

In pursuance of clause(3) of article 348 of the Constitution of India, the following translation in English of the Maharashtra Value Added Tax Act,2005 (Mah IX of 2005) is hereby published under the authority of the Governor.

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

A.M.SHINDEKAR,
Secretary to Government,
Law and Judiciary Department

MAHARASHTRA ACT No. IX OF 2005

*(First published ,after having received the assent of the President, in the
'Maharashtra Government Gazette' n the 9th March 2005)*

An Act to consolidate and amend the laws relating to the levy and collection of tax on the sale or purchase of certain goods in the State of Maharashtra.

WHEREAS it is expedient to consolidate and amend the laws relating to the levy and collection of tax on the sale or purchase of certain goods in the State of Maharashtra: it is hereby enacted in the Fifty-third year of the Republic of India, as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Maharashtra Value Added Tax Act, (Levy and Amendment) Act, 2005 .
(2) It extends to the whole of the State of Maharashtra.
(3) It shall come into force with effect from the 1st of April, 2005.
2. In this Act, unless the context otherwise requires,—
 - (1) “agriculture”, with all its grammatical variations and cognate expressions, includes floriculture, horticulture, the raising of crops, grass or garden produce, and also grazing; but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forests or rearing of seedlings or plants;
Explanation. —For the purposes of this clause and clause (4), the expression “forest” means the forest to which the Indian Forest Act, 1927, in its application to the State of Maharashtra, applies;
 - (2) “agriculturist” means a person who cultivates land personally, for the purpose of agriculture;
 - (3) “appointed day” means the 1st of April ,2005.
 - (4) “business” includes, --

- (a) any service;
- (b) any trade, commerce or manufacture;
- (c) any adventure or concern in the nature of service, trade, commerce or manufacture;

whether or not the engagement in such service, trade, commerce, manufacture, adventure or concern is with a motive to make gain or profit and whether or not any gain or profit accrues from such service, trade, commerce, manufacture, adventure or concern.

Explanation. For the purpose of this clause,—

- (i) the activity of raising of man-made forest or rearing of seedlings or plants shall be deemed to be business;
- (ii) any transaction of sale or purchase of capital assets pertaining to such service, trade, commerce, manufacture, adventure or concern shall be deemed to be a transaction comprised in business;
- (iii) sale or purchase of any goods, the price of which would be credited or, as the case may be, debited to the profit and loss account of the business under the double entry system of accounting shall be deemed to be transactions comprised in business;
- (iv) any transaction in connection with the commencement or closure of business shall be deemed to be a transaction comprised in business;

(5) “capital asset” shall have the same meaning as assigned to it, from time to time, in the Income Tax Act, 1961, but the said expression shall not include jewelry held for personal use or property not connected with the business;

(6) “Commissioner” means the person appointed to be the Commissioner of Sales Tax for the purposes of this Act;

(7) “to cultivate personally”, with its grammatical variations and cognate expressions, means to carry on any agricultural operation on one’s own account,—

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

of one's family.

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

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

(8) “dealer” means any person who for the purposes of or consequential to his engagement in or, in connection with or incidental to or in the course of, his business buys or sells, goods in the State whether for commission, remuneration or otherwise and includes,-

(a) a factor, broker, commission agent, del-credere agent or any other mercantile agent, by whatever name called, who for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of the business, buys or sells any goods on behalf of any principal or principals whether disclosed or not;

(b) an auctioneer who sells or auctions goods whether acting as an agent or otherwise or, who organizes the sale of goods or conducts the auction of goods whether or not he has the authority to sell the goods belonging to any principal whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;

(c) a non resident dealer or as the case may be, an agent. residing in the State of a non-resident dealer, who buys or sells goods in the State for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of, the business.

(d) any society, club or other association of persons which buys goods from, or sells goods to, its members;

Explanation- For the purposes of this clause, each of the following persons, bodies and entities who sell any goods whether by auction or otherwise, directly or through an agent for cash, or for deferred payment, or for any other valuable consideration, shall, notwithstanding anything contained in clause (4) or any other provision of this Act,

be deemed to be a dealer, namely:-

- (i) Customs Department of the Government of India administering the Customs Act, 1962;
- (ii) Departments of Union Government and any Department of any State Government;
- (iii) Incorporated or unincorporated societies, clubs or other associations of persons;
- (iv) Insurance and Financial Corporations, institutions or companies and Banks included in the Second Schedule to the Reserve Bank of India Act, 1934;
- (v) Local authorities;
- (vi) Maharashtra State Road Transport Corporation constituted under the Road Transport Corporation Act, 1950;
- (vii) Port Trusts;
- (viii) Public Charitable Trusts registered under the Bombay Public Trusts Act, 1950;
- (ix) Railway Administration as defined under the Indian Railways Act, 1989 and Konkan Railway Corporation Limited;
- (x) Shipping and construction companies, air transport companies, airlines and advertising agencies;
- (xi) any other corporation, company, body or authority owned or constituted by, or subject to administrative control, of the Central Government, any State Government or any local authority:

Exception I.—An agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally, shall not be deemed to be a dealer within the meaning of this clause.

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

Exception III. —A transporter holding permit for transport vehicles (including cranes) granted under the Motor Vehicles Act, 1988, which are used or

adopted to be used for hire or reward shall not be deemed to be a dealer within the meaning of this clause in respect of sale or purchase of such transport vehicles or parts, components or accessories thereof.

(9) "declared goods" means declared goods as defined, from time to time, in the Central Sales Tax Act, 1956;

(10) "document" includes electronic record as defined in the Information Technology Act, 2002;

(11) "earlier law" means any of the following laws, that is to say,—

(i) The Bombay Sales of Motor Spirit Taxation Act, 1958,

(ii) The Bombay Sales Tax Act, 1959,

(iii)

(iv) The Maharashtra Sales Tax on the Transfer of the Right to use any goods for any Purpose Act, 1985 and

(v) The Maharashtra Sales Tax on the Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act, 1989,

each of them as amended, from time to time, and includes enactments which have validated anything done or omitted to be done under any of the above-mentioned laws;

(12) "goods" means every kind of moveable property not being newspapers, actionable claims, money, stocks, shares, securities or lottery tickets and includes live stocks, growing crop, grass and trees and plants including the produce thereof including property in such goods attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(13) "importer" means a dealer who brings any goods into the State or to whom any goods are dispatched from any place outside the State;

(14) "legal representative" shall have the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908;

(15) "manufacture", with all its grammatical variations and cognate expressions includes producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods;

(16) "non-resident dealer" means a dealer who effects purchases or sales of any goods in the State, but who has no fixed or regular place of business or residence in the State;

(17) “person” includes an individual, any State Government, the Central Government, any company or society or club or association or body of individuals whether incorporated or not, and also a Hindu Undivided Family, a firm and a local authority and every artificial juridical person not falling within any of the preceding descriptions;

(18) “place of business” includes a warehouse, godown or other place where a dealer stores his goods and any place where the dealer keeps his books of accounts;

(19) “prescribed” means prescribed by the rules or by any notification;

(20) “purchase price” means the amount of valuable consideration paid or payable by a person for any purchase made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged;

Explanation I. —The amount of duties levied or leviable on the goods under the Central Excise Act, 1944, or the Customs Act, 1962 or the Bombay Prohibition Act, 1949 shall be deemed to be part of the purchase price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person.

Explanation II. —Purchase price shall not include tax paid or payable by a person in respect of such purchase.

Explanation III. —Purchase price shall include the amount paid by the purchaser by way of deposit whether refundable or not which has been paid whether by way of a separate agreement or not, in connection with or incidental or ancillary to, the said purchase of goods;

Explanation IV. —Where the purchase is effected by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, purchase price shall be taken to mean, the total consideration for the works contract and for the purpose of levy of tax, purchase price shall be taken to mean, the price as may be determined in accordance with the rules, by making such deduction from the total consideration for the works contract as may be prescribed.

(21) “registered dealer” means a dealer registered under this Act:

(22) “resale” means a sale of purchased goods—

- (i) in the same form in which they were purchased, or
- (ii) without doing anything to them which amounts to, or results in, a manufacture,

and the word “resell” shall be construed accordingly;

(23) “rules” means the rules made under this Act;

(24) “sale” means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge; and the words “sell”, “buy” and “purchase”, with all their grammatical variations and cognate expressions, shall be construed accordingly;

Explanation,—For the purposes of this clause,—

(a) a sale within the State includes a sale determined to be inside the State in accordance with the principles formulated in section 4 of the Central Sales Tax Act, 1956;

(b) (i) the transfer of property in any goods, otherwise than in pursuance of a contract, for cash, deferred payment or other valuable consideration;

(ii) the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) a delivery of goods on hire-purchase or any system of payment by instalments;

(iv) the transfer of the right to use any goods or any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(v) the supply of goods by any association or body of persons incorporated or not, to a member thereof or other valuable consideration;

(vi) the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is made or given for cash, deferred payment or other valuable consideration:

(25) “sale price” means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit

or of installation, when such cost is separately charged.

Explanation 1. —The amount of duties levied or leviable on goods under the Central Excise Act, 1944 or the Customs Act, 1962 or the Bombay Prohibition Act, 1949, shall be deemed to be part of the sale price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person.

Explanation II. — Sale price shall not include tax paid or payable to a seller in respect of such sale.

Explanation III. — Sale price shall include the amount received by the seller by way of deposit, whether refundable or not, which has been received whether by way of a separate agreement or not, in connection with or incidental or ancillary to, the said sale of goods;

Explanation IV: The amount of valuable consideration paid or payable of a dealer for the sale of Drugs specified in entry 29 in Schedule C shall be the maximum retail price printed on the package containing the Drug.

- (26) ‘Schedule’ means the Schedule appended to this Act;
- (27) “service” means any service as may be notified by the State Government, from time to time, in the *Official Gazette*;
- (28) “the State” means the State of Maharashtra;
- (29) “tax” means a sales tax, leviable or as the case may be, payable, under this Act and includes any amount payable by way of composition;
- (30) "tax-free goods" means goods against which the rate of sales tax is shown to be NIL in the Schedule and 'taxable goods' means goods other than tax-free goods;
- (31) “Tribunal” means the Maharashtra Sales Tax Tribunal constituted under section 11;
- (32) “turnover of purchases” means the aggregate of the amounts of purchase price paid and payable by a dealer in respect of any purchase of goods made by him during a given period, after deducting the amount of,—
- (a) purchase price, if any, refunded to the dealer by the seller in respect of any goods purchased from the seller and returned to him within the prescribed period; and
- (b) deposit, if any, refunded in the prescribed period to the dealer by the seller, in respect of any goods purchased by the dealer.

Explanation I. —In respect of goods delivered on hire-purchase or any system of payment by instalment or in respect of the transfer of the right to use any goods for any purpose (whether or not for a specified period) the amounts of purchase price paid or payable during a given period shall mean the amounts paid or, as the case may be, due and payable during the said Period.

Explanation II -

(33) “turnover of sales” means the aggregate of the amounts of sale price received and receivable by a dealer in respect of any sale of goods made during a given period after deducting the amount of —

(a) sale price, if any, refunded by the seller, to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period; and

(b) deposit, if any, refunded in the prescribed period, by the seller to a purchaser in respect of any goods sold by the dealer.

Explanation I. —In respect of goods delivered on hire-purchase or any system of payment by instalment or in respect of the transfer of the right to use any goods for any purpose (whether or not for a specified period) the amounts of sale price received or receivable during a given period shall mean the amounts received or as the case may be, due and payable during the said period;

Explanation II.....

Explanation III. —Where the registration certificate is cancelled, the amounts of sale price in respect of sales made before the date of the cancellation order, received or receivable after such date, shall be included in the turnover of sales during a given period;

(34) "vehicle" means a goods carriage as defined in the Motor Vehicles Act, 1988; and

(35) “year” means the financial year.

CHAPTER II

INCIDENCE AND LEVY OF TAX

3. (1) Every dealer, who, immediately before the appointed day, holds a valid or effective certificate of registration or license under any of the earlier laws or, as the case may be, who is liable to pay tax under any of the earlier laws, in the year ending immediately before the

appointed day shall, if his turnover of sales or purchases has, in the said year under any of such earlier laws, exceeded rupees five lakh, or, as the case may be, if he is an importer in the said year and his turnover of sales or purchases in the said year had exceeded rupees one lakh, shall be liable to pay tax, with effect from the appointed day, in accordance with the provisions of this Act, till his certificate or licence is duly cancelled under this Act.

Explanation.—For the purposes of this sub-section, the expressions “turnover of sales”, “turnover of purchases” and “importer” shall have the respective meanings assigned to them under the relevant earlier laws.

- (2) A dealer to whom sub-section (1) does not apply and whose turnover, of all sales made, during the year commencing on the appointed day or any year subsequent thereto, first exceeds the relevant limit, specified in sub-section (4), shall, until such liability ceases under sub-section (3), be liable to pay tax under this Act with effect from the 1st day of April of the said respective year:

Provided that, a dealer shall not be liable to pay tax in respect of such sales as take place during the period commencing on the 1st day of April of the said respective year upto the time when his turnover of sales (.....), as computed from the 1st day of April of the said respective year, does not exceed the relevant limit applicable to him under sub-section (4).

- (3) Every dealer who has become liable to pay tax under this Act, shall continue to be so liable until his registration is duly cancelled; and upon such cancellation his liability to pay tax, other than tax already levied or leviable, shall remain ceased until his turnover of sales (...) again, first exceeds the relevant limit specified in sub-section (4) or, as the case may be, until he becomes liable to pay tax under sub-section (7), (8) or (9).

- (4) For the purposes of this section, the limits of turnover shall be as follows

- (a) *Limit of turnover Rs. 1,00,000.—* in the case of a dealer, who is an importer, and the value of taxable goods sold or purchased by him during the year is not less than Rs. 10,000/-.
- (b) *Limit of turnover Rs. 5,00,000.—* in any other case, where the value of taxable goods sold or purchased by him during the year is not less than

Rs. 10,000.

- (5) For the purpose of calculating the limit of turnover for liability to tax,—
- (a) except as otherwise expressly provided, the turnover of all sales and purchases shall be taken, whether such sales or purchases are of taxable goods or not;
 - (b) the turnover shall include all sales(...)made by the dealer on his own account, and also on behalf of his principals whether disclosed or not;
 - (c) in the case of an auctioneer, in addition to the turnover, if any, referred to in clauses (a) and (b), the turnover shall also include the price of the goods auctioned by him for his principal, whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal, if the price of such goods is received by him on behalf of his principal;
 - (d) in the case of an agent of a non-resident dealer, in addition to the turnover, if any, referred to in clause (a), (b) or (c), the turnover shall also include the sales (...) of the non-resident dealer effected in the State.
- (6) Notwithstanding anything contained in any contract or any law for the time being in force, but subject to the provisions of this Act, any person covered by sub-clauses (a), (b), or (c) of clause (8) of section 2 shall be liable to pay tax under this Act, whether or not the principal is a dealer and whether or not such principal is liable to pay tax under this Act and whether or not the principals are disclosed.
- (7) Any person who at any time after the appointed day becomes liable to pay tax under the Central Sales Tax Act, 1956, but who is not liable to pay tax under the other provisions of this section shall be liable, to pay tax on the sales effected by him on and from the day on which he becomes so liable to pay tax under the Central Sales Tax Act. 1956 and accordingly nothing contained in the proviso to sub-section (2) shall apply to him in any year.
- (8) Where a dealer liable to pay tax under this Act is succeeded in the business by any person in the manner described in clause (a) of sub-section (1) or sub-section (4) of section 44, then such person shall, notwithstanding anything contained in this section, be liable to pay tax on the sales of goods effected by him on and after the date of such succession and accordingly nothing contained in the proviso to sub-section (2) shall apply to him in any year.
- (9) Any person who is not liable to pay tax under the foregoing

provisions of this section, but has been voluntarily registered under the provisions of this Act, shall be liable to pay tax from the date of effect of the certificate of registration duly granted to him and accordingly nothing contained in the proviso to sub-section (2) shall apply to him in any year.”

4. Subject to the provisions of this Act and rules, there shall be paid by every dealer or, as the case may be, every person, who is liable to pay tax under this Act, the tax or taxes leviable in accordance with the provisions of this Act and rules.

5. Subject to the other provisions of this Act, and the conditions or exceptions, if any, set out against each of the goods specified in column (3) of Schedule A, no tax shall be payable on the sales of any goods specified in column (2) of that schedule.

6. There shall be levied a sales tax on the turnover of sales of goods specified in column (2) in the schedules B, C, D or, as the case may be, E at the rates set out against each of them in column (3) of the respective Schedule.

7. Where any goods are sold and such goods are packed in any material, the tax shall be leviable under section 6 on the sales of such packing material, whether such materials are separately charged for or not, at the same rate of tax, if any, at which tax is payable on the sales of the goods so packed.

8. (1) Nothing in this Act or the rules or the notifications shall be deemed to impose or authorise the imposition of a tax or deduction of tax at source on any sale or purchase of any goods, where such sale or purchase takes place,—

(a) (i) outside the State ; or

(ii) in the course of the import of the goods into the territory of India, or the export of the goods out of such territory ; or

(b) in the course of inter-State trade or commerce, and the provisions of this Act and the said rules and notifications shall be read and construed accordingly.

Explanation. —For the purpose of this section, whether a sale or purchase takes place- outside the State, or in the course of the import of the goods into the territory of India or export of

the goods out of such territory, or in the course of inter-State trade or commerce, shall be determined in accordance with the principles specified in sections 3, 4 and 5 of the Central Sales Tax Act, 1956.

- (2) In accordance with the notification issued by the Central Government in exercise of its powers under section 3 of the Foreign Air Craft (Exemption from Taxes and Duties on Fuel) Act, 2002, no tax shall be levied on the sales of fuel and lubricants which are filled into receptacle forming part of any aircraft registered in a country other than India, if—
- (a) the said country is a party to the Convention on International and Civil Aviation, 1944; and
 - (b) the said country has entered into in Air Services agreement with India; and
 - (c) the aircraft is operating on a schedule or non-scheduled service to or from India.
- (3) The State Government may by general or special order published in the Official Gazette in this behalf, and subject to such conditions and restrictions as may be specified in the said order, exempt from payment of tax any class or classes of sales of goods made by any unit in the Special Economic Zone, a developer of the Special Economic Zone, any hundred percent export oriented unit or any unit in the Software Technology Park or any unit in the Electronic Hardware Technology Park.

Explanation.-- For the purposes of this sub-section, --

- (a) "a unit in the Special Economic Zone" means a unit,-
- (i) situated in a zone which the Central Government or, as the case may be the State Government, and
 - (ii) which has been certified in this behalf by the Commissioner.
- (b) "a unit in the Software Technology Park" means a unit,-
- (i) set up in accordance with the Software Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Industry , and
 - (ii) which has been certified in this behalf by the Commissioner.
- (c) "a unit in the Electronic Hardware Technology Park" means a unit,-
- (i) set up in accordance with the Electronic Hardware Technology Park Scheme notified by the Government of India in the Ministry of Commerce and Industry, and

- (ii) which has been certified in this behalf by the Commissioner.
- (d) "a hundred per cent, export oriented unit" means a unit, -
 - (i) which has been approved as a hundred per cent. export oriented unit by the Board appointed in this behalf by the Central Government in exercise of the power conferred by section 14 of the Industries (Development and Regulation) Act, 1951 and the rules made under that Act, and
 - (ii) which has been certified in this behalf by the Commissioner."
- (4) The State Government may by general or special order published in the Official Gazette, on this behalf and subject to such conditions and restrictions as may be specified in the order, provide for exemption from payment of the whole of tax in respect of any class or classes of sales of goods effected by a unit holding a Certificate of Entitlement as defined under section 88, to whom incentives are granted under any Package Scheme of Incentives, by way of exemption from payment of tax.

9. (1) The State Government may, from time to time, by notification in the Official Gazette,--

- (a) amend the Schedule by adding or modifying or deleting any entry therein and thereupon the Schedule shall stand amended accordingly for the purpose of levy of tax;
- (b) provide for reducing or enhancing the rates of tax or for specifying the rates of tax where NIL rates are specified, and thereupon the Schedule shall stand amended for the purposes of this Act:

Provided further that, no notification which provides for enhancement of rate of tax shall be issued after the expiry of the period of two years from the appointed day and not more than one such notification shall be issued within such period.

(.....)

(2) The provisions contained in sub section (6) of section 83 regarding rules made by the State Government shall apply *mutatis mutandis* to any notification issued under sub-section (1) as they apply to the rules made by the State Government.

CHAPTER III

SALES TAX AUTHORITIES AND TRIBUNAL

- 10. (1) For carrying out the purposes of this Act, the State Government shall appoint an officer to be called the Commissioner of Sales Tax.
- (2) Likewise, the State Government may appoint such number of

Additional Commissioners of Sales Tax, and such number of,-

- (a) Joint Commissioners,
 - (b) Senior Deputy Commissioners,
 - (c) Deputy Commissioners,
 - (d) Assistant Commissioners,
 - (e) Sales Tax Officers, and
 - (f) other officers and persons, and give them such designations, as the Government deems necessary.
- (3) The Commissioner shall have jurisdiction over the whole of the State (...). All other officers shall have jurisdiction over the whole of the State or over such local areas as the Commissioner may, by notification in the *Official Gazette*, specify.
- (4) The Commissioner shall have and exercise all the powers and perform all the duties, conferred or imposed on the Commissioner by or under this Act, and the Additional Commissioner or Additional Commissioners of Sales Tax, if any be appointed, shall, save as otherwise directed by the Commissioner by notification in the *Official Gazette*, have and exercise, within his or their jurisdiction, all the powers and perform all the duties, conferred or imposed on the Commissioner, by or under this Act.
- (5) A Joint Commissioner shall, save as otherwise directed by the Commissioner by notification in the *Official Gazette*, have and exercise, in the area within his jurisdiction, all the powers, and shall perform all the duties, conferred or imposed on the Commissioner, by or under this Act.
- (6) Senior Deputy Commissioners, Deputy Commissioners, Assistant Commissioners, Sales Tax Officers, other officers and persons shall, within their jurisdiction, exercise such of the powers and perform such of the duties of the Commissioner under this Act, as the Commissioner may, subject to such conditions and restrictions as he may, by general or special order impose, delegate to them either generally, or as respects any particular matter or class of matters by an order notified in the *Official Gazette*
- (7) The State Government may, subject to such restrictions and conditions, if any, as it may impose, by notification in the *Official Gazette*, delegate to the Commissioner the powers (not being the powers of the appointment of Additional Commissioner

or Joint Commissioner) conferred on the Government by sub-section (2).

- (8) No person shall be entitled to call in question in any proceeding, any exercise of power including the territorial jurisdiction of any officer or person appointed under sub-section (2), after the expiry of the period of thirty days from the date of receipt by such person of any communication, intimation, order or notice under this Act or under any earlier law, issued by such officer or person. If within the period aforesaid, an application in writing in the prescribed form raising an objection as to such exercise of power by or the jurisdiction of any such officer or person is made to such officer or person, he shall refer the question to the Commissioner, who shall, after giving the applicant a reasonable opportunity of being heard, make an order determining the question. The order made by the Commissioner shall be final.
- (9) All officers and persons appointed under sub-section (2) shall be subordinate to the Commissioner; and the subordination of officers other than the Commissioner, and of persons, amongst themselves shall be such as may be prescribed.
- (10) The Commissioner may, from time to time, issue such instructions and directions as he may deem fit to the authorities and officers subordinate to him for carrying out the purposes of this Act, and such authorities and officers shall observe and follow such instructions and directions of the Commissioner:

Provided that, no such instructions or directions shall be issued,—

- (i) so as to require any authority to pass a particular order or to dispose of a particular case in a particular manner; or
- (ii) so as to interfere with the discretion of the appellate authorities in any particular case:

Provided further that, if the Commissioner is of the opinion that it is necessary in the public interest so to do, he may cause such instructions and directions to be published and circulated for general information.

11. (1) There shall be a Tribunal to be called “the Maharashtra Sales Tax Tribunal”. The Tribunal shall consist of such number of members appointed by the State Government as the Government may, from time to time, consider necessary for the proper discharge of the functions conferred on the Tribunal by or under this Act.

- (2) The State Government shall appoint one of the members of the Tribunal to be the President thereof on the basis of his seniority in the Judicial Service.
- (3) The qualification and the terms of office of the members of the Tribunal shall be such as may be prescribed, and a member shall hold office for such period as may be prescribed or as the State Government may, by special order in his case, specify.
- (4) Any vacancy of the member of the Tribunal shall be filled up by the State Government as soon as practicable.
- (5) The functions of the Tribunal may, be discharged by any of the members sitting either singly, or in Benches of two or more members, as may be determined by the President.
- (6) If the members of a Bench are divided, the decision shall be the decision of the majority if there be a majority; but if the members are equally divided, they shall State the point or points on which they differ, and the case shall be referred by the President of the Tribunal for hearing on such point or points to one or more of the other members of the Tribunal, including himself and such point or points shall be decided according to the majority of the members of the Tribunal who heard the case including those who first heard it.
- (7) During the course of any proceedings, if a Bench is of the opinion that any earlier decision of any Bench on any point or issue requires reconsideration, or where such Bench is inclined to take a decision on any point or issue different than the decision earlier taken by any Bench then such Bench shall refer the point or the issue to the President for formation of a larger Bench. The president shall thereupon form a larger Bench of such members of the Tribunal as he may determine. Such larger Bench shall, as far as practicable, be presided over by the President. The point or the issue shall be decided according to the decision of the majority of the members constituting such larger Bench. Where any member including the President is sitting singly he may in similar circumstances refer the matter to the President for formation of a larger Bench.
- (8) The Tribunal shall have power towards costs after giving the dealer or person, as the case may be, a reasonable opportunity of being heard, and the amount of such costs shall be recoverable from the dealer or person ordered to pay the same in the manner provided in this Act for recovery of arrears of tax.

- (9) The Tribunal shall, with the previous sanction of the State Government, for the purpose of regulating its procedure including the place or places at which the Tribunal, the Benches or the members thereof shall sit and dispose of its business, make regulations consistent with the provisions of this Act rules and notifications.
- (10) The regulations made under sub-section (9) shall be published in the *Official Gazette*.

12. (1) The Commissioner may.—

- (i) on receipt of any complaint in the prescribed form from any dealer or person liable to pay tax under this Act or from any authority appointed under section 10, that any particular authority has made in the proceedings of such dealer or person a false or vexatious order or has taken any action under this Act vindictively or has vindictively not acted within a reasonable time upon any application provided for by or under this Act, or
- (ii) on receipt of a report from the Tribunal that, a particular authority has knowingly or willfully under-assessed any dealer or person or has passed a false or vexations order or has taken any action under this Act vindictively, or has vindictively not acted any reasonable time upon any application provided for, by or under this Act, or
- (iii) on his own motion, if he has reason to believe that any authority has passed such order or taken such action or has made such under-assessment, or has not so acted upon any application(.....) initiate appropriate enquiry or action in the matter, and if in his opinion, prima facie case against such particular authority or officer exists, he may initiate appropriate action against such authority under the Maharashtra Civil Services (Conduct) Rules, 1979, or the Maharashtra Civil Services (Discipline and Appeal) Rules. 1979, or any other relevant rules for the time being in force. The Commissioner shall within one year of the receipt of the complaint referred to in clause (i) or report referred to in clause (ii), send an intimation to the person or dealer making the said complaint or to the Tribunal, stating therein whether he has decided to initiate or has initiated any action against the concerned authority or officer.

(2) The Commissioner may, on finding that any complaint made by any dealer or person is false or mischievous or has been made

with a view to defeating the application or purposes of this Act, within one year of the receipt of the complaint, after giving the person or the dealer a reasonable opportunity of being heard, impose on him such fine not exceeding five thousand rupees as he deems fit and the fine so levied may be recovered in the manner provided in this Act for recovery of arrears of tax.

13. The Commissioner and all officers and persons appointed under section 10 and all the members of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal code.

14. (1) In discharging their functions by or under this Act, the Tribunal and the Commissioner shall have all the powers of a Civil Court for the purpose of,—

(a) proof of facts by affidavit;

(b) summoning and enforcing the attendance of any person, and examining him on oath or affirmation;

(c) compelling the production of documents; and

(d) issuing commissions for the examination of witnesses.

(2) In the case of any affidavit to be made for the purposes of this Act, any officer appointed by the Tribunal or the Commissioner may administer the oath to the deponent.

(3) Without prejudice to the provisions of any other law for the time being in force, where a person, to whom a summons is issued by the Tribunal or the Commissioner either to attend to give evidence or produce books of accounts, registers or other documents at a certain place and time, intentionally omits to attend or produce the books of accounts, registers or documents at the place and time, the Tribunal or, the case may be, the Commissioner, may impose on him such fine not exceeding five thousand rupees as it or he thinks fit; and the fine so levied may be recovered in the manner provided in this Act for recovery of arrears of tax:

Provided that, before imposing any such fine, the person concerned shall be given a reasonable opportunity of being heard.

(4) When any documents are produced by a person or dealer on whom the summons was issued by the Commissioner and the Commissioner is of the opinion that such dealer or any other dealer has evaded or is attempting to evade the payment of any tax due from him and the documents produced by such dealer or person are necessary for establishing the case against such dealer, the Commissioner may, for reasons to be recorded in

writing, impound the documents and shall grant a receipt for the same and retain the same for so long as may be necessary in connection with the proceedings under this Act or for a prosecution;

Provided that, if the original documents are required by any statutory authority for any official purpose, then the said documents shall be made available to such authority for such purpose for such duration as may be required.

15. No suit, prosecution or other legal proceedings shall lie against any servant of the Government for anything which is in good faith done or intended to be done under this Act, the rules or notifications.

CHAPTER IV

REGISTRATION

16. (1) No dealer shall, while being liable to pay tax under this Act, be engaged in the business as a dealer, unless he possesses a valid certificate of registration as provided by this Act:

Provided that, the provisions of this sub-section shall be deemed not to have been contravened, if the dealer having applied, within the prescribed time, for such registration as provided in this section, is engaged in such business:

Provided further that, if any dealer, holds the certificate of registration granted under the Bombay Sales Tax Act, 1959, which is effective or valid immediately before the appointed day, it shall not be necessary for him to apply for a fresh certificate under this section so long as the said certificate is not duly cancelled under this Act:

Provided also that, a dealer holding an effective certificate of registration or, as the case may be, a licence granted before the appointed day, under any laws other than the Bombay Sales Tax Act, 1959, shall, notwithstanding the fact that he is holding such effective certificate be required to apply for grant of certificate of registration under this section.

(2) Every dealer, required by sub-section (1) to possess a certificate of registration or one who voluntarily desires to get registered shall apply in the prescribed manner to the prescribed authority for grant of such registration.

(3) If the prescribed authority, after scrutiny of the application and after such inquiry as it deems fit, is satisfied that the application for registration is in order and the prescribed conditions, if any, are fulfilled, shall register the applicant and issue to him a certificate of registration in the prescribed form:

Provided that, the prescribed authority, on finding that the application is not complete or that the information or documents prescribed for grant of registration certificate have not been furnished, or, (.....) the prescribed conditions are not fulfilled, may, after giving the applicant a reasonable opportunity of being heard, reject the application for reasons to be recorded in writing.

(4) The Commissioner may, after considering any information furnished under any of the provisions of this Act or otherwise received, amend from time to time, any certificate of registration.

(5) A person or a dealer who has got himself registered shall be liable to pay tax during the period in which his registration certificate is effective, notwithstanding the fact that subsequently it is found that no registration certificate was necessary in his case.

(6) Where,—

(a) any business, in respect of which a certificate of registration has been issued under this section, has been discontinued or otherwise disposed of, or has been transferred or the place of such business is changed to a different local area, or

(b) the turnover of sales or the turnover of purchases of a registered dealer who has become liable to pay tax under section 3 has during any year not exceeded the relevant limit specified in sub-section (4) of section 3,

then in the case covered by clause (a), the dealer shall apply in the prescribed manner and within the prescribed time, for cancellation of his registration to the Commissioner, and in the case covered by clause (b), the dealer may apply, in the prescribed manner, for cancellation, of his registration to the Commissioner; and thereupon the Commissioner may, after such inquiry as he deems fit and subject to the rules, cancel the registration with effect from such date including any date earlier to the date of the order of cancellation as he considers fit having regard to the circumstances of the case. The registration certificate cancelled under this sub-section shall be returned to the Commissioner within the prescribed time:

Provided that, where the Commissioner is satisfied that any business in respect of which a certificate has been issued under this section has been discontinued or disposed of or the place of such business is changed to a different local area, and the dealer has failed to apply under clause (a) as aforesaid for cancellation of registration, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, cancel the registration with effect from such date as he may fix to be the date in

accordance with the rules, if any, from which the business has been discontinued or disposed of or changed to a different local area, as the case may be:

Provided further that, the cancellation of a certificate of registration on an application or otherwise shall not affect the liability of the dealer to pay the tax including any penalty, amount forfeited and interest due for any period ending on or before the date of cancellation whether such tax including any penalty, amount forfeited and interest is assessed before the date of cancellation but remains unpaid, or is assessed thereafter.

Explanation. —For the purposes of this section, local area means the area to which the Post and Telegraph authorities have assigned a Postal Index Number (PIN).

(7) The Commissioner shall, by such date as he may notify in the *Official Gazette*, prepare a list of all registered dealers and may amend the list, from time to time. Any person may make an application in the prescribed form to the Commissioner for a certified copy of any extract from the list and thereupon the Commissioner, shall furnish a copy of the extract to the applicant.

(8) Save as otherwise provided in sub-section (9), a certificate of registration granted under this section and any certificate that may be granted under this Act, shall be personal to the dealer or person to whom it is granted, and shall not be transferable.

(9) Where a registered dealer,—

- a. effects a change in the name of his business, or
- b. is a firm, and there is a change in the constitution of the firm without dissolution thereof, or
- c. is a trustee of a trust, and there is change in the trustees thereof, or
- d. is a guardian of a ward, and there is a change in the guardian or termination of guardianship, or
- e. is a Hindu Undivided Family and there is a change of Karta, or
- f. is a private limited company which is converted into a public limited company,

then, merely by reason of occurrence of any of the changes aforesaid, it shall not be necessary for the dealer, or the firm with the changed constitution, or the new trustees, or new guardian or the ward or the new Karta or the public limited company to apply for a fresh certificate of registration and on information being furnished in the manner required by section 18, the certificate of registration shall, where necessary, be amended and any other certificate granted under the Act, rules or

notifications shall also continue to be valid and be amended where necessary with effect from the appropriate date.

17. (1) Every registered dealer who holds, on such date as the Commissioner may by notification in the *Official Gazette* specify, a certificate of registration, which is valid on the said date (hereinafter, in this section, referred to as "the existing certificate of registration"), shall obtain in lieu of the existing certificate of registration a fresh certificate of registration as provided in this section.

(2) Every dealer, who is required to obtain a fresh certificate under sub-section (1), shall apply in such form, manner and time and to such authority as may be prescribed; and such application shall be accompanied by the existing certificate of registration together with all additional copies thereof, if any, issued to him.

(3) On receipt of such application, the prescribed authority shall, subject to rules, issue a fresh certificate of registration, in the prescribed form to the applicant; and thereupon the fresh certificate of registration, so issued, shall, for all the purposes of this Act, be deemed to be a certificate of registration issued under section 16.

(4) Without prejudice to the other provisions of this Act, all the existing certificates of registration shall stand cancelled with effect from such date as the Commissioner may notify in the *Official Gazette*

(5) The Commissioner may, by the notification issued under sub-section (1) or (4), also provide that such notification shall apply only to such class of registered dealers as are specified in the said notification and such notification may be issued by him, from time to time.

(6) The provisions of this section shall *mutatis mutandis* apply in respect of any other certificate issued by or under the provisions of this Act as they apply in respect of the certificate of registration.

18. Any registered dealer liable to pay tax under this Act, who,-

(a) transfers by way of sale or otherwise disposes of his business or any part thereof, or effects or knows of any other change in the ownership of the business or

(b) discontinues his business, or changes the place thereof, or opens a new place of business, or

(c) changes the name of his business, or

(d) enters into a partnership in regard to his business, or

(e) applies for or has an application made against him for insolvency or liquidation,

(f) being a company, is involved in merger, de-merger or amalgamation of companies,

shall, within the prescribed time, inform the prescribed authority accordingly.

(2) Where any dealer liable to pay tax under this Act,—

- (a) dies, his executor, administrator or other legal representative or,
- (b) where he is a firm, a Hindu Undivided Family or an association of persons and there is a change in the constitution of such firm, Hindu Undivided Family or association, either by way of dissolution, disruption, partial partition or partition, or otherwise, then every person who was a partner. ⁴Karta or a member of such firm, Hindu Undivided Family or association, or
- (c) transfers or otherwise disposes of his business in the circumstances mentioned in sub-section (4) of section 44, then any person from whom and every person to whom the business is so transferred,

shall, in the prescribed manner, inform the said prescribed authority of such death, change in the constitution, dissolution, partial partition, partition, disruption or transfer.

19. (1) Every dealer, who is liable to pay tax, and who is a Hindu Undivided Family, or an association of persons, club or society or firm or company, or who is engaged in business as the guardian or trustee or otherwise on behalf of another person shall, within the period prescribed send to the authority prescribed, a declaration in the manner prescribed stating the name of the person or persons who shall be deemed to be the manager or managers of such dealer's business for the purposes of this Act. Such declaration shall be furnished at the time of registration whenever applicable and may be revised in the prescribed manner, from time to time.

Every dealer liable to pay tax under this Act who is liable to obtain a permanent account number under the Income Tax Act, 1961, shall communicate to the Commissioner, in the prescribed time and manner, the said number if he has obtained the same and in any other case shall State whether he has applied for the same and provide the details of the application .

CHAPTER V

RETURNS AND ASSESSMENT, ETC.

20. (1)(a) Every registered dealer shall file correct ,complete, self-consistent return in such form, by such date, for such period and to such authority as may be prescribed. Different types of returns may be prescribed for different classes of dealers.

(b) The Commissioner may examine the return to ascertain whether it is complete and self-consistent. If the return is not complete or self-consistent, the Commissioner may serve on the dealer, within four months of date of filing of the return, a defect notice in the prescribed form. The said registered dealer shall correct the defects and submit to the prescribed authority a fresh, complete and self-consistent return within one month of the service of the defect notice:

Provided that the registered dealer who fails to submit a complete or self consistent fresh return within the said period of one month shall be deemed not to have submitted the return within the prescribed time as required under clause (a)

(2) Notwithstanding anything contained in sub-section (1), the Commissioner may, subject to such terms and conditions, as may be prescribed, permit any dealer, --

(a) to furnish returns for such different period, or

(b) to furnish a consolidated return relating to all or any of the places of business of the dealer in the State for such period or periods, to such authority, as he may direct.

(3) Every person or an unregistered dealer who is required to file a return under any other provision of this Act, shall file such return for such period, in such form, by such date and to such authority as may be prescribed and the provisions contained in paragraph (b) of sub-section (1) shall apply to such return as they apply to the return prescribed under paragraph (a) of sub-section (1).

(4) Any person or dealer who, having furnished a return under sub-section (1), (2) or (3) discovers any omission or incorrect statement therein, may furnish a revised return in respect of the period covered by the return at any time before a notice for assessment is served on him in respect of the period covered by the return or before the expiry of a period of six months from the end of the year containing the period to which the return relates, whichever is earlier".

21.“(1) Where a return is filed by the prescribed date by a registered dealer no notice calling the dealer for assessment in respect of the period covered

by the return shall be served on the dealer after two years from the end of the year containing the period to which the return relates.

(2) Where a registered dealer has not filed a return in respect of any period by the prescribed date, no notice calling the dealer for assessment in respect of the said period shall be served on the dealer after three years from the end of the year containing the said period :

(3) Notwithstanding anything contained in sub-section (1) or (2) , a notice for assessment in respect of any period ending on or before the 31st March 2008, may be served on the dealer within a period of four years from the end of the year containing the said period.

22. (1) With a view to promoting compliance with the provisions of this Act, the Commissioner may arrange for audit of the business of any registered dealer. For the purpose of this section, the selection of dealers for audit shall be made from amongst the dealers,—

- (a) who have not filed returns by the prescribed dates; or
- (b) who have claimed refund of tax; or
- (c) where the Commissioner is not, *prima-facie*, satisfied with the correctness of any return filed by a dealer or is not satisfied with any claim made, deduction claimed or turnover disclosed in any return filed by the dealer; or
- (d) who are selected by the Commissioner on the basis of the application of any criteria or on a random selection basis; or
- (e) where the Commissioner has reason to believe that detailed scrutiny of the case is necessary.

(2).....

(3) On the appointed day or, as the case may be, at anytime within the aforesaid period, any officer to whom the powers and duties under this section have been delegated, by the Commissioner, in writing, may conduct audit of the business.

(4)

(5) (a) During the course of the audit, the officer may require the dealer,—

- (i) to afford him the necessary facility to inspect such books of accounts or other documents as he may require and which may be available at such place,
- (ii) to afford him the necessary facility to check or verify the cash or stock which may be found therein. And

(iii) to furnish such information as he may require as to any matter which may be useful for or relevant to any proceedings under this Act.

(b) The officer conducting the audit shall on no account remove or cause to be removed any books of accounts, other documents or any cash or stock.

(6)

(7)

(8)

23. (1) Where a registered dealer fails to file a return in respect of any period by the prescribed date, the Commissioner may assess the dealer in respect of the said period to the best of his judgement without serving a notice for assessment and without affording an opportunity of being heard;

Provided that, if after the assessment order is passed, the dealer submits the return for the said period along with evidence of payment of tax due as per the return or submits evidence of return for the said period having been filed before the passing of the assessment order along with evidence of payment of tax, due as per the return, then the Commissioner shall cancel by order in writing, the said assessment order.

Provided further that, such cancellation shall be without prejudice to any interest or penalty that may be levied in respect of the said period and after such cancellation, the dealer may be assessed in respect of the said period under the other provisions of this section.

Provided also that no order under this sub-section shall be passed after three years from the end of the year containing the said period.

(2) Where the return in respect of any period is filed by a registered dealer by the prescribed date and if the Commissioner considers it necessary or expedient to ensure that return is correct and complete and he thinks it necessary to require the presence of the dealer or the production of further documents, he shall serve on such dealer, a notice requiring him on a date and at a place specified therein, either to attend and produce or cause to be produced all documents on which such dealer relies in support of his return, or to produce such documents or evidence as is specified in the notice.

On the date specified in the notice, or as soon as may be thereafter, the Commissioner shall, after considering all the documents or evidence which may be produced, assess the amount of tax due from the dealer:

Provided that, if a registered dealer fails to comply with the terms of any notice issued under this sub-section, the Commissioner shall assess,

to the best of his judgement the amount of tax due from him:

Provided further that,(.....) no order of assessment under this sub-section shall be made after the expiry of three years from the end of the year containing the period to which return relates.

(3) Where a registered dealer has not filed the return in respect of any period by the prescribed date, then the Commissioner may, at any time, within three years from the end of the year containing the said period serve on the dealer a notice requiring him to attend on a date and at a place specified therein and after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax due from him:

Provided that, no order of assessment under this sub-section shall be made after the expiry of four years from the end of year containing the said period.

(4) Where the Commissioner has reason to believe that a dealer is liable to pay tax in respect of any period, but has failed to apply for registration or has failed to apply for registration within the time as required by or under this Act, the Commissioner may at any time within five years from the end of the year in which such period occurs, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgement, where necessary, the amount of tax, if any, due from the dealer in respect of that period, and any period or periods subsequent thereto:

Provided that, no order of assessment under this sub-section shall be made after the expiry of eight years from the end of the said financial year containing the said period.

(5)(a) During the course of any proceedings under section 64, in case of any dealer or person, if the prescribed authority is satisfied that tax has been sought to be evaded in respect of any period or periods by not recording or recording in an incorrect manner, any transaction of sale or purchase, or that any claim has been incorrectly made, then in such a case notwithstanding that any notice for assessment has been issued under other provisions of this section or any other section of this Act, the prescribed authority may, after giving such dealer or person a notice in the prescribed form and a reasonable opportunity of being heard, initiate assessment of the dealer or person in respect of such transaction or claim.

(b) During the course of any proceedings under Sec. 64 if the prescribed authority is satisfied that the tax has been or is sought to be evaded, as provided under clause (i) by any dealer or person, the said authority may, after issuing a notice in the prescribed form and after giving a reasonable opportunity of being heard to such dealer or person proceed to assess such

dealer or person as provided in clause (i) in respect of any such transaction or claim relating to any period or periods and such authority shall, notwithstanding anything contained in section 59, be deemed to have the requisite jurisdiction and power to assess such dealer or person in respect of such transaction of sale or purchase or claim, covered by clause (i) and such assessment proceedings shall for all purposes of this Act, be deemed to have been transferred to such authority.

(c) The assessment proceedings under this sub-section shall be without prejudice to the assessment proceedings in respect of the said period or periods under any other provisions of this Act by any authority who otherwise has the jurisdiction to assess such dealer or person in respect of other transactions of sale or purchase or any other claim which are not covered by clause (i) and clause (ii).

(d) The assessment under this sub-section shall be made separately in respect of the transaction or claim relating to the said period or periods to the best of the judgement of the prescribed authority where necessary and irrespective of any assessment made under this sub-section, the dealer may be assessed separately under the other provisions of this section in respect of the said period or periods.

Provided that once the dealer or person is assessed under this sub-section, no tax from such transaction or claim and penalty and interest, if any, consequent upon such tax shall be levied or demanded from such dealer or person, at the time of assessment to tax under the other provisions of this section in respect of the said period or periods relating to such transaction or claim. ”

(6) If the Commissioner is of the opinion that, in respect of any period covered by a return, any turnover of sales or of purchases has not been disclosed, or that tax has been paid at a lesser rate, set-off has been wrongly claimed, or deduction has been wrongly claimed, then notwithstanding anything contained in section 21 or the other provisions of this section Commissioner may at any time within five years from the end of the year containing the said period, serve a notice in the prescribed form on the dealer and proceed to assess him in respect of the said period after giving him a reasonable opportunity of being heard:

Provided that the assessment order shall be passed, by the Commissioner to the best of his judgment, where necessary, within the said period of six years from the end of the year containing the said period.

(7) Where a fresh assessment has to be made under this section to give effect to any finding or direction contained in any order made under this Act including an order made by the Tribunal or the High Court or the Supreme Court, then, notwithstanding anything contained in this section, such assessment shall be made within a period of thirty-six months from

the date of communication of such finding or, direction contained in the order, as the case may be, to the Commissioner.

Provided that, if a certified copy of the said order is supplied by the dealer concerned to the Commissioner earlier than the said date of communication, then the period of thirty six months shall be counted from the date of the said supply.

(8) The Commissioner may call for the record of any matter and conduct an examination in respect of the same, in the manner as provided in sub-section (2), call for the books of accounts and other evidence in such matter and after hearing the dealer concerned pass an appropriate order of assessment in the matter notwithstanding the fact that in a similar matter, the Tribunal has given a decision against the State Government or the Commissioner, if in such matter the State Government or the Commissioner has already filed an appeal before the appropriate forum against the order of the Tribunal and such appeal is pending before such appropriate forum:

Provided that, no order of recovery of the dues including the penalty or interest or forfeiture shall be passed by the Commissioner or the State Government in such case, pending decision by such forum, in the matter, and on decision of the appropriate forum, the Commissioner shall modify the order in accordance with the order of such forum after giving the dealer concerned, an opportunity of being heard.

(9) The Commissioner, may on an application in the prescribed form made by any dealer, 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 or expedient to do so, he may issue such directions as he thinks fit for the guidance of the assessing authority in charge of the case to enable him to complete the assessment and such directions shall be binding on the assessing authority :

Provided that, no direction which is prejudicial to the dealer shall he issued without giving the dealer a reasonable opportunity of being heard. However, no direction as to the lines on which any investigation connected with the assessment should be made shall be deemed to be a direction prejudicial to the dealer.

(10) A dealer or a person may be assessed under a single notice and by a single order of assessment in respect of more than one period covered by a return so long as all periods are comprised in one year.

24. (1) The Commissioner may, at any time within two years from the end of a financial year in which any order passed by him has been served, on

his own motion, rectify any mistake apparent on the record, and shall within the said period or thereafter rectify any such mistake which has been brought to his notice within the said period, by any person affected by such order:

Provided that, no such rectification shall be made if it has the effect of enhancing the tax or reducing the amount of a refund or interest payable on refund, unless the Commissioner has given notice in writing in the prescribed form to such person of his intention to do so and has allowed such person a reasonable opportunity of being heard. An application for rectification shall not be rejected on the ground that there is no mistake apparent on record unless the person concerned has been given a reasonable opportunity of being heard:

Provided further that, where a dealer has applied in the prescribed form within the said period of two years for rectification of the said order and specified in his application, the quantum by which the amount payable as per the said order should be reduced, then the Commissioner shall, without prejudice to the other provisions of this Act including levy of interest, stay the recovery of such quantum till the disposal of the application for rectification.

(2) Where any dealer or person has recorded in his books of accounts or, as the case may be, has claimed in the returns that no tax is payable or that the tax is payable at a reduced rate on any transaction of sale on account of any declaration or certificate to be received from the purchasing dealer or person and he has not produced such certificate or declaration before the passing of the order of assessment under section 23 for any reason whatsoever in which assessment order the claim is disallowed, then at any time within two years from the end of the financial year in which the said order has been served, he may, unless he has filed an appeal against the said order, apply to the Commissioner for rectification of the order on the ground that he has received such declaration or certificate and is in a position to produce the same and thereupon the Commissioner shall hold such inquiry as he may deem fit and after hearing the applicant, rectify the assessment order if the application is in order:

Provided that, in respect of any assessment order sought to be rectified, only one application for rectification shall be entertained under this subsection.

(3) The provisions of sub—section (1) shall apply *mutatis mutandis* to the rectification of a mistake by the Tribunal or an appellate authority as they apply to the rectification of a mistake by the Commissioner:

Provided that, where any matter has been considered and decided in any proceeding by way of appeal or review in relation to any order or part of

an order, the authority passing the order of appeal or review, may, notwithstanding anything contained in this Act, rectify the order or part of the order on any matter other than the matter which has been so considered and decided.

(4) Where any such rectification has the effect of reducing the amount of the tax or penalty or interest or the amount of forfeiture, the Commissioner shall, refund any amount due to such person in accordance with the provisions of this Act.

(5) Where any such rectification has the effect of enhancing the amount of the tax or penalty or interest or the amount of forfeiture or reducing the amount of the refund, the Commissioner shall recover the amount due from such person in accordance with the provisions of this Act.

“25. (1) After any order including an order under this section or any order in appeal, is passed under this Act, rules or notifications, by any officer or person sub-ordinate to him, the Commissioner may, of his own motion, or upon information received by him, call for the record of such order and examine whether,--

- (a) any turnover of sales or purchases has not been brought to tax or has been brought to tax at lower rate, or has been incorrectly classified, any claim is incorrectly granted or that the liability to tax is understated, or
- (b) in any case, the order is erroneous, in so far as it is prejudicial to the interests of revenue, and after examination may by serving on the dealer a notice in the prescribed form, pass an order to the best of his judgment, where necessary,

(2) (i) For the purpose of the examination and passing of the order, the Commissioner may require by service of notice in the prescribed form, the dealer to produce or cause to be produced before him such books of accounts and other documents or evidence which he thinks necessary for the purposes aforesaid.

(ii) No order under this section shall be passed after the expiry of five years from the end of the year in which the order passed by the sub-ordinate officer has been served on the dealer.

(iii) Where in respect of any order or part of the said order passed by the sub-ordinate officer, an order has been passed by any appellate authority including the Tribunal, or such order is pending for decision in appeal, or an appeal is filed then whether or not the issues involved in the examination have been decided or raised in appeal, the Commissioner may within five years of the end of the year in which the said order passed by the subordinate officer has been served on the dealer, make a report to the said appellate authority including the Tribunal regarding his examination

or the report or the information received by him and the said appellate authority including the Tribunal shall thereupon, after giving the dealer a reasonable opportunity of being heard, pass an order to the best of its judgment, where necessary . For the purposes of section 26, such order shall be deemed to be an order passed in appeal.

(3) If the State Government or the Commissioner has initiated any proceeding before an appropriate forum, against a point which is decided against the State by a judgment of the Tribunal, then the Commissioner may, in respect of any order, other than the order which is the subject matter of the judgement, call for the record, conduct an examination as aforesaid, record his findings, call for the said books of accounts and other evidence, hear the dealer and pass an order as provided for under this section as if the point was not so decided against the State, but shall stay the recovery of the dues including interest, penalty or amount forfeited, in so far as they relate to such point until the decision by the appropriate forum and after such decision may modify the order of review, if necessary, after giving the dealer a reasonable opportunity of being heard.

(4) No proceedings under this section shall be entertained on any application made by a dealer or a person.

26.(1) An appeal, from every original order, not being an order mentioned in sub-section (2) of section 85 passed under this Act or rules or notifications, shall lie if the order is made,—

(a) by a Sales Tax Officer or an Assistant Commissioner, or any other officer sub-ordinate thereto, to the Deputy Commissioner;

(b) by a Deputy Commissioner or Senior Deputy Commissioner, to the Joint Commissioner; -

(c) by a Joint Commissioner, Additional Commissioner or the Commissioner, to the Tribunal.

(2) In the case of an order passed in appeal by a Deputy Commissioner or a Joint Commissioner, a second appeal shall lie to the Tribunal.

(3) Every order passed in appeal by the Tribunal under this section shall, subject to the provisions of sections 24 and 27, be final and every order passed in appeal by any other appellate authority, shall, subject to the provisions of sections 24, 25 and 27 be final.

(4) Subject to the provisions of sections 80 and 81, no appeal including a second appeal shall be entertained unless it is filed within sixty days from the date of the communication of the order appealed against.

(5) Subject to such rules of procedure as may be prescribed, every appellate authority (both in the first appeal and the second appeal) shall

have the following powers, namely :—

- (a) in an appeal against an order of assessment, it may confirm, reduce, enhance or annul the assessment:

Provided that, where the appeal is filed before the Tribunal, the Tribunal may set aside the assessment and refer the case back to the assessing authority for making a fresh assessment in accordance with the direction given by it and after making such further inquiry as may be necessary; the assessing authority shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;

- (b) in an appeal against an order imposing a penalty, the appellate authority may confirm or cancel such order or modify it in accordance with the provisions of this Act;
- (c) in an appeal against an order levying interest, the appellate authority may confirm or cancel such order or modify it in accordance with the provisions of this Act;
- (d) in any other case, the appellate authority may pass such order in the appeal as it deems just and proper:

Provided that, the appellate authority shall not enhance an assessment or a penalty or interest or sum forfeited or reduce the amount of set-off or refund of the tax, unless the appellant has been given a reasonable opportunity of showing cause against such enhancement or reduction.

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

(6) The Appellate authority or the Tribunal, as the case may be, may, while admitting the appeal, pending the disposal of the appeal, stay the order appealed against in full or part, subject to such conditions or restrictions as it may deem necessary including a direction for depositing of a part or whole of the disputed amount by the appellant.

(7) Every appellate authority, including the Tribunal, in so far as it may, shall decide the appeals pending before it by such priorities as may be prescribed.

Provided that, if a person has attained the age of seventy-five years

or more and such person is the proprietor of the business, a partner in a firm or a director having substantial interest in a company being a body corporate, then on an application in the prescribed form made by him in this regard, any appeal made by the proprietary concern, partnership firm or the company shall be decided on priority to the exclusion of all other appeals.

27. (1) An appeal shall lie to the High Court from every order passed by the Tribunal including a judgment by way of advance ruling, if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner or the applicant before the Tribunal aggrieved by any order passed by the Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be,—

- (a) filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the Commissioner;
- (b) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that, nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which,—

- (a) has not been determined by the Tribunal; or
- (b) has been wrongly determined by the Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1)

(7) The payment of any amount due to be paid by the applicant before the Tribunal or, as the case may be, by the Commissioner in accordance with the order of the Tribunal in respect of which an appeal has been preferred under this section, shall not be stayed by the High Court pending the final disposal of such appeal, but if such amount is varied as the result

of the final disposal of the appeal, the difference shall be recovered or, as the case may be, refunded in accordance with the provisions of this Act.

(8) Where the High Court delivers a judgement in an appeal filed before it, effect shall be given by the Tribunal to the order passed in the appeal on the basis of a certified copy of the judgment:

Provided that, for the purposes of this sub-section, the Tribunal may accept a certified copy of the judgment furnished by the Commissioner or, as the case may be, by the dealer.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

28. Where any Court or Tribunal or any Appellate authority or any other authority passes an order in appeal or review to the effect that any tax assessed under this Act or any other Act should have been assessed under the provisions of a law other than that under which it was assessed, then in consequence of such order, such turnover or part thereof may be assessed to tax at any time within five years from the date of such order, and where any assessment has already been made, the assessment shall be modified after giving the dealer a reasonable opportunity of being heard, notwithstanding that any provision regarding limitation applies to such assessment period.

CHAPTER VI

PENALTY AND INTEREST

29. (1) ...

(2)...

(3) While or after passing any order under this Act, in respect of any person or dealer, the Commissioner, on noticing or being brought to his notice, that such person or dealer has concealed the particulars or has knowingly furnished inaccurate particulars of any transaction liable to tax or has concealed or has knowingly misclassified any transaction liable to tax or has knowingly claimed set-off in excess of what is due to him, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose upon him, in addition to any tax due from him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission.

(4) Where any person or dealer has knowingly issued or produced any document including a false bill, cash memorandum,

voucher, declaration or certificate by reason of which any transaction of sale or purchase effected by him or any other person or dealer is not liable to be taxed or is liable to be taxed at a reduced rate or incorrect set-off is liable to be claimed on such transaction, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose on him in addition to any tax payable by him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission.

(5)

(6) Where, any person or dealer contravenes the provision of section 86, so as to have the quantum of tax payable by him to be under-assessed, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose on him, in addition to any tax payable by him a penalty equal to half the amount of tax which would have been under-assessed or one hundred rupees, whichever is more.

(7) Where, any person or dealer has failed without reasonable cause to comply with any notice in respect of any proceedings, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose on him, in addition to any tax payable by him, a penalty equal to one thousand rupees.

(8) Where, any person or dealer has failed without reasonable cause to file within the prescribed time, a return for any period as provided under section 20, (...) the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose on him, in addition to any tax payable by him, a sum of rupees two thousand by way of penalty. Such penalty shall be without prejudice to any other penalty, which may be imposed under this Act:

Provided that, if the return is filed before the initiation of the proceeding for levy of penalty, the penalty shall be levied at rupees one thousand and in any other case, the penalty shall be levied at rupees two thousand.

(9) (a)

(b)

(c) Where a dealer has tiled a return and such return is found to be not complete or self consistent, then the Commissioner may, after giving the dealer a reasonable opportunity of being

heard, impose on him, by order in writing, a penalty of rupees one thousand. The levy of penalty shall be without prejudice to any other penalty which may be imposed under this Act.

(10) Where a person or dealer has collected any sum by way of tax in contravention of the provisions of section 60, --

- (a) he shall be liable to pay a penalty not exceeding two thousand rupees, and
- (b) in addition, any sum collected by the person or dealer in contravention of section 60 shall be forfeited to the State Government.

If the Commissioner in the course of any proceeding under this Act or otherwise, is of the opinion that any person has become liable to a penalty or forfeiture or both penalty and forfeiture of any sum under this sub-section, he may serve on such person a notice in the prescribed form requiring him on a date and at a place specified in the notice to attend and show cause why a penalty or forfeiture or both penalty and forfeiture of any sum as provided in this sub-section should not be imposed on him. The Commissioner shall thereupon hold an inquiry and shall make such order as he thinks fit. When any order of forfeiture is made the Commissioner shall publish or cause to be published a notice thereof for the information of the persons concerned giving such details and in such manner as may be prescribed."

(11) No order levying penalty under the foregoing provisions of this section shall be passed in respect of any period after five years from the end of the year containing the said period."

(12) No order levying penalty under any of the foregoing sub-sections shall be made :-

- (a) by a Sales Tax Officer , or an Assistant Commissioner, where the penalty exceeds rupees five lakh except with the prior approval of the Deputy Commissioner.
- (b) by a Deputy Commissioner or a Senior Deputy Commissioner, where the penalty exceeds rupees ten lakh except with the prior approval of the Joint Commissioner.

Provided that , nothing in this sub-section shall apply to any penalty which can be imposed by an appellate authority.

(13) For the purposes of this section, Commissioner includes any appellate authority appointed or constituted under this Act.

30. 1) A dealer who is liable to pay tax in respect of any year, and who has failed to apply for registration or has failed to apply for registration within the time as required by or under this Act, shall be liable to pay by way of simple interest, in respect of each of such years, in addition to the amount of tax payable in respect of such year, a sum calculated at the prescribed rate on the amount of such tax for each month or part thereof for the period commencing on the 1st April of the respective year to the date of payment of tax . The amount of such interest shall be calculated by taking into consideration the amount of, and the date of, such payment, when the payment is made on different dates or in parts or is not made. When, as a result of any order passed under 45 this Act, the said amount of tax is reduced, the interest shall be reduced accordingly and where the said amount is enhanced as a result of any order, the interest on the enhanced amount shall be calculated *mutatis mutandis* upto the date of such order.

Provided that, in respect of any of such years, the amount of the interest payable under this sub-section shall not exceed the amount of tax found payable for the respective year.

(2) A registered dealer who has failed to pay the tax within the time specified by or under this Act, shall be liable to pay by way of simple interest, in addition to the amount of such tax, a sum calculated at the prescribed rate on the amount of such tax for each month or part thereof after the last date by which he should have paid such tax:

Provided that, in relation to the tax payable according to the return or, as the case may be, a fresh return or revised return, the said dealer shall, notwithstanding anything contained in any other provision of this Act, be deemed not to have paid the amount of such tax within the time he is required by or under the provisions of this Act to pay it if he has not paid the full amount of such tax on or before the last date prescribed for furnishing of such return and accordingly, if he has not paid the full amount of such tax or has paid only the part of the amount of such tax by such date. he shall be liable under this clause for payment of interest after such date on the full or part, as the case may be, of the amount of tax which has not been paid by such date and where a dealer has furnished a fresh return or revised return and the amount of tax payable as per the fresh return or revised return exceeds the amount of tax payable as per the original return, then for the purposes of this sub-section, the dealer shall be deemed to have been required to pay the excess amount of tax at the time he was required to pay the tax as per the original return and accordingly he shall be liable to pay interest under this sub-section on the

said excess amount of tax.

(3) In the case of a registered dealer, in whose case, any tax other than the tax on which interest is leviable under sub-section (2) has remained unpaid upto one month after the end of the period of assessment, such dealer shall be liable to pay by way of simple interest, a sum calculated at the prescribed rate on the amount of such tax for each month or part thereof from the date next following the last date of the period covered by an order of assessment till the date of the order of assessment and where any payment of such unpaid tax whether in full or part is made on or before the date of the order of assessment, the amount of such interest shall be calculated by taking into consideration the amount and the date of such payment. If, as a result of any order passed under this Act, the said amount of tax is reduced, then the interest shall be reduced accordingly and where the said amount is enhanced, then interest on the enhanced amount shall be calculated mutatis mutandis up to the date of such order from the said date next.

(4) (.....)

CHAPTER VII

PAYMENT OF TAX AND RECOVERY

31. (1) (a) Subject to the provisions contained in clause (b), the Commissioner may, by a notification in the *Official Gazette*, subject to such conditions and restrictions as may be specified in the notification, require any dealer or person or class of dealers or persons (hereinafter in this section referred to as "the employer") to deduct the tax or such amount of tax as may be specified in the notification, payable on the purchases other than the purchases to which section 8 applies, effected by them in the period or periods specified in the said notification.

Explanation. —For the purposes of this section, the tax payable on purchases shall mean the sum collected separately from the said employer by way of sales tax by the supplier on the corresponding supplies effected by him in the said period or periods and the deduction is to be made from the sums payable to the supplier on account of the said supply.

(b) (i) The Commissioner may by a like notification require any class of employers to deduct tax or such amount of tax as may be specified from and out of the amount payable (excluding the amount of tax, if any, separately charged by the contractor) by such employer to a dealer to whom a works contract has been awarded, towards execution of the said works contract:

Provided that, the quantum of such deduction shall not exceed the quantum of tax payable towards such works contract:

Provided further that, no deduction shall be made from any payment made to any sub-contractor by a principal contractor where the principal contractor has assigned the execution of any works contract, in whole or in part, to the said sub-contractor:

Provided also that, no deduction as provided under this clause shall be made in respect of any sale or purchase to which section 8 applies.

Explanation. —Where any payment in the nature of an advance payment towards the execution of a works contract is made by an employer to a dealer and such amount is adjustable against the total contract value payable to the said dealer, then, for the purposes of this clause, the advance payment shall be deemed to be the amount paid towards the execution of the works contract only as and when such advance payment is adjusted, in part or otherwise, against the total amount payable towards the works contract.

(ii) Where on an application being made by any contractor in this behalf, the Commissioner is satisfied that the contract under reference is separable and involves both a works contract and labour or is not a works contract and therefore justifies deduction of tax only as a part of the sum payable in respect of any works contract or, as the case may be, justifies no deduction at all, he shall grant him such certificate as may be appropriate:

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

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

(iii) Where such certificate is produced by the contractor, before the employer, the employer shall, unless the certificate is cancelled or modified by the Commissioner, make deduction of tax in accordance with the said certificate. In the event of such certificate being cancelled or modified as provided, the employer shall make the deductions accordingly.

(2) For the purpose of this section, where any amount of tax referred to in sub-section (1) is credited to any account whether called the “suspense account” or by any other name, in the books of accounts of the employer, such crediting shall be deemed to be credit of such tax to the account of the employer and the provisions of this Act shall apply accordingly.

(3) Any registered dealer who is not covered as an employer under the said notification may apply to the Commissioner for making the provisions relating to the employers applicable to him and subject to such conditions

and restrictions as may be prescribed, the Commissioner may, by order in writing, accept the request.

(4) Any amount or any sum deducted in accordance with the provisions of this section and paid to the State Government shall be treated as a payment of tax on behalf of the person making the said supply and credit shall be given to the said person in respect of the relevant period for the amount so deducted and paid on the production of the certificate furnished under this section.

(5) Any employer deducting any sum in accordance with this section, shall pay within the prescribed time, the sum so deducted to the credit of the State Government. If the employer does not deduct or after deducting fails to pay the tax as required by this section, he shall be deemed not to have paid the tax within the time he is required by or under the provisions of this Act to pay it and all the provisions of this Act including the provisions relating to interest shall apply *mutatis mutandis* to such unpaid tax.

(6) The power to recover tax by deduction at source shall be without prejudice to any other mode of recovery.

(7) Every person deducting tax in accordance with the provisions of this section shall within such periods as may be prescribed, furnish to the person to whose account the credit of the tax is to be given under this section, a certificate in the prescribed form.

(8) Every employer shall, as prescribed in the rules, and in the prescribed time, apply to the Commissioner for allotment of a sales tax deduction account number. The number shall be quoted in such documents. Statements and returns as may be prescribed.

(9) Where tax is deductible at source by any employer, the person making the said supply shall not be called upon to pay tax himself to the extent to which the tax has been deducted in respect of the said supply.

(10) The employer shall within the prescribed time after the end of each year, file a return in such form and to such authority as may be prescribed. Any return filed on a floppy diskette, magnetic cartridge tape, CD-ROM or any other computer-readable media as may be prescribed, shall be deemed to be a return for the purposes of this section. While receiving the return on computer-readable media, the Commissioner shall carry out appropriate checks by scanning the documents filed on computer-readable media and the said media shall be duly authenticated by the Commissioner.

32. (1) Tax shall be paid in the manner herein provided, and at such intervals as may be prescribed.

(2) A registered dealer furnishing returns as required by section 20 shall

pay into the Government treasury, in such manner and at such intervals as may be prescribed, the amount of tax due from him for the period covered by a return which he is required to file along with the amount of interest and any other sum payable by him.

(3) A registered dealer furnishing a revised return in accordance with sub-section (4) of section 20, when the revised return shows that a larger amount of tax than, the tax already paid, is payable, shall first pay into the Government treasury the extra amount of tax.

(4) (a) (i) The amount of tax due where the return or revised return has been furnished without full payment thereof shall be paid forthwith.

(ii) The amount of tax which it becomes necessary to pay on account of the reduction in set-off because of any contingency specified in the rules, shall be paid at the time prescribed for making payment of tax for the period in which such contingency occurs.

(b) (i) The amount of tax due as per any order passed under any provision of this Act, for any period, less any sum already paid in respect of the said period; and

(ii) the amount of interest or penalty or both, if any, levied under any provision of this Act; and

(iii) the sum, if any, forfeited and the amount of fine, if any, imposed under the Act or rules; and

(iv) the amount of tax, penalty and interest demanded in the context of excess availment of incentives or availment of incentives not due ; and

(v) any other amount due under this Act,

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

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

(5) Any tax, penalty, interest, fine or sum forfeited, which remains unpaid after the service of notice under sub-section (4) or any installment not duly paid or any amount due or payable under this Act, shall be recoverable as an arrears of land revenue.

(6) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, where any sum collected by a person by way of tax in contravention of section 60, is forfeited under

section 29 and is recovered from him, such payment or recovery shall discharge him of the liability to refund the sum to the person from whom it was so collected. A refund of such sum or any part thereof can be claimed from the Commissioner by the person from whom it was realised by way of tax, provided such person has not resold the goods within a period of two years from the date of purchase and an application in writing in the prescribed form is made to the Commissioner, within two years from the date of the order of forfeiture. For this purpose, the Commissioner may send an intimation in the prescribed form to such of the said purchasers whose names and addresses are available in the records of the person who has collected any sum in contravention of section 60. On receipt of such application, the Commissioner shall hold such inquiry as he deems fit, and if the applicant proves to the satisfaction of the Commissioner that the goods are not resold by him as aforesaid and if the Commissioner is satisfied that the claim is valid and admissible and that the amount so claimed as refund was actually paid in Government treasury or recovered and no set-off or refund in respect of that amount was granted, he shall refund the sum or any part thereof, which is found due to the person concerned.

(7) (i) There shall be established a Fund to be called “the Maharashtra Consumer Protection and Guidance Fund “ (hereinafter, in this section, referred to as “ the Fund “). From the amounts forfeited and recovered except for the amounts refunded as aforesaid to the purchasers and except for the amounts in respect of which a set-off or refund is granted, the remaining amount shall, after deducting the expenses of collection and recovery as determined by the State Government, under appropriation duly made by law in this behalf, be entered into, and transferred to, that Fund.

(ii) No sum from the Fund shall be paid or applied for any purpose other than the one specified in clause (iii).

(iii) The Fund shall be administered in the prescribed manner; and the amount in the Fund shall be utilised for meeting the expenses of any activities related to consumer protection and guidance as the State Government may direct, and for giving grant in the prescribed manner to any voluntary consumer organisation, society, association, body or institution engaged in providing for the better protection of the interests of the consumers and having such qualifications as may be prescribed.

(8)(a) Any dealer or person may apply to the Commissioner in the prescribed form for a clearance certificate and thereupon the Commissioner may, on the basis of the record, issue a certificate in the prescribed form within a period of fifteen days from the date of receipt of the application, in so far as he may, stating therein, the periods for which the returns have been filed or, as the case may be, have not been filed, assessments have

been made, the status of pending proceedings, if any, and the amounts payable by the applicants, if any.

(b) The Commissioner may, every year on the basis of the record, issue to every registered dealer a certificate regarding the amounts payable by him, as on the 1st April of that year, stating therein the periods for which returns have not been filed, the periodwise outstanding amounts of tax, penalty, interest and sum forfeited payable by the dealer including the amounts for which the due date of payment is not yet over, the amounts, the recovery of which has been stayed and the amounts under installment. The certificate shall in so far as it may, be issued immediately after the 1st of April every year.

(c) Nothing in the certificates issued under this sub-section shall be a bar on the Commissioner to initiate or continue any proceedings including recovery proceedings. If it is subsequently found that the certificates were issued on the basis of incomplete or erroneous information.

33. (1) Notwithstanding anything contained in any law or contract to the contrary, the Commissioner, on noticing that there is an outstanding liability of tax, interest or penalty against a dealer or person on whom a notice under sub-section (4) of section 32 has already been served, may at any time, by notice in writing, require,—

- (a) any person from whom any amount of money is due, or may become due, to the said dealer or person, or
- (b) any person who holds or may subsequently hold money for or on account of such dealer or person,

to pay to the Commissioner, either forthwith upon the money becoming due or being held or within the time specified in the notice (but not before the money becomes due or is held as aforesaid), an amount equal to the amount due and outstanding from such dealer as aforesaid:

Provided that, no action under this sub-section shall be taken till the date prescribed for filing of appeal, if the dealer makes an application in the prescribed form to the Commissioner before the said date stating therein that he is proposing to file an appeal against the order in pursuance of which the said notice under sub-section (4) of section 32 has been served on him.

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

(2) The Commissioner may, at any time, amend or revoke any such notice,

or extend the time for making any payment in pursuance of the notice.

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

(4) Any person discharging any liability to the dealer or person after receipt of the notice referred to in this section, shall be personally liable to the Commissioner to the extent of the liability discharged. or the extent of the liability of the dealer or a person for tax, penalty, interest and sum forfeited, whichever is less.

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

(6) Subject to the provisions of sub-section (5), any amount of money which a person is liable to pay to the Commissioner, shall, under sub-section (1) read with sub-section (4), if it remains unpaid, be recoverable as if it is a sum demanded under section 32 and accordingly any notice served under this section shall be deemed for the purposes of this Act to be a notice served under section 32 and the unpaid amounts shall be recoverable as arrears of land revenue.

34. (1) For the purpose of effecting recovery of the amount of tax, penalty, interest, amount forfeited or any other sum, due and recoverable from any dealer or other person by or under the provisions of this Act, as arrears of land revenue.—

(i) the Commissioner of Sales Tax shall have and exercise all the powers and perform all the duties of the Commissioner under the Maharashtra Land Revenue Code 1966;

(ii) the Additional Commissioner of Sales Tax shall have and exercise all the powers and perform all the duties of the Additional Commissioner under the said Code;

(iii) the Joint Commissioner of Sales Tax shall have and exercise all the powers and perform all the duties of the Collector under the said Code ;

(iv) the Senior Deputy Commissioner and the Deputy Commissioner of Sales Tax shall have and exercise all the powers (except the powers of confirmation of sale and arrest and confinement of a defaulter in a civil jail) and perform, all the duties of the Assistant or Deputy Collector under the

said Code;

(v) the Assistant Commissioner and the Sales Tax Officer shall have and exercise all the powers (except the powers of confirmation of sale and arrest and confinement of a defaulter in a civil jail) and perform all the duties of the Tahsildar under the said Code.

(2) Every notice issued or order passed in exercise of the powers conferred by sub-section (1) shall, for the purposes of sections 24, 25, 26, 27 and 85 be deemed to be a notice issued or an order passed under the said Act.

35. (1) If during the course of inquiry in any proceedings including proceedings related to recovery of any amount due, in respect of any person or dealer or during any inspection or search in relation to the business of any person or dealer under this Act, the Commissioner is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, then he may, notwithstanding anything contained in any law for the time being in force or any contract to the contrary, attach provisionally by order in writing any money due or which may become due to such person or dealer from any other person or any money which any other person holds or may subsequently hold for or on account of such person or dealer:

Provided that, the Commissioner shall specify in his order the amount of money to which the order applies:

Provided further that, the Commissioner may, by an order, revoke such order, if the dealer furnishes, to the Commissioner, a bank guarantee, in such time, for such period, as may be specified, in the said order.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of service of the order issued under sub-section (1)

Provided that, the Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he may think fit, so, however that the total period of extension shall not in any case exceed two years.

(3) The powers under this section shall be exercised by the Commissioner himself or the Additional Commissioner having jurisdiction over the entire State or, as the case may be, by any Joint Commissioner to whom the Commissioner has delegated such powers by a notification published in the *Official Gazette*.

(4) Where an order under sub-section (1) is served upon any person, provisionally attaching any money, then, such person shall be personally liable, so long as the attachment order is not revoked or has not ceased to have effect, to pay to the Commissioner, the amount of money so attached.

(5) If the said person or the dealer makes an application in the prescribed form to the Commissioner within fifteen days of the date of service of the order specified in sub-section (1), or as the case may be, within fifteen days of the date of service of the order extending the period under sub-section (2), then the Commissioner, after affording such person or dealer a reasonable opportunity of being heard, and, having regard to the circumstances of the case, may confirm, modify or cancel the order.

(6) An appeal against any order passed under sub-section (5) shall lie with the Tribunal and all other provisions of section 26 shall apply accordingly.

36. (1) Where any notice of demand in respect of any tax, penalty, sum forfeited or interest (hereinafter in this section, referred to as "Government dues") is served upon a dealer or the person liable therefor and any appeal or other proceedings is filed or taken in respect of such Government dues, then,—

(a) where such Government dues are enhanced in such appeal or proceeding, the Commissioner shall serve upon the dealer or person, as the case may be, another notice only in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice or notices of demand served upon him before the disposal of such appeal or proceeding may, without the service of any fresh notice, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such Government dues are reduced in such appeal or proceedings,—

(i) it shall not be necessary for the Commissioner to serve upon the dealer or person a fresh notice;

(ii) the Commissioner shall give intimation of the fact of such reduction to the dealer or person;

(iii) any recovery proceedings initiated on the basis of the notice or notices of demand served upon him before the disposal of such appeal or proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal;

(c) no recovery proceedings in relation to such Government dues shall be invalid by reason only that no fresh notice of demand was served upon the dealer or person after the disposal of such appeal or proceeding or that such Government dues have been enhanced or reduced in such appeal or proceeding;

Provided that, where any Government dues are reduced in such appeal or proceeding and the dealer or person is entitled to any refund thereto, such refund shall be made in accordance with the provisions of this Act.

(2) For the removal of doubts, it is hereby declared that no fresh notice of demand shall be necessary in any case where the amount of Government dues is not varied as a result of any order passed in appeal or the proceeding under this Act.

(3) The provisions of this section shall apply in relation to every notice of demand served by the Commissioner upon a dealer or any other person liable for any Government dues.

37. Notwithstanding anything contained in any contract to the contrary, but subject to any provision regarding creation of first charge in any Central Act for the time being in force, any amount of tax, penalty, interest, sum forfeited, fine or any other sum, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer or, as the case may be, person.

38. (1) Where, during the pendency of any proceedings under this Act or after the completion thereof, the Commissioner has reason to believe that the liability of the dealer to pay tax or any other sum payable under this Act, is likely to be in excess of rupees twenty five thousand and the dealer creates a charge on, or parts with the possession by any mode of transfer whatsoever, including sale, mortgage, gift or exchange of any of the assets of his business valued at rupees ten thousand or more in favour of any other person with intent to defraud revenue, then, notwithstanding anything contained in any Act or contract to the contrary such charge or transfer shall be void as against any claim in respect of any tax or other sum payable by the dealer as a result of the completion of such proceedings or otherwise:

Provided that, such charge or transfer shall not be void if made for adequate consideration and without notice of the pendency of the proceeding or of the liability to pay any sum on completion of any proceedings.

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

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

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

39. The amount of tax, penalty, interest, composition money, fine or any other sum payable, and the amount of set off or refund due under the provisions of 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:

Provided that, nothing in this section shall apply for the purposes of collection by a dealer of any amount by way of tax under this Act.

40. Any payment made by a dealer or person in respect of any period towards any amount due as per the order passed under this Act shall first be adjusted except in so far as the recovery of the said amount or part thereof is stayed under sub-section (6) of section 26, against the interest payable by him on the date of payment in respect of the said period and thereafter towards the amounts due as a penalty, sum forfeited and fine. Any amount remaining unadjusted shall then be adjusted towards the tax payable in respect of that period.

41. (1) The State Government, if satisfied that it is necessary in the public interest to grant refund of any tax levied and collected from any class or classes of dealers or persons or, as the case may be, charged on the purchases or sales made by any class or classes of dealers or persons, it may, by notification in the *Official Gazette* and subject to such terms and conditions as may be specified in the notification, provide for grant of refund of such tax, for such period and to such class of dealers or persons as specified in the said notification; on such tax payers applying to the Commissioner in the prescribed form for such refund:

Provided that, such notification may be issued so as to have retrospective effect so however that the effective date is not earlier than the appointed day.

2. (.....)

3.(.....)

(4) Subject to such conditions as it may impose, the State Government may, by notification in the *Official Gazette*, provide for exemption from the payment of full or part of the tax payable on the purchases and sales of motor spirits and crude oil to any class or classes of dealers and for the purposes of this sub-section “ motor spirit” means such products as the State Government may notify, from time to time, in the *official Gazette*.

42. (1) (a) The State Government may, by a notification in the *Official Gazette*, provide for a scheme of composition, subject to such of tax, conditions and restrictions as may be provided therein, of tax payable by the dealers who are engaged in the business, as prescribed, of reselling at retail, any goods or merchandise and different types of schemes may be notified for different classes of retailers.

(b) For the purpose of this section, a dealer shall be considered to be engaged in the business of selling at retail if 9/10th of his turnover of sales consists of sales made to persons who are not dealers and if any question arises as to whether any particular dealer is a retailer, then the question shall be referred to the Joint Commissioner, who shall after hearing the dealer, if necessary, decide the question. The order made by the Joint Commissioner shall be final.

(c) Nothing in this sub-section shall apply to a dealer who is a manufacturer or who is an importer or who purchases any goods from a registered dealer whose sales of the said goods are not liable to tax by virtue of the provisions contained in sub-section (1) of section 8 or who sells at retail liquor including liquor imported from out of India, Indian Made Foreign Liquor or Country Liquor.

(2) The State Government may, by a notification in the *Official Gazette*, provide for a scheme of composition, subject to such conditions and restrictions as may be provided therein, of tax payable by dealers who are running any eating house, restaurant, hotel, refreshment room or boarding establishment (...) and the tax payable by dealers who are caterers and serve food and non-alcoholic drinks or tax payable by dealer running bakeries or dealers of second-hand motor vehicles whose principal business is buying or selling motor vehicles.

(3) Where a dealer is liable to pay tax on sales effected by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, he may subject to such restrictions and conditions as may be prescribed, in lieu of the amount of tax payable by him under this Act, whether in respect of the entire turnover of sales effected by way of works contract or in respect of any portion of the turnover corresponding to individual works contract, pay lump sum tax by way of composition equal to eight per cent. of the total contract value of the works contract after deducting from the total contract value the amounts payable towards sub-contracts to sub-contractors.

43. Where in respect of any tax (including any penalty, interest and amount forfeited) due from a dealer or person under this Act or under any earlier law, any other person is liable for the payment thereof under section 44, all the relevant provisions of this Act or, as the case may be, of the

earlier law, shall in respect of such liability apply to such person also, as if he were the dealer himself.

44. (1) Where a dealer, liable to pay tax under this Act, dies then.—

(a) if the business in which the dealer was engaged is continued after his death by his legal representative or any other person, such legal representative or other person shall be liable to pay the tax including any penalty, sum forfeited and interest due from such dealer under this Act or under any earlier law, in the like manner and to the same extent as the deceased dealer, and

(b) if the business in which the dealer was engaged is discontinued whether before or after his death, his legal representative shall be liable to pay out of the estate of the deceased, in the like manner and to the same extent as the deceased dealer would have been liable to pay if he had not died, the tax including any penalty, sum forfeited and interest due from such dealer under this Act, or under any earlier law. whether such tax including any penalty, sum forfeited and interest has been assessed before his death but has remained unpaid, or is assessed after his death.

(2) Where a dealer, liable to pay tax under this Act, is a Hindu Undivided Family and there is a partial partition or partition of the joint family property amongst the various members or group of members, then each member or group of members shall be jointly and severally liable to pay the tax including any penalty, sum forfeited and interest due from the dealer under this Act or under any earlier law, up to the time of the partial partition or partition, whether such tax including any penalty, sum forfeited and interest has been assessed before the partial partition or partition but has remained unpaid, or is assessed after such event.

(3) Where a dealer, liable to pay tax under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable under section 46, the tax, including any penalty, sum forfeited and interest due from the firm under this Act or under any earlier law, up to the time of dissolution, whether such tax including any penalty, sum forfeited and interest has been assessed before such dissolution but has remained unpaid, or is assessed after dissolution.

(4) Where a dealer, liable to pay tax under this Act, transfers or otherwise disposes of his business in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in the business or part thereof by any other person, the dealer and the person succeeding shall jointly and severally be liable to pay the tax including any penalty, sum forfeited and interest due from the dealer under this Act or under any earlier law, up to the time of such transfer, disposal

or change, whether such tax including any penalty, sum forfeited and interest has been assessed before such transfer, disposal or change but has remained unpaid, or is assessed thereafter.

(5) Where the dealer liable to pay tax under this Act,—

(a) is the guardian of a ward on whose behalf the business is carried on by the guardian, or

(b) are trustees who carry on the business under a trust for a beneficiary, then,

if the guardianship or trust is terminated, the ward or, as the case may be, the beneficiary shall be liable to pay the tax including any penalty, sum forfeited and interest due from the dealer up to the time of the termination of the guardianship or trust, whether such tax including any penalty, sum forfeited and interest has been assessed before the termination of the guardianship or trust, but has remained unpaid, or is assessed thereafter.

45. (1) Where any person specified in sub-clause (a), (b) or (c) of clause (8) of section 2, sells (...)any taxable goods on behalf of his principal, the person as well as the principal shall both be jointly and severally liable to pay the taxes on the turnover of such sales (...).

(2) If the principal, on whose behalf the said person has sold (...) any goods, shows to the satisfaction of the Commissioner that, the tax has been paid by the said person on such goods under sub-section (I), the principal shall not be liable to pay the tax again in respect of the same transaction and where the person shows to the satisfaction of the Commissioner that the principal has paid such tax, the person shall not be liable to pay the tax again in respect of the same transaction.

(3) Where an agent of a non-resident dealer, sells (...) any goods on behalf of the non-resident dealer in the State, then the nonresident dealer and the agent residing in the State, shall be jointly and severally liable to pay tax on the turnover of such sales (...):

Provided that, if the non-resident dealer shows to the satisfaction of the Commissioner that the tax payable in respect of such sale (...)has been paid by the agent residing in the State, then the non-resident dealer shall not be liable to pay tax again in respect of the same transaction and where the agent shows to the satisfaction of the Commissioner that the non-resident dealer has paid such tax, the agent shall not be liable to pay the tax again in respect of the same transaction.

(4) Where any sale has been effected by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract and the contractor has executed the works contract awarded to him, through a sub-contractor, directly or otherwise, then

notwithstanding anything contained in any law or agreement to the contrary, the relationship between the contractor and the person who has actually executed the works contract or part of it as a sub-contractor shall be deemed to be that of the principal and agent and accordingly,—

(a) where such principal assigns the whole or part of the execution of the works contract to different such agents resulting into the distribution of the turnover of the said sales amongst the principal and the agents or wholly amongst the agents whereby the principal escapes the liability to pay tax on the whole or part of the turnover of sales, then, having regard to the total turnover of sales, including the total turnover of sales in respect of execution of such contract, of the principal in the year of assessment being such that the principal would have been liable to pay tax under this Act if such works contract had been executed by himself alone the liability to pay tax on such total turnover of sales shall be that of the principal;

(b) where such agent executes such works contract on behalf of the principal and each or either of them is liable to pay tax, then notwithstanding anything contained in any other law or any contract to the contrary, the principal and the agent shall be jointly and severally liable to pay tax in respect of the transfer of property in goods involved in the execution of such works contract;

(c) if the principal shows to the satisfaction of the Commissioner that tax has actually been paid by the agent on the turnover of sales, the principal shall not be liable to pay tax again in respect of the same turnover of sales on which the agent has paid tax;

(d) if the agent shows to the satisfaction of the Commissioner that the tax has been actually paid by his principal on the turnover of sales on which he is liable to pay tax under this Act, then the agent shall not be liable to pay tax again on the same turnover of sales on which the principal has paid tax;

(e) no deduction from payment of tax under the preceding clauses shall be given to the principal or to the agent, unless a duly signed certificate in the prescribed form is produced;

(f) a contractor assigning execution of a works contract (either in whole or in part) to a sub-contractor registered under this Act. may deduct from his total contract value or, as the case may be, the turnover of sales, the value or the turnover of sales in respect of works contract executed through the said sub-contractor provided a declaration in the prescribed form signed by such sub-contractor is produced;

(g) a sub-contractor who has been assigned execution of works contract (either in whole or in part) by a contractor may deduct from his total

contract value or, as the case may be, the turnover of sales, the value or the turnover of sales in respect of such works contract executed by him provided a declaration in the prescribed form signed by such contractor is produced.

46. (1) Notwithstanding any contract to the contrary, where any firm is liable to pay tax under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.

(2) Any notice or order under this Act may be served on any person who was a partner during the relevant time, whether or not the firm has been dissolved and all the provisions of this Act shall apply accordingly.

(3) Where any partner retires from the firm, he shall be liable to pay the tax, penalty, sum forfeited and interest, if any, remaining unpaid at the time of his retirement and any such amount due up to the date of retirement, though un-assessed at that date and where at the time of death of the said partner, the legal representative is not a partner in the said firm, he shall be liable to pay such amounts only out of the estate of the deceased, in the like manner and to the same extent as the deceased partner would have been liable to pay if he had not died.

47. (1) When two or more companies are to be amalgamated by the order of Court or of the Central Government and passed after the appointed day and is to take effect from a date earlier to the date of the order and any two or more of such companies have sold or purchased any goods to or from each other in the period commencing on the date from which the order is to take effect and ending on the date of the order, then such transactions of sale and purchase shall be included in the turnovers of sale or purchase of the respective companies and shall be assessed to tax accordingly.

Notwithstanding anything contained in the said order, for all of the purposes of this Act, the said two or more companies shall be treated as distinct companies for all the periods upto the date of the said order and the registration certificates of the said companies shall be cancelled. where necessary, with effect from the date of the said order.

(2A)(a) When any company is to be demerged by the order of the court or of the Central Government passed after the appointed day, and is to take effect from a date earlier to the date of the order, then for all of the purposes of this Act, it shall be presumed that the two or more companies brought into existence by the operation of the said order have not sold or purchased any goods to each other from the date of effect of the order to the date of the order.

(b) Notwithstanding anything contained in the said order, for all the purposes of this Act, the said two or more companies shall be treated as a

single company for all the periods upto the date of the said order and the registration certificate of the company to be demerged shall be cancelled with effect from the date of the said order and the said two or more companies shall, subject to rules, be granted registration certificates from the date of the said order.

(3) Words and expressions used in this section but not defined shall have the respective meanings assigned to them in the Companies Act, 1956.

CHAPTER VIII

SET-OFF, REFUNDS, ETC.

48. (1) The State Government may, by rules, provide that.—

(a) in such circumstances and subject to such conditions and restrictions as may be specified in the rules, a set-off or refund of the whole or any part of the tax,—

(i) paid under any earlier law in respect of any earlier sales or purchases of goods treated as capital assets on the day immediately preceding the appointed day or of goods which are held in stock on the appointed day by a person who is a dealer liable to pay tax under this Act, be granted to such dealer; or

(ii) (ii) paid in respect of any earlier sale or purchase of goods under this Act be granted to the purchasing dealer; or

(iii) paid under the Maharashtra Tax on Entry of Motor Vehicles into the Local Areas Act, 1987, be granted to the dealer purchasing or importing motor vehicles;

(iv) paid under the Maharashtra Tax on Entry of Goods into the Local Areas Act, 2002, be granted to the dealer;

(b) for the purpose of the levy of tax under any of the provisions of this Act, the sale price (...) may in the case of any class of sales be reduced to such extent, and in such manner, as may be specified in the rules.

(2) No set-off or refund as provided by any rules made under this Act shall be granted to any dealer in respect of any purchase made from a registered dealer after the appointed day, unless the claimant dealer produces a tax invoice, containing a certificate that the registration certificate of the selling dealer was in force on the date of sale by him and the due tax, if any, payable on the sale has been paid or shall he paid and unless such certificate is signed by the selling dealer or a person duly authorised by him.

(3) Subject to the provisions contained in sub-section (4), where no tax has been charged separately under any earlier law, the rate of tax applicable for the purposes of calculating the amounts of set-off, or refund in respect of

any earlier sale or purchase of goods, or for the purposes of reduction of sale or purchase price for levy of tax, shall be the rate set-out against the goods in the relevant Schedule under any earlier law..

(4) Where, under any notification issued under this Act or as the case may be, any earlier law, any sale or purchase of goods has been exempted from the payment of whole of sales tax or purchase tax, then, for the purposes of sub-section (3), the rate of tax applicable shall be nil; and where it is exempted from payment of any part of sales tax (or purchase tax), the rate of tax applicable shall be the rate at which the payment of tax is to be made by virtue of such exemption.

(5) For the removal of doubt it is hereby declared that, in no case the amount of set-off or refund on any purchase of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under this Act or any earlier law, into the Government treasury except to the extent where purchase tax is payable by the claimant dealer on the purchase of the said goods effected by him:

Provided that, where tax levied or leviable under this Act or any earlier law is deferred or is deferrable under any Package Scheme of Incentives implemented by the State Government, then the tax shall be deemed to have been received in the Government Treasury for the purposes of this sub-section.

(6) Where at any time after the appointed day, a dealer becomes entitled to a refund whether under any earlier law or under this Act, then such refund shall first be applied against the amount payable, if any, under any earlier law or this Act (...) and the balance amount, if any, shall be refunded to the dealer.

49. Where any declared goods are sold by a dealer in the course of inter-State trade or commerce and tax has been paid by him under the Central Sales Tax Act, 1956, in respect of the sale of such goods in the course of inter-State trade or commerce, and such dealer shows to the satisfaction of the Commissioner that tax under this Act, or any earlier law has been paid in respect of an earlier sale or purchase of such goods made in the State after the 1st day of October 1958, then an amount equal to the tax so paid shall be reimbursed to such dealer making such sale in the course of inter-State trade or commerce, in such manner and subject to such conditions as may be prescribed.

50. (1) Subject to the other provisions of this Act and the rules made thereunder, the Commissioner shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him. The refund may be either by deduction of such excess from the amount of tax, penalty, amount forfeited and interest due, if any, in

respect of any other period or in any other case, by cash payment:

Provided that, the Commissioner shall first apply such excess towards the recovery of any amount due in respect of which a notice under subsection (4) of section 32 has been issued, or, as the case may be. any amount which is due as per any return or revised return but not paid and shall then refund the balance, if any.

(2) Where any refund is due to any dealer according to the return or revised return furnished by him for any period, then subject to the other provisions of this Act including the provisions regarding provisional refunds such refund may provisionally be adjusted by him against the tax due and payable as per the returns or revised return furnished under section 20 for any subsequent period:

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

51. (1) If a registered dealer has filed any returns or revised returns as required by or under this Act, and such returns show any amount to be refundable to the said dealer, then the said dealer may apply in the prescribed form to the Commissioner for grant of a provisional refund pending assessment.

(2) The Commissioner may require the said dealer to furnish such Bank Guarantee for such period as may be prescribed . On receipt of such guarantee, the Commissioner shall subject to rules, grant the dealer a provisional refund of the amount claimed refundable as aforesaid within six months of the end of the year containing the period to which the return or revised return relates and the refund relating to all the periods contained in one year may be granted by a single order:

Provided that the refund relating to any period covered by a return shall be granted within three months of the end of the period to which the return relates if the dealer is,-

- (a) is an exporter within the meaning of sub-section(1) of section5 of the Central Sales Tax Act, 1956
- (b) is an unit specified in the Explanation to sub-section (3) of section 8
- (c) holds a certificate of Entitlement under any Package Scheme of Incentives,

Provided further that where the dealer has obtained a registration certificate as provided under section 16 except on account of change of place of business to a different local area, then the provisional refund in

respect of the year containing the date of effect of the registration certificate shall be granted within six months of the end of the year succeeding the said year.

(d) a person or dealer specified to be eligible for refund in any notification issued under sub-section(1) of section 41.

(3) If it is found that the provisional refund granted is in excess of the refund found due , then the excess shall be recovered as if it a tax due from the dealer and on such excess, interest shall be leviable at the prescribed rate per month or part thereof from the date of grant of the provisional refund.”

(4) If the dealer is required to furnish any information before the grant of provisional refund and the required information is not furnished in the prescribed time, then, for the purposes of this Act, the period in which the refund is to be granted shall commence from the first date of the month following the month in which the required information is furnished.

(5) Provisional refund shall not be granted under this section if before the grant of refund, a notice for assessment covering the period to which the refund relates is issued or proceedings under sub-section (3) or (4) of section 64 in respect of the period to which the refund relates are initiated .

52. Where under this Act, refund of any tax becomes due to a registered dealer, he shall, subject to rules, if any, be entitled to receive, in addition to the refund, simple interest at the prescribed rate on the amount of refund for the period commencing on the date next following the last date of the period to which the refund relates and ending on the date of the order sanctioning the refund or for a period of twenty four months, whichever is less. The interest shall be calculated on the amount of refund due to the registered dealer in respect of the said period after deducting therefrom the amount of penalty, sum forfeited and interest, if any, charged in respect of the said period and also the amount of refund, if any, adjusted towards any recovery under this Act or any earlier law or as the case may be, under the Central Sales Tax Act, 1956, If, as a result of any order passed under this Act, the amount of such refund is enhanced or reduced, as the case may be, such interest shall be enhanced or reduced accordingly. If the interest is reduced, then the amount granted in excess shall be recovered as if it is an amount payable under this Act.

Provided that interest under this section shall not be granted towards any provisional refund granted under section 51.

Explanation. —For the purposes of this section, where the refund of tax, whether in full or in part, includes any amount of refund on any payment of tax made after the date prescribed for making the last payment in

respect of the said period, then the interest, in so far as it relates to the refund arising from such payment, shall be calculated from the date of such payment to the date of such order.

53. (1) Where an amount required to be refunded by the Commissioner to any person, by virtue of an order issued under this Act, is not so refunded to him within ninety days of the date of the order, the Commissioner shall pay such person simple interest at the prescribed rate on the said amount from the date immediately following the expiry of the period of ninety days to the date of the refund:

Provided that, where the amount becomes refundable by virtue of an order of the Tribunal or the High Court or the Supreme Court, the interest under the provisions of this section shall be payable from the date immediately following the expiry of period of ninety days from the date of receipt of the order of the Tribunal, the High Court or the Supreme Court, by the officer whose order forms the subject of the proceedings before the Tribunal, the High Court or the Supreme Court, to the date of refund. The applicant dealer or person may supply to the said officer a certified copy of such order and if the copy is so furnished, interest shall become payable after the expiry of period of ninety days from the date of such supply.

Explanation. —If the delay in granting the refund within the period of ninety days aforesaid is attributable to the said person, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.

(2) Where any question arises as to the period to be excluded for the purposes of calculation of interest under the provisions of this section, such question shall be determined by the Commissioner, whose decision shall be final.

54. (1) Where an order giving rise to a refund is the subject-matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the authority competent to grant such refund is of the opinion that the grant of the refund is likely to adversely affect the revenue, such authority may, with the previous approval of the Commissioner, withhold the refund till such time as the Commissioner may determine:

Provided that, the Commissioner shall accord his approval to the withholding of the refund only if he is of the opinion that on the conclusion of such appeal, further proceedings or other proceedings, if it becomes necessary to recover the amount of refund in full or in part, then it may not be otherwise practicable or possible so to do in any reasonable period of time:

Provided further that, no order withholding the refund shall be made after

the expiry of ninety days from the date of service of the order giving rise to the said refund.

(2) Where a refund is withheld under sub-section (1), the State Government shall pay interest in accordance with the provisions of section 53 on the amount of refund ultimately determined to be due to the person as a result of the appeal or further proceeding, or any other proceeding for the period from the date immediately following the expiry of ninety days from the date of service of the order referred to in sub-section (1) to the date of refund.

CHAPTER IX PROCEEDINGS

55. (1) Any registered dealer (...) may apply in the prescribed form and manner to the Tribunal for obtaining an advance ruling on the interpretation of any provision of this Act, rules or notifications in respect of a transaction proposed to be undertaken by him even though any question relating to the said provision has not arisen in any proceeding.

(2) If the Tribunal finds that the application does not involve any important and substantial question of law, then the Tribunal may, after giving the applicant a reasonable opportunity of being heard, reject the application.

(3) If the application is admitted, then for determination of the question, the President shall cause a Bench to be constituted, consisting of three (...) members of the Tribunal, a senior practitioner entitled to appear before the Tribunal to be nominated by the President and an Officer of the Sales Tax Department not below the rank of Joint Commissioner, to be nominated by the Commissioner. After hearing the applicant, the Bench shall pronounce its advance ruling on the question specified in the application. If the members of the Bench are divided, then the decision shall be the decision of the majority. The pronouncement of the advance ruling shall, in so far as it may be, made by the said Bench within four months of the receipt of the application by the Tribunal.

(4) The advance ruling so pronounced shall be binding unless there is a change of law on the basis of which the advance ruling has been pronounced and accordingly no such question shall be entertained in any proceeding by any authority appointed or constituted under this Act, save as provided in section 27. (...)

(5) The provisions of this section shall come into effect from such date as may be notified by the State Government in the Official Gazette.

(6) Advance Ruling under this section shall not be sought on any question which can be posed under section 56.

56. (1) If any question arises, otherwise than in a proceedings before a Court or the Tribunal under section 55, or before the Commissioner has commenced assessment of a dealer under section 23, whether, for the purposes of this Act,—

(a) any person, society, club or association or any firm or any branch or department of any firm, is a dealer, or

(b) any particular person or dealer is required to be registered, or

(c) any particular thing done to any goods amounts to or results in the manufacture of goods, within the meaning of that term, or

(d) any transaction is a sale or purchase, or where it is a sale or purchase, the sale price or the purchase price, as the case may be, thereof, or

(e) in the case of any person or dealer liable to pay tax, any tax is payable by such person or dealer in respect of any particular sale or purchase, or if tax is payable, the rate thereof, or

(f) set-off can be claimed on any particular transaction of purchase and if it can be claimed, what are the conditions and restrictions subject to which such set-off can be claimed,

the Commissioner shall, subject to rules, make an order determining such question.

Explanation.—For the purposes of this sub-section, the Commissioner shall be deemed to have commenced assessment of the dealer under section 23 when the dealer is served with any notice by the Commissioner under that section.

(2) The Commissioner may direct that the determination shall not affect the liability under this Act of the applicants or, if the circumstances so warrant, of any other person similarly situated, as respects any sale or purchase effected prior to the determination.

(3) The Commissioner, for reasons to be recorded in writing, may, on his own motion, review an order passed by him under sub-section (1) or (2) and pass such order thereon as he thinks just and proper. The Commissioner may direct that the order of review shall not affect the liability of the person in whose case the review is made in respect of any sale or purchase effected prior to the review and may likewise, if the circumstances so warrant, direct accordingly in respect of any other person similarly situated:

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

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

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

(7) The Commissioner, in so far as he may, shall decide the applications for determination in the chronological order in which they were filed.

57. (1) If the Commissioner is satisfied that an arrangement has been entered into between two or more persons or dealers to defeat the application or purposes of this Act or any provision of this Act, then the Commissioner may by order declare the arrangement to be null and void as regards the application and purposes of this Act. He may, by the said order, provide for increase or decrease in the amount of tax payable by any person or dealer who is affected by the arrangement whether or not such dealer or person is a party to the arrangement, in such manner as the Commissioner considers appropriate so as to counter act any tax advantage obtained by that dealer from or under the arrangement.

(2) For the purposes of this section,—

(i) “arrangement” includes any contract, agreement, plan or understanding, whether enforceable in law or not, and all steps and transactions by which the arrangement is sought to be carried into effect;

(ii) “tax advantage” includes,—

- a. any reduction in the liability of any dealer to pay tax,
- b. any increase in the entitlement of any dealer to claim set-off or refund,
- c. any reduction in the sale price or purchase price receivable or payable by any dealer.

(3) Before passing any order under this section, the Commissioner shall afford a reasonable opportunity of being heard to any such person or dealer whose tax advantage is sought to be counter acted.

58. Where any order under this Act is being passed in respect of a dealer for a part of a year for any reason whatsoever, then for the purposes of levy of tax or exemption from the payment of whole or part of tax and for any purposes incidental or ancillary thereto, any reference to any specified amount or amounts in any section other than section 3 or in any rule or in any notification issued under this Act in relation to a year shall, for the purposes of such order, be construed as a reference to the said amount or amounts as modified by multiplying each such amount or amounts by a

number of which the numerator is the number of months in the period for which the order is being passed and the denominator is twelve:

Provided that, where the period includes a part of a month, then if such part is of fifteen days or more, it shall be increased to one complete month and if such part is less than fifteen days, it shall be ignored

Provided further that, where such period is of less than fifteen days, it shall be increased to one complete month.

59. (1) The Commissioner may, after giving the parties a reasonable opportunity of being heard in the matter, by order in writing after recording his reasons for so, doing so transfer any proceedings or class of proceedings under any provision of this Act, from himself to any other officer and he may likewise transfer any such proceedings, including a proceeding pending with any officer or already transferred under this section, from any officer to any other officer whether with or without concurrent jurisdiction or to himself:

Provided that, nothing in this section shall be deemed to require any such opportunity to be given where the transfer is from any officer to any other officer and the offices of both the officers are situated in Brihan Mumbai including Thane District or, as the case may be, in the same district as constituted under section 4 of the Maharashtra Land Revenue Code, 1966.

(2) For the purposes of this section, any proceedings shall be deemed to be pending only when any authority, having appropriate jurisdiction, issues notice under the provisions of this Act, rules or notifications and the proceedings shall be deemed to be pending only after issue of such notice.

(3) Where no proceedings are pending before any authority, then any authority having appropriate jurisdiction over a person or dealer, may initiate and complete any proceedings whatsoever.

Explanation I. — In this section, the word “proceedings” in relation to any dealer means all proceedings under this Act in respect of any period, which may be pending on the date of such order or which may have been completed on or before such date, and also includes all proceedings under this Act which may be commenced after the date of such order in respect of the said period in relation to such dealer.

Explanation II.(.....)

60. (1) No person shall collect any sum by way of tax in respect of sales of any goods which are not taxable goods.

(2) No person, who is not a registered dealer, shall collect in respect of any sale of goods any sum by way of tax from any other person and no registered dealer shall collect any amount by way of tax or in tax in lieu of

tax in excess of the amount of tax payable by him on any sale of goods under the provisions of this Act.

Explanation. —For the purposes of this sub-section, where, the total amount of tax collected on the turnover of sales by a registered dealer exceeds the amount of tax payable by the dealer on such turnover, and if neither the said dealer nor the Commissioner can identify the individual transactions on which such excess collection has taken place, then, for the purposes of this sub-section, it shall be deemed that the excess collection is attributable in proportionate amounts to all the transactions comprising the turnover and accordingly it shall be deemed for the purposes of this section that an excess amount as aforesaid has been collected on each and every such transaction.

(3) Nothing in sub-section (2) shall apply where a person is required to collect such amount of tax separately in order to comply with the conditions and restrictions imposed on him under the provisions of any law for the time being in force.

(4) Notwithstanding anything contained in sub-section (2), a dealer who is not a works contractor and who has been permitted by the Commissioner to pay a lump-sum in lieu of tax under any provision of this Act, rules or notification shall not collect any sum by way of tax or in lieu of tax on the sale of goods if made during the period to which such lump-sum payment applies.

61. (1) Every dealer liable to pay tax shall,—

(a) if his turnover of sales or, as the case may be, of purchases cases, exceed or exceeds rupees forty lakh in any year, or

(b) a dealer or person who holds license in

(i) Form P.L.L under the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules , 1966.

(ii) Form B-RL under the Maharashtra Manufacture of Beer and Wine Rules, 1966 or,

(iii) Form E under the Special Permits and Licence Rules,1952.

(iv) Forms FL-I, FL-II, FL-III, FL-IV under the Bombay Foreign Liquor Rules, 1953

(v) Forms CI-I, CL-II, CL-III, CL/FL/TOD III under the Maharashtra Country Liquor Rules, 1973.

get his accounts in respect of such year audited by an Accountant within the prescribed period from the end of that year and furnish within that period the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars and

certificates as may be prescribed.

Explanation. —For the purposes of this section, “Accountant” means a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 ..

(2) If any dealer liable to get his accounts audited under sub-section (1) fails to furnish a copy of such report within the time as aforesaid, the Commissioner may, after giving the dealer a reasonable Opportunity of being heard, impose on him, in addition to any tax payable, a sum by way of penalty equal to one tenth per cent. of the total sales or as the case may be, purchases or a sum of one lakh rupees, whichever is less.

Provided that the dealer fails to furnish a copy of such report within the period prescribed under sub-section (1) but files it within one month of the end of the said period and the dealer proves to the satisfaction of the Commissioner that the delay was on account of factors beyond his control, then no penalty under this sub-section shall be imposed on him.

62. (1) No assessment (including review, appeal, rectification, penalty and forfeiture), notice, summons or other proceedings furnished, made or issued or taken or purported to have been furnished, made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such, assessment, notice, summons or other proceedings, if such assessment, notice, summons or other proceedings are, in substance and effect in conformity with or according to the intent, purposes and requirements of this Act.

(2) The service of any notice, order or communication shall not be called in question, if the said notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or which service has not been called in question at or in the earlier proceedings commenced, continued or finalized pursuant to such notice, order or communication.

(3) No order, including an order of assessment, review, appeal or rectification or forfeiture passed under the provisions of this Act shall be invalid merely on the ground that the action could also have been taken by any other authority under any other provisions of this Act.

CHAPTER X

LIABILITY TO PRODUCE ACCOUNTS ETC.

63. (1) Every dealer liable to pay tax under this Act, and any other dealer, who is required so to do by the Commissioner by notice in the prescribed form served on him, shall keep a true account of the value of the goods sold or purchased by him.

(2) If the Commissioner considers that the accounts kept are not sufficiently clear or intelligible to enable him to determine whether or not a dealer is liable to pay tax during any period, or are so kept as not to enable a proper scrutiny of the returns or the Statements furnished, the Commissioner may require such dealer by notice in writing to keep such accounts, including records of sales or purchases in such form or manner as in his opinion is necessary for the purpose of proper quantification of tax and as he may, subject to anything that may be prescribed in that behalf, in writing direct.

(3) The Commissioner may, subject to such conditions or restrictions as may be prescribed in this behalf, by notice in writing direct any dealer, or by notification in the *Official Gazette*, direct any class of dealers, to maintain accounts and records showing such particulars regarding their purchases, sales or delivery of goods, and payments made or received towards sale or purchase of goods in such form, and in such manner, as may be specified by him.

(4) Every registered dealer shall ordinarily keep all his accounts, registers and documents relating to his stocks of goods, or to purchases, sales and delivery of goods made by him or payments made or received towards sale or purchase of goods, at the place or places of business specified in his certificate of registration or with the previous approval of the Commissioner, at such other place as may be agreed to by the Commissioner.

(5) Where,-

(a) any sale of goods is made and thereafter the goods are returned within the prescribed time, then the goods returned shall be accounted for in the return for the period in which appropriate entries are taken in the books of account and

(b) any purchase of goods is made and thereafter the goods are returned within the prescribed time, then the goods returned shall be accounted for in the return for the period in which appropriate entries are taken in the books of account.

(6) If the sale price or, as the case may be, the purchase price of any goods is varied and credit notes, or as the case may be debit notes, are requested to be issued to give effect to such variation, then,--

(a) the credit notes or, as the case may be, debit notes shall separately specify the component of tax, if any, and the component of price, and

(b) such credit notes or, as the case may be, debit notes, shall be accounted for in the return in the period in which appropriate entries for debit notes and credit notes are taken in the books of account.

64. (1) The Commissioner may, subject to such conditions as may be prescribed, require any dealer to produce before him any accounts or documents, or to furnish any information, relating to stocks of goods of, or to sales, purchases and delivery of goods or to payments made or received towards sales or purchases of goods by the dealer, or any other information relating to his business, as may be necessary for the purposes of this Act.

(2) All accounts, registers and documents relating to stock of goods of, or to purchases, sales and delivery of goods, payments made or received towards sale or purchase of goods by any dealer and all goods and cash kept in any place of business of any dealer, shall at all reasonable times, be open to inspection by the Commissioner, and the Commissioner may take or cause to be taken such copies or extracts of the said accounts, registers or documents and such inventory of the goods and cash found as appear to him to be necessary for the purposes of this Act.

(3) If the Commissioner has reason to believe that any dealer has evaded or is attempting to evade the payment of any tax due from him, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer as may be necessary, and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceedings under this Act or for any prosecution:

Provided that, on application of the dealer, the Commissioner shall provide true copies of the said accounts, registers or documents.

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

(5) Where any books of accounts, other documents, money or goods are found in the possession or control of any person in the course of any search, it shall be presumed unless the contrary is proved, that such books of accounts, other documents, money or goods belong to such person.

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

65. (1) With a view to preventing evasion of tax and ensuring proper compliance with the provisions of this Act, the Commissioner may,

from time to time, collect information regarding sales and purchases effected by any class of dealers and cause any of such transactions of sale and purchase to be cross-checked.

(2) For this purpose, the Commissioner may, from time to time, by notification in the *Official Gazette* require any class of dealers to furnish such information, details and particulars as may be specified therein regarding the transactions of sales and purchases effected by them during the period mentioned in the said notification in such form, to such authority and by such date as may be specified therein.

(3).....

(4).....

66. 1) With a view to identifying dealers who are liable to pay tax under this Act, but have remained unregistered, the Commissioner shall, from time to time, cause a survey of unregistered dealers to be taken.

(2) For the purposes of the survey, the Commissioner may, by general or special notice, require any dealer or class of dealers to furnish the names, addresses and such other particulars as he may find necessary relating to the persons and dealers who have purchased any goods from or sold any goods, to such dealer or class of dealers during any given period.

(3) For the purposes of survey, the Commissioner may call for details and particulars regarding the services provided by public utilities and financial institutions including Banking companies which he is of the opinion shall be relevant and useful for the purposes of the survey. He may, from time to time, cause the results of the survey to be published in any manner as he thinks fit, so however as not to disclose or indicate the identity of any particular unregistered dealer identified during the survey.

(4)

(5)

(6)

(7)

67. If the Government considers it necessary with a view to preventing or checking evasion of tax under the Act, it may, by notification in the *Official Gazette*, direct the establishment of check-post or the erection of a barrier or both, at such place in the State or at the border of the State as may be specified therein.

(2) The owner or person in charge or driver of a vehicle shall,—

(a) carry with him a tax invoice or a bill of sale or a delivery note or such other documents as may be prescribed, in respect of the goods carried by the vehicle;

(b) produce the documents referred to in sub-clauses (a) before any officer-in-charge of check-post or barrier or any other officer authorised under sub-section (1) of section 77 and obtain the seal of such officer affixed thereon and give one copy of the bill of sale and delivery note or other document to the said officer and carry and retain with him the other copy until the termination of movement of goods;

(c) on entering the State, report at the first situated check-post or barrier, and while leaving the State, report at the last situated check-post or barrier and give a declaration to the said officer containing such particulars as may be prescribed in respect of the goods carried in the vehicle;

(d) stop the vehicle and keep it stationary so long as may be required by the said officer to examine the goods and inspect the records relating to the goods carried in the vehicle and which are in the possession of such driver or other person-in-charge of a vehicle, and who shall, if so required, give his name and address and the name and address of the owner of the vehicle.

(e) where any vehicle is intercepted by an officer authorised under sub-section (1) of section 77, such officer may, if he deems it necessary, direct the owner or driver or person-in-charge of the vehicle to take it to the nearest check-post or barrier or police station and the owner, driver or Person-in-charge of the vehicle shall comply with such direction.

68. (1) Where a vehicle is carrying taxable goods,---

(a) from any place outside the State to any place outside the State and passes through the State; or

(b) imported into the State from any place outside the country and such goods are being carried to any place outside the State.

the driver or any other person-in-charge of such vehicle shall furnish the prescribed information and obtain a transit pass in the prescribed form, in duplicate, from the officer in charge of the first check-post or barrier after its entry into the State or after movement of such goods has commenced from the State, as the case may be, or from the officer to whom powers have been delegated under sub-section (1) of section 77 upon interception of the goods vehicle after its entry into the State or after movement of such goods has commenced, as the case may be,

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

the State.

(3) (a) If for any reason, the goods carried in a vehicle are not moved out of the State within the time stipulated in the transit pass, the owner, driver or person-in-charge of the goods vehicle shall furnish to the officer empowered in this behalf the reasons for such delay and other particulars, if any, thereof and such officer shall after due enquiry, where necessary extend the time of exit by suitably amending the transit pass.

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

(4) If the driver or any other person-in-charge of the vehicle does not comply with the requirements of sub-section (2), then it shall be presumed, unless proved otherwise, that the said goods have been sold within the State and the owner of the vehicle and the driver shall be assessed to tax as if he is a dealer liable to pay tax by an officer empowered in this behalf by the Commissioner and all the provisions of this Act shall apply accordingly.

(5) If the owner of the vehicle having obtained the transit pass as provided under sub-section (1) fails to deliver the same as provided in sub-section (2), he shall be liable to pay by way of penalty a sum equal to twice the amount of tax leviable on the goods transported.

(6) In a case where a vehicle owned by a person is hired for transport of goods by some other person, the hirer of the vehicle shall, for the purposes of this section, be also deemed to be the owner of the vehicle.

69. (1) The State Government may, by notification in *Official Gazette*, provide that the provisions contained in the Information Technology Act, 2000, and the rules made and directions given under that Act, including the provisions relating to digital signatures, electronic governance, attribution, acknowledgement and dispatch of electronic records, secure electronic records and secure digital signatures and digital signature certificates as are specified in the said notification, shall, in so far as they may, as far as feasible, apply to the procedures under this Act.

(2) Where any notice or communication is prepared on any automated data processing system and is properly served on any dealer or person, then the said notice or communication shall not be required to be personally signed by any officer or person and the said notice or communication shall not be deemed to be invalid only on the ground that it is not personally signed by

any such officer.

CHAPTER XI STATISTICS

70. (1) The Commissioner may, if he considers that or the purposes of the better administration of this Act, it is necessary so to do, he may by notification in the *Official Gazette*, direct that statistics he collected relating to any matter dealt with, by or in connection with to this Act.

(2) Upon such direction being given the Commissioner, or any person or persons, authorised by the Commissioner in this behalf. may, by notification in the *Official Gazette*; and if found necessary by notice in any newspapers or in such other manner as in the opinion of the Commissioner or the said person, is best suited to bring the notice to the attention of dealers and other person or persons, call upon all dealers or any class of dealers or persons to furnish such information or returns as may be specified therein relating to any matter in respect of which statistics is to be collected. The form in which. the persons to whom or, the authorities to which, such information or returns should be furnished, the particulars which they should contain, and the intervals in which such information or returns should be furnished, shall be such as may be prescribed.

70. (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceeding before a Criminal Court), or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act shall, save as provided in sub-section (3), be treated as confidential; and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall save as aforesaid, be entitled to require any servant of the Government to produce before it any such statement, return, account, document or record or any part thereof, or to give evidence before it in respect thereof.

(2) Save as provided in sub-section (3). if any servant of the Government discloses any of the particulars referred to in sub-section (1), he shall. on conviction, be punished with imprisonment which may extend to six months or with fine or with both:

Provided that, no prosecution shall be instituted under this section except with the previous sanction of the State Government.

(3) Nothing contained in this section shall apply to the disclosure of,—

(a) any such particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption

- Act, 1988, or this Act, or any other law for the time being in force; or
- (b) any such particulars to the State Government or to any person acting in the execution, or for the purposes, of this Act; or
- (c) any such particulars when such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand; or
- (d) any such particulars to a Civil Court or a Tribunal constituted under any central law in any suit, to which the Government is a party, which relates to any matter arising out of any proceeding under this Act; or
- (e) any such particulars to any officer appointed to audit receipts or refunds of the tax imposed by this Act; or
- (f) any such particulars where such particulars are relevant for the purposes of any inquiry into the conduct of an official of the Sales Tax Department. to any person or persons appointed as an inquiry officer under any relevant law ; or
- (g) such facts to an officer of the Central Government or any State Government as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it: or
- (h) any such particulars, when such disclosure is occasioned by the lawful exercise by a public servant of his powers under the Bombay Stamp Act, 195 or the Indian Stamp Act, 1899, to impound an sufficiently stamped document; or
- (i) any such particulars where such particulars are relevant to any inquiry into a charge of misconduct in connection with sales tax proceedings against a legal practitioner, sales tax practitioner, cost accountant or chartered accountant, to the authority, if any, empowered to take disciplinary action against the members practising the profession of a legal practitioner, sales tax practitioner, cost accountant or chartered accountant, as the case may be; or
- (j) any such particulars to the Director, Bureau of Economics and Statistics or any officer serving under him or to any person or persons authorised under sub-section (2) of section 70 as may he necessary for enabling the Director or such person or persons to carry on their official duties; or
- (k) any such particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes ; or
- (l) any such particulars to an officer of the Central Government or any

State Government as may be necessary for the administration of, or for the purposes of inquiry or prosecution under, any law in force in any part of India.

71. (1) No information of any individual return or part thereof, with respect to any matter given for the purposes of section 70 shall, without the previous consent in writing of the dealer or person or his authorised agent, be published in such manner as to enable any particulars to be identified as referring to a particular dealer and no such information shall be used for the purpose of any proceedings under the provisions of this Act.

(2) Except for the purposes of prosecution under this Act, or any section, other Act, no person who is not engaged in the collection of statistics under this Act or of compilation or computerization thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in that section.

(3) If any person engaged in connection with the collection of statistics under section 70 or compilation or computerization thereof willfully discloses any information or the contents of any return given or made under that section, otherwise than in execution of his duties under that section or for the purposes of the prosecution of an offence under this Act or under any other Act, he shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Provided that, no prosecution shall be instituted under this sub-section except with the previous sanction of the State Government.

(4) Nothing in this section shall apply to the publication of any information relating to a class of dealers or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

72. (1) Notwithstanding anything contained in sections 71 and 72, if the State Government is of the opinion that it is necessary or expedient in the public interest to publish or disclose the names of any dealers or other persons and any other particulars relating to any proceedings under this Act in respect of such dealers and persons, it may publish or disclose or cause to be published or disclosed such names and particulars in such manner as it thinks fit.

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

been disposed of.

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

CHAPTER XII

OFFENCES AND PENALTIES

74. (1) Whoever knowingly,--

- (a) Not being a registered dealer under this Act, represents that he is or was a registered dealer when he sells or buys goods or,
- (b) furnishes a false return, or
- (c) produces before the Commissioner or the Tribunal, a false bill, cash memorandum, voucher, declaration, certificate or other document referred to in sub-section(4) of section 29, or
- (d) keeps false account of the value of goods bought or sold by him in contravention of sub-section (1) of section 63 ,or
- (e) produces false accounts, registers or documents or knowingly furnishes false information, or
- (f) issues to any person any certificate or declaration , under the Act, Rules or notifications, or a bill, cash memorandum, voucher, delivery challan, lorry receipt or other document which he knows or has reason to believe to be false, or
- (g) falsely represents that he is authorised under section 82 to appear before any authority in any proceeding,

shall on conviction be punished with rigorous imprisonment for a term which shall not be less than one month but which may extend to one year and with fine.

(2) Whoever will fully attempts in any manner whatsoever to evade any tax leviable under this Act or payment of any tax, penalty or interest under this Act shall on conviction be punished with rigorous imprisonment which shall not be less than three months but which may extend to one year and with fine.

(3) Whoever ,--

- (a) fails without sufficient cause, to comply with the requirements of sub-section(1) of section 14,or

- (b) is engaged in business as a dealer without being registered under section 16, or
- (c) fails without sufficient cause, to obtain in lieu of the existing certificate of registration of fresh certificate of registration when required to do so as provided in sub-section(1) of section 17,or
- (d) fails without sufficient cause, to furnish any information required by section 18,or
- (e) fails without sufficient cause to furnish a declaration or, as the case may be, a revised declaration as provided in sub-section(1) of section 19 or fails without sufficient cause to communicate the permanent account number obtained under the Income Tax Act, 1961 or, as the case may be, fails to state whether he has applied for the same and fails without sufficient cause to provide the details of the application as provided in sub-section (2) of section 19,or
- (f) fails, without sufficient cause, to furnish any return or, as the case may be, a self consistent and fully filled in return as required by section 20 by the date and in the manner prescribed,or
- (g) fails without sufficient cause to pay the tax deductible at source or to deduct at source such tax, or fails without sufficient cause to obtain the sales tax deduction account number or fails without sufficient cause to file a return as required under the provisions of section 31,or
- (h) fails without sufficient cause to comply with the requirements of the notice issued under sub-section(1) of section 33,or
- (i) fails without sufficient cause to comply with the requirements of any order issued under sub-section (1) of section 35,or
- (j) fails without sufficient cause to comply with the requirements of any order issued under sub-section (3) of section 38,or
- (k) fails without sufficient cause to comply with the requirements of section 42,or
- (l) without reasonable cause, contravenes any of the provisions of section 60, or
- (m) fails, without sufficient cause, to get his accounts audited or furnish the report of the audit, as required under section 61,or
- (n) fails, without sufficient cause to comply with requirements of section 63. or
- (o) fails, without sufficient cause, to comply with the requirements of section 64,or

- (p) fails without sufficient cause to comply with requirements of section 65
- (q) fails, without sufficient cause, to comply with the requirements of section 66,or
- (r) fails, without sufficient cause, to furnish any information or return required by section 70 by the date and in the manner prescribed or willfully furnishes any information or return which he knows to be incorrect or false, or
- (s) fails, without sufficient cause, to issue a tax invoice, a bill or cash memorandum as required under section 86,or
- (t) contravenes, without reasonable cause, any of the conditions, subject to which the Certificate of Entitlement is granted, or
- (u) fails, without sufficient cause, to comply with any notice in respect of any proceedings,

shall, on conviction , be punished with simple imprisonment for a term which may extend to six months and with fine.

(4) Whoever aids or abets or induces any person in commission of any act specified in sub-sections (1) and (2) shall, on conviction, be punished with simple imprisonment which shall not be less than one month but which may extend to one year and with fine and whoever abets or induces any person in commission of any act specified in sub-section (3) shall on conviction be punished with simple imprisonment which may extend to one month and with fine .

(5) Whoever commits any of the acts specified in sub-sections (1) to (4) and the offence is a continuing one under any of the provisions of these sub-sections, shall, on conviction, be punished with daily fine not less than rupees one hundred during the period of the continuance of the offence, in addition to the punishments provided under this section.

(6) Where a dealer is accused of an offence specified in the sub-sections (1) or(2) or (3), the person deemed to be the manager of the business of such dealer under section 19 shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission thereof.

(7) In any prosecution for an offence under this section, which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state, but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation— Culpable mental State includes intention, motive or knowledge of a fact or belief in or reason to believe, a fact and a fact is said to be proved only when the court believes it to exist beyond reasonable

doubt and not merely when its existence is established by a preponderance of probability.

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

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

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

Explanation. —For the purpose of this section,—

(a) “business entity” means a body corporate, and includes a firm, a firm, a Hindu Undivided Family or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm and in relation to a Hindu Undivided Family, means a Karta .

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

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a Metropolitan Magistrate or Judicial Magistrate, First Class may, impose on any person found guilty of an offence under section 71, 72 or 74, a punishment as provided in relevant sections in excess of his powers under section 29 of the said Code.

(3) If any prosecution for an offence under this Act has been instituted in respect of the same facts on which a penalty has been imposed by the Commissioner under section 29 or 61, then if the offence is compounded under section 78 or, in any other case, on conviction as a result of the final proceedings, the Commissioner shall refund to the dealer the amount of penalty paid by him.

77. (1) Subject to such conditions, if any, as may be prescribed, the Commissioner may authorise, either generally or in respect of a particular case or class of cases any officer or person subordinate to him to investigate all or any of the offences punishable under this Act.
- (2) Every officer so authorised shall, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure, 1973, upon an officer in charge of a police station for the investigation of a cognizable offence.
78. (1) The Commissioner may, either before or after the institution of proceedings for any offence punishable under section 74 or under any rules made under this Act, after affording the person concerned an opportunity of being heard, accept from any person charged under sub-section (3) of section 74 or under any rule, a sum not exceeding two thousand rupees and in any other case a sum not exceeding double the amount of tax which would have been payable in the sale, purchase or turnover to which the offence relates, by way of composition of the offence.
- (2) On payment of such sum as may be determined by the Commissioner under sub-section (1), no further proceedings shall be taken against the accused person in respect of the same offence and any proceedings, if already taken, shall stand abated.

CHAPTER XIII

Miscellaneous

79. Notwithstanding anything contained in the Bombay Court-fees Act, 1959,-
- (a) any application not otherwise provided for when presented to a prescribed authority for a prescribed purpose or when presented to the Tribunal shall subject to the provisions of clause (h), be charged with such fee not exceeding one hundred rupees, as may be prescribed and
- (b) An appeal preferred under section 26 shall bear a court fee stamp of such value, not exceeding one thousand rupees, as may be prescribed, if the amount in dispute exceeds rupees one lakh, and any other appeal shall be charged with such fee not exceeding one hundred rupees, as may be prescribed.
80. In computing the period of limitation laid down under sections 25, 26 and 27, the provisions of sections 4 and 12 of the Limitation Act, 1963 shall, so far as may be, apply.
81. (1) An appellate authority may admit any appeal under section 26

after the period of limitation laid down in the said section, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period.

Explanation.—For the purposes of this section, when an appeal is preferred under section 26 after the period of limitation laid down in that section, the ground that the appellant came to know of any judgment, decision or order of any Court, Tribunal or other authority after the expiry of the period of limitation aforesaid (whether such judgment, decision or order was delivered or made before or after the expiry of that period). shall not be deemed to constitute a sufficient cause for the purposes of this section.

(2) In computing the period of limitation, in respect of any proceedings under this Act, the time during which the proceedings remained stayed under the order of a competent Court or Tribunal shall be excluded.

82. (1) Any person, who is entitled or required to attend before any before any authority including the Tribunal in connection with any proceeding under this Act, otherwise than when required to attend personally for examination on oath or affirmation, may attend,—

- (a) by a relative or a person regularly employed by him, or
- (b) by a legal practitioner, Chartered Accountant or Cost Accountant who is not disqualified by or under sub-section (2), or
- (c) by a sales tax practitioner who possesses the prescribed qualifications and is entered in the list which the Commissioner shall maintain in that behalf, and who is not disqualified by or under sub-section (2), or
- (d) any person who, immediately before the commencement of this Act was qualified to appear as a sales tax practitioner under any earlier law and who is not disqualified by or under sub-section (2), only if such relative, person employed, legal practitioner, Chartered Accountant, Cost Accountant or sales tax practitioner is authorised by such person in the prescribed form, and such authorisation may include the authority to act on behalf of such person in such proceedings.

Explanation. —“A person regularly employed” means a person whose salary is regularly and periodically debited and recorded in the books of account of the dealer.

(2) The Commissioner may, by order in writing and for reasons to be recorded therein, disqualify for such period as is stated in the order from attending before any such authority, any legal practitioner, Chartered Accountant, Cost Accountant or sales tax practitioner,—

- (i) who has been removed or dismissed from Government service, or

(ii) who being a legal practitioner, a Chartered Accountant or a Cost Accountant is found guilty of misconduct in connection with any proceedings under this Act by an authority, empowered to take disciplinary action against the member of the profession to which he belongs, or

(iii) who, being a sales tax practitioner, is found guilty of such misconduct by the Commissioner.

(3) No order of disqualification shall be made in respect of any particular person unless he is given a reasonable opportunity of being heard.

(4) Any person against whom any order of disqualification is made under this section may, within one month of the date of communication of such order, appeal to the Tribunal to have the order cancelled or modified.

(5) The order of the Commissioner shall not take effect until one month of the service thereof or when an appeal is preferred until the appeal is decided.

(6) The Commissioner may, at any time *suo motu* or on an application made to him in this behalf, revoke or modify any order made against any person under sub-section (2) and thereupon such person shall cease to be disqualified subject to such conditions or restrictions that may be contained in such order.

83. (1) The power to make rules under this Act shall be exercisable by the State Government, by notification in the *Official Gazette*.

(2) Without prejudice to any power to make rules contained elsewhere in this Act, the State Government may make rules generally to carry out the purposes of this Act : and such rules may include rules for levy of fees for any of the purposes of this Act.

(3) Without prejudice to any provision made in this behalf, any rule made under this Act may be made so as to be retrospective to any date not earlier than the appointed day.

(4) Rules made under this section shall be subject to the condition of previous publication :

Provided that, the State Government may, if it is satisfied that circumstances exist which render it necessary for it to take immediate action, it may dispense with the requirement of previous publication of any rule or rules to be made under this section.

(5) In the rules, it may be provided that a breach thereof shall be punishable with fine not exceeding two thousand rupees and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the continuance of the offence.

(6) Every rule made under this section shall be laid, as soon as may be

after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made and notify such decision in the *Official Gazette*, the rule shall, from the date of publication of such notification, 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 or omitted to be done under that rule.

84. The Commissioner may, by notification in the *Official Gazette*, require any class of registered dealers as may be specified in the notification, to declare such details regarding capital assets held by them on the day immediately preceding the appointed day and the stock of goods held by them on the day immediately preceding the appointed day in such manner and with such particulars and to such authority, as he may notify in this behalf.

85. (1) Save as is provided by section 27, no order passed or proceedings taken under this Act, the rules or notification by any authority appointed or constituted under this Act, shall be called in question in any Court, and save as is provided by section 26, (.....)no appeal shall lie against any such order.

(2) No appeal shall lie against,—

- (a) any notice issued under this Act, rules or notifications, or
- (b) any summons issued under sub-section (1) of section 14, or a defect notice issued under section 20
- (b-1) an assessment order passed under sub-section (1) of section 23 or
- (c) any order issued on an application for instalment, or
- (d) any order or notice issued under sub-section (1) or (2) of section 34
- (e) an order pertaining to the seizure or retention of books of accounts, registers and other documents, or
- (f) (...)
- (g) any order or assignment under section 59, or
- (h).....
- (i) an interim order issued in the course of any proceeding not being an order issued under sub-section (6) of section 26.

86. (1) If a registered dealer sells any goods, he may issue to the

purchaser a tax invoice containing such particulars as are specified in sub-section (2) and retain a copy thereof for three years from the end of the year in which the sale took place.

(2) The tax invoice issued under sub-section (1) shall contain the following particulars on the original as well as on all the copies thereof,—

- (a) the words “tax invoice” in bold letters at the top or at any prominent place,
- (b) the name, address and registration certificate number of the selling dealer as well as the name and the address of the purchasing dealer,
- (c) an individual serialised number and the date on which the tax invoice is issued,
- (d) description of the goods, the quantity or as the case may be, number and price of the goods sold and the amount of tax charged thereon indicated separately, and
- (e) signed by the selling dealer, or his servant, manager or agent duly authorised by him.

(3) When a registered dealer sells any goods, he may at his option issue to the purchaser a bill or cash memorandum serially numbered, signed and dated by him or his servant, agent or manager and stating therein such other particulars as may be prescribed. He shall keep a counterfoil or duplicate of such bill or cash memorandum duly signed and dated and preserve it for a period of three years from the end of the year in which the sale took place. Where the said registered dealer is issuing a bill or cash memorandum, he shall not collect tax separately on such sale.

(4) Nothing contained in sub-section (1) or (2) shall apply to a dealer who is paying tax by way of composition under sub-section (1) or (2) of section 42.

(5) The State Government may, by rules provide for such electronic system as may be used, if necessary, in conjunction with such automatic data processing machines, as may be prescribed, for preservation of the details of the bill or cash memorandum for the purposes of sub-section (3) in such form and manner as may be approved by the Commissioner and any dealer may apply to the Commissioner to permit him, subject to such conditions, if any, as may be prescribed, to maintain the record of the bills or cash memoranda on such system. On such permission being granted, the dealer shall stand exempted for the purposes of said sub-section (3) regarding keeping counterfoils or duplicates of the said bills or cash memoranda and of signing the bill or cash memorandum.

(6) A registered dealer, shall in respect of every sale made by him issue either a tax invoice or a bill or cash memorandum as provided under sub-section (1) or (3).

87. The Commissioner may, from time to time, by notification in the Official Gazette, direct that on and after such dates as may be specified therein, the form of any of the certificates or declarations under this Act or any rule or any notification, shall be obtained from the prescribed authority in the prescribed manner subject to the conditions and restrictions that may be specified by him in that behalf.

CHAPTER XIV

PACKAGE SCHEME OF INCENTIVES

88. In this chapter, unless the context requires otherwise,—

(a) “Certificate of Entitlement” means a certificate issued by the Commissioner in respect of sales tax incentives under the relevant Package Scheme of Incentives;

(b) “District Industries Centre” in relation to any eligible unit means the District Industries Centre established by the State Government in a district, in which the concerned Eligible Unit is situated;

(c) “Eligibility Certificate” means a certificate granted by the SICOM SICOM or the Directorate of Industries or the relevant Regional Development Corporation or the District Industries Centre concerned or the Maharashtra Tourism Development Corporation or the Maharashtra Energy Development Authority in respect of sales tax incentives under the relevant Package Scheme of Incentives designed by the State Government;

(d) “Eligible Unit” means the Industrial Unit in respect of which an Eligibility Certificate is issued;

(e) “Package Scheme of Incentives” means the 1979, 1983, 1988 or 1993 Package Schemes of Incentives introduced by the Industries, Energy and Labour Department, the Package Scheme of Incentives for Tourism 1993, Electronic Scheme 1985 and the New Package Scheme of Incentives for projects 1998 for projects 1998, introduced by the Home and Tourism Department and the Power Generation Promotion Policy 1998 introduced by the Industries, Energy and Labour Department, all as amended, from time to time;

(f) “the Relevant Regional Development Corporation” means,—

(i) in relation to the Vidarbha area of the State, the Development Corporation of Vidarbha Limited, a Government Company registered under the Companies Act, 1956;

(ii) in relation to the Konkan revenue division excluding the City of Mumbai and the Mumbai Suburban District, the Development Corporation of Konkan Limited, a Government Company registered under the Companies Act, 1956;

(iii) in relation to the Marathwada area of the State, the Marathwada Development Corporation Limited, a Government Company registered under the Companies Act, 1956;

(iv) in relation to the rest of Maharashtra, the Western Maharashtra Development Corporation Limited, a Government Company registered under the Companies Act. 1956;

(g) "SICOM" means the State Industrial and Investment Corporation of Maharashtra Limited, a Government Company registered under the Companies Act, 1956.

(h) "Maharashtra Tourism Development Corporation" means a Government Company registered under the Companies Act, 1956;

(i) "Maharashtra Energy Development Authority" means a society registered by the name "the Maharashtra Energy Development Authority" under the Societies Registration Act, 1860, under the Societies Registration Act, 1860.

89. (1) Where an Eligibility Certificate has been recommended to an Eligible Unit by the implementing agency under any of the Package Scheme of Incentives declared by the State Government, such Eligible Unit may apply for grant of Certificate of Entitlement to the Commissioner.

(2) Subject to the provisions of this Act, and any rules that may be made in this behalf, the Commissioner shall, if the Eligible Unit satisfies such further requirements as may be prescribed, issue, subject to such conditions, as may be prescribed to the unit a Certificate of Entitlement .

90. Notwithstanding anything contained in this Act, the Certificate of Entitlement issued in favour of an Eligible Unit by the Commissioner whether before or after the appointed day, in respect of any Package Scheme of Incentives,—

(a) shall be deemed to have been automatically cancelled on the date on which,—

(i) the incentives including the cumulative quantum of benefits availed whether before or after the appointed day exceed the monetary ceiling fixed for the Eligible Unit; or

(ii) the period for which a Certificate of Entitlement was granted to an Eligible Unit, expires; or

(iii) the Certificate of Registration granted to an Eligible Unit has been cancelled; or

(b) shall be cancelled by the Commissioner, after giving the Eligible Unit an opportunity of being heard, if it is noticed that the grant of Certificate of Entitlement is inconsistent with any of the provisions of this Act, or, as the

case may be, the Bombay Sales Tax Act, 1959 rules or notifications or any provision of the relevant Package Scheme of Incentives or , if the unit contravenes any of the provisions of the relevant Scheme .

91. (1) Where any Certificate of Entitlement has been granted to any unit under any Package Schemes of Incentives and such unit is entitled to receive benefits for any period which is to end after the appointed day then, notwithstanding anything contained in the said scheme, the benefits shall be availed of only in accordance with this Act, rules and the notifications issued thereunder.

(2). The Commissioner may, notwithstanding anything contained in section 32, in respect of a dealer to whom an Entitlement Certificate for availing of the benefits by way of deferment of Government dues has been granted, extend the date of payment or grant a moratorium for payment of the dues or provide for the payment of dues thereafter in installments, subject to such conditions as may be prescribed.

Provided further that no interest under section 30 shall be payable by a dealer to whom an Entitlement Certificate has been granted and for whom the due date of payment has been extended, moratorium has been granted or installments have been granted and payments have been made accordingly.”

(3) In order to determine whether the cumulative quantum of benefits received by any dealer to whom an Entitlement Certificate for availing of benefits by way of exemption from payment of Government dues has been granted, has exceeded the relevant monetary ceiling under any Package Scheme of Incentives, the Commissioner shall calculate the cumulative quantum of benefits in the manner prescribed and for this purpose he shall take into account the benefits received, if any, by the said dealer prior to the appointed day.

(4) If it is found that the cumulative quantum of benefits calculated in respect of any dealer has exceeded the relevant monetary ceiling, where such ceiling is provided in the relevant Package Scheme of Incentives, then the Commissioner shall require the dealer by order in writing to pay the tax, interest or penalty in respect of each relevant period and shall for the purposes of recovery of such Government dues, serve on the dealer a notice as provided under section 32:

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

(5) Notwithstanding anything contained in this Act, the rules made hereunder or any Package Scheme of Incentives,—

(i) no dealer to whom an Entitlement Certificate has been issued,

whether in order to avail the benefits by way of deferment or payment or exemption from payment of Government dues, shall be entitled to claim set-off of sales tax in respect of purchases of raw materials effected by the said dealer and for the purposes of this section, the expression raw materials' shall have the meaning assigned to it in the rules;

(ii) every dealer to whom the Entitlement Certificate has been issued, whether in order to avail the benefits by way of deferment of payment or exemption from payment of Government dues shall be entitled to claim in accordance with the rules, refund of sales tax in respect of purchases of raw materials;

(iii) (.....)

92. (1) Notwithstanding anything to the contrary contained in any of the Package Scheme of Incentives, no Eligible Unit to whom the Eligibility Certificate has been granted shall be eligible to draw the benefits in any year after the appointed day, in respect of the production in excess of the annual production capacity of that unit as may be prescribed by the State Government, having regard to the licensing provisions, as they stood from time to time, under the Industries (Development and Regulation) Act, 1951, as applicable during the relevant period, as that Act stood during the relevant time.

(2) The benefits availed of by any Eligible Unit in contravention of sub-section (1) shall be and shall be deemed to have been withdrawn and such Unit shall be liable to pay the tax including penalty and interest in respect of sales or purchases, in so far as they relate to such excess production referred to in sub-section (1).

(3) A unit holding a Certificate of Entitlement shall not be entitled to claim or receive any incentives towards,-

a) a sale made by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract

b) a sale made by 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.

93. (1) Notwithstanding anything to the contrary contained in any Package Scheme of Incentives, any Eligible Unit, to whom the Eligibility Certificate has been granted, shall be eligible to draw the benefits in any year after the appointed day, only on that part of its turnover of sales or purchases as may be arrived at by applying the ratio as may be prescribed by the State Government to the total turnover of sales and purchases of the said unit in that year and different ratios may be prescribed for different classes of units and different schemes.

(2) The benefits, if any, availed of by an Eligible Unit in contravention of sub-section (1), if any, shall be and shall be deemed to have been withdrawn and such unit shall be liable to pay tax including penalty and interest, if any, in respect of the turnover of sales and purchases in excess of the turnover arrