 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;

(f) a bank or a financing institution, which, whether in the course of its business or not sells any gold or other valuable article pledged with it to secure any loan, for the realization of such loan amount;

**Explanation I:-** Bank for the purposes of this clause includes a Nationalized Bank or a Schedule Bank or a Co-operative Bank.

**Explanation II: -** Financing Institution means a financing institution other than a bank;

(xva) 'declared goods' mean goods declared by section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) to be of special importance in inter-state trade or commerce;

(xvi) "Deputy Commissioner" means any person appointed to be a Deputy Commissioner of Commercial Taxes under sub-section (3) of section 3;

(xvii) "Deputy Commissioner (Appeals)" means any person appointed to be a "Deputy Commissioner(Appeals) under sub section (3) of section 3

(xviii) "Document" includes written or printed records of any sort, title deeds and electronic records as defined in Clause (t) of sub-section (1) of Sec.2 of the Information Technology Act, 2000 (21 of 2000);

(xviii A) "Empowered Committee" means the Empowered committee of State Finance Ministers constituted by the Ministry of Finance, Government of India on the basis of the resolution adopted in the conference of the Chief Ministers on 16th November, 1999.

(xix) "Foreign liquor" means and includes wine, brandy, champagne, sherry, rum, gin, whisky, beer, cider, cocoa brandy and all other distilled or spirituous preparations other than arrack and medicines and drugs;

(xx) "Goods" means all kinds of movable property (other than newspapers, actionable claims, electricity, stocks and shares and securities) and includes live stock, all materials, commodities and articles and every kind of property (whether as goods or in some other form) involved in the execution of a works contract, 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;

(xxi) "Government" means the Government of Kerala;

(xxii) "Importer" means any person who obtains or brings any taxable goods from any place outside the state or country whether as a result of purchase or otherwise for the purpose of business.

(xxiii) "Input Tax" means the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods in the course of business and includes the tax paid on the purchase of materials for the research and development in relation to any goods.

(xxiv) “Joint Commissioner” means any person appointed to be a Joint Commissioner under sub-section (3) of section 3;

(xxv) “Local authority” means a Panchayat constituted at any level under the Kerala Panchayat Raj Act, 1994 (13 of 1994), or a Town Panchayat, a Municipal Council, or a Municipal Corporation, constituted under the Kerala Municipality Act, 1994 (20 of 1994) or a Cantonment declared under the Cantonments Act, 1924 (Central Act 2 of 1924);

(xxvi) “Manufacture” with its grammatical variations and cognate expressions means producing, making, extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods, and includes any process incidental or ancillary to such activities but does not include any process or mode of manufacture as may be prescribed;

(xxvii) “Motor spirit” means any substance which, by itself or in admixture with other substances is ordinarily used directly or indirectly to provide reasonably efficient fuel for automotive or stationary internal combustion engines and includes petrol, diesel oil and other internal combustion oils, but does not include kerosene, furnace oil, coal or charcoal;

(xxviii) “Non-Resident dealer” means a dealer who effects sale or purchase of any goods in the State, but who has no fixed place of business or residence in the State;

(xxix) “Notification” means a notification issued by the Government, under the provisions of this Act and published in the Gazette;

(xxx) “Notified goods” means coffee, rubber, cardamom, pepper, arecanut, other than tender arecanut, cashewnut, iron and steel, cement, timber, plywood, glass, tread rubber and any other goods notified by the Government from time to time.

(xxxi) “Output Tax” means the tax charged or chargeable under this Act by a registered dealer for the sale of goods in the course of business and includes reverse tax levied under sub-section (8) of section 11;

(xxxii) “Permit” means a permit granted under section 19 or under section 46;

(xxxiii) “Person” includes: -

(a) an individual;

(b) a joint family; (c) a company;

(d) a firm;

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

(f) the Central Government or the Government of Kerala or the Government of any other State or any department thereof or a Union Territory in India;

(g) a local authority;

(h) every artificial juridical person not falling under any of the preceding sub-clauses;

(xxxiv) "Petrol" means dangerous petroleum having its flashing point below 24.4 degree centigrade,

(xxxv) "Place of business" means any place where a dealer carries on the business 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 goods,

(c) any place where a dealer keeps his books of accounts,

(d) in any case where a dealer carries on business through an agent (by whatever name called), the place of business of such agent,

(e) any warehouse, railway station, railway goods yard, parcel office, steamer station, or any other place where goods for transportation in the course of business or otherwise are kept by dealers, and

(f) any vehicle or vessel or any other carrier wherein the goods are stored or used for transporting the goods;

(xxxvi) “Prescribed” means prescribed by rules made under this Act;

(xxxviA) “Prevailing market price” means the wholesale price of any goods in force in the market as published by the Economics and Statistics Department of the State or any other authorised agency or in the news paper and in cases where no such published whole sale price is available, the price at which goods of the kind or quality is sold by the Kerala State Civil Supplies Corporation or any other similar agency on the date of sale of such goods.

(xxxvii) “Purchase” with all its grammatical variations and cognate expressions shall be construed from the word “sale”;

(xxxviii) “Purchase price” shall be construed from the words “sale price”;

(xxxix) “Registered dealer” means a dealer registered under this Act;

(xl) “Registering authority” means the officer designated, by notification in the Gazette, as registering authority;

(xli) “Return period” means and includes a calendar month or a quarter of an year or an year;

(xlii) “Reverse tax” means that portion of input tax of the goods for which credit has been availed but such goods remain unsold at the closure of business or are used subsequently for any purpose other than resale or manufacture of taxable goods or execution of works contract or use as containers or packing materials of taxable goods within the State;

(xlili) “Sale” with all its grammatical variations and cognate expressions means any transfer whether in pursuance of a contract or not of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or for other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge;

**Explanation I :-** A transfer of property in goods by the Central Government or a State Government 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;



**Explanation II :-** The transfer of property involved in the supply or distribution of goods by a society (including a co-operative society), club, firm or any association or body of persons, whether incorporated or not, 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;

**Explanation III:-** A transfer of goods on hire – purchase or other installment system of payment shall, notwithstanding the fact that the seller retains the title in the goods as security for payment of the price, be deemed to be a sale on the date of delivery of the goods in pursuance of the agreement of such hire purchase or other system of payment in installments;

**Explanation IV:-** A transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract shall be deemed to be a sale;

**Explanation V: -** A transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration shall be deemed to be a sale;

**Explanation VI:-** Any supply, by way of or as part of any service or in any other manner what so ever, of goods, being food or any other articles for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration shall be deemed to be a sale;

**Explanation VII: -** Unless otherwise expressly provided in this Act, any transfer, delivery or supply of any goods referred to in this clause shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and purchase of those goods by the person to whom such transfer, delivery or supply is made;

**Explanation VIII:-** (a) The sale or purchase of goods shall be deemed, for the purposes of this Act, to have taken place in the State where the contract of sale or purchase might have been made, if the goods are within the State,-

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

(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior or subsequent to such appropriation;

(b) 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 the goods at each of such places;

(c) For the purpose of this Act, the transfer of property in 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 of works contract is made, whether the assent of the other party to the contract is prior or subsequent to such transfer;

**Explanation IX:** - 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:

Provided that the deduction or addition, as the case may be, of the commission agreed upon and specified in the accounts and incidental charges incurred by the agent which are specified in the accounts and which the assessing authority considers legitimate shall not be deemed to be a difference in the rates referred to in sub-clauses (i) and (ii).

(xlv) “Sale price” means the amount of valuable consideration received or receivable by a dealer for the sale of any goods less any sum allowed as cash discount, according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods or services at the time of or before delivery thereof, excise duty, special excise duty or any other duty or taxes except the tax imposed under this Act.

(xlv) “Settlement Commission” means the Settlement Commission appointed under Section 5;

(xlvi) “Smuggling” means transportation of notified goods exceeding such value as may be prescribed, into or out of the State, without the documents prescribed by sub-section (3) of section 46 or under cover of a document which is bogus or forged or where the consignor or consignee, as the case may be in the State, as shown in the document accompanying the goods, is non-existent or bogus.

(xlvii) “State” means the State of Kerala;

(xlviii) “Tax” means the tax payable under this Act;

(xlix) “Tax invoice” includes a bill of sale containing such particulars as may be prescribed.

(l) “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;

(li) “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 inter-state 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 goods into the territory of India;

(lii) “Turnover” means the aggregate amount for which goods are either bought or sold, supplied or distributed 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 for other valuable consideration, provided that the proceeds of the sale by a person not being a Company or Firm registered under the Companies Act, 1956 (Central Act 1 of 1956) and Indian Partnership Act, 1932 (Central Act 9 of 1932) or society including a co-operative society or association of individuals whether incorporated or not of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.

**Explanation I:** - The turnover in respect of delivery of goods on hire purchase or on any system of payment by installments shall be the market price of such goods at the time of delivery.

**Explanation II:** - The turnover in respect of the transfer of the right to use any goods shall be the aggregate amount received or receivable by the dealer as consideration for such transfer.

**Explanation III:** - Subject to such conditions and restrictions, if any, as may be prescribed in this behalf:

(i) 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;

(ii) Any discount on the price allowed in respect of any sale where such discount is shown separately in the tax invoice and the buyer pays only the amount reduced by such discount; or any amount refunded in respect of goods returned by customers shall not be included in the turnover

(iii) Where for accommodating a particular customer, a dealer obtains

goods from another dealer and immediately disposes of the same to the said customer, the sale in respect of such goods shall be included in the turnover of the latter dealer but not in that of the former;

**Explanation IV:-** “Agricultural or horticultural produce” shall not include such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting, drying or de-husking;

**Explanation V:** Where a dealer receives in any return period any amount due to price variations in respect of any sale effected during any earlier return period, such amount shall be deemed to be the turnover relating to the return period in which such amount is received.

**Explanation VI:** The turnover in respect of rubber shall be deemed to include any cess leviable under the Rubber Act, 1947 irrespective of whether the payment of cess is deferred till the rubber is consumed by the manufacturer of rubber goods or not:

**Explanation VII:** Where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance of the price, the amount so received shall be deemed to be turnover in respect of such goods.

(liiA) “Used Motor vehicle” means a motor vehicle purchased and registered under the provisions of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) and used for a minimum period of fifteen months subsequent to the registration or which had already been subjected to tax under this Act.

(liii) “Vehicle” includes every wheeled conveyance used for the carriage of goods solely or in addition to passengers;

(liv) “Vessel” includes any ship, barge, boat, raft, timber, bamboos or floating materials propelled in any manner;

(lv) “Works contract” includes any agreement for carrying out for cash or for deferred payment or other valuable consideration the construction, fitting out, improvement, repair, manufacture, processing, fabrication, erection, installation, modification or commissioning of any movable or immovable property;

(lvi) “Year” means the financial year.

(lvii) “Zero rate sale” means the sale of any goods on which no tax is chargeable but in relation to which input tax credit or refund of input tax paid is admissible.

## CHAPTER – II

### **AUTHORITIES, APPELLATE TRIBUNAL AND SETTLEMENT COMMISSION**

**3 . Commercial Tax Authorities.-** (1) The Commissioner shall have and exercise all the powers and shall perform all the duties conferred or imposed upon him by or under this Act.

Provided that the Commissioner may, by an order in writing, delegate any power vested in him to any officer appointed under sub-section (3).

(2) The Commissioner shall have superintendence over all officers and persons employed in the execution of this Act and the Commissioner may, -

(a) call for returns from such officers and persons;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such officers and persons;

(c) issue such orders, instructions and directions to such officers and persons as it may deem fit, for the proper administration of this Act.

(3) The Government shall appoint as many Joint Commissioners, Deputy Commissioners, Deputy Commissioner (Appeals), Assistant Commissioner (Appeals), Assistant Commissioners, Commercial Tax Officers and such other officers as they think fit for the purpose of performing the functions respectively assigned to them by or under this Act. Such officers shall perform the said functions within such local limits as the Commissioner may assign to them.

(4) All officers and persons employed for the execution of this Act shall observe and follow the orders, instructions and directions of the officers

superior to them: Provided that no such Orders, Instructions or directions shall be given so as to interfere with the discretion of the Deputy Commissioner (Appeals) and Assistant Commissioner(Appeals) in the exercise of their appellate functions.

(5) The Commissioner or the Deputy Commissioner may by order in writing. -

(a) transfer any case or cases relating to any assessee or class of assesses pending before an assessing authority to another assessing authority having jurisdiction to deal with such case or cases; or

(b) specify one of the assessing authorities having jurisdiction over an area, which shall deal with any case or cases relating to any assessee or class of assesseees.

(6) Where any case is transferred to an assessing authority under clause (a) of sub-section (5), such assessing authority may deal with the case either de novo or from the stage at which it was transferred.

**4. Appellate Tribunal.-** (1) The Government shall appoint an Appellate Tribunal consisting of a Chairman and as many other members as they think fit and such additional Appellate Tribunals, as they think fit, with such members to perform the functions assigned to the Appellate Tribunal by or under this Act.

(2) The Chairman shall be a person who is or has been a Judicial Officer not below the rank of a District Judge and the other members shall possess such qualifications as may be prescribed.

(3) Any vacancy in the office of a member of the Appellate Tribunal shall be filled by the Government.

(4) The functions of the Appellate Tribunal may be performed,

(i) by a Bench consisting of the Chairman and any other member; or

(ii) by a Bench consisting of the Chairman and two other members; or

(iii) by a Bench consisting of two or more members other than the Chairman

(5) In any case which comes up before a Bench of which the Chairman is not a member, involves a question of law, the bench may, in its discretion, reserve such case for decision by the Chairman or by a Bench to be constituted under sub-section (6), of which the Chairman shall be a member.

(6) The Bench or Benches of the Appellate Tribunal shall be constituted by the Chairman in accordance with the provisions of this Act and the rules made there under.

(7) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority but if the members are equally divided, they shall state the point or points on which they differ, and such point or points shall be heard –

(i) When the Chairman is not a member of that Bench, either by the Chairman or by the Chairman and any other member or members as the Chairman may direct; and

(ii) When the Chairman is a member of that Bench, by any other member or members to whom the case is referred by the Chairman; and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(8) Any member who has previously dealt with any case coming up before the Appellate Tribunal in any other capacity or is personally interested in any case coming up before the Appellate Tribunal shall be disqualified to hear that case.

(9) Where any case is heard by a Bench consisting of two members and the members are divided in their opinion on any point and the other member or members of the Tribunal are disqualified under sub-section (8) to hear the case, the Government may appoint a person qualified to be appointed as a member of the Appellate Tribunal as an additional member of the Tribunal and the point shall be decided in accordance with the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.



(10) The additional member appointed under sub-section (9) shall cease to hold office on the disposal of the case for which he was appointed.

(11) The appellate Tribunal shall, with the previous sanction of the Government make regulations consistent with the provisions of this Act and the rules made there under for regulating its procedure and the disposal of its business.

(12) The regulations made under sub-section (11) shall be published in the Gazette.

**5. Settlement Commission.-** (1) The Government may appoint a Settlement Commission consisting of a Chairman and as many other members as they think fit, to perform the functions assigned to the Settlement Commission by or under this Act. The Chairman shall be a person who is a judicial Officer not below the rank of a District judge and the other members shall possess such qualifications as may be prescribed;

(2) Any vacancy in the office of the members of the Settlement Commission shall be filled by the Government.

(3) The functions of the Settlement Commission may be performed –

(i) by a bench consisting of the Chairman and any other member; or

(ii) by a bench consisting of the Chairman and two other members; or

(iii) by a bench consisting of two or more members other than the Chairman.

(4) Any member who has previously dealt with any case coming up before the Commission in any other capacity or is personally interested in any such case shall be disqualified to hear such case.

(5) The Commission may, with the previous sanction of the Government, make regulations consistent with the provisions of this Act and the rules made there under for regulating its procedure and the disposal of its business.

(6) The regulations made under sub-section (5) shall be published in the Gazette.

## CHAPTER – III

### INCIDENCE AND LEVY OF TAX

**6. Levy of tax on sale or purchase of goods.-** (1) Every dealer whose total turnover for a year is not less than ten lakh rupees and every importer or casual trader or agent of a non-resident dealer, or dealer in jewellery of gold, silver and platinum group metals or silver articles or contractor or any State Government, Central Government or Government of any Union Territory or any department thereof or any local authority or any autonomous body whatever be his total turnover for the year, shall be liable to pay tax on his sales or purchases of goods as provided in this Act. The liability to pay tax shall be on the taxable turnover, -

(a) in the case of goods specified in the Second and Third Schedules at the rates specified therein and at all points of sale of such goods within the State and in the case of aerated branded soft drinks excluding soda at the rate of twenty per cent at all points of sale within the State.

(b) Omitted.

(c) in the case of transfer of the right to use any goods for any purpose whether or not for a specified period, at the rate of four percent at all points of such transfer;

(d) in the case of goods not falling under clauses (a) or (c) at the rate of 12.5% at all points of sale of such goods within the State. Government may notify a list of goods taxable at the rate of 12.5%;

(e) in the case of transfer of goods involved in the execution of works contract where transfer is in the form of goods, at the rates specified for such goods in clauses (a) or (d) above, as the case may be;

(f) In the case of transfer of goods involved in execution of works contract, where the transfer is not in the form of goods, but in some other form, at the rate of 12.5 per cent and when the transfer is in the form of goods at the rates prescribed under the respective Schedules.

Provided that where the sale is to the Administrator, Union Territory of Lakshadweep, Laccadive Co-operative Marketing Federation, Kozhikode or the

Lakshadweep Harbour Works and registered dealers certified by the Administrator, Union Territory of Lakshadweep, the tax payable under clause (d) shall be at the rate of four per cent, subject to such conditions as may be prescribed:

Provided further that a bar attached hotel, as defined under explanation to clause (c) of section 8 or a dealer in petroleum products shall be liable to pay tax under this sub-section if his total turnover under this Act and the total turnover under the Kerala General Sales Tax Act, 1963 (15 of 1963) together is not less than the limit specified under this sub-section:

Provided also that where the total turnover of a dealer, other than an importer or casual trader or agent of a non-resident dealer or dealer in jewellery of gold, silver and platinum group metals and silver articles or contractor, exceeds ten lakh rupees for the first time during the course of an year, such dealer shall be liable to pay tax under this sub-section only on the turnover in excess of ten lakh rupees; but he shall be liable to pay tax irrespective of the total turnover in any subsequent year :

Provided also that in respect of works contracts executed under the Sampurna Gramin Rosghar Yojana or the beneficiary committees using the Member of Parliament / Member of Legislative Assembly Funds or Natural Calamity Relief Funds or Sarva Siksha Abhiyan Funds, or funds of Local Authorities or Command Area Development Authority or execution of work under Jalanidhi Project (KRWSA) and OFD Works through Beneficiary Farmers' Associations or Karshaka Samithy where the total amount in respect of individual contract does not exceed ten lakhs rupees, the tax payable under clause (f) above shall be four per cent and the beneficiary committees shall be entitled to receive payment even without taking registration under the Act.

Provided also that where:

(a) the sale is to or by Military, Naval, Air Force or NCC Canteen, Indian Naval Canteen Service and Canteen Stores Department, and

(b) in case of motor vehicles, the sale is to defense personnel or ex-servicemen on production of authorization duly issued by the authorized officer of the Canteen Stores Department, the tax payable under (a) or (d) above shall subject to such conditions and restrictions as may be prescribed be half the rate applicable to such goods

Provided also that in respect of sale of fuel and lubricants to foreign-going vessels, other than fishing vessels, the tax payable under clause (a) or (d) above shall, subject to conditions and restrictions as may be prescribed, be half per cent:

Provided also that where sale of goods other than petroleum products, manufactured in the State is to Railways, Kerala State Electricity Board, Kerala State Road Transport Corporation or Kerala Water Authority, the tax payable under clause (d) above shall, subject to such conditions and restrictions as may be prescribed, be at four per cent.;

Provided also that sculptural statues of national leaders and social reformers shall be exempted from tax payable under clauses (e) and (f) of sub-section (1) of section 6:

Provided also that the tax payable under clause (f), in respect of transfer of declared goods not in the form of goods but in some other form, shall be at the rate prescribed under the respective Schedules:

Provided also that the rate of tax on the sale of used motor vehicles shall be at 0.5 per cent and that no tax is payable under sub-section (2):

Provided also that, in respect of cinematographic films, turnover relating to sale of "copyright" under clause (a) and transfer of right to use under clause (c) shall be exempted.;

(1A) Notwithstanding anything contained in sub-section (1), —

(a) where a dealer whose total turnover for a year is below the limit specified in sub-section (1) collects tax under section 30 on his sales, he shall, whatever be his total turnover for the year, be liable to pay tax under sub-section (1) on the taxable turnover for the year.

(b) where the sale of any goods is exempted at the point of sale by any dealer, such dealer may, at his option, pay tax in respect of the sale of such goods and thereupon he shall, whatever be his total turnover, be liable to pay tax on the taxable turnover for the year.

(2) Notwithstanding anything contained in sub-section (1), —

(a) every dealer who purchases taxable goods from any person other than a registered dealer shall pay tax on the purchase turnover of goods at the rates specified under sub-section (1).

(b) every dealer who purchases taxable goods from any registered dealer other than a dealer liable to tax under this Act and despatches the goods to any place outside the state otherwise than by way of sale in the course of interstate trade or export shall pay tax on the purchase turnover of the goods at the rates specified under sub-section (1), provided that the maximum rate leviable under this clause shall not exceed four per cent:

Provided that a dealer, other than an importer, casual trader, agent of non-resident dealer, dealer in jewellery of gold, silver and platinum group metals or silver articles or contractor or any State Government, Central Government or Government of any Union Territory or any department thereof or any local authority or autonomous body shall not be liable to tax under this sub-section if his total turnover is less than five lakh rupees.

Provided further that Khadi and Village Industrial Units manufacturing splints and veneers shall not be liable to tax under this subsection on the turnover of purchase of softwood effected from unregistered dealers for the years 2005-06 and 2006-07.

(c) every awardee, not being a Government department or Local Authority, who purchases taxable goods from any person, other than a registered dealer, within the State for execution of works contract and issues the same for incorporation in the work, without including its value in the gross contract amount, shall pay tax on the purchase turnover of such goods at the rates specified under sub-section (1), if the cost of the work including the value of materials supplied by the awardee exceeds one crore rupees.

(3) Omitted.

(4) Goods specified in the First Schedule shall be exempted from tax.

(5) Notwithstanding anything contained in sub-section (1), but subject to Sub-section (2), any registered dealer not being,

(a) an importer; or

(b) a dealer making any sale in the course of interstate trade or commerce or export; or

(c) a dealer registered under the Central Sales Tax Act, 1956 (Central Act 74 of 1956); or

(d) a dealer effecting first taxable sale of goods within the State; or

(e) a dealer covered by sub-section (1A); or

(f) a contractor,

whose total turnover for a year is below fifty lakh rupees, may, at his option, pay tax at the rate of half per cent of the turnover of sale of taxable goods as presumptive tax instead of paying tax under sub-section (1):

Provided that a dealer holding stock of goods purchased in the course of interstate trade on the date of coming into force of the Act, will have the option to pay tax under this sub-section from the beginning of the quarter following the quarter in which he has sold such goods in the state and paid tax under sub-section (1) of section 6 and his registration under the Central Sales Tax Act, 1956 (Central Act 74 of 1956) is cancelled:

Provided further that any dealer covered by sub-section (1A) may, at his option pay tax under this sub-section from such period as may be prescribed:

Provided also that a dealer shall not be eligible to opt for payment of tax under this sub-section if his total turnover in respect of goods to which this Act applies, whether under this Act or under the Kerala General Sales Tax Act, 1963 (15 of 1963) had exceeded fifty lakh rupees during the year preceding the year to which such option relates.

Provided also that a dealer shall not be liable to pay presumptive tax under this sub-section, if his total turnover is less than ten lakh rupees. Provided also that dealers covered under his sub-section whose total turnover for a year is below rupees twenty lakhs, may pay a lump sum amount of

rupees three thousand annually as presumptive tax, and the payment shall be at the rate of rupees seven hundred and fifty per quarter along with a statement as may be prescribed. Such dealers shall also file an annual declaration as may be prescribed.

**Explanation:** “First taxable sale” for the purpose of this sub-section shall mean the sale of taxable goods effected by a registered dealer immediately after the import of such goods into the State or its manufacture in the State as the case may be, but shall not include the sale of goods in respect of which tax under section 5 or under sub-section (4) of section 59 of the Kerala General Sales Tax Act 1963 (15 of 1963) had been paid and which are held as opening stock on the date of coming into force of the Act.

(6) Notwithstanding anything contained in sub-section (1), where goods sold are contained in containers or are packed in any packing materials, the rate of tax and the point of levy applicable to such containers or packing materials, as the case may be, shall, whether the price of the containers or the packing materials is charged separately or not be the same as those applicable to goods contained or packed, and in determining turnover of the goods, the turnover in respect of the containers or packing materials shall be included therein:

Provided that where the sale or purchase of goods contained in any containers or packed in any packing materials is exempt from tax, then, the sale or purchase of such containers or packing materials shall also be exempt from tax.

**Explanation:-** For the purposes of sub-section (6), the word “containers” includes gunny bags, tins, bottles or any other containers.

(7) Notwithstanding anything contained in sub-section (1),

(a) any authorised retail or wholesale distributor dealing in rationed articles namely, rice, wheat and kerosene under the Kerala Rationing Order, 1966 shall not be liable to pay tax on the turnover of such goods;

(b) sale of any building materials, industrial inputs, plant and machinery including components, spares, tools and consumables in relation

thereto to any developer or industrial unit or establishments situated in any Special Economic Zone in the State for setting up the unit or use in the manufacture of other goods shall, subject to such conditions or restrictions, as may be prescribed, be exempted from tax.

(c) sale of medicines and drugs falling under the Third Schedule, in respect of which tax had been paid under the Kerala General Sales Tax Act, 1963 (15 of 1963) and which are held as opening stock on the 1 day of April, 2005 shall, subject to conditions and restrictions, as may be prescribed, be exempted from tax.

**Explanation:** For the purpose of this sub-section, Special Economic Zone shall mean a Special Economic Zone approved and notified as such by the Central Government and includes an existing Special Economic Zone.

(8) The Rules of Interpretation of the Schedules of this Act shall be as set out in the Appendix.

**7 . Trade discount etc. deemed to be sale in certain cases:-** Notwithstanding anything contained in any other provisions of this Act, where a dealer allows any trade discount or in terms of quantity in goods in relation to any sale effected by him, the quantity so allowed as trade discount or incentive, shall be deemed to be a sale by the dealer, who allows such trade discount or incentive and a purchase by the dealer who receives such trade discount or incentive and such sale shall form part of the sale in relation to which such trade discount or incentive is allowed.

**8 . Payment of tax at compounded rates:-** Notwithstanding anything contained in section 6-

(a) (i) any works contractor not being a dealer registered under the provisions of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), and who is not an importer may, at his option, instead of paying tax in accordance with the provisions of the said section, pay tax at three per cent of the whole contract amount;

(ii) any works contractor not falling under clause (i) above may, at his option, instead of paying tax in accordance with the provisions of the said section, shall pay tax at three per cent of the contract amount after



deducting the purchase value of goods excluding freight and gross profit element consigned into the State on stock transfer or purchased from outside the State and for the purchase value of goods so deducted shall pay tax at the scheduled rate applicable to such goods.

Provided that notwithstanding anything contained in sub-clause (ii) above, the compounded tax payable by any works contractor under this clause in respect of works contracts awarded by Government of Kerala, Kerala Water Authority or Local Authorities shall be four per cent of the whole contract amount:

Provided further that the provisions of this clause shall not apply to any works contract in which the transfer of material is in the form of goods:

Provided also that notwithstanding anything contained elsewhere in this Act, a works contractor who intends to pay tax at compounded rate in accordance with this clause in respect of all works undertaken by him during a year, may, instead of filing separate application for compounding for individual works, file a single option for payment of tax under this clause before 30th day of April of the year to which the option relates, subject to eligibility:

Provided also that in the case of any work covered under the above provisos which remains unexecuted fully or partly at the end of the year, the contractor shall continue to pay tax in respect of such works in accordance with the provisions of this clause.

Provided also that notwithstanding anything contained in this Act, in cases of works which commenced prior to 1st April, 2008 and which remains partly unexecuted as on 1st April, 2008, the contractor shall pay tax at the rates as it existed prior to 1st April, 2008 till the completion of work, or up to 31st March, 2009, whichever is earlier:

Provided also that notwithstanding anything contained in this Act, contractors who have opted for payment of tax under sub-clause (ii) of clause (a) of section 8 during the previous years shall continue to pay tax on that portion of the works remaining unexecuted as on 1st April, 2009, at the rates applicable as on 1st April, 2009.

**Explanation.1:-** For the purpose of this clause “whole contract amount” shall not include the amount paid to sub-contractors for execution of the portion of works contract if the sub-contractor is a registered dealer liable to tax under sub-section (1) or sub-section (1A) of section 6, and the contractor claiming deduction in respect of such amount furnishes certificates in such form as may be prescribed.;

**Explanation 2.—** Notwithstanding anything contained in any other Act, a dealer who had surrendered his registration and unused declaration forms under the Central Sales Tax Act, 1956 (74 of 1956), before the assessing authority on or before 31st March, 2008 and who does not have any closing stock of materials purchased interstate as on 31st March, 2008 or who pays tax on such closing stock at scheduled rates, shall be eligible for paying compounded tax under sub-clause (i) of this clause, for the year 2008-2009.”;

(b) Any dealer producing granite metals with the aid of mechanized crushing machine may, at his option, instead of paying tax in accordance with the provisions of the said sections, pay tax at the following rates, namely:-

(i) for each crushing machine of size not exceeding 30.48 cm x 22.86 cm = Rs.40,000 per annum;

ii) for the each crushing machine of size exceeding 30.48 cm x 22.86 cm but not exceeding 40.64 cm and 25.40 cm = Rs.1,40,000 per annum;

(iii) for the each crushing machine of size exceeding 40.64 cm x 25.40 cm = Rs.2,80,000 per annum;

(iv) for each cone crusher Rs.15,00,000 per annum.

Provided that in the case of dealers, who opted to pay compounded tax under this clause, no separate assessment shall be made in respect of m-sand produced by them.

Provided further that notwithstanding anything contained in this clause, dealers with a single crushing machine of size not exceeding 30.48 cm. × 22.86 cm. shall pay rupees twenty five thousand only per annum and those with a single crushing machine of size above 30.48cm x 22.86 cm but not exceeding 40.64 cm X 25.40 cm shall pay rupees one lakh only per annum as tax under this clause.”;

**Explanation.**— For the purpose of this clause, primary crushers shall also be reckoned for the purpose of computation of compounded tax, and the rate applicable to primary crushers shall be at fifty per cent of the aggregate of the tax payable on secondary crushers.

(c) (i) Any dealer in cooked food and beverages, including beverages prepared by him, other than a dealer supplying cooked food or beverages to any airline service company or institution or shipping company for serving in air craft, ships or steamer or served in air craft, ship, steamer, bar attached hotel or star hotel may, at his option, instead of paying tax in accordance with the provisions of sub-section (1) of section 6 but subject to payment of tax, if any, payable under sub-section (2) thereof, pay tax at half per cent of the turnover of cooked food and beverages prepared by him and also on the turnover of other goods in respect of which he is not the dealer effecting first taxable sale, as defined in the explanation under sub-section (5) of section 6.

**Explanation:** — Cooked food for the purpose of this clause shall include sweets and fresh fruit juice prepared and served in the restaurants and hotels.

(ii) Any bar attached hotel, not being a star hotel of and above three star or a club or a heritage hotel may, at its option, instead of paying tax in accordance with the provisions of section 6, but subject to such conditions and restrictions as may be prescribed, pay tax at one hundred and twenty five per cent of the tax paid or payable under this Act, in respect of the highest turnover of cooked food and beverages prepared by them, and packaged water, aerated water, cigarettes, soft drinks and other goods purchased from registered dealers, for the previous three consecutive years, immediately preceding the year to which the option relates:

Provided that the dealers who have paid compounded tax during the previous year shall pay tax at one hundred and fifteen per cent of the compounded tax paid and one hundred and fifteen per cent of the tax paid on packaged water, aerated water, cigarettes and soft drinks purchased from registered dealers.

Provided further that where a dealer had paid tax under this sub clause for the previous year, the tax paid for the succeeding year under this clause shall be one

hundred and fifteen percent of such tax paid during the previous year

**Explanation:**—For the purpose of this clause “bar attached hotel” shall mean a hotel or restaurant or club or any other place, which is licensed under the Foreign Liquor Rules to serve foreign liquor falling under Serial Number 2 of the Fourth Schedule, but shall not include any hotel or restaurant, not being a star hotel, which is licensed to serve only beer.

(d) Any dealer who transfers the right to use Video Cassette or Compact Disc may, instead of paying tax in accordance with the provisions of section 6, pay tax at the rate of one thousand rupees per year for every main or branch shop situated in any place within the limits of any Municipal Corporation or Municipality and rupees five hundred per year for any main or branch shop situated in any other place or places.

(e) Any dealer, who is an importer or a manufacturer who is not entitled to any deferment of tax under section 32, of medicines and drugs falling under the Third schedule may, at his option, pay, in such manner and subject to such conditions and restrictions as may be prescribed, in lieu of the tax payable by him on such goods under sub-section (1) of section 6, tax at the rate of 4 per cent of the maximum retail price of such goods.

**Explanation:** For the purpose of this clause, maximum retail price in respect of the goods mentioned means the maximum price printed on the package of any goods at which such goods may be sold to the ultimate consumer and in respect of supplies to Government of Kerala, where such price is not so printed on the package, the price charged on the sales to Government:

Provided that where a registered dealer has purchased any goods,

(a) from an importer or a manufacturer who has opted for payment of tax under this clause; or

(b) from another registered dealer where the tax on the maximum retail price of such goods was paid in the state on an earlier sale, such dealer shall, notwithstanding anything contained elsewhere in the Act, but subject to such conditions and restrictions as may be prescribed, be exempt from payment of tax under sub-section (1) of section 6 in respect of

the sale of such goods and be entitled to recover from the buyers the amount of tax paid by him at the time of purchase of such goods and the turnover of such goods shall not be included in the total turnover for the purpose of sub-section.(5) of section 6 where the dealer opts for payment of tax in accordance with the said subsection in respect of goods other than medicines and drugs.

Provided further that a dealer who opts payment of tax under this clause shall not allow any trade discount or incentive in terms of quantity of goods in relation to any sale of goods covered under the clause, effected by him, for the purpose of calculating his tax liability.

(f) (i) any dealer in ornaments or wares or articles of gold, silver or platinum group metals including diamond may at his option, instead of paying tax in respect of such goods in accordance with the provisions of section 6, pay tax at,—

(a) one hundred and fifteen per cent, in case their annual turnover for the above goods for the preceding year was rupees ten lakhs or below;

(b) one hundred and twenty per cent, in case their annual turnover for the above goods for the preceding year was above rupees ten lakhs and up to rupees forty lakhs;

(c) one hundred and thirty five per cent; in case their annual turnover for the above goods for the preceding year was above rupees forty lakhs and up to rupees one crore; and at

(d) one hundred and fifty per cent; in case their annual turnover for the above goods for the preceding year exceeded rupees one crore;

of the highest tax payable by him as conceded in the return or accounts, or tax paid by him under this Act, whichever is higher, for a year during any of the three consecutive years preceding that to which such option relates.

**Explanation 1:**— Where a dealer had not transacted any business for the last three years consecutively, the highest tax paid or payable for the year during the year or years he transacted business shall be considered for the above purpose.

**Explanation 2:**— Where during any such preceding year, the dealer had not transacted business for any period in that financial year, the tax payable for the twelve months shall be calculated proportionately on the basis of the tax payable or the turnover conceded, as the case may be, for the period during which such dealer had transacted business.

**Explanation 3:**— Dealers opting for payment of tax under this clause shall pay compounded tax in respect of all their branches existing in the year to which the option relates.

**Explanation 4:**— Where a dealer has not opted to pay compounded tax with respect to a new branch opened in 2008-09, the compounded tax payable for such branch for the year 2008-09 shall be notionally fixed as the average of the compounded tax paid for the principal place and branches in that year and if the new branch opened is the first branch, the compounded tax payable for it shall be the same as that payable for the principal place of business.

**Explanation 5:**— Where a dealer opens a new branch in the current year, the additional compounded tax payable under this clause in respect of such branch shall be the average of the tax payable by him in respect of his principal place of business and all branches.

**Explanation 6:**— Where a dealer has opted for payment of tax under this clause for the first time in 2009-10 and has commenced business only in 2008-09 and the tax payable as per return or account during 2008-09 is less than the output tax payable, then the tax payable for 2008-09 shall be notionally re-determined on the basis of output tax for determining the tax liability for 2009-10.

**Explanation 7:**—Tax payable as conceded in the accounts includes the tax payable on suppressed turnover subsequently detected also.

**Explanation 8:**- where a dealer who had opted and paid tax under this clause during previous years with respect to a branch that had remained closed during the whole of the year 2009-10 ,for the purpose of determining the compounded tax payable for 2010-11, the tax paid in respect of that branch shall not be reckoned.

Provided that a dealer who opts for payment of tax under this clause may collect tax on the sales at the rate not exceeding the rate prescribed

for the commodity under this Act, but where the tax so collected during the year is in excess of the tax payable for the year under this clause, the tax collected in excess shall be paid over to Government in addition to the tax payable under this clause

(ii) The assessing authority, for valid and sufficient reasons, such as shifting of place of business, holding of stock exceeding double the quantity held in the previous year, furnishing of false information, suppression of relevant information, failure to furnish such information demanded, may refuse permission to pay tax under this section and cancel the permission if any granted:

Provided that no orders under this sub-clause shall be issued without giving the dealer an opportunity of being heard and without prior approval of the District Deputy Commissioner.

(iii) Notwithstanding anything contained in sections 55 or 60 of this Act, orders under sub - clause (ii) shall be appealable only to the Appellate Tribunals.

(iv) In case where permission has been cancelled, the amount, if any paid based on the permission, shall be apportioned against the output tax due of the dealer.

(v) Where a dealer had paid tax under this clause for the previous year, the tax payable for the succeeding year under this clause shall be:

(a) one hundred and five per cent of such tax paid during the previous year, in case their turnover for the preceding year was rupees ten lakhs or below

(b) one hundred and ten percent of such tax paid during the previous year, in case their turnover for the above goods for the preceding year was above rupees ten lakhs and upto rupees forty lakhs

(c) one hundred and fifteen percent of such tax paid during the previous year, in case their turnover for the above goods for the preceding year was above rupees forty lakhs and up to rupees one crore: and

(d) one hundred and twenty five percent of such tax paid during the

previous year, in case their turnover for the above goods for the preceding year exceeded rupees one crore.

Provided that the tax payable under this sub clause by the dealers covered under Explanation 6 of this clause shall be at the appropriate percentage of tax mentioned in (a),(b),(c) or (d) above, of the tax re-determined under the said Explanation.

(vi) where a dealer who opt for compounding under this clause has been transacting business under a brand name, the compounded tax payable under this clause shall not be less than the compounded tax payable had the business been run as a branch of the franchisee or of other franchisees.

(g) Any dealer in poultry or poultry meat which are brought from outside the state may at his option, instead of paying tax in accordance with the provisions of the said section, pay tax on the basis of floor value fixed by the Commissioner from time to time at the rate of 12.5% during the time of entry of goods into the state.

**9. Burden of proof.-** The burden of proving that any transaction of a dealer is not liable to tax under this Act shall lie on such dealer.

**10 . Deduction of tax at source .-** (1) Every awarder shall deduct from every payment, including advance payment, made by him to any works contractor liable to pay tax under section 6, in relation to any works contract awarded, the tax payable by the contractor in respect of such contract under that section, whether the transfer of goods involved in the execution of works contract is in the form of goods or not, and remit it to Government, in the prescribed manner, on or before the fifth day of the month succeeding the month in which such deduction is made. Every such awarder shall also file such return as may be prescribed.

Provided that in respect of works contract executed under the Sampurna Gramin Rozgar Yojana or the Beneficiary Committees using the Member of Parliament / Member of Legislative Assembly Funds or Natural Calamity Relief Funds of Sarva Siksha Abhiyan Funds, where the total amount in respect of individual contract does not exceed ten lakh rupees, the maximum amount deductible under this section shall not exceed four per cent of the whole contract amount.

( 2 ) For the purpose of sub - section (1), the contractor may produce a



liability certificate in relation to such works contracts from the assessing authority showing the tax liability or tax remittance, as the case may be, of the contractor in relation to the work.

(2A) In cases where a liability certificate has been produced as per sub-section (2), payment shall be effected to a works contractor, on the basis of the said certificate; and,—

(i) in case of work awarded by Government of Kerala, Kerala Water Authority or Local Authorities, after deducting four per cent of the amount paid as per the works contract; and .

(ii) in other cases—

(a) after deducting eight per cent of the amount paid as per the works contract in the case of contractors registered under this Act.

(b) after deducting ten per cent of the amount paid as per the works contract in the case of other contractors:

Provided that the awarder shall not insist from the contractor, not being a dealer registered under the provisions of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) any certificate issued by the assessing authority showing the tax liability or tax remittances, as the case may be, of the contractor, in relation to the contract, if he has opted for payment of tax in accordance with the proviso to sub-clause (i) of clause (a) of section 8.;

(3) If any awarder effects any payment without deduction of the taxes provided under sub-section (1) or after making such deductions, fails to remit the same to Government within the time limit specified under the said sub-section, the awarder and any person or persons responsible for such deduction on behalf of the awarder, including a Director, Manager, Secretary or other officer of a company, shall be jointly and severally liable for payment of such amounts to the Government forthwith as if it were a tax due from him.

**Explanation.** - For the purposes of this section:

(1) “Company” means anybody corporate and includes a firm or other association of individuals, or a Co-operative society; and

(2) “Director” in relation to a firm, means partner in the firm.

**11. Input Tax Credit :** - (1) Subject to the other provisions of this section, any registered dealer, liable to tax under sub-section (1) of section 6, shall be eligible for input tax credit.

(2) In respect of capital goods purchased by a dealer, the value of which exceeds such limit as may be prescribed, input tax credit shall be allowed over a period of three years from the date of commencement of commercial production or from the date from which the capital goods are put to use, whichever is later, in such manner and subject to such conditions as may be prescribed.

Provided that input tax credit on capital goods for industrial units including those which have undertaken expansion, diversification or modernization shall be allowed over a period twelve months from the date of commencement of commercial production or from the date from which the capital goods are put to use, whichever is earlier from 1st day of April, 2006.

Provided further that no input tax credit shall be allowed with respect to capital goods used exclusively for the manufacture of goods having no taxable consequence under this Act or the Central Sales Tax Act, other than zero rated sales and in cases where it is only partly used for such purposes, input tax credit shall be proportionately disallowed to that extent.

(3) Subject to the provisions of sub-section (4) to (13), input tax credit shall be allowed to a registered dealer in respect of a return period against the output tax payable by him for such period and the dealer shall pay to Government, the balance of the output tax in excess of the input tax credited in the manner prescribed.

Provided that no input tax credit shall be allowed to any amount illegally collected by way of tax as specified in sub-Section (3) (a) of Section 30 of the Act.

Provided also that where any goods purchased in the state are subsequently sold at subsidized price, the input tax allowable under the sub-section in respect of such goods shall not exceed the out put tax payable on such goods.

Provided also that where any goods purchased in the State are subsequently sent to outside the State or used in the manufacture of goods and the same are sent out side the State otherwise than by way of sale in the course of inter- State trade or export or where the sale in the course of inter- State trade is exempted from tax, input tax credit under this section shall be limited to the amount of input tax paid in excess of four per cent on the purchase turnover of such goods sent outside the State:

Provided also that where it is found that the dealer claiming input tax credit under this section has charged tax under section 6 on the turnover of goods, without making any deduction in respect of the tax paid under this Act, for which input tax credit is allowed to him under this section, the input tax credit availed of by him shall be disallowed:

Provided also that input tax credit shall not be available in respect of the tax paid on the turnover subsequently allowed as discount, and shall be disallowed where it is found that the dealer has claimed input tax credit under this section on such turnover or of such goods used in the manufacture of goods sent outside but the amount covered under credit notes issued by a supplier that do not affect the input tax credit already availed of or on account of reimbursement of any expenses incurred by the dealer shall not be reckoned for the purpose of assessment under this Act.

Provided also that no input tax credit shall be allowed where any dealer, with a view to evade payment of tax or in order to claim any inflated input tax credit or refunds under this Act, purchases goods from a sister concern of the dealer and where the sale consideration in respect of which has been influenced by such relationship, and there has been no physical transfer of the goods covered by the invoice:

Provided also that the purchase in respect of which input tax credit availed is made from a sister concern of the dealer and there is actual physical transfer of the goods involved, and the dealer availing input tax credit sells such goods at a price lower than the price for which it was purchased, the input tax credit allowable in respect of such goods shall not exceed the output tax due on such goods.

**Explanation.**— For the purpose of above provisos, ‘sister concern’ means a business run by a proprietorship or partnership, association of persons or a company which is controlled by the dealer, or by a person whom the dealer controls, or by a person who is controlled by the same person who controls the dealer:

Provided also that notwithstanding anything contained elsewhere in this Act, planters including companies or firms or society, including a co-operative society or association of individuals, whether incorporated or not, shall not be entitled to input tax credit on purchases of fertilizers, pesticides etc.;

(3A) Notwithstanding anything contained in this Act ,the tax collected by registered dealers under this Act at four percent on the sales of coconut oil,copra and coconut oil cake for the return periods of may 2007 and june 2007 shall be deemed to have been validly collected.

(4) Unregistered dealers or dealers paying presumptive tax under sub-section (5) of section 6 or dealers paying compounded tax under section 8 or dealers who transfer the right to use goods under clause (c) of sub-section (1) of section 6 shall not be eligible for input tax credit.

Provided that where a dealer has opted to pay tax under section 8 in respect of certain transactions and is liable to pay tax under sub-section (1) of section 6 in respect of others, he shall be eligible for input tax credit only on the purchases of taxable goods made in relation to the sales in respect of which he pays tax under sub-section (1) of section 6:

Provided further that notwithstanding anything contained elsewhere in the Act, manufacturers of medicine who have opted for payment of compounded tax under clause (e) of section 8 shall be eligible with effect from 1st April, 2005 for input tax credit, for the tax paid under this Act, under the Kerala Tax on Entry of Goods into Local Areas Act, 1994, on purchase of raw materials, packing materials and capital goods used exclusively for the manufacture of own taxable goods.

(5) No input tax credit shall be allowed for the purchases, -

(a) from an unregistered dealer or from a dealer not liable to tax under section 6 or from a dealer whose registration has been cancelled;

(b) from a dealer paying presumptive tax under sub-section (5) of section 6;

(c) from a dealer paying compounded tax under Section 8.

(d) of goods from outside the State in the course of inter State trade or commerce or otherwise in respect of tax paid on such purchase;

(e) of goods which are used in the manufacture, processing or packing of goods specified in the First Schedule and the Fourth Schedule;

(f) of goods specified in the Fourth Schedule;

(g) of goods, which are used, as fuel in motor vehicles or vessels or stores;

(h) of motor vehicles where such motor vehicle is sold as a used motor vehicle except where such motor vehicle is purchased as a used motor vehicle.

**Explanation:** For the purpose of clause (g) “stores” shall not include spare parts or tools in relation to any goods to which the provisions of this section applies

(i) (Omitted)

(j) which relates to goods sold by a principal through his agent in respect of which the principal has claimed input tax credit or vice versa;

(k) of goods remaining unsold at the time of closure of business;

(l) of goods which are used in the manufacture, processing or packing of goods, where such manufactured, processed or packed goods remain unsold at the time of closure of business;

(m) of goods where tax invoice in the prescribed form is not available with the dealer or there is evidence that the same has not been issued by the selling dealer;

(n) by a dealer who is exempted from payment of tax; (o) of goods notified under clause (x) of section 2.

Provided that where a dealer remits differential tax in accordance with the provisions of the Act, he may, for the period up to 30 September 2010, issue debit note for the tax amount subsequently remitted, to the purchasing dealer to claim input tax credit to the extent of the tax covered in the debit note subject to such condition as may be prescribed.

(6) If the input tax of a dealer for a return period is more than the output tax of that return period, the difference between the input tax and the output tax shall be first adjusted against any interest, tax or any other amount due or demanded under this Act, from the dealer for any previous return period(s) and then to the tax payable by the dealer on the sales in the course of inter-state trade and the balance, if any, shall be carried forward to the next return period for the purpose of allowing input tax credit in the succeeding return period.

Provided that where the excess input tax so carried forward cannot be fully adjusted during the last return period of that year, the excess input tax credit so remaining unadjusted shall be refunded to the dealer as if it were a refund accrued under section 13.

(7) If goods in respect of which input tax credit has been availed of are subsequently used, fully or partly, for purposes in relation to which no input tax credit is allowable under the section, the input tax credit availed of in respect of such goods shall be reverse tax.

(8) The reverse tax as determined under sub-section (7), shall be deemed to be an amount due under this Act.

(9) Any dealer who claims input tax credit under this section in respect of any purchase shall keep the original tax invoice for such purchase (duly filled in and signed and issued by the selling dealer) wherein the input tax has been separately charged, and produce for verification as and when required by any authority empowered under this Act.

(10) Notwithstanding anything contained in any other provisions of this Act, a dealer who purchases goods from another dealer whose Certificate of Registration is suspended, shall not be eligible for input tax credit on such

purchases of goods, made during the period of suspension of the Certificate of Registration.

(11) Notwithstanding anything contained in any other provisions of this Act, a dealer whose Certificate of Registration is suspended shall not be entitled to claim any input tax credit during the period of suspension of the Certificate of Registration.

(12) A registered dealer who intends to claim input tax credit under this section shall, for the purpose of determining the amount of input tax credit, maintain the accounts and such other records as may be prescribed, in respect of purchases, supplies and sales effected by him in the State.

(13). Subject to the provisions of sub-sections (4) to (7) and sub-sections (10) to (12), input tax credit shall be allowed to a registered dealer in respect of the tax paid under the Kerala General Sales Tax Act, 1963 (15 of 1963) where the tax paid by the dealer who sold the goods to such registered dealer or by any previous seller, or the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (15 of 1994), in respect of goods purchased by him during a period of one year immediately preceding the date of commencement of this Act, subject to such conditions and restrictions as may be prescribed, where such goods are—

(i) held as opening stock on such date and sold or used in the manufacture of taxable goods or used in the execution of works contract or used as containers or packing materials for the packing of taxable goods in the state for sale thereafter; or

(ii) used in the manufacture of taxable goods or as packing materials for the packing of taxable goods and such manufactured or packed goods are held as opening stock on such date; or

(iii) used in the manufacture of taxable goods and are held as opening stock on such date as work in process.

Provided that the assessing authority may adjust any amount accruing to a dealer as input tax credit under this sub-section towards any tax or other amount due from the dealer, under this Act or under the provisions of the Kerala General Sales Tax Act, 1963 (15 of 1963) or the Central Sales Tax Act, 1956 (Central Act 74 of 1956) or The Kerala Tax on Entry of

Goods into Local Areas Act, 1994 (15 of 1994).

Provided further that where it is found on audit that the dealer claiming input tax credit under this sub-section has charged tax under section 6 on the turnover of such goods without making any deduction in respect of the tax paid under the Kerala General Sales Tax Act, 1963 (15 of 1963) for which input tax credit is allowed to him under this sub-section, the input tax credit availed of by him shall be liable to be disallowed to that extent and the input tax credit so disallowed shall be deemed to be reverse tax due under sub-section (7).

**Explanation: -** For the purposes of this sub-section “input tax” means tax paid by one registered dealer under the Kerala General Sales Tax Act, 1963 (15 of 1963) to another such dealer or, where the goods are liable to tax under the Kerala General Sales Tax Act, 1963 (15 of 1963) at the point of first purchase or last purchase or under section 5A, as the case may be, the tax paid by the dealer claiming input tax credit under this sub-section on the purchase or tax paid by such dealer under the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (15 of 1994).

Provided also that no input tax credit under this sub-section shall be allowed in respect of tax paid under the Kerala General Sales Tax Act, 1963 (15 of 1963) on medicines and drugs falling under the Third Schedule to this Act and turnover of sale of such medicines and drugs shall not be included in the taxable turnover of any dealer effecting sales of such medicines and drugs, subject to such conditions and restrictions as may be prescribed.

**12 . Special rebating in certain cases: -** (1) In calculating the net tax payable by a dealer for a return period there shall be deducted from the tax payable for the return period, a sum equal to –

(a) the tax paid under sub-section (2) of section 6; and

(b) the tax paid under section 3 of the Tax on Entry of Goods into Local Areas Act, 1994 (15 of 1994) on the import of any goods, other than those included in the fourth schedule; where such goods are intended for re-sale or for use in the manufacture of taxable goods or for use in the execution of works contract or for use as containers or packing materials for the



packing of taxable goods in the state:

Provided that where the special rebate is in respect of capital goods, the same shall be allowed over a period of three years and all the conditions and restrictions applicable to input tax credit under sub-section (2) of section 11 shall apply to the special rebate under this section also:

Provided also that where the goods except plywood, packing cases, splints and veneers in respect of which tax is payable under sub-section (2) of section 6 is sold in the State or in the course of interstate trade or used in the course of manufacture of taxable goods in the month in which it is purchased, the special rebate allowable in respect of such goods resold or sold in the course of interstate trade or used in the manufacture of goods liable to pay tax under this Act or Central Sales Tax Act, 1956 may be availed in the month itself.

Provided also that where the goods in respect of which tax under sub-section (2) of section 6 or under section 3 of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 has been paid, are sent outside the State or used in the manufacture of goods and the same are sent outside the State, otherwise than by way of sale in the course of inter-state trade or export or where the sale in the course of inter-state trade is exempted from tax, the special rebate under this section shall be limited to the amount of such tax paid in excess of four percent :

Provided also that where the goods in respect of which tax under sub-section (2) of section 6 or under section 3 of the Kerala Tax on Entry of Goods in to Local Areas Act, 1994 has been paid and where such goods are resold in the State at reduced rate or a part of which has been resold and the balance disposed in the state otherwise than by way of sale or used in the manufacture of taxable goods, then the special rebate under this section shall not exceed the output tax payable in respect of such goods or goods manufactured out of such goods.

(2) Unregistered dealers or dealer paying presumptive tax under sub-section (5) of section 6 or dealer paying compounded tax under section 8 shall not be eligible for rebate under sub-section (1).

(3) If the rebate allowed under sub-section (1) and the input tax

credit allowed under section 11 is more than the output tax for that return period, the amount by which the sum of the input tax credit and rebate under sub-section (1) is in excess of the output tax for the return period shall be in the same manner as input tax under sub-section (6) of section 11, as if such rebate were also input tax credit accrued under that section.

(4) Where rebate is claimed under sub-section (1) in respect of any goods during a return period and the goods are subsequently used, fully or partly for purposes other than those specified in the said sub-section, or has remained as unsold at the time of closure of business, in relation to such goods, the rebate claimed on such goods used otherwise or remained as unsold at the time of closure shall be the reverse tax for that return period which may be determined in the same manner as if it were a reverse tax accrued under sub-section (7) of section 11.

**13. Refund of input tax in the case of export or interstate sale:** (1) Every sale in the course of export shall be a zero rate sale.

(2) Where input tax has been paid in respect of the purchase of any goods including capital goods, except those goods coming under the Fourth Schedule, and such goods are either,-

(i) sold in the course of export; or

(ii) sold in the course of inter-State trade or commerce; or

(iii) sent to outside the State otherwise than by way of sale in the course of inter-State trade; or

(iv) (a) used or consumed in the manufacture of goods, other than those falling under the Fourth Schedule, or used as containers or as packing materials for such goods and such manufactured goods are sold in the course of export; or

(b) used or consumed in the manufacture of taxable goods or used as containers or as packing materials of such goods manufactured and such manufactured goods are sent outside the State either by way of sale in the course of inter-state trade or commerce or otherwise; or

(v) used as Capital goods; the input tax paid on such goods shall be refunded to the person making such sales in the course of export or in the course of inter- State trade or commerce or sending such goods to outside the State, as the case may be, in such manner and subject to such conditions as may be prescribed:

Provided that the dealer claiming such refund shall not claim input tax credit on such purchases for any return period:

Provided further that where the goods are sent to outside the State otherwise than by way of sale in the course of inter- State trade or export or where the sale in the course of interstate trade is exempted from tax, the refund under this section shall be limited to the amount of input tax paid in excess of four per cent on the purchase turnover of such goods sent outside the State, re-sold or used in the manufacture, as the case may be:

Provided also that in the case of capital goods, the refund of input tax will be allowed in such installments as may be prescribed.

**Explanation:** For the removal of doubt it is hereby clarified that where input tax is paid on the purchase of Duty Entitlement Pass Book or any similar license for the import of any goods and goods so imported are used, consumed or disposed of in the manner specified in this sub-section, the input tax paid on the purchase of such Duty Entitlement Pass Book or any similar license shall for the purpose of this section and section 11, be deemed to be the input tax paid on the goods imported.

(3) Nothing contained in sub-section (2) shall be construed as preventing the assessing authority from adjusting any amount due as refund under sub-section (1) towards any tax or other amount due from the dealer, under this Act or under the provisions of the Kerala General Sales Tax Act, 1963 (15 of 1963) or the Central Sales Tax Act, 1956 (Central Act 74 of 1956) or The Kerala Tax on Entry of Goods into Local Areas Act, 1994 (15 of 1994).

4) The provisions of this section shall apply to goods purchased by a dealer during a period of one year immediately preceding the date of commencement of the Act and held by such dealers as opening stock on such date.

**Explanation:** For the purpose of this section—

(a) sale in the course of export means a sale falling under sub-section (1) or sub-section (3) of section 5 of the Central Sales Tax Act 1956 (Central Act 74 of 1956).

(b) input tax includes tax paid under sub-section (2) of section 6, input tax covered by the explanation to sub-section (13) of section 11 and the tax paid under the Tax on Entry of Goods into Local Areas Act, 1994 (15 of 1994) on any taxable goods.

**14 . Reimbursement of tax:** - Where tax has been collected by any dealer in the State on any sale effected under this Act to any official or personnel of, –

(a) any foreign diplomatic mission or consulate in India ; or

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

(c) any consular or diplomatic agent of any mission, the United Nations or other body the tax so collected shall be reimbursed to such person, mission, United Nations or other body in such manner as may be prescribed.

## CHAPTER – IV

### REGISTRATION AND PERMIT

**15 . Registration of dealers :** - (1) Every dealer whose total turnover in any year is not less than five lakh rupees shall, and any other dealer may, get himself registered under this Act.

(2) Notwithstanding anything contained in sub-section (1)

(i) every casual trader;

(ii) every dealer, registered under the Kerala General Sales Tax Act, 1963 (15 of 1963) immediately before the date of

commencement of this Act, whose total turnover under the said Act for the year preceding such date was not less than the limit specified under sub-section (1);

(iii) every dealer registered under sub-section (3) of section 7 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956);

(iv) every dealer who in the course of his business obtains or brings goods from outside the State or effect export of goods out of the territory of India;

(v) every dealer in bullion or specie or in jewellery of gold, silver or platinum group of metals,

(vi) every dealer residing outside the State, but carrying on business in the State,

(vii) every agent of a non-resident dealer

(viii) every commission agent, broker, delcredere agent, 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;

(ix) any contractor, and

(x) any State Government, Central Government, or Government of any Union Territory or any department thereof or any local authority/autonomous body, shall get himself registered under this Act, irrespective of the quantum of his total turnover.

(xi) any hallmarking unit.

(3) Notwithstanding anything contained in the foregoing sub-sections, an authorized retail or wholesale distributor dealing exclusively in rationed articles under the Kerala Rationing Order, 1966 shall not be liable to get himself registered under this Act.

(4) The burden of proving that a dealer is not liable to be registered under this Act shall lie on that dealer.

**15A. Compulsory Registration.-** Where a dealer liable to be registered under this Act has failed to inform the registering authority of his liability to be registered, the registering authority, after conducting such survey, inspection or enquiry, as may be prescribed, proceed to register such person as a dealer under this Act and thereupon all the provisions of this Act and the Rules made there under, shall be binding on such person however, such dealer shall not be entitled to any benefits accruing from such registration.

**15B. Special drive for registration:** — Notwithstanding anything contained anywhere in this Act, dealers who had voluntarily applied for registration under the Act for the period from 15th December, 2007 to 31st March, 2008 would be entitled to,—

(a) get registration with effect from the date of commencement of business irrespective of the date of application;

(b) claim input tax credit on their purchases covered under bills / invoices of registered dealers within the State from the date of commencement of business; and

(c) pay tax under sub – section ( 5 ) of section 6, subject to eligibility, or pay tax under section 8 for the relevant years subject to eligibility and filing application for compounding along with the registration application:

Provided that such dealers shall be liable to pay interest on all dues and will not be entitled for any refund relating to the period prior to filing of registration application.

**15C. Registration of industrial Units:** - (1) Any person who intends to establish an industrial unit may get himself registered under this section.

(2) Every application for registration of an Industrial Unit shall be supported by a certificate in the prescribed form issued by the Director of Industries and Commerce, the Kerala State Industrial Development Corporation or the Kerala Financial Corporation.

(3) A provisional registration certificate shall be issued to the

applicant within seven days from the date of application.

(4) The form of application, form of provisional registration certificate, the fee for registration, the conditions and the authority empowered to issue such certificates shall be such as may be prescribed.

(5) The provisional registration certificate issued under this section shall facilitate the holder for procurement of all materials for construction and establishment of the Industrial Unit, including raw materials for trial production in such quantity as may be specified in such certificate.

(6) Every holder of a provisional registration certificate, shall before starting commercial production in the Industrial Unit, get himself registered under section 15.

**16 . Procedure for registration:** - (1) An application for registration shall be made to such authority, in such manner and within such period as may be prescribed and shall be accompanied by a fee as specified in the table below: -

Provided that a dealer getting registered under clause (ii) of sub-section (2) of section 15 shall not be required to pay the registration fee specified in this sub-section; but only the fee for renewal of registration specified under sub-section (7):

Provided further that where the dealer is an authorized retail or wholesale distributor of rationed articles under the Kerala Rationing Order, 1966, his total turnover for the purpose of this sub-section shall not include the turnover in respect of such goods:

Provided also that in the case of casual trader, the minimum registration fee to be paid shall be two thousand five hundred rupees per month and the maximum period of validity of registration certificate shall be three months from the date of issue of certificate.

Provided also that where a dealer liable to get registered under sub-section (1) of section 15 is also liable to get registered under the provisions of the Kerala General Sales Tax Act, 1963 (15 of 1963), notwithstanding anything contained in the said Act, he shall not be required to pay the fee prescribed under the provisions of the said Act for the year if he has paid the fee

specified under this section for the said year for the total turnover both under this Act and also under the said Act.

Provided also that a person shall not be entitled for more than one registration under this Act.

(2) If the prescribed authority after making such enquiries as it may consider necessary, is satisfied that the application is in order and that the particulars furnished therein are correct, it shall register the applicant and issue to him a certificate of registration in the prescribed form.

Provided that registration shall be deemed to have been granted with effect from the date of commencement of business irrespective of the date of application for the purpose of, -

(a) paying tax under sub-section (5) of section 6, subject to eligibility, and

(b) opting for payment of tax under section 8 for the relevant years subject to eligibility:

Provided further that new dealers applying for registration and existing dealers having registration may avail this benefit subject to the condition that they shall pay tax under the respective provisions along with interest and will not be entitled for any refunds relating to the period prior to filing of application for registration:

Provided also that in the case of dealers against whom an offence has been detected under section 67 of the Act before filing application for registration, registration shall be granted under this sub-section subject to the finalization of the proceedings in respect of the offence so detected.

(3) The registering authority shall dispose of the application for registration received under sub-section (1), within thirty days from the date of receipt of the application.

(4) Where a dealer has more than one place of business, the registration certificate shall cover all such place of business.

The registering authority shall issue such number of certified copies of the registration certificate to the dealer for exhibition at each of his places



of business and the dealer shall pay a fee of one hundred and fifty rupees for each of such certified copy.

(5) No fee specified above shall be payable by any State Government, Central Government or Government of any Union Territory or any department thereof or any local authority.

(6) The dealer shall exhibit the certificate of registration granted under sub-section (2) at the place of business mentioned therein. Where the dealer has more than one place of business, he shall exhibit the certificate of registration at the principal place of business mentioned therein and a certified copy thereof granted under sub-section (4) at every other place of business within the State mentioned in the certificate of registration.

(7) A certificate of registration issued under sub-section (2) shall be valid for a year and shall be renewed from year to year on payment of the fee specified below:

(a) dealer who is not an importer: Five hundred rupees

(b) others : One thousand five hundred rupees.

(8) A dealer registered under sub-section (1) of section 15 shall be entitled to have his registration cancelled if he is able to prove to the satisfaction of the registering authority that his turnover in each of the two consecutive years immediately preceding the application was less than the limits mentioned in that sub-section.

(9) If any dealer registered under this Act has committed the offence of evasion of tax for more than once during an year, the registering authority may, for the reasons to be recorded in writing, cancel the registration of such dealer.

(10) Notwithstanding anything contained in sub section (9) the registering authority shall have power, for good and sufficient reasons, to cancel, modify or amend any registration certificate issued by it.

(11) No application for registration nor renewal under this section shall be refused and no order under sub-section (9) or (10)

shall be made, unless the dealer concerned has been given an opportunity of being heard.

(12) When a dealer has ceased to do business in any year, and gives notice of that fact to the registering authority, he shall not be liable to pay any registration fee from the commencement of the following year unless he resumes business.

(13) (i) Any dealer conducting exhibitions, exchange melas or any prize schemes for sales promotion, shall obtain a written permission from the assessing authority, with whom he is registered as a dealer on payment of a fee of five hundred rupees. The assessing authority may issue such permission in such form and subject to such conditions as may be prescribed. The dealer to whom the permission is issued shall exhibit the same at a conspicuous place where the exhibition or exchange mela or prize scheme is conducted.

(ii) The owner of the premises (not being the regular business place of the dealer) where the exhibition, exchange mela or any prize schemes for sales promotion are conducted shall obtain a copy of the permission issued by the assessing authority under clause (i) and intimate the assessing authority concerned the particulars regarding the period during which the mela is conducted, the dealer conducting the mela and the conditions subject to which the premises are leased out for the conduct of such exhibition, exchange mela or prize schemes and any other relevant information. Where the owner of the premises fails to do so, he shall be jointly and severally liable for any tax that may become due on the sales of goods made in such exhibition, exchange mela or any prize schemes.”

(14) Every registered dealer shall be issued an electronic identity card on payment of five hundred rupees and subject to such conditions as may be prescribed. Add on cards may be issued to a dealer on payment of two hundred and fifty rupees per card. The maximum number of add-on cards that may be issued to a dealer shall not exceed three.

(15) Where a certificate of registration or an electronic identity card issued under this section is lost, a duplicate certificate may be issued on payment of One hundred rupees in the case of registration certificate and two hundred and fifty rupees in the case of electronic identity card, subject to such conditions as may be prescribed.

**17 . Security to be furnished in certain cases:** - (1) Where the registering authority has reasons to believe that a dealer is likely to make default in payment of tax or other amount due under this Act, he may, by order in writing, demand security from the dealer for an amount not exceeding one half of the tax, payable on the turnover of the dealer for the year as estimated by the registering authority.

(2) Notwithstanding anything contained in sub-section (1), the registering authority may, at the time of registration, demand security by order in writing, from every dealer effecting first sale of goods within the State, an amount not exceeding one half of the tax payable on the turnover of the dealer for the year as estimated by the registering authority.

Provided that the registering authority shall have the power to demand at any time additional security if such authority has reason to believe that the turnover estimated under sub-sections (1) or (2) was too low.

Provided further that no security or additional security shall be demanded under this sub-section from a dealer falling under clause (ii) of sub-section (2) of section 15.

(3) The dealer from whom security or additional security is demanded shall furnish it within the prescribed time and in the prescribed manner.

(4) Where a dealer getting registered under section 15 had furnished any security in accordance with the provisions of the Kerala General Sales Tax Act, 1963 (15 of 1963) notwithstanding anything to the contrary contained in this Act the security furnished under the provision of the said Act shall be deemed to have been furnished under the provisions of this Act.

**18 . Suspension of registration in certain cases.** - (1) Notwithstanding anything contained in any other provisions of this Act, the Deputy Commissioner may, if he is satisfied that any dealer has violated the condition of a registration certificate issued to such dealer or that he has violated any of the provisions of this Act or the rules made there under or has prevented or obstructed or abetted the prevention or obstruction of any survey, inspection, entry, search or seizure by an officer empowered under this Act, without prejudice to any other action that may be taken against him under this Act, by order, suspend the

registration of such dealer for such period not exceeding six months as may be specified in the order.

(2) Notwithstanding anything contained in sub-section (1) where a dealer registered under this Act has evaded tax exceeding one lakh rupees during an year, the Deputy Commissioner may, without prejudice to any other action that may be taken against him under this Act, by an order in writing, suspend, in the manner as may be prescribed, the Certificate of Registration for a period not less than six months but not exceeding one year.

(3) Any dealer who continues the business during the period of suspension of the registration shall be guilty of an offence under this Act.

**19 . Issue of permits:** -(1) Every registered dealer who transacts business at places other than his registered place or places of business or employs a traveling salesman or representative to transact business as aforesaid, shall obtain a permit issued under this Act authorizing himself or permitting him to authorize, the traveling salesman or representative so to do.

(2) The entire turnover of business carried on under the permit shall be included and accounted for by the registered dealer in his accounts and returns and shall be dealt with as if it were the turnover of business done by the registered dealer himself at the registered place of business.

(3) Every permit holder shall carry the permit with him and shall produce it on demand by any officer of the Commercial Tax Department empowered by the Government in this behalf. He shall maintain and produce on demand to any such officer a true and correct account of all the transactions carried on under the permit and a stock book showing the quantities of goods held by him, the quantities disposed of from day to day by sale or otherwise and the balance on hand at the end of each day.

(4) An application for the permit referred to in sub-section (1) shall be made to registering authority, in such manner and within such period, as may be prescribed, and shall be accompanied by a fee of one hundred and fifty rupees.

**Explanation:** - A dealer may make a single application for all the permits required by him together with the fee for each permit applied for.

(5) If the registering authority is satisfied that the application is in order, and that the particulars furnished therein are correct, it shall issue the permit in the prescribed form.

(6) A permit issued under sub-section (5) shall be valid for a period of one year and shall be renewed from year to year on receipt of an application from the registered dealer, accompanied by a fee of one hundred and fifty rupees;

(7) The registering authority shall cancel a permit,-

(a) on requisition made in writing by the registered dealer, or

(b) on the cancellation of the certificate of registration.

(8) The registering authority may cancel a permit if the permit holder has contravened any of the terms or conditions of the permit or any of the provisions of this Act or the rules made there under.

(9) No permit shall be cancelled under sub-section (8) unless the person affected has been given a reasonable opportunity of being heard.

**19A . Issue of Green Card :** - Every registered dealer satisfying the criteria, as may be prescribed, may be issued a Green Card for such speeding up clearances of his consignments at the check posts and such other purposes as may be prescribed.

## CHAPTER – V

### **ASSESSMENT, RECOVERY OF TAX AND PENALTY**

**20 . Filing of returns :-** (1) Every registered dealer and every dealer liable to be registered under this Act shall submit to the assessing authority such return or returns before such dates and in such manner and accompanied by such documents as may be prescribed.

(2) In case of a dealer having more than one place of business, the aggregate turnover of all such places of business shall, subject to the provisions of sub-section (3), be taken as the turnover of the business for the purposes of this Act.

(2A). Every dealer registered under this Act and every others required to file their returns under this Act shall file their returns as well as purchase and sale list through electronic filing in addition to the hard copy to be filed along with the returns:

Provided that the Commissioner may, in the interest of tax administration, exempt such class or classes of dealers or others as may be prescribed, from electronic filing of returns and the stipulation regarding hard copy of returns prescribed under this sub-section.

(3) The Commissioner may, on application by the dealer, treat each of such places of business as a separate unit for the purposes of levy, assessment and collection of tax, and thereupon all the provisions of this Act regarding registration, filing of returns, assessment and collection of tax shall apply, as if each of such places of business were a separate unit except for considering the eligibility for payment of tax under sub-section (5) of section 6.

(4) Where any order is passed by the Commissioner under sub-section (3), the turnover of each of such places of business shall be liable to tax irrespective of such turnover being below the minimum turnover mentioned in section 6 provided that the total turnover in respect of all such places of business together shall not be less than the minimum turnover mentioned in section 6.

**20A. Condonation of Delay:** - The Deputy Commissioners having jurisdiction over the area may, for valid and sufficient reasons, to be recorded in writing, condone delay,— .

(a) in applying for any refund under this Act and Rules made there under,

(b) in filing options under section 8 of this Act up to 31 December, 2008 for the years 2005-06, 2006-07 and 2007- 08:

Provided that the time limit for completion of any assessment under this Act shall be extended by a further period of three years from the date of condoning such delay, under this section.

**21. Self assessment :** - Where the return submitted under sub-section (1) of section 20 is in the prescribed manner and accompanied by the

prescribed documents, the assessment relating to the return period shall, subject to the provisions of sections 22, 24 and section 25, be deemed to have been completed on the receipt of such return.

**22 . Assessment in case of non-filing of return and filing of defective return :** - (1) Where the return submitted under sub-section (1) of section 20 is not in the prescribed manner or not accompanied by the prescribed documents or with incorrect particulars, the assessing authority shall, after recording its reasons, reject the return with due notice to the dealer.

Provided that the payment of any tax declared as payable as per the return shall be provisionally accepted.

(2) A dealer whose return is rejected under sub-section (1) may, file a fresh return curing the defects in such manner and with in such time as may be prescribed file a fresh return curing the defects in such manner and accompanied by such documents as provided under sub-section (1) of section 20 together with proof of payment of interest on the tax payable at the rates provided under section 31 for the period from the due date of filing of return till the date of filing of such fresh return. On the receipt of such return by the assessing authority, the assessment for the return period shall, subject to the provisions of section 24 and section 25, be deemed to have been completed.

(3) If any dealer fails to submit any return as provided under sub-section (1) of section 20 or files incorrect return and fails to file a fresh return as provided under sub-section (2), the assessing authority shall estimate the turnover of the return period and complete the assessment to the best of its judgment.

(4) No assessment under subsection (3) of this section shall be completed without affording the dealer an opportunity of being heard.

(5) On receipt of the notice under sub-section (4), if the dealer files a return for the return period as provided under subsection (1) of section 20 and accompanied by proof of payment of tax payable and interest on this amount from the due date for filing of return till the date of filing of return at the rates specified in section 31 and double the amount of interest so due as penalty the assessing authority shall drop the proposal for assessment under sub-section (3) and the assessment for the return period shall be deemed to have been completed on receipt of such return.

(6) Any assessment, levy and collection of tax under this Act shall be in such manner as may be prescribed.

(7) Where on scrutiny of returns or verification of accounts in any proceedings under this Act, in respect of dealers paying tax under sub section (5) of section 6, it is found that the amount of tax, if any, paid by such dealer is less than the amount of tax he is liable to pay on finalizing such proceedings, the assessing authority shall direct the dealer to pay difference of tax between the amount of tax already paid and that fixed in such proceedings, together with thrice the amount of such difference as penalty.

(8) No proceeding made under sub-section (7) shall be completed without affording the dealer an opportunity of being heard.

(9) Notwithstanding anything contained in this Act, where an offence has been detected under the Act in respect of a return filed by a dealer or otherwise and proceedings initiated under this Act, the dealer shall not be permitted to revise the return till such proceedings are finalized.

(10) Where the proceedings referred to in the above sub-section are finalized under section 74 on payment of tax due along with the compounding fee, the dealer may thereafter file a revised return incorporating such turnover covered in such proceedings within a period of three months from the finalization of such proceedings and on the receipt of such return by the assessing authority, the assessment for the return period or periods shall, subject to the provisions of sections 24 and 25, be deemed to have been completed:

Provided that where a pattern of suppression is detected the assessing authority shall proceed with best judgment assessment in accordance with the provisions of sections 24 and 25, as the case may be.

**Explanation:-** For the purposes of this section and section 21, a return shall be deemed to have been received as and when the assessing authority acknowledges the receipt of the return in such manner as may be prescribed.



**23 . Visit to dealer's premises and audit of accounts and other records by audit officers** : - (1) The Government or any authority or officer empowered by them in this behalf may designate any officer not below the rank of a Deputy Commissioner to conduct audit visit at the business place of any dealer and to audit any returns books of accounts, any other records or stock statements and goods relating to the business either by himself or through audit officers not below the rank of an assessing authority. The officer so designated and the audit officers shall follow the procedure as may be notified by Government.

(2) The audit officers shall have all the powers of an assessing authority.

(3) The designated Officer may, by an order in writing, authorize not less than two audit officers to visit the place of business of any dealer and audit any returns, books of accounts any other records, stock statements and goods relating to any return period'

(4) The audit officer authorized in this behalf may, with due intimation to the dealer, enter any place of business and require the dealer, his employee or any other person found there assisting the dealer in carrying on business to make available all or any of the books of accounts or other records relating to any return period for audit and require them to prove the correctness of the stock statement and goods and thereupon the dealer or his representative shall render necessary facilities to the audit officers to conduct the audit.

(5) The audit officers may inspect and verify all or any of the books of accounts and other records relating to any return period and require the dealer to furnish any information or statements relating to the business which he may deem necessary for checking the credibility or correctness of the returns.

(6) If any dealer or any other person who is required to make available any books of accounts or records for audit fails to do so without any reasonable cause or fails to prove the correctness of the stock statement, goods or the turnover or the input tax credit or the refund claimed, notwithstanding anything contained in section 11, 20, 21 and 22,

(a) where the input tax credit or refund claimed in relation to the period covered by the audit is not proved, the claim shall be liable to be

disallowed; or

(b) where the correctness of the stock statement or the turnover is not proved, the assessment for the period, the stock statement or turnover in relation to which has not been proved, shall be liable to be completed to the best of judgment, in such manner as may be prescribed.

**24 . Audit assessment:-** (1) Notwithstanding anything contained in any other provision of this Act, if any dealer.

(a) is found on audit of his books of accounts other records or otherwise, to have submitted incorrect or incomplete return for any return period; or

(b) fails to make available any accounts or other records required by the audit officer for audit in the business place of the dealer or

(c) fails to prove the claim of input tax credit, special rebate or refund claimed, the audit officer may, at any time within three years from the last date of the year to which the return relates, after conducting such enquiry as he may deem necessary, reject the returns of such return periods and complete the assessments to the best of judgment.

Provided that no assessment under this section shall be completed without affording the dealer an opportunity of being heard.

Provided further that where the defect in the return is only the application of incorrect rate of tax, mistake in the claim of input tax credit, special rebate or refund, no assessment under this sub-section shall be made where the dealer, at his option, files revised return and pays the balance tax along with interest under sub-section (5) of section 31 and thrice the interest as settlement fee:

Provided also that the time limit mentioned in this sub-section and the preceding proviso shall not apply to a dealer where the claim of input tax credit, special rebate or refund made by him was on the basis of any bogus or forged document or where the claim was otherwise fraudulent.

(2) Notwithstanding anything contained in sub-section (1) the officer designated under sub-section (1) of Section 23 may, on his own motion or

on a reference being made to him by the assessing authority or on an application of an assessee, call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary so to do, he may issue such directions as he thinks fit for the guidance of the assessing authority to enable him to complete the assessment, and such directions shall be binding on the assessing authority.

Provided that no directions, which are prejudicial to the assessee, shall be issued before an opportunity is given to the assessee of being heard.

Provided also that the time limit for the completion of assessments for the year 2005-06 under this section shall be extended up to 31 march 2011

**25 . Assessment of escaped turnover :-** (1) Where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax in any year or return period or has been under- assessed or has been assessed at a rate lower than the rate at which it is assessable or any deduction has been wrongly made there from, or where any input tax or special rebate credit has been wrongly availed of, the assessing authority may, at any time within five years from the last date of the year to which the return relates, proceed to determine, to the best of its judgment, the turnover which has escaped assessment to tax or has been under assessed or has been assessed at a rate lower than the rate at which it is assessable or the deduction in respect of which has been wrongly made or input tax or special rebate credit that has been wrongly availed of and assess the tax payable on such turnover or disallow the input tax or special rebate credit wrongly availed of, after issuing a notice on the dealer and after making such enquiry as it may consider necessary:

Provided that before making an assessment under this sub- section the dealer shall be given a reasonable opportunity of being heard.

Provided further that where the escapement is due to the application of incorrect rate of tax, no assessment under this sub- section shall be made where the dealer files revised return and pays the tax which has escaped assessment along with interest under sub-section (5) of section 31 and thrice the interest as settlement fee.

Provided also that the time limit for the completion of assessments for the year 2005-06 under this section shall be extended upto 31 march,2011

(2) The time limit mentioned in sub-section (1) shall not apply where the turnover which escaped assessment relates to any business done by such dealer as benamidar or through a benami or where it relates to a dealer, who being liable to get himself registered under this Act and the rules made there under, has failed to do so or where the escaped turnover is on account of the dealer having claimed any input tax credit on the basis of any bogus or forged documents.

(3) In making an assessment under sub-section (1), the assessing authority may, if it is satisfied that the escape from assessment is due to willful non-disclosure of assessable turnover by the dealer, direct the dealer to pay, in addition to the tax assessed under sub-section (1), a penalty as provided in section 67:

Provided that no such penalty shall be imposed unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

**Explanation:** - For the purposes of this section, the burden of proving that the escape from assessment was not due to willful non-disclosure of assessable turnover by the dealer shall be on the dealer.

(4) The powers under sub-section (1) may be exercised by the assessing authority even though the order of assessment, if any, passed in the matter, has been the subject matter of an appeal or revision.

(5) In computing the period of limitation for the purposes of this section, the time during which the proceedings for assessment remained stayed under the orders of a Civil court or other competent authority shall be excluded.

**26 . Protective assessment :** - Notwithstanding anything to the contrary contained in any judgment, decree, order, direction or decision of any Court, Tribunal or other Authority, where the assessing authority has reason to believe that any person is, or was carrying on business in the name of, or in association with any other person, either directly, or indirectly, whether as agent, employee, manager, power of attorney holder, guarantor

or in any other capacity, such person and the person in whose name the registration certificate, if any, is taken, shall jointly and severally, be liable for the payment of the tax, penalty or other amount due under this Act which shall be assessed, levied and recovered from all or any of such person or persons, as if such person or persons are dealers:

Provided that before taking action under this section, the persons concerned shall be given a reasonable opportunity of being heard.

**27. Assessment of legal representatives :** - 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, fee or other amount assessed as payable by any such dealer or levied on him or any tax, fee or other amount 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.

**28 . Liability of firms :** - (1) Where any firm is liable to pay any tax, fee or other amount under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.

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

**29 . Firm dissolved or business discontinued :** -(1) Where any business carried on by a firm is discontinued or where a firm is dissolved, the assessing authority shall make an assessment of the taxable turnover of, and determine the tax payable by, the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to levy of penalty or any other amount payable under any provisions of this Act, shall apply, so far as may be, to such assessment and determination.

(2) Without prejudice to the generality of sub-section (1), if the assessing authority in the course of any proceedings under section 75 in

respect of any such firm as is referred to in that sub-section is satisfied that the firm was guilty of willful non-disclosure of assessable turnover, it may direct payment of a penalty in accordance with the provisions of sub-section (2) of that section.

(3) Every person who was, at the time of such discontinuance or dissolution a partner of the firm and the legal representative of any such person who is deceased, shall be jointly and severally liable, for the amount of tax, penalty or other amount payable, and all the provisions of this Act shall apply, so far as may be, to any such assessment or direction for payment of penalty or other amount.

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of any year have commenced, the proceedings may be continued against the persons referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in this section shall affect the provisions of section 27.

**30. Collection of tax by dealers:** - (1) A registered dealer may, subject to the provisions of sub-sections (2) and (3), collect tax at the rates specified under section 6 on the sale of any goods, from the person to whom he sells the goods and pay it over to Government in such manner as may be prescribed.

(2) Dealers registered under this Act, except those dealers paying presumptive tax under sub-section (5) of section 6 and those paying tax under clause (a) of section 8 by those undertaking works of Government of Kerala, Kerala Water Authority and Local Authorities, and under clause (b), clause (c) (ii) and clause (d) of section 8 alone shall be eligible to collect any sum by way of, or purporting to be by way of tax under this Act.

Provided that the dealers who are paying tax under sub-section (5) of section 6 are entitled to recover from the buyers the amount of tax paid by him on the purchase value of such goods at the time of purchase.

(3) No registered dealer shall collect any sum purporting to be by way of tax: -

(a) on the sale of any goods:

(i) which is included in the First Schedule or,

(ii) at a rate exceeding the rate at which he is liable to pay tax; or

(b) in respect of the purchase of any goods, whether or not he is liable to pay tax on such purchase.

Provided that nothing contained in this sub-section shall apply to the collection of an amount by a registered dealer towards the amount of tax already paid under this Act in respect of goods, the sale or purchase price of which is controlled by any law in force and the retail price fixed for such goods under such law is not inclusive of such tax:

Provided further that where the sale of any goods is exempted only at the point of sale by any dealer, such dealer may, notwithstanding anything contained in sub-section (1), at his option, collect tax in respect of the sale of such goods and there upon he shall be liable to pay tax in respect of such goods.

(4) Where a registered dealer has collected tax in respect of any goods in accordance with sub-section (1), he shall be liable to tax notwithstanding that his total turnover for the year is below the limit specified under sub-section (1) of section 6.

(5) Where any dealer has collected any tax under sub-section (1) but has failed to pay the tax due under this Act for such sale to the Government, any person or persons responsible for such collection on behalf of the dealer including a Director, Manager, Secretary or other officers of a company shall be jointly and severally liable for payment of such amounts to the Government forthwith as if it were a tax due from him.

**Explanation.** - For the purposes of this section:

(a) "Company" means any body corporate and includes a firm or other association of individuals, or a Co-operative society; and

(b) "Director" in relation to a firm, means partner in the firm.

**31 . Payment and recovery of tax :** - (1) Every dealer liable to pay tax under this Act for any return period shall pay tax within such period, as may be prescribed.

(2) In the case of a dealer from whom any tax or other amount is demanded shall pay tax in such manner and in such installments, if any, and within such time, as may be specified in the notice of demand, not being less than fifteen days from the date of service of the notice:

Provided that the time limit of fifteen days for a notice under this sub-section shall not apply to casual traders.

(3) If default is made in payment under sub-section (2), the whole of the amount outstanding on the date of the default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or other amount under this Act:

(4) Any tax or any other amount due under this Act from a dealer or any other person may, without prejudice to any other mode of recovery, be recovered,

(a) as if it were an arrear of land revenue:

(b) on application to any Magistrate, by such Magistrate as if it were a fine imposed by him:

Provided that no proceedings for such recovery shall be taken or continued as long as such dealer or other person has, in regard to the payment of such tax or other amount, as the case may be complied with an order by any of the authorities to whom he has appealed or applied for revision, under the provisions of this Act.

(5) If the tax or any other amount assessed or due under this Act is not paid by any dealer or any other person within the time prescribed therefore in this Act or in any rule made there under and in other cases within the time specified therefore in the notice of demand, the dealer or the other person, shall pay simple interest at the rate of twelve percent per annum on the tax or other amount defaulted.



(6) Where any dealer has failed to include any turnover of his business in any return filed or where any turnover or tax has escaped assessment, interest under sub-section (5) shall accrue on the tax due on such turnover or tax with effect from such date on which the tax would have fallen due for payment, had the dealer included the turnover or tax in the return relating to the period to which such turnover relates.

(7) Where, as a result of any order in appeal or revision or in any other proceedings, the tax or any other amount due under this Act is finally settled, the interest leviable under sub-section (5) shall be on the amount as finally settled and the period during which the collection of tax or other amount is stayed by any Court or any other authority shall not be excluded in computing the period for calculating interest under the said sub-section.

(8) Where, as a result of any order in appeal or revision or any rectification under section 66 any dealer or other person is not liable to pay the tax or any other amount, the levy of interest for the non-payment of such tax or other amount shall be cancelled and if any amount of such interest has been collected, it shall be refunded to the dealer or other person as the case may be, in such manner as may be prescribed.

(9) Where, as a result of any order in appeal or revision or any rectification under section 66, any tax or any other amount due from any dealer or other persons has been reduced, the interest levied for the non-payment of such tax or other amount shall be proportionately reduced and if any amount of interest in excess of such reduced interest has been collected, such excess shall be refunded to the dealer or other person as the case may be.

(10) The provisions of the Kerala Taxation Laws (Continuation and Validation of Recovery Proceedings) Act 1967 (23 of 1967), shall apply for all proceedings in relation to the recovery of any amount due under this Act.

**32. Deferment of tax payable by Industrial Units :-** (1) Where the Government had granted any exemption in respect of the tax payable by any industrial unit under the Kerala General Sales Tax Act, 1963 (15 of 1963) or, the Kerala Surcharge on Taxes Act, 1957 (11 of 1957) for any specified period under any notification issued under section 10 of the Kerala General

Sales Tax Act, 1963 (15 of 1963) under the Industrial policy of the State, or where any application or other proceedings is pending on the date of commencement of this Act, such exemption granted or due to be granted shall have operation only till the day preceding the date of commencement of this Act:

Provided that the Government may, by notification, which may be subject to such conditions and restrictions as may be specified therein, order to defer the payment of the whole or any part of the tax payable by such industrial units under this Act, which shall not be more than the unavailed portion of the exemption to which such unit would have been eligible had the notification issued under the Kerala General Sales Tax Act, 1963 (15 of 1963) been in force on the date of commencement of this Act, and that the tax or taxes so deferred shall be repaid, after the expiry of the period for which such deferment is granted, in such installments over a period of five years, in such manner as may be specified.

(2) Notwithstanding anything contained in this Act but subject to such conditions as the Government may, by general or special order specify, where in respect of an industrial unit deferment is granted under sub-section (1) and where liability equal to the amount of any such tax deferred has been created as a loan by Government, such tax deferred shall not attract interest under sub-section (5) of Section 31 during the period for which deferment is granted.

**33. Special powers of Assistant Commissioners under Revenue Recovery Act :-** (1) The Government may, by notification in the Gazette, appoint any Assistant Commissioner to exercise the functions of a Collector under the Kerala Revenue Recovery Act, 1968 (15 of 1968) for the recovery of arrears due under this Act.

(2) Notwithstanding anything contained in any other law for the time being in force, an officer appointed under sub-section (1) shall be deemed to be a Collector within the meaning of clause (c) of section 2 of the Kerala Revenue Recovery Act, 1968 (15 of 1968).

**34. Recovery of penalty :-** Penalty payable under this Act shall be deemed to be a tax under this Act for the purpose of collection and recovery and shall be recoverable without prejudice to the institution of any proceeding for prosecution for an offence under this Act.

**35. Further mode of recovery:** - (1) The assessing authority may, at any time or from time to time by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to the assessing authority) require any court or any officer of the Central Government or of the Government of any State or Union Territory or any other person (other than an individual) from whom money is due or may become due to the dealer or any court or any such officer or any other person (other than an individual) who holds or may subsequently hold money for or on account of the dealer, to pay to the assessing authority, either forthwith if the money has become due or is so held 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, fee or penalty or the whole of the money when it is equal to or less than the arrears of tax, fee or penalty.

(2) The assessing 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 court, officer or other 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 by the assessing authority shall constitute a good and sufficient discharge of the liability of such court, officer or other person to the extent of the amount referred to in the receipt.

(4) Any court or person other than an officer of the Government making any payment to the dealer after receipt of the notice referred to in this section shall be liable to the assessing authority to the extent of the payment made or to the extent of the liability of the dealer for the amount due under this Act, whichever is less.

(5) Where any court or person other than, an officer of the Government to which or to whom a notice under this section is sent objects to it on the ground that the sum demanded or any part thereof is not due by it or him to the dealer or that such court or person does not hold any money for or on account of the dealer, then nothing contained in this section shall be deemed to require such court or person to pay the sum demanded or any part thereof to the assessing authority.

(6) Any amount which a court or person other than any officer of the Government is required to pay the assessing authority or for which it or he is liable to the assessing authority under this section shall, if it remains unpaid, be a charge on the properties of such court or person, as the case may be, and may be recovered as if it were an arrear of public revenue due on land.

**Explanation:-** For the purposes of this section, the amount due to a dealer or money held for or on account of a dealer by any court, officer or other person shall be computed after taking into account such claims if any, as may have fallen due for payment by such court, officer or other person, as the case may be, and as may be, lawfully subsisting.

**36. Recovery of tax when business is transferred :-** Where the ownership of the business of a dealer liable to pay tax or other amount is transferred, any tax or other amount payable under this Act in respect of such business and remaining unpaid at the time of the transfer and any tax or other amount due up to the date of transfer, though unassessed may, without prejudice to any action that may be taken for its recovery from the transferor, be recovered from the transferee as if he were the dealer liable to pay such tax or other amount:

Provided that the recovery from the transferee of the arrears of tax due for the period prior to the date of the transfer shall be limited to the value of the assets he obtained by transfer.

**37. Certain transfers to be void :-** Where, during the pendency of any proceedings under this Act or after the completion thereof, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of any of his assets in favour of any person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee under this Act.

**38. Tax payable to be first charge on the property :-** Notwithstanding anything to the contrary contained in any other law for the time being in force, any amount of tax, penalty, interest and any other amount, If any, payable by a dealer or any another person under this Act, shall be the first charge on the property of the dealer, or such person.

**39. Liability of Directors of a Private Company :-** Where any tax or other amount recoverable under this Act from any private company, whether existing or wound up or under liquidation, cannot be recovered for any reason whatsoever, every person who was a director of such company at any time during the period for which the tax or other amount is due under this Act shall be jointly and severally liable for the payment of such tax or other amount unless he proves that the non-recovery cannot be attributed to any negligence, misfeasance or breach of duty on his part in relation to the affairs of the company.

## CHAPTER - VI

### **INSPECTION OF BUSINESS PLACES AND ACCOUNTS AND ESTABLISHMENT OF CHECK POSTS**

**40. Maintenance of true and correct accounts by dealers :-** Every person registered under this Act, every dealer liable to get himself registered under this Act, every awardee other than Government Departments and Local Authorities, where the cost of the work exceeds one crore rupees and every other dealer who is required so to do by the authority by notice served in the prescribed manner shall keep and maintain true and correct accounts and such other records as may be prescribed, in Malayalam, Tamil, Kannada, or English relating to his business, showing such particulars as may be prescribed. Different particulars may be prescribed for different classes of dealers.

Provided that dealers shall be permitted to use electronic billing and accounting subject to such restrictions and conditions as may be prescribed.

Provided further that auctioneers acting as agents and effecting auction sale shall maintain in such manner, as may be prescribed, the details of such goods received for auction, sold in auction and those returned to the owners of such goods without effecting auction.

**40A. Issuance of sale bill by dealers :-** (1) Every dealer registered or liable to get himself registered under this Act shall compulsorily issue a bill or an invoice or cash memorandum in respect of every sale of goods liable to tax under this Act involving transaction amounting to not less than one hundred rupees.

(2) Where a dealer effects taxable sale, he shall furnish the name and address of the purchaser in the sale bill/invoices, and where the sale is to a dealer, the address shall include TIN or PIN, as the case may be.

(3) Where the TIN or PIN details are not furnished as specified in sub-section (2), such dealer shall be liable for payment of the tax on the Maximum Retail Price (MRP) of such goods, where it is ascertainable.

**41. Credit notes and debit notes :-** (1) Where subsequent to any sale of taxable goods effected by a dealer the purchaser has returned the goods covered by the tax invoice fully or partly, within the period permitted by this Act or the Rules made there under, the dealer effecting the sale shall issue, forthwith, to the purchaser a credit note containing such particulars as may be prescribed.

(2) Where a tax invoice or a bill of sale has been issued as per the provisions of this Act or the Rules made there under and the tax payable in respect of the sale is more than the amount shown as tax charged in such tax invoice or sale bill, as the case may be, the dealer making such sale shall issue to the purchaser a debit note containing such particulars as may be prescribed.

**42. Audit of accounts and certification of returns :-** (1) Every dealer whose total turnover in a year exceeds rupees sixty lakhs shall get his accounts audited annually by a Chartered Accountant or Cost Accountant and shall submit copy of the audited statement of accounts and certificate, in the manner prescribed.

Provided that a co-operative society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969), may in lieu of the statement and certificate mentioned above, submit a copy of the audited statement of accounts and certificate issued by the Registrar of Co-operative Societies on or before 31st day of December of the year succeeding to the year to which annual return relates.

(2) Where any dealer detects any omission or mistake in the annual return submitted by him with reference to the audited figures, he shall file revised annual return rectifying the mistake or omission along with the audit certificate. Where, as a result of such revision, the tax liability increases,

the revised return shall be accompanied by proof of payment of such tax, interest due thereon under sub-section (5) of section 31, and penal interest, calculated at twice the rate specified under sub - section (5) of section 31:

Provided that this sub-section shall not apply to a dealer against whom any penal action is initiated in respect of such omission or mistake under any of the provisions of this Act.

**43. Power of Survey:** - Any officer not below the rank of an assessing authority may, for the purpose of survey for ascertainment of commencement of liability for registration under this Act, enter any place of business and require the dealer, employee or any other person who may at that time helping in carrying on such business, to provide necessary facility –

(i) to inspect books of accounts or documents relating to the business, and

(ii) to check or verify the cash and stock of goods which may be found therein, and

(iii) to furnish such information including such statement relating to any matter which may be useful for or relevant to any proceedings under this Act and the dealer, employee or any other person shall comply with such requirements.

Provided that no residential accommodation (not being a shop - cum residence) shall be entered into or inspected unless such officer is specially authorized in writing by the Commissioner to search that residential accommodation.

**44. Power to order production of accounts and powers of entry, inspection etc:** - (1) An officer not below the rank of an assessing authority may, for the purposes of this Act, by notice, require any dealer,

(a) to produce or cause to be produced before him any accounts, registers, records or other documents; or

(b) to furnish or cause to be furnished any other information, relating to his business, and such dealer shall comply with such requisition.

(2) Any officer, not below the rank of an assessing authority may,

(a) enter any place of business; and

(b) inspect any accounts, registers, records or other documents relating to his business and the goods in his possession.

(3) If any officer not below the rank of an assessing authority has reason to believe that a dealer is trying to evade any tax under this Act, he may, for reasons to be recorded, enter and search,-

(a) the place of business of the dealer; or

(b) any other place where the dealer is keeping or is reasonably suspected to be keeping any goods, accounts, registers, records or other documents relating to his business:

Provided that no residential accommodation (not being a shop-cum residence) shall be entered into or searched unless such officer is specially authorized in writing by the Commissioner to search that accommodation.

**Explanation:-** For the purposes of clause (b), “place” includes any godown, building, vessel, vehicle, box or receptacle.

(4) All searches under this section shall, so far as may be, be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(5) The officer making the inspections or search may seize such accounts, registers, records or other documents, as he considers necessary and on such seizure he shall grant the dealer a receipt of the things seized.

(6) The accounts, registers, records or other documents seized under sub-section (5) shall not be retained by the officer seizing them beyond a period of one hundred and eighty days from the date of the seizure except with the permission of the next higher authority, unless they are required for any prosecution under this Act:

Provided that the next higher authority shall not give permission to retain such accounts, registers records or other documents beyond a period of one year from the date of the seizure.



(7) The power conferred by sub-sections (3) and (5) shall include:-

(a) the power to break open any box or receptacle or place or the door of any premises, in which any goods or any accounts, registers, records or other documents of the dealer are, or are reasonably believed to be kept:

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises fails or refuses to open the door on being called upon to do so.

(b) the power to seal any box or receptacle, godown or building, where any goods or any accounts, registers, records or other documents are, or are reasonably believed to be kept, if the owner or any other person in occupation leaves the premises or refuses to open the box or receptacle, godown or building, or is not available, and then to break open such box, receptacle, go down or building on the authority of an authorization in writing by the Commissioner.

(c) the power to search any person who has got out of, or is about to get into or is in, any place referred to in clause (a) or clause (b) of sub-section (3) or any vessel or vehicle of any dealer, if the Officer has reasons to suspect that such person has secreted about his person any goods or any accounts, registers, records or other documents.

(d) The power to require any person who is found to be in possession or control of any accounts, register or other documents maintained in the form of electronic record as defined in clause (t) of subsection (1) of section (2) of the Information Technology Act, 2000, to afford such officer the necessary facility to have an access to such books of accounts or other documents.

(e) The power to record the statement of any dealer or his manager, agent or servant, to take extracts from records found in any premises and to put identification marks on accounts, registers, documents or goods.

(f) the power 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 of any samples so taken and the samples shall, except where an offence is

found, be returned to the dealer or be disposed of, with the approval of the Commissioner, after giving the dealer an opportunity of being heard.

(8) If any officer, while inspecting any place of business under sub-section (2) or searching any place under sub-section (3) finds therein any goods not accounted for by the dealer in his accounts and other records required under section 40 to be kept and maintained by him, such officer may, after giving the dealer a reasonable opportunity of being heard, by order, direct the payment of a penalty, not exceeding fifty per cent of the value of the taxable goods not accounted for, as may be fixed by such officer.

(9) If any officer, during the course of any inspection or search of any business place, building, godown or any other place finds that any goods not accounted for by any dealer in this accounts or other records required to be maintained under this Act and not claimed by any dealer or any other person, are stored in any business place, building, godown or other place, such officer may seize the same by giving the owner of such business place, building, godown or other place a receipt of the goods seized and after giving him a reasonable opportunity of being heard, confiscate such goods and sell the same in public auction, in the manner as may be prescribed.

(10) If any officer, in the course of any inspection or search of any business place, building or any other place finds that goods are stored in undeclared godown, such stock shall be treated as stock outside the regular books of accounts of the dealer unless proved otherwise.

Provided that godowns in respect of which prior written intimation had been given to the registering authority within ten days of its usage by the dealer shall not be treated as undeclared godowns.

**45. Purchase of goods to prevent under valuation:-** The assessing authority or any other officer empowered in this behalf by the Government, is satisfied that any dealer with a view to evade payment of tax, shows in his accounts, sale or purchase of any goods at prices lower than the prevailing market price of such goods, shall have the power to purchase such goods at a price of ten per cent above the purchase value or the value disclosed by any principal or agent in the case of goods received

on consignment basis plus transporting charges and entrust such goods for sale to the Kerala State Civil Supplies Corporation Ltd. or Kerala State Marketing Federation Limited or to any such public distribution system or sell such goods in public auction.

**46. Establishment of check post and documents to be carried with the goods.** – (1) If the Government consider that with a view to prevent or check evasion of tax under this Act in any place or places in the State it is necessary so to do, they may by notification in the Gazette notify such areas, hereinafter referred to as the notified area, and may direct setting up of check posts at such place or places, and define the boundaries of such notified area and may demarcate such boundaries by means of barriers or otherwise for the purpose of regulating the passage of goods across the notified area.

(2) If the Commissioner is satisfied that for the purpose of preventing evasion of tax, check posts are to be set up for a specified period or periods, he may for reasons to be recorded in writing, set up such check posts and all other provisions relating to the check posts mentioned in sub-section (1) shall be applicable to such check posts also.

(3) Subject to the provisions of sub-section (4) no person shall transport within the State across or beyond the notified area any consignment of goods exceeding such quantity or value, as may be prescribed, by any vehicle or vessel, unless he is in possession of-

(a) either a tax invoice or delivery note or certificate of ownership containing such particulars, as may be prescribed, and

(b) When notified goods, exceeding such quantity or value, as may be prescribed, is transported into or out of the State, the consignments shall be accompanied by delivery note in Form 15. In the case of movements within the State, the consignments shall be accompanied by delivery notes when it is dealer to dealer transaction and sale bill in case the transport is between a dealer to the consumer.

Provided that in the case of notified goods the consignment shall be accompanied by a delivery note notwithstanding that it is accompanied by any of the other documents specified in this sub-section.

**Explanation I** – The term “goods” referred to in this sub-section shall not include luggage of persons who cross the notified area.

**Explanation II** – For the purposes of this Act transport of goods commences at the time of delivery of goods to a carrier or bailee for transmission and terminates at the time when delivery is taken from such carrier or bailee.

(c) A report issued by the scanning agency and weighing agency, where such an agency is available.

**Explanation:** For the purpose of this clause, scanning and weighing agencies means the person in charge of the scanner and weigh bridge installed in such check post, whether controlled by Government or any other agency approved by the Government.

(d) a declaration in such form, as may be prescribed, when the vehicle or vessels enters or leaves the State limits.

(e) Where goods are imported into the State through coastal cargo, through air and through the Railways, the importer or clearing agents, by whatever name called, shall, on arrival of such goods, furnish a declaration before the Commercial Tax Officer having jurisdiction over the place of import, as may be prescribed. While transporting such goods within the State or across the State, the transporter / person in charge of the vehicle / vessel shall keep a copy of such declaration duly acknowledged by the concerned authority and shall be produced for verification by any authority under this Act.

Provided that in the case of notified goods, the consignment shall be accompanied by a delivery note notwithstanding that is accompanied by any of the other documents specified in this sub-section.

Provided also that notwithstanding anything contained in this sub section, in case of transport of notified goods for which advance tax has been paid under sub section (16A) of section 47, to the shop, branches or godowns of the dealer mentioned in his certificate for registration, delivery note shall not be insisted, if the transport is accompanied by the proof of remittance of advance tax along with any of the other documents specified in this sub section.

**Explanation I:** - The term “goods” referred to in this sub-section shall not include luggage of persons who cross the notified area.

**Explanation II :-** For the purpose of this Act transport of goods commences at the time of delivery of goods to a carrier or bailee for transmission and terminates at the time when delivery is taken from such carrier or bailee.

(4) No person shall transport within the State, across or beyond the notified area or within two kilometers from the border area, by head load, or by animal load, any consignment of notified goods exceeding such quantity, as may be prescribed, unless he is in possession of the documents specified in sub-section (3).

(5) All transport of consignments of goods, exceeding such quantity as provided in sub-section (3), by road into or out of the State shall be made only through notified check post.

(6) All vehicles carrying goods, other than those specifically notified by the Commissioner shall be subjected to scanning and weighing by the scanning and weighing agency at such check post, where such facilities are available whether controlled by the Government, or any other agency approved by the Government, and the driver or the person in charge of the vehicle shall be liable to pay the weighing and scanning charges at rates notified by the Commissioner. (7) For the effective enforcement of provisions of this Act, the Commissioner may, from time to time, issue necessary instructions for regulating the movement of vehicles carrying goods through selected border check-posts.

**47. Procedure for inspection of goods in transit.:-** (1) The driver or other person in charge of a vehicle or vessel shall stop the vehicle or vessel and any person referred to in sub-section (4) of section 46 shall stop or, as the case may be, stop the animal at any place within a notified area when so required by the officer in charge of that notified area, or at any other place when so required by any officer empowered by the Government in that behalf, for the purpose of enabling such officer to verify the documents required by sub-section (3) of section 46 to be in the possession of the person transporting the goods and to satisfy himself that there is no evasion of tax.

(1A) Notwithstanding anything contained in section 3 of this Act, or in The Kerala Panchayat Raj Act, 1994 (13 of 1994), where there is reason to believe that a goods-laden vehicle has by-passed the check post and entered in the State, it shall be lawful for an elected member or an officer authorized by resolution by a Grama Panchayat touching the border of the State, through which the vehicle is passing, to stop the vehicle for ascertaining whether the vehicle has passed through a check post, and on so doing, the driver or the person in charge of the vehicle shall stop the vehicle, and if it is found that the vehicle has not passed through a check post, they shall inform the commercial tax authorities having jurisdiction over the area to pursue further action under this Act and no suit, prosecution or other proceeding shall lie against any such person for anything done or purporting to be done in good faith under this sub-section.

(2) If such officer has reason to suspect that the goods under transport are not covered by proper and genuine documents (in cases where such documents are necessary) or that any person transporting the goods is attempting to evade payment of the tax due under this Act, he may, for reasons to be recorded in writing, detain the goods and shall allow the same to be transported only on, the owner of the goods or his representative or the driver or other person in charge of the vehicle or vessel on behalf of the owner of the goods, furnishing security for double the amount of tax likely to be evaded, as may be estimated by such officer:

Provided that such officer may, if he deems fit, having regard to the nature of the carrier or the goods and other relevant matters, allow such goods to be transported on the owner of the goods or his representative or the driver or other person in charge of the vehicle or vessel executing a bond with or without sureties for securing the amount due as security.

Provided further that where the documents produced in support of the transport of goods evidence defects of a minor or technical nature only and the goods are owned by a dealer registered under this Act, such officer may allow the goods to be transported after realizing the tax on the turnover of the goods under transport.

(3) Where the owner, driver or person in charge of the vehicle or vessel carrying the goods detained under sub-section (2) is found in collusion for such carrying of goods, the vehicle or vessel shall also be detained and seized by the officer empowered under sub-section (1) and such vehicle or vessel shall be released only on the owner, driver or person in charge of it furnishing the security provided in sub-section (2). In case of failure to furnish the security as above, the officer detaining and seizing the vehicle shall have the power to order the vehicle or vessel being taken to the nearest Police Station or to any check post or to the office of the Commercial Tax Department for safe custody of the goods or the vehicle or the vessel or both:

Provided that where the owner, driver or person in charge of a vehicle or vessel carrying goods is found guilty of the offence under this sub-section for a second or a subsequent time, such vehicle or vessel may be detained for a period not exceeding thirty days from the date of furnishing the security.

(4) If such officer has reason to believe that the tax exigible on the sale or purchase of goods under transport is not paid, or the dealer whose goods are transported is in default of payment of any tax or other amount due under this Act for any period, such officer may, notwithstanding anything to the contrary contained in this Act or the rules made there under allow the goods to be transported after realizing the tax in respect of the goods transported. If the driver or the person in charge of the goods or the dealer whose goods are under transport refuses to pay such tax, the goods shall be detained by such officer and shall be dealt with in the manner provided in this section as if the transport of goods were an attempt to evade payment of tax due under this Act.

(5) The officer detaining the goods shall record the statements, if any, given by the owner of the goods or his representative or the driver or other person in charge of the vehicle or vessel and shall submit the proceedings along with the connected records to such officer not below the rank of Commercial Tax Officer as may be authorized in that behalf by the Government, for conducting necessary inquiry in the manner prescribed:

Provided that where tax is collected under the second proviso to sub-section (2) or under sub-section (4), no enquiry under this sub-section shall be necessary and the officer detaining the goods shall

submit the proceedings along with the connected records to the concerned assessing authority.

(6) The officer authorized under sub-section (5) shall, before conducting the inquiry, serve notice on the owner of the goods and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to evade the tax due under this Act, he shall, by order, impose on the owner of the goods a penalty not exceeding twice the amount of tax attempted to be evaded, as may be estimated by such officer.

(7) No action under sub-section (2) or sub-section (5) or sub-section (6) shall be taken in respect of goods already subjected to the proceedings under those sub-sections.

(8) If the owner of the goods or his representative or the driver or other person in charge of the vehicle or vessel does not furnish security or execute the bond as required under sub-section (2) within fourteen days from the date of stopping the vehicle or vessel under sub-section (1), the officer referred to in that sub-section may, by order, seize the goods, and in the event of the owner of the goods not paying the penalty imposed under sub-section (6) within thirty days from the date of the order imposing the penalty, the goods seized shall be liable to be sold for the realization of the penalty in the manner provided in sub-section (11).

(9) When any goods are seized under sub-section (8), the officer seizing the goods shall issue to the owner of the goods if present or, if the owner of the goods is not present, to his representative or the driver or other person in charge of the vehicle or vessel, a receipt specifying the description and quantity of the goods so seized and obtain an acknowledgment from such person or, if such person refuses to give an acknowledgment, record the fact of such refusal in the presence of two witnesses.

(10) The notice under sub-section (6) to be served on the owner of the goods shall be given to the address as furnished in any of the documents referred to in sub-section (1) or to the address furnished by the driver or other person in charge of the vehicle or vessel, and if there are no such documents or if the address is not furnished, a notice giving the description of the goods, the approximate value thereof, the number and description of the vehicle or vessel in which the goods were carried and the date and time of



detention and also indicating the provisions of the Act and the rules made there under which have been violated shall be-

(a) displayed on the notice board of the officer authorized under sub-section (5); and

(b) published in not more than two daily newspapers having wide circulation in the area in which the goods were detained, before conducting the inquiry under sub-section (6).

(11) The goods seized under sub-section (9) shall be sold by the officer who imposed the penalty; by public auction to the highest bidder and the sale proceeds shall be remitted in the Government treasury. The auction purchaser shall pay the sale value of the goods in ready cash immediately after the sale and he will not be permitted to carry away any part of the property until he has paid for the same in full. Where the purchaser fails to pay the purchase money, the property will be re-sold at once and the defaulting purchaser will be liable for any loss arising from as well as the expenses incurred on the re-sale.

(12) If the goods seized are of a perishable nature or subject to speedy and natural decay, or when the expenses of keeping them in custody are likely to exceed their value, the officer in charge of the notified area or the other officer empowered under sub-section (1), as the case may be, shall immediately sell such goods or otherwise dispose of them and remit the sale proceeds of such goods, or the amount obtained by the disposal of such goods otherwise than by sale, in the Government treasury.

(13) If the order of imposition of penalty under sub-section (6) or of seizure of goods under sub-section (8) is set aside or modified in appeal or other proceedings, the appropriate authority shall also pass consequential orders for giving effect to the order in such appeal or other proceedings, as the case may be.

(14) The owner of the goods sold or otherwise disposed of under this section shall be liable to pay the expenses and other incidental charges for keeping the goods seized in custody until the sale or other disposal and the charges for publication in newspapers of the notice under sub-section (10).

(15) If the sale proceeds of any goods sold or the amount obtained on the disposal of any goods otherwise than by sale under provisions herein before contained exceeds the penalty imposed in respect of such goods, such excess amount after deducting the expenses, incidental charges and charges for publication referred to in sub-section (14) shall be returned by the officer who conducted the sale or otherwise disposed of the goods to the owner of the goods on his establishing the ownership thereof.

(16) Notwithstanding anything contained in the foregoing provisions where any officer referred to in sub-section (1) finds on inspection of any goods under transport that such goods are transported or attempted to be transported in the name of bogus or unidentifiable person or under cover of bogus documents, such officer may, after giving notice to the owner or any person in charge of the vehicle, carrier of bailee in writing and after following such procedure as may be prescribed, seize and confiscate the goods and sell the same in the public auction or by public sale and the sale proceeds shall be remitted to Government.

(16 A) Notwithstanding anything contained in this Act or the rules made there under, the Commissioner may where he deems it necessary to prevent any evasion of tax, direct that the tax in respect of the sale of any evasion prone commodities, as may specified by him, shall be paid before the date prescribed for its payment under this Act.

**48. Transit of goods through the State and issue of transit pass:-** (1) When a vehicle or vessel carrying goods from any place outside the State and bound for any place outside the State passes through the State, the owner or consignor of goods or owner or driver or person in charge of such vehicle or vessel shall obtain a transit pass in the prescribed form for such goods from the officer-in-charge of the first check post after his entry into the State and deliver it to the officer-in-charge of the last check post before his exit from the State.

(2) If the owner or consignor of goods or owner or driver or person in charge of such vehicle or vessel fails to deliver the transit pass for such goods referred to in sub-section (1) to the last check post, it shall be presumed that such goods which are liable to tax under this Act and the goods have been delivered within the State for sale:

Provided that where the goods carried by such vehicle or vessel are, after their entry into the State, transported outside the State by any other vehicle or conveyance, the onus of proving that goods have actually moved out of the State, shall be on the owner or consignor of goods or owner or driver or person in charge of such vehicle or vessel, as the case may be.

(3) Where it is presumed under sub-section (2) that the goods carried in a vehicle or vessel have been delivered within the State for sale by the owner or consignor of goods or owner or driver or person in charge of such vehicle or vessel such owner or consignor of goods or owner or driver or person in charge of the vehicle or vessel shall be jointly or severally liable to pay tax which shall be assessed and recovered in accordance with the relevant provisions of this Act, irrespective of the limit of any turnover together with an amount of penalty not exceeding twice the amount of such tax as may be assessed, after having given to the person or persons aforesaid an opportunity of being heard by the assessing authority under whose jurisdiction the check post is situate.

(4) Where any person consigns any goods or transports any goods liable to tax under this Act from another State into the State without any records as provided for under section 46 or where the particulars furnished in the documents accompanying the goods are false or the consignor or purchaser stated therein is found to be bogus or non-existent or is not traceable or where the transporter fails to prove the bonafides of the transport, it shall be presumed that such goods have been sold in the State by the consignor or the owner of the goods or the transporter or the owner or persons in charge of the vehicle or the person in charge of the goods or all of them jointly and they shall be jointly and severally liable to pay tax on such sales which shall be assessed and recovered in the manner provided for in sub-section (3).

(5) For the purpose of this section, the owner or driver or person in charge of the vehicle or vessel shall, unless he is a registered dealer under this Act, be deemed to be a registered dealer for assessment of tax under this Act.

(6) Where the goods enter the State by way of import from foreign countries through any airport or sea port and the goods are transported to a place outside the State through a vehicle or vessel, the transit pass shall be obtained from the first check post or from the office of

the Commercial Taxes Department nearer to the airport or sea port, as the case may be, and the provisions in sub-sections (1) to (5) shall apply accordingly.

**49. Confiscation by Authorized officers in certain cases:** (1) Any officer, not below the rank of a Commercial Tax Officer shall have the power to intercept and search the vehicle or vessel or any conveyance transporting notified goods at any place within the State for the purpose of enabling such officer to verify whether any notified goods are being smuggled into or out of the state.

(2) If on verification such officer has reason to suspect that the notified goods are being smuggled into or out of the state, he may, without any unreasonable delay, produce the goods and the vehicle before such officer authorized by the Government, by notification in the Gazette, not below the rank of an Assistant Commissioner.

(3) Where the authorized officer is satisfied that the driver or other person in charge of the vehicle or vessel or other conveyance is smuggling notified goods, the officer shall have the power to seize and detain the goods along with the vehicle or vessel.

Provided that before taking action to seize and detain the goods and the vehicle or vessel under this section, the officer shall give the person in charge of the goods and the owner, if ascertainable, and to the owner of the vehicle or the person in charge of the vehicle a notice in writing informing him the reason for the seizure and detention of the goods and vehicle or vessel and an opportunity of being heard.

Provided further that the authorized officer may release the goods and the vehicle or vessel seized and detained if the owner or the person in charge of the notified goods or the owner or person in charge of the vehicle or vessel files an option to pay in lieu of seizure and detention, a redemption fee equal to thrice the amount of tax due at the rate applicable to the goods liable to seizure and detention and twice the tax due or an amount of Rs.50, 000/- whichever is higher for the release of the vehicle or vessel in lieu of detention.

Provided further that if the owner of the vehicle produces the documents specified in sub-section (3) of Section 46 and the owner of the goods proves the bonafides of the transport of goods within seven days

of the seizure and detention the officer shall release the goods and the vehicle.

(4) Notwithstanding anything contained in the foregoing provisions, if the owner or person in charge of the notified goods or the owner or person in charge of the vehicle fails to prove the genuineness of the transport of the notified goods or to remit the redemption fee as specified in second proviso to sub section (3), within thirty days from the seizure and detention of goods and the authorized officer has reason to believe that the owner or the person in charge of the vehicle or the driver has transported the notified goods to evade payment of tax with the knowledge or connivance of the owner of the goods, the officer may confiscate the vehicle or vessel along with the goods:

Provided that the authorized officer shall serve notice to the owner of the vehicle or the person in charge of the vehicle or the owner of the notified goods, if ascertainable, intimating the reason for the confiscation of the vehicle or vessel affording him and an opportunity of being heard. The officer shall also afford an opportunity to any of such persons to pay a penalty equal to thrice the amount of tax attempted to be evaded in lieu of confiscation of the notified goods and an amount equal to thrice the amount of such tax or rupees one lakh whichever is higher in lieu of confiscation of the vehicle or vessel.

(5) No order confiscating any vehicle or vessel shall be made under sub-section (4), if the owner or the person in charge of the vehicle or vessel proves to the satisfaction of the authorized officer that it was used for carrying the notified goods without the knowledge or connivance of the owner himself, his agent, if any, or the person in charge of such vehicle or vessel and that each of them has taken all reasonable and necessary precautions against such use.

(6) Any person aggrieved by an order under sub-section (5) may, within thirty days from the date of communication to him of such order, file an application for revision in such manner and in such form as may be prescribed and accompanied by a fee of rupees five hundred before the Deputy Commissioner and the Deputy Commissioner may pass such orders thereon as he thinks fit.

Provided that the Deputy Commissioner may admit an appeal preferred after the expiry of the said period if he is satisfied that the

appellant had sufficient cause for not filing the appeal within the said period.

(7) Any person aggrieved by an order under sub-section (6) may, within thirty days from the date of communication to him of such order, file a revision in such manner and in such form as may be prescribed and accompanied by a fee of rupees five hundred before the Commissioner and the decision of the Commissioner shall be final.

Provided that the Commissioner may admit an application for revision filed after the expiry of the said period if it is satisfied that the applicant had sufficient cause for not filing the application within the said period.

(8) Where an order of confiscation under this section has become final in respect of any goods/vessel such goods vehicle or vessels as the case may be shall vest in the Government free from all encumbrances.

(8A) Notwithstanding anything contained in this Act, the goods so confiscated under this section can be disposed of by public auction or by public sale, if the Commissioner feels that compelling circumstances exist to do so.

(9) The award of confiscation under this section shall not prevent the infliction of any punishment to which the person affected thereby is liable under the Act.

**49A. Police Assistance for inspection, search and seizure:** - Any officer authorized under the provisions of this Act to conduct inspection, search or seizure of any vehicle or vessel, goods, business place residential accommodation or any other place, if he feels necessary to have police assistance for the effective conduct of such inspection, search or seizure may seek police assistance from the officer in charge of the police station or from his superior officer having jurisdiction over the area where inspection, search or seizure is to be conducted or is being conducted and thereupon such police officer shall render such assistance to the officer as may be required for the conduct of such inspection, search or seizure.

**50. Procedure as to perishable goods seized under section 49:** - (1) Notwithstanding anything contained in section 49, the authorized officer may direct the sale of any goods seized under that section which is

subject to speedy and natural decay and remit the sale proceeds in to the Government Treasury.

(2) The authorized officer may deal with the proceeds of the sale of goods under sub-section (i) in the same manner as he might have dealt with the goods if it had not been sold.

**51. Possession and submission of certain records by owners etc., of Vehicle and vessels.** - The owner or other person in charge of a vehicle or vessel shall, while transporting any consignment of goods exceeding such quantity or value as may be prescribed under sub - section (3) of section 46, carry with him, -

(i) a tax invoice, delivery note or certificate of ownership; and

(ii) such other documents as may be prescribed, relating to the goods under transport and containing such particulars as may be prescribed and shall submit the documents aforesaid or copies thereof to the prescribed authority, having jurisdiction over the area in which the goods are delivered, along with such return within such time as may be prescribed

**52. Forwarding agency, etc., to submit returns.**- Every clearing or forwarding house or agency, transporting agency, shipping agency, shipping out agency, railway authorities, air cargo authorities or steamer agency in the State shall submit to the assessing authority of the area such returns and information as may be prescribed of all goods cleared, forwarded, transported, or shipped by it. The assessing authority concerned shall have the power to call for and examine the books of account or other documents in the possession of such agency with a view to verify the correctness of the returns submitted and the agency shall be bound to furnish the books of account or other documents when so called for.

**53. Banks to submit returns.**- Every bank, including any branch of a bank or any banking institution in the State, shall submit to the assessing authority of the area, a return of all bills relating to goods discounted, cleared or negotiated by or through it, in such form, in such manner and within such time, as may be prescribed.

**54. Warehousemen and banks to furnish details.**- Every warehouseman and every bank, including any branch of a bank or any banking

institution in the State, shall, if so required by an officer not below the rank of an assessing authority, furnish such information, document or statement as he may consider necessary for the purpose of any proceedings under this Act.

## CHAPTER – VII

### **APPEALS, REVISIONS AND SETTLEMENT OF CASES**

**55. Appeals to the Deputy Commissioner (Appeals) and Assistant Commissioner (Appeals).**—(1) Any person aggrieved by any order issued or proceedings recorded other than those under sub-section (3), sub-section (8) or sub-section (9) of section 16, sub-section (8) of section 19 passed by an authority empowered to do so under this Act not being an authority above the rank of an Assistant Commissioner may, within a period of thirty days from the date on which the order was served on him, appeal against such order, (i) to the Deputy Commissioner (Appeals), if the order was passed by an authority of the rank of an Assistant Commissioner; and (ii) to the Assistant Commissioner (Appeals), if the order was passed by an authority of the rank of a Commercial Tax Officer:

Provided that orders passed under sections 48, 49, 67, 69, 70, 70A and 72 shall be appealable only to the Deputy Commissioner (Appeals):

Provided further that the Deputy Commissioner (Appeals) and Assistant Commissioner (Appeals) may admit an appeal presented after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period:

Provided also that no appeal shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of the tax or other amounts admitted by the appellant to be due or such installment thereof as might have become payable, as the case may be, where the appeal is against an assessment completed under sub-section (6) of section 23, or under section 24 or section 25.

(2) Where an appeal lies against any order under sub-section (1), any order issued under section 66 to rectify any error in such order shall also be appealable under the said sub-section.

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



(4) Notwithstanding that an appeal has been preferred under sub-section (1), the tax or other amounts shall be paid in accordance with the order against which the appeal has been preferred:

Provided that the Deputy Commissioner (Appeals) and Assistant Commissioner (Appeals) may, at his discretion, give such directions as he thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to his satisfaction in such form and in such manner as may be prescribed.

(5) In disposing of an appeal, the Deputy Commissioner (Appeals) and Assistant Commissioner (Appeals) may, after giving the appellant a reasonable opportunity of being heard,—

(a) in the case of an order of assessment or penalty, either confirm, reduce, enhance or annul the assessment or the penalty or both;

(b) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed;

(c) or pass such other orders as he may think fit; or (d) in the case of any other order, confirm, cancel or vary such order:

Provided that at the hearing of any appeal against an order of the assessing authority, the assessing authority or the officer empowered by the Commissioner in this behalf shall be heard.

(6) The order of the Deputy Commissioner (Appeals) and Assistant Commissioner (Appeals) disposing of an appeal before it shall state the point for determination, the decision thereon and the reason for arriving at such decision.

(7) Where as a result of the appeal any change becomes necessary in the order appealed against, the Deputy Commissioner (Appeals) and Assistant Commissioner (Appeals) may, direct the assessing authority to amend such order accordingly and on such amendment being made, any amount paid in excess by the appellant shall be refunded to him or as the case may be the further amount of tax, if any, due from him shall be collected in accordance with the provisions of this Act, as the case may be.”;

**56. Powers of revision of the Deputy Commissioner suo motu. - (1)**

The Deputy Commissioner may, of his own motion, call for and examine any order passed or proceedings recorded under this Act by any officer or authority subordinate to him which in his opinion is prejudicial to the interest of the Revenue and may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such order thereon as he thinks fit.

**Explanation:** - For the purpose of this section an order passed or proceedings recorded shall be deemed to be prejudicial to the interest of the revenue where the tax or other amount assessed or demanded is lower than what is actually due, either due to escapement of turnover or for any other reason.

(2) The Deputy Commissioner shall not pass any order under sub-section (1) if, -

(a) the time for appeal against the order has not expired;

(b) the order has been made the subject matter of an appeal to the Deputy Commissioner (Appeals) or the Assistant Commissioner (Appeals) or the Appellate Tribunal or of a revision in the High Court; or

(c) more than four years have expired from the year in which the order referred to therein was passed.

(3) Notwithstanding anything contained in sub-section (2), the Deputy Commissioner may pass an order under sub-section (1) on any point which has not been decided in an appeal or revision referred to in clause (b) of sub-section (2), 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 the period of four years referred to in clause (c) of that sub-section, whichever is later.

(4) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

**57. Power of revision of Deputy Commissioner on application: -(1)**

Any person objecting to an order passed or proceedings recorded under this Act for which an appeal has not been provided for in Section 55 or section 60 may, within a period of thirty days from the date on which a copy of the order or

proceeding was served on him in the manner prescribed, file an application for revision of such order or proceeding to the Deputy Commissioner:

Provided that the Deputy Commissioner may admit an application for revision presented after the expiration of the said period, if he is satisfied that the applicant had sufficient cause for not presenting the application within the said period.

(2) An application for revision shall be in the prescribed form and shall be verified in the prescribed manner, and be accompanied by a fee of five hundred rupees.

(3) On admitting an application for revision, the Deputy Commissioner may call for and examine the record of the order or proceeding against which the application has been preferred and may make such enquiry or cause such enquiry to be made and subject to the provisions of the Act, pass such order thereon as he thinks fit.

(4) Notwithstanding that an application has been preferred under sub-section (1), the tax, fee or other amount shall be paid in accordance with the order or proceeding against which the application has been preferred:

Provided that the Deputy Commissioner may, in his discretion, give such directions as he thinks fit in regard to the payment of such tax, fee or other amount, if the applicant furnishes sufficient security to his satisfaction, in such form and in such manner, as may be prescribed.

(5) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

**58. Powers of revision of the Commissioner suo-motu.-** (1) The Commissioner may suo motu call for and examine any order passed or proceedings recorded under this Act by any officer or authority, subordinate to him other than that of the Deputy Commissioner (Appeals) or the Assistant Commissioner(Appeals) or not being the orders passed by him against any order issued or proceedings recorded under sub-section (3) of section 25, sub-section (8) or sub-section (9) of section 44, section 49, section 67, section 68, section 69 or section 70 which in his opinion is prejudicial to the interest of revenue and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act may pass such order thereon, as he thinks fit.

**Explanation:** - For the purpose of this section an order passed or proceedings recorded shall be deemed to be prejudicial to the interest of the revenue where the tax or other amount assessed or demanded is lower than what is actually due, either due to escapement of turnover or for any other reason.

(2) The Commissioner shall not pass any order under sub- section (1) if –

(a) the time for appeal against that order has not expired;

(b) the order has been made the subject matter of an appeal to the Deputy Commissioner (Appeals) or the Assistant Commissioner(Appeals) or the Appellate Tribunal or of a revision in the High Court; or

(c) more than four years have expired from the year in which the order referred to therein has passed.

(3) Notwithstanding anything contained in sub-section (2), the Commissioner may pass an order under sub-section (1) on any point which has not been decided in an appeal or revision referred to in clause (b) of sub-section (2), 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 in clause (c) of that sub-section, whichever is later.

(4) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

**59. Power of revision of the Commissioner on application.** - (1) Any person objecting to an order passed by the Deputy Commissioner other than an order of the Deputy Commissioner (Appeals) or the Assistant Commissioner(Appeals) under section 55 may, within a period of thirty days from the date on which a copy of the order was served on him file an application for revision of such order to the Commissioner:

Provided that the Commissioner may admit an application for revision filed after the expiry of the said period if he is satisfied that the applicant had sufficient cause for not filing the application within the said period.

(2) Such application for revision shall be in the prescribed form and shall be verified in the prescribed manner and be accompanied by a fee of seven

hundred and fifty rupees.

(3) Notwithstanding that an application has been preferred under sub-section (1), the tax, fee or other amount shall be paid in accordance with the order against which the application has been preferred:

Provided that the Commissioner may in his discretion, give such directions as he thinks fit in regard to the payment of such tax, fee, or other amount, if the applicant furnishes sufficient security to his satisfaction in such manner as may be prescribed.

(4) On admitting an application for revision, the Commissioner may call for and examine the record of the order against which the application has been preferred and may make such enquiry or cause such enquiry to be made and subject to the provisions of this Act pass such order thereon as he thinks fit.

(5) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

**60. Appeal to the Appellate Tribunal.-** (1) Any person objecting to an order passed by the Deputy Commissioner (Appeals) or Assistant Commissioner (Appeals) under sub-section (5) of section 55 or any officer empowered by the Government in this behalf may within a period of 60 days from the date on which the order was served on him, in the manner prescribed, appeal against such order to the Appellate Tribunal:

Provided that the Appellate Tribunal may admit an appeal presented after the expiration of the said period if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period:

Provided further that no appeal shall lie in cases where suo moto revision proceedings under section 58 is pending.”;

(1A) Omitted

(2) The officer authorised 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 Deputy Commissioner (Appeals) or Assistant Commissioner (Appeals) 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

within 30 days of the receipt of the notice, a memorandum of cross objection, verified in the prescribed manner, against any part of the order of the Deputy Commissioner (Appeals) or Assistant Commissioner (Appeals) and such memorandum shall be disposed by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (1).”;

(3) The appeal or the memorandum of cross objections shall be in the prescribed form and shall be verified in the prescribed manner and, in the case of an appeal preferred by any person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of one thousand rupees.

(4) In disposing of an appeal, the Appellate Tribunal may after giving the parties a reasonable opportunity of being heard either in person or by a representative, -

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

(i) confirm, reduce, enhance or annul the assessment or penalty or both;

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed; or

(iii) pass such other orders as it may think fit; or

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

Provided that 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 to the High Court against such decision or an appeal to 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 to the High Court or the appeal to the Supreme Court is disposed of.

(5) Where as a result of the appeal any change becomes necessary in the order appealed against, the Appellate Tribunal may authorize the assessing authority to amend such order accordingly and on such amendment being made any amount paid in excess by the appellant shall be refunded to him or the further amount of tax, if any, due from him shall be collected in

accordance with the provisions of this Act.

(6) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that the Appellate Tribunal may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

Provided further that where the Appellate Tribunal has passed an order of stay in an appeal it shall dispose of the appeal within a period of one hundred and eighty days from the date of such order:

Provided also that if such appeal is not so disposed of within the period specified in the second proviso the stay order shall stand vacated after the expiry of the said period.

(7) The Appellate Tribunal may, on the application of the appellant or the respondent review any order passed by it under sub-section (4) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within the knowledge of the applicant or could not be produced by him when the order was made:

Provided that no such application shall be preferred more than once in respect of the same order.

(8) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed, and where the application is preferred by any person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of rupees three hundred.

(9) Every order passed by the Appellate Tribunal under sub-section (4) or sub-section (7) shall be communicated in the manner prescribed, to the appellant, the respondent, the authority on whose order the appeal was preferred, the Deputy Commissioner concerned, and the Commissioner.

**61. Filing of application for settlement of cases.-** (1) Notwithstanding anything contrary contained in this Act an assessee may, at any stage of an appeal or revision pending before any authority under the Act or the High Court, make an application in such form and in such manner as may be prescribed, containing a full and true disclosure of his turnover which had not been disclosed before the Assessing authority including the additional amount of tax payable on such turnover and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless, the assessee has furnished the return of turnover, which he is or was required to furnish under any of the provisions of this Act.

Provided further that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard.

(2) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) An application made under sub-section (1) shall not be allowed to be withdrawn by the applicant.

(4) On receipt of an application under sub-section (1), the Settlement Commission shall call for a report from the Deputy Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstance of the case or complexity of investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded, with or reject the application:

Provided that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided further that the Deputy Commissioner shall furnish the report within a period of forty-five days of the receipt of communication from the Settlement Commission, and if the Deputy Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report.

(5) A copy of every order under sub-section (4) shall be sent to the



applicant and to the Deputy Commissioner.

(6) Subject to the provisions of sub-section (7), the assessee shall, within thirty-five days of the receipt of a copy of the order under sub-section (4) allowing the applications to be proceeded with, pay the additional amount of tax or other amount payable on the turnover disclosed in the application and shall furnish proof of such payment to the Settlement Commission.

(7) Where the additional amount of tax or other amount referred to in sub-section (6) is not paid by the assessee within the time specified under that sub-section, the Settlement Commission may, at its discretion, permit the assessee to pay the amount within a period not exceeding fifteen days.

(8) Where an application is allowed to be proceeded with under sub-section (4), the Settlement Commission may call for the relevant reports from the Deputy Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Deputy Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matter covered by the application and any other matter relating to the case.

(9) After examination of the records and the report of the Deputy Commissioner received under sub-sections (4) or (8) and after giving an opportunity to the applicant and to the Deputy Commissioner to be heard, either in person or through a representative duly authorized in this behalf and after examining such further evidences as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Deputy Commissioner under sub-section (4) or sub-section (8).

(10) Every order passed under sub-section (9) shall provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

(11) Where any tax payable in pursuance of an order under

sub-section (9) is not paid by the assessee within thirty-five days of the receipt of a copy of the order by him, the assessee shall be liable to pay interest at the rate of one per cent for each month or part thereof, for the first three months after the date specified for its payment; and at the rate of two percent for each month or part thereof, subsequent to the first three months aforesaid, on the amount remaining unpaid from the date of expiry of the period of thirty-five days

(12) Where a settlement become void as provided under sub-section (10), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the authority concerned may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void.

(13) If the matter is settled under the provisions of this section the Deputy Commissioner shall intimate the fact of such settlement to the authority specified in sub-section (1) or to the High Court as the case may be.

**62. Appeals to the High Court.** -(1) Any person objecting to an order affecting him passed under section 58 or section 94 may, within a period of ninety days from the date on which a copy of the order was served on him in the manner prescribed, appeal against such order to the High Court:

Provided that the High Court may admit an appeal preferred after the period of ninety days aforesaid if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

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

(3) In disposing of an appeal, the High Court may, after giving the parties a reasonable opportunity of being heard either in person or by a representative,

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

(i) confirm, reduce, enhance or annual the assessment or penalty or both;

(ii) set aside the assessment and direct that a fresh assessment may be made after such further enquiry as may be directed; or

(iii) pass such other orders as it may think fit; or

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

(4) Where as a result of the appeal any change becomes necessary in the order appealed against, the High Court may authorize the Commissioner to amend such order accordingly and on such amendment being made, any amount paid in excess by the appellant shall be refunded to him or the further amount of tax, if any, due from him shall be collected in accordance with the provisions of this Act, as the case may be.

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

(6) Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that the High Court may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

(7) The High Court may, on the application of the appellant or the Commissioner, review any order passed by it under sub- section (3) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within the knowledge of the applicant or could not be produced by the applicant, when the order was made.

(8) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed and shall, where it is preferred by any person other than the Commissioner, be accompanied by a fee of three hundred rupees.

(9) The High Court may, at its discretion, award the cost in an appeal under sub-section (1) or in a review under sub-section (7).

**63 . Revision by the High Court.** -(1) Any officer empowered by the Government in this behalf or any other person objecting to an order passed by Appellate Tribunal under sub-section (4) or sub-section (7) of section 60, or any person objecting to an order passed by the Commissioner under sub-section (4) of section 59 may, within ninety days from the date on which a copy of such order is served on him in the manner prescribed, prefer a petition to the High Court on the ground that the Appellate Tribunal or the Commissioner has either decided erroneously or failed to decide any question of law:

Provided that the High Court may admit a petition preferred after the period of ninety days aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within the said period.

(2) The petition shall be in the prescribed form and shall be verified in the prescribed manner and where it is preferred by a person other than an officer empowered by the Government under sub-section (1) it shall be accompanied by a fee of one thousand five hundred rupees.

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

Provided that no petition shall be dismissed unless the petitioner has had a reasonable opportunity of being heard.

(4) 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 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 of law raised, or pass such order in relation to the matter as the High Court thinks fit.

(5) Where the High Court remits the matter under sub-section (4) with its opinion on the question of law raised, the Appellate Tribunal shall amend the order passed by it in conformity with such opinion.

(6) Before passing an order under sub-section (4) the High Court may, if it considers it 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.

7) Notwithstanding that a petition has been preferred under sub-section (1), the tax shall be paid in accordance with the order against which the revision has been preferred.

Provided that the High Court may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the petition, if the petitioner furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed.

8) The High Court may, on the application of any party to a revision under this section, review any order passed by it on the basis of the discovery of new and important facts which after the exercise of due diligence were not within the knowledge of the applicant or could not be produced by him when the order was made.

9) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed and, where it is preferred by a person other than an officer empowered by the Government under sub-section (1), it shall be accompanied by a fee of one thousand five hundred rupees.

10) If, as a result of the revision or review, any change becomes necessary in any assessment, the High Court may direct the assessing authority to amend the assessment accordingly, and on such amendment being made any amount paid in excess by any person shall be refunded to him, or the further amount of tax due from him shall be collected in accordance with the provisions of this Act, as the case may be.

11) The High Court may at its discretion, award the cost in a revision under sub-section (1) or in a review under sub-section (8).

**64. Appeals, petitions and applications to the High Court to be heard by a Bench of not less than two judges.-** every appeal preferred to the High Court under section 62, every petition under section 63 and every application under the said sections shall be heard by a Bench of not less than two judges, and in respect of such appeal, petition or application, the provisions of section 98 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908) shall, so far as may be, apply.

**65. Fee for interlocutory petitions.** - Every interlocutory application prescribed by the Government and filed before the authorities under this Act specified below, other than those filed by officers empowered by Government, shall be accompanied by the following fees, namely: -

(a) Before the Deputy Commissioner (Appeals) ,Assistant commissioner (Appeals) or the Deputy Commissioner Before the Commissioner or the Appellate Tribunal Two hundred rupees Three hundred rupees

**66. Power to rectify any error apparent on the face of the record.-** (1) Any authority including Appellate Tribunal and Settlement Commission issuing any order or proceedings under this Act may, on application or otherwise, at any time within four years from the year in which the order passed by it, rectify any error apparent on the face of the record. Provided that no such rectification, which has the effect of enhancing an assessment or any penalty, shall be made unless such authority has given notice to the person affected and has allowed him a reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund to the person entitled thereto.

(3) Where any such rectification has the effect of enhancing an assessment or penalty, the assessing authority shall give the dealer or other person, a revised notice of assessment or penalty and thereupon the provisions of this Act and the rules made there under shall apply as if such notice has been given in the first instance.

**Explanation:** - The liability to pay the tax or other amount shall arise only from the date specified in the revised notice.

## CHAPTER – VIII

### OFFENCES AND PENALTIES

**67. Imposition of penalty by authorities.-** (1) Notwithstanding anything contained in section 71 if any authority empowered under this Act is satisfied that any person, -

(a) being a person required to register himself as a dealer under this Act, did not get himself registered; or

(b) has failed to keep true and complete accounts; or

(c) has failed to submit any return as required by the provisions of this Act or the rules made there under; or

(d) has submitted an untrue or incorrect return; or

(e) has made any bogus claim of input tax credit, special rebate or refund; or

(f) has continued the business during the period of suspension of registration; or

(g) has failed to return the un used statutory Forms and Declarations under this Act after the cancellation or suspension of the registration; or

(h) has not stopped any vehicle or vessel when required to do so; or

(i) has failed to comply with all or any of the terms of any notice or summons issued to him by or under the provisions of this Act or the rules made there under; or

(j) has acted in contravention of any of the provisions of this Act or any rule made there under, for the contravention of which no express provision for payment of penalty or for punishment is made by this Act; or

(k) has abetted the commission of the above offences, or

(l) has abetted or induced in any manner another person to make and deliver any return or an account or a statement or declaration under this Act or rules made there under, which is false and which he either knows to be false or does not believe to be true, such authority may direct that such person shall pay, by way of penalty, an amount not exceeding twice the amount of tax or other amount evaded or sought to be evaded where it is practicable to quantify the evasion or an amount not exceeding ten thousand rupees in any other case:

Provided that the authority empowered under this section shall dispose off the case within three year from the date of detection of offence mentioned under this section except where the extension of time is granted by the Deputy Commissioner.

(2) Notwithstanding anything contained in sub-section (1), where on completion of an assessment in relation to a dealer under sections 22, 23, 24 or 25, it is found that the tax so determined on such assessment was not paid by the dealer, the assessing authority may direct such dealer to pay, in addition to the tax so determined, a penalty, in the case of a dealer who has made part payment, at twice the balance amount of tax so determined, and in the case of a dealer who has not paid any amount, twice the complete amount so assessed.

**Explanation:** - The burden of proving that any person is not liable to the penalty under sub-section (1) shall be on such person.

(3) No order under sub-sections (1) or (2) shall be passed unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter.

**68. Penalty for default of payment of tax.** - (1) Where an assessee makes default in payment of tax or any other amount due under this Act within the time specified in the notice of demand, he shall, in addition to the tax or other amount in arrears and the amount of interest payable under sub-section (5) of section 31, be liable to pay, by way of penalty such amount and in the case of a continuing default, amount at such rate for every day during which the default continues, as the assessing authority may direct, so, however, that the total amount of penalty shall not exceed the amount of tax or other amount in arrears.

(2) No penalty under sub-section (1) shall be imposed without giving the assessee a reasonable opportunity of being heard.

**69. Penalty for transport of goods without records.** - (1) If any officer empowered under sub-section (1) of section 47 finds on inspection of any vehicle or vessel that any transporting agency or contract carriage transporting any goods without the documents required under sub-section (3) of section 46, such officer may without prejudice to any action that may be taken under section 47, impose by an order in writing on such transporting agency, or contract carriage, or



the owner of the vehicle a penalty equal to twice the amount of the tax due on such goods subject to a minimum of five thousand rupees.

(2) Where a transporting agency or contract carriage or the owner of the vehicle or vessel is subsequently guilty of the offence under sub-section (1) for more than one occasion, the officer referred to in that sub-section may, in addition to the penalty that may be imposed under the said sub-section, by an order in writing detain the vehicle or vessel for a period of thirty days from the date of inspection of the vehicle or vessel, whether the vehicle or vessel used for the Commission of the offence on subsequent occasion is the same or not.

(3) The vehicle or vessel detained under sub-section (2) shall be kept in safe custody by the officer detaining the vehicle on a place notified by the Government.

(4) No order under sub-section (1) or sub-section (2) shall be passed unless such person affected by such order shall be given an opportunity of being heard.

(5) The vehicle or vessel detained under this section shall, after the expiry of thirty days from the date of detention, release to the person from whom it was detained.

**Explanation:-** Transporting agency for the purposes of the section shall include parcel agency.

**70. Penalty for prevention or obstruction of survey, inspection etc.-** Any person who, -

(a) prevents or obstructs survey, inspection, entry, search, seizure or checking of invoices by an officer empowered under this Act, or

(b) prevents or obstructs inspection of any vehicle or vessel or goods transported, otherwise or seizure of goods by an officer in charge of a check post or barrier or any officer empowered under this Act, or

(c) prevents or obstructs any other act of an officer which he is empowered to perform under this Act, shall, pay by way of penalty an amount not exceeding twenty five thousand rupees, as may be imposed by an officer not below the rank of an assessing authority.

Provided that no order under this shall be passed unless the person affected by such order is given an opportunity of being heard.

**70A. Penalty for non-issuance of sale bill.**-(1) Any officer during the course of any inspection or search of any business place, building, godown or any other place, or checking of goods under transport or verification of the bills at any place finds that the seller has not issued a sale bill or an invoice or cash memorandum in respect of any sale, in violation of section 40 A of the Act, the dealer shall, without prejudice to any other provisions in the Act, be liable to pay by way of penalty, an amount not exceeding twice the amount of tax evaded or sought to be evaded or one thousand rupees for the first offence, whichever is higher, an amount not exceeding thrice the amount of tax evaded or sought to be evaded or two thousand rupees for the second offence, whichever is higher, and so on in arithmetic progression, for every subsequent commissions of the above offence.

(2) No penalty under sub-section (1) shall be imposed without giving the person affected a reasonable opportunity of being heard.

(3) Notwithstanding anything contained in sub-section (1), the dealer shall have an option to get the offence compounded, on the spot, on the payment of fifty per cent of penalty payable under sub-section (1)

(4) Where an offence has been compounded under sub-section (3), no further penal proceedings under sub-section (1) shall be taken against the dealer in respect of such offence.

(5) A dealer who commits the offence in sub-section (1) for more than ten occasions shall be liable to cancellation of his registration.

**70B. Penalty for commercial use of goods brought from outside the State declaring it as for own use.**—Any person bringing goods from outside the State declaring it as for own use and has used the goods so brought otherwise than for own use, shall, without prejudice to any other provisions in this Act, be liable to pay by way of penalty, an amount not exceeding thrice the amount of tax due on such goods.

## **71. Punishment for submitting untrue return etc:-**

(1) Any person who, -

(a) knowingly submits an untrue return or fails to submit return as required by the provisions of this Act or the rules made there under; or

(b) fails to keep true and complete accounts; or

(c) dishonestly objects to or fails to comply with the terms of a notice issued to him under sub-section (1) of section 35, or

(d) being a person obliged to register himself as a dealer under this Act does not get himself registered; or

(e) fails to stop any vehicle or vessel when required to do so by an officer empowered in this behalf; or

(f) willfully acts in contravention of any of the provisions of this Act or the rules made there under, for the contravention of which no express provision for punishment is made by this Act, shall, on conviction by a Magistrate, be liable to fine which may extend to twenty five thousand rupees.

(2) Any person who –

(a) makes any bogus claim of input tax credit, special rebate or refund, or

(b) continues the business during the period of suspension of registration, or

(c) prevents or obstructs survey, inspection, entry, search, checking of tax invoice or seizure by an officer empowered under this Act, or

(d) prevents or obstructs inspection of any vehicle or vessel or goods transported otherwise or seizure of goods by an officer in charge of a check post or barrier or by any officer empowered under this Act, or

(e) fraudulently evades the payment of tax, fee or other amount due from him under this Act, or

(f) carries on business as a dealer without furnishing the security demanded under sub-section (1) of section 17, shall, on conviction by a Magistrate, be punished with simple imprisonment for a period which may extend to six months or to fine not less than the tax or other amounts due but not exceeding fifty thousand rupees or to both.

**71A. Penal provisions for the misuse of registration numbers.**— (1) Any person, who knowingly and willfully, uses a false registration number or uses a registration number of another person with a view to,

(i) evade payment of tax due, or

(ii) to claim any input tax credit, without actually effecting the purchase, or

(iii) to shield the identity of the person to whom the sale has been effected, in the invoices issued or in the sale and purchase lists to be filed along with the returns under this Act, shall, on conviction by a Magistrate, be punished with simple imprisonment for a period which may extend to six months or with fine not less than five times of the tax sought to be evaded, or both.

(2) The assessing authority may cancel his registration granted under this Act on conviction by the Magistrate under sub-section (1).

**Explanation:**—For the purpose of this section, return shall mean revised return if such revised return is filed and registration number shall mean Tax Payers Identification Number (TIN) or the Presumptive tax payers Identification Number granted or generated under the provisions of this Act.”;

**72. Penalty for illegal collection of tax.** - (1) If any person collects any sum by way of tax or purporting to be by way of tax in contravention of sub-section (2) or sub-section (3) or sub-section (4) of section 30, he shall, in addition to the forfeiture of such illegal collection, be liable to pay penalty not exceeding five thousand rupees:

Provided that no penalty or forfeiture shall be ordered under this sub-section if the assessing authority is satisfied that the sum so collected has been returned to the person from whom it was collected.

(2) No penalty or forfeiture shall be ordered under this sub-section against any person unless such person is given an opportunity of being heard.

(3) Where any sum is forfeited to the Government under sub-section (1), any person from whom the amount was collected in contravention of the provisions of sub-section (2) or sub-section (3) or sub-section (4) of section 30 may apply to the assessing authority for reimbursement of such sum and the amount shall be reimbursed to such person in the prescribed manner.

(4) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed or forfeiture has been ordered under this section.

**73. Punishment for abetment.** - Any person who,

(a) abets or induces in any manner another person to make and deliver any return or an account or a statement or declaration under this Act or rules made there under, which is false and which he either knows to be false or does not believe to be true, or

(b) abets or induces in any manner another person or persons to prevent or obstruct survey, inspection, entry, search, checking of tax invoice or seizure by an officer empowered under this Act, or

(c) abets to act in contravention of any of the provisions of this Act or the rules made there under, shall, on conviction by a Magistrate be punished with simple imprisonment for a period which may extend to six months or with fine not exceeding fifty thousand rupees or with both.

**74. Composition of offences.** - (1) The assessing authority or other officer or authority authorized by the Government in this behalf may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act, other than those specified under clause (e) of sub-section (1) or clauses (b), (c) or (d) of sub-section (2) of section 71, by way of compounding of such offence,-

(a) where the offence consists of the evasion of any tax payable under this Act, in addition to the tax so payable a sum of money equal to the amount of tax so payable subject to a minimum of rupees five hundred and maximum

of rupees four lakhs: and

Provided that the maximum compounding fee collectable against a single offence spread over several return periods in a financial year shall be two lakh rupees

(b) in other cases, a sum of money not exceeding ten thousand rupees:

Provided that the Commissioner may by order authorize any officer to compound the offence under this section on payment of a reduced amount.

(2) On payment of such amount under sub- section (1), no further penal or prosecution proceedings shall be taken against such person, in respect of that offence.

**74A. Voluntary disclosure of unaccounted transactions.**—(1) Any dealer who had failed to include or suppressed any turnover or taxable turnover in the return filed upto 31st March, 2008 shall be permitted to disclose voluntarily such suppressed turnover to the assessing authority on or before 30th June, 2009.

(2) Such dealers shall file a revised return along with tax due thereon and a statement admitting such non-inclusion or suppression in the returns already filed.

(3) Interest and penalty on the tax due on the suppressed turnover shall be waived in the case of such dealers.

(4) The provisions under this section shall not be applicable to cases already detected by any authority under this Act.

**75. Offences by Companies.** - (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and 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:

Provided that nothing contained in this sub-section shall render any such person 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.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the 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.

**Explanation.** - For the purposes of this section-

(a) “Company” means anybody corporate and includes a firm or other association of individuals; and

(b) “Director” in relation to a firm, means a partner in the firm.

## CHAPTER – IX

### MISCELLANEOUS

**76. Courts not to set aside or modify assessments except as provided in this Act.** - No suit or other proceeding shall except as expressly provided in this Act, be instituted in any court to set aside or modify any assessment made under this Act or any proceedings under this Act for the recovery of any tax or other amount due under this Act or to stay any such proceedings or recovery.

**77. Bar against attachment in certain cases:-** Notwithstanding anything contained in any other law in force or in any judgment, decree or order of any court, no court or any other authority shall pass any order attaching any amount due to Government from any person under the provisions of this Act.

**78. Assessment etc., not to be questioned in prosecution.-** (1) Any order of assessment made under this Act shall be conclusive evidence in any prosecution or other proceeding.

(2) 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.

**79. Bar of certain proceedings.** - (1) No suit, prosecution or other proceeding shall lie against any officer or servant of the Government for any act done or purporting to be done under this Act, without the previous sanction of the Government.

(2) No officer or servant of the 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 functions imposed by or under this Act.

**79A. Bar against attachment in certain cases:-** Notwithstanding anything contained in any other law in force or in any judgment, decree or order of any court, no court or any other authority shall pass any order attaching any amount from any person, out of the tax collected by such person under the Act and kept with him before it became due to Government.

**79B. Bar against Revision of returns.—**Notwithstanding anything contained elsewhere in this Act, where a case of tax evasion has been detected and proceedings have been initiated against such evasion, the dealer shall not be permitted to revise the returns in respect of the return period covered in the penal proceedings until such proceedings are finalized.

**80. Limitation for certain suits and prosecutions.-** No suit shall be instituted against the Government and no suit, prosecutions or other proceeding shall be instituted against any officer or servant of the 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:

Provided that, in computing the period of limitation under this section, the time taken for obtaining sanction under the sub-section (1) of section 79 shall be excluded.

**81. Power to summon witnesses and cause production of documents.-** An assessing authority or an appellate or revisional authority (including the Appellate Tribunal) shall, for the purposes of this Act, have all the powers



conferred on a court by the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely,-

(a) summoning and enforcing the attendance of any person and examining him on oath or affirmation; and

(b) compelling the production of any document.

**82. Notice to obtain information** – (1) Any officer, not below the rank of an assessing authority, by notice in writing, require any person, whether or not liable to pay tax under the Act. (a) to furnish any information that may be required by the notice, or (b) to attend at the time and place designated in the notice, for the purpose of being examined on oath by such officer, concerning the tax affairs of that person or any other person and for that purpose such officer may require the person examined to produce any book, record or information stored in computer in the control of that person.

**83. Admissibility of micro films, facsimile copies of documents and computer printout as documents and as evidence:** (1) Notwithstanding anything contained in any other law for the time being in force, -

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a computer printout), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question, shall also be deemed to be a document for the purposes of this Act and the rules made there under and shall be admissible in any proceedings there under, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions to in sub-section (1) in respect of a computer print out shall be the following, namely: -

(a) the computer printout containing the statement was produced by the

computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made there under, where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say-

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,-

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and, whether it is so supplied directly or ( with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being, stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

**Explanation** - For the purposes of this section, -

(a) "Computer" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information

shall be a reference to its being, derived there from by calculation, comparison or any other process.

**84. Presumption as to documents in certain cases:-** Where any document-

(i) is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or

(ii) has been received from any place within or outside the state India in the course of investigation of any offence alleged to have been committed by any person under this Act, and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall-

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i) also presume, unless the contrary is proved, the truth of the contents of such document.

**85. Prohibition of disclosure of particulars produced before commercial tax authorities.-** (1) All particulars contained in any statement made, return furnished or accounts, registers or documents produced under the provisions of this Act or in the evidence given or affidavit or deposition made in the course of any proceeding under this Act or in any record of any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential and shall not be disclosed.

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

- (i) to any officer of the Commercial Tax Department of the State;
- (ii) for the purpose of prosecution under the Indian Penal Code (Central Act 45 of 1860), or under this Act in respect of any such statement, return, accounts, registers, documents, evidence affidavit or deposition;
- (iii) to any person enforcing the provisions of this Act where it is necessary to disclose the same to him for the purposes of this Act;
- (iv) occasioned by the lawful employment under this Act of any process for the recovery of any demand;
- (v) to a civil court in any suit to which the Government are party and which relates to any matter arising out of any proceeding under this Act;
- (vi) occasioned by the lawful exercise by a public servant of his powers under the Kerala Stamp Act, 1959 (Act 17 of 1959), or the Indian Stamp Act, 1899, (Central Act 2 of 1899), to impound an insufficiently stamped document;
- (vii) to an officer of the Government of India, or the Government of any State or Union Territory in India, if an agreement for disclosure on a reciprocal basis has been entered into between the Government and the Government of India or the Government of the State or Union Territory, as the case may be;
- (viii) to the Director of Statistics or any officer serving under him and authorized by him in this behalf, as may be necessary for conducting statistical survey;
- (ix) to the Director of the Centre for Taxation Studies or any person authorized by him in this behalf, as may be necessary for conducting any research or other studies;
- (x) to an officer of any Department of the Central Government or the Government of Kerala after obtaining –
  - (a) the permission of the Deputy Commissioner of the district, where such particulars are to be furnished by an officer subordinate to the

Deputy Commissioner; and

(b) the permission of the Commissioner, where such particulars are to be furnished by an Assistant Commissioner(Appeals) or Assistant Commissioner or by a Deputy Commissioner (Appeals) or by a Deputy Commissioner:

Provided that such particulars shall be furnished under clause (x) only in exceptional cases and that any officer obtaining such particulars shall keep them as confidential and use them only in the lawful exercise of the powers conferred by or under any enactment.

(xi) to an officer of Government of India or the Government of any State or Union Territory of India, where such disclosure is on the basis of the decision of the Empowered Committee.

(3) Notwithstanding anything contained in sub-section (1),the Commissioner may display the details of tax paid and the tax defaulted by the dealers on the official website of the Department.

**86. Persons entitled to appear before authority.** - (1)Any person who is entitled or required to appear before any authority other than the High Court in connection with any proceedings under this Act may be represented before such authority, -

(a) by his relative or a person employed by him, if such relative or person is duly authorized by him in writing in this behalf; or

(b) by a legal practitioner; or

(c) by a chartered accountant or Cost Accountant duly authorized by him in writing in this behalf; or

(d) by a sales tax practitioner possessing the prescribed qualifications and duly authorized by him in writing in this behalf.

(e) a member of the Institute of Company Secretaries of India within the meaning of section 2(2) of the Company Secretaries Act, 1980 (Central Act 56 of 1980). Explanation:- For the purpose of this sub-section the expression “a person employed by him” shall mean a person who is a full time employee under the person on whose behalf he is appearing or part-time employee holding

Diploma in Sales Taxation issued by the Centre for Taxation Studies.

(3) The authorization referred to in sub-section (1) shall be in such form and accompanied by such fee as may be prescribed.

**87. Rounding off of turnover, tax etc.-** (1) The amount of taxable turnover computed in accordance with the provisions of this Act shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten, and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten, and the amount so rounded off shall be deemed to be the taxable turnover of the dealer for the purposes of this Act.

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

**88. Service of notice.-** Any notice required to be served on, or given to, any person under this Act or the rules made there under shall be deemed to be duly served or given: -

(a) if the notice is addressed to that person and is given or tendered to him; or

(b) where that person cannot be found if it is affixed on some conspicuous part of his last known place of residence or business or is tendered to some adult member of his family; or

(c) if it is sent by registered post or by courier service to that person at his last known place of residence or business, or

(d) by sending by FAX if the FAX Number is known; or

(e) by sending it by e-mail if the e-mail address is given by the person; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence or by publication in a newspaper.

**89. Refunds.-** (1) When an assessing authority finds, on completion of annual assessment, that a dealer has paid tax in excess of what is due from him, it shall refund the excess to the dealer.

(2) When an assessing authority receives an order from any appellate or revisional authority or any officer authorised under sub-section (5) of section 47, to make a refund of tax or penalty or cash security paid by a dealer or any other person, it shall effect the refund to such dealer or such other person, as the case may be.

(3) Notwithstanding anything contained in sub-section (1) and (2), the assessing authority shall have power to adjust the amount due to be refunded under sub-section (1) or subsection (2), or under the provisions of the Kerala General Sales Tax Act, 1963 (15 of 1963); towards the recovery of any amount due, on the date of adjustment, from the dealer.

(4) In case refund under sub-section (1) or sub-section (2) or adjustment under sub-section (3) is not made within ninety days of the date of completion of assessment or, as the case may be, within ninety days of the date of receipt of the order in appeal or revision or the date of expiry of the time for preferring appeal or revision, the dealer shall be entitled to claim interest at the rate of ten percent per annum on the amount due to him from the date of expiry of the said period up to the date of payment or adjustment.

**90. Power to withhold refund in certain cases:-** (1) Where an order giving rise to refund is the subject matter of appeal or any other proceedings under the Act and the assessing authority is of the opinion that the grant of refund is likely to prejudice the public revenue, it may, for good and sufficient reason to be recorded in writing withhold the refund until such time as it deem proper.

(2) Where a refund is withheld and the matter is finally settled in favour of a dealer, a simple interest of six percent per annum shall be paid for the period commencing from the first day of the order determined in



favour of the dealer ending the date on which the refund is made., where the assessing authority fails to make the refund within ninety days from the date of receipt of such order by it.

**91. Appropriation of payment.** - Where any tax or any other amount due or demanded under the Act is paid by any dealer or other person, the payments so made shall be appropriated first towards interest accrued on such tax or other amount under sub-section (5) of section 31 on of payment and the balance available shall be appropriated towards principal outstanding.

**92. Power to make rules.**- (1) The Government may, by notification in the Gazette, make rules either prospectively or retrospectively 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) determining the total turnover, taxable turnover or turnover of a dealer for the purposes of this Act;

(c) the assessment to tax under this Act of business which is discontinued or the ownership of which has changed;

(d) the assessment to tax under this Act of business owned by minors and other incapacitated persons or by persons residing outside the state;

(e) 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 appointed by or under any order of a court;

(f) the administration of the notified areas and the barriers erected and the check posts set up under this Act and the regulation of the work therein;

(g) the disposal of goods confiscated under this Act and the procedure for dealing with the proceeds thereof;

(h) requiring the submission of returns;

(i) the form in which and the particulars to be contained in any declaration to be given under this Act, the authority from whom, the conditions subject to which and the fees subject to payment of which such form of declaration may be obtained, the manner in which such form shall be kept in custody and records relating thereto maintained, the manner in which any such form may be used and any such declaration may be furnished;

(j) the duties and powers of officers appointed for the purpose of enforcing the provisions of this act;

(k) the term of office, and conditions of service of the members of the Appellate Tribunal and the Settlement Commission ;

(l) the manner in which and the extent to which, tax paid may be refunded; (m) the issue of bills or cash memoranda, the class or classes of dealers who should maintain counterfoils for the same and the particulars to be shown in and the manner of maintenance of such counterfoils and the time for which they should be preserved;

(n) the maintenance of purchase bills or accounts of purchases and sales by dealers and the time for which they should be preserved;

(o) 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;

(p) the extent of liability of commission agent, broker, delcredare agent, auctioneer or any other mercantile agent, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;

(q) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act;

(r) any other matter for which there is no provision or on sufficient

provision in this Act and for which provision is, in the opinion of the Government are necessary for giving effect to the purposes of this Act.

(3) Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rules or decides that this rule should not be made, the rule 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 rules.

**93. Power to amend Schedules.-** (1) The Government may, by notification in the Gazette add, omit or amend any entry in any of the Schedule to this Act either prospectively or retrospectively, but not so as to enhance the rate of tax in any case.

(2) Where a notification has been issued under sub-section (1), there shall, unless the notification is in the meantime rescinded, be introduced in the Legislative Assembly, as soon as may be, but in any case during the next session of the Assembly following the date of the issue of the notification a Bill on behalf of the Government, to give effect to the addition, omission or amendment of the entries in the Schedules specified in the notification, and the notification, shall cease to have effect when such Bill is passed into a law, whether with or without modifications, but, without prejudice to the validity of anything previously done there under:

Provided that, if a notification under sub-section (1) is issued when the Legislative Assembly is in session, such a Bill shall be introduced in the Legislative Assembly during that session itself:

Provided further that where for any reason a Bill as aforesaid could not be passed into a law within six months from the date of its introduction in the Legislative Assembly, the notification shall, without prejudice to anything previously done there under cease to have effect on the expiration of the said period of six months.

(3) All references made in this Act to any Schedule shall be construed as references to that Schedule as for the time being amended in exercise of the powers conferred by this Section.

**94. Power of Authority to issue clarification.-** (1) If any dispute arises, otherwise than in a proceedings before any appellate or revisional authority or in any court or tribunal, as to whether, for the purpose of this Act, -

(a) any person is a dealer; or

(b) any transaction is a sale; or

(c) any particular dealer is required to be registered; or

(d) any tax is payable in respect of any sale or purchase, or if tax is payable, the point and the rate thereof; or

(e) any activity carried out in any goods amounts to or results in the manufacture of goods; such dispute an authority consisting of three officers in the rank of Joint Commissioner or Deputy Commissioner nominated by the Commissioner on application by a dealer or any other person.

(1A) If the dispute relates to the tax rate of a commodity, the details of the first seller, or the manufacturer of such goods in the State, as the case may be, shall be furnished by the applicant and they shall be made necessary parties to such application.”.

(2) The Authority shall decide the question after giving the parties to the dispute a reasonable opportunity to put forward their case and produce evidence and after considering such evidence and hearing the parties. Commissioner may considering the fact in issue decide whether such orders have prospective operation only.

(3) Every application by a dealer or any other person other than an officer acting on behalf of the Government under sub-section (1) shall be in such form as may be prescribed and shall be accompanied by a fee of five hundred rupees.

(4) Where any question arises from any order already passed or any proceedings recorded under this Act, or any earlier law no such question shall be

entertained for determination under sub- section (1).

(5) Every order issued by the authority under sub- section (1) shall, subject to the provisions of section 62, be final and binding on the applicant and all authorities subordinate to the Commissioner, including Deputy Commissioner (Appeals) and Assistant Commissioner (Appeals)",

(6) If no unanimous decision is arrived at by the authority, the matter shall be referred to the Commissioner who shall decide the same as if the application is filed before him.

(7) If the order passed by the authority mentioned in sub-section (1) is found to be prejudicial to the revenue; the Commissioner may exercise his powers of suomoto revision, and may cancel, amend or vary such order:

Provided that no order shall be passed under this sub-section, until the party is given an opportunity of being heard.

(8) Where the Authority/Commissioner 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.

**95. Change of an incumbent of an office:-** Whenever in respect of any proceedings under this Act, any prescribed authority ceases to exercise jurisdiction and is succeeded by another who has and exercised jurisdiction, the authority or officer so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor

Provided that before proceeding under this section the authority shall give the person affected thereby an opportunity of being heard.

**96. Time limit for disposal of appeal or revision:-** Every appeal or revision filed under the provisions of this Act, shall be disposed of within one year from the date of filing of such appeal or revision as the case may be.

Provided that the period during which the proceedings are stayed by any competent authority shall be excluded for the purpose of computing the period of one year.

**97. Power to remove difficulties.-** (1) If any difficulties arise in giving effect to the provisions of this Act, the Government may, as occasion may require, by order, do anything, which appears to them necessary for the purpose of removing the difficulty.

2) All orders made under sub-section (1) shall, as soon as may be after they are made, be laid before the Legislative Assembly for a period of not less than fourteen days and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

**98. Kerala General Sales Tax Act, 1963(15 of 1963) to have limited application:-** (1) From the date of commencement of this Act, the Kerala General Sales Tax Act, 1963(15 of 1963) shall apply only in respect of goods included in the Fourth Schedule to this Act.

(2) Goods taxable under the said Act at the point of last purchase in the State, which are held as closing stock on the date preceding the date of coming into force of this Act, shall be deemed to have acquired the quality of last purchase under the provisions of the Kerala General Sales Tax Act, 1963 on such date and tax shall be levied accordingly.

Provided that, notwithstanding anything contained in sub-section (2), the dealer who had paid tax on such stock under this Act shall not be liable to pay any tax under the Kerala General Sales Tax Act, 1963. But such dealer shall be liable to pay interest for such belated payments under the provisions of this Act.

(3) Notwithstanding anything in sub-section (1), Government may permit the use of the registration certificates issued under the provisions of the said Act and also of such forms prescribed by the rules made there under by any dealer to whom the provisions of this Act applies, till the thirtieth day of June, 2005

(4) Notwithstanding anything contained in sub-section (1), but subject to the provisions of section 32, in relation to any goods covered by this Act—

(i) any authority appointed under the provisions of Kerala General

Sales Tax Act, 1963 (15 of 1963) shall have power to initiate and complete any proceedings under the said Act for the assessment, levy, collection and recovery of tax, penalty or other amount chargeable under the said Act including that of escaped turnover or to continue any such proceedings pending at the commencement of this Act for any period prior to the date of commencement of this Act and the provisions relating to appeal, revision or review under this Act shall apply to such proceedings as if it were a proceeding completed under this Act;

(ii) any right, title, obligation or liability already acquired, accrued or incurred under the Kerala General Sales Tax Act, 1963 (15 of 1963) for any such previous period shall remain unaffected;

(iii) any application, appeal, revision or other proceedings made or preferred or initiated by any officer or authority under the said Act and pending at the commencement of this Act, shall, after such commencement be transferred to and disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceedings under this Act as if it had been in force on the date on which such application, appeal, revision or other proceedings was made or preferred.

(5) Notwithstanding anything contained in sub-section (1) nothing shall affect the power of the Government to issue a notification under section 10 of the Kerala General Sale Tax Act, 1963 for a period prior to the commencement of the Kerala Value Added Tax Act, 2003.

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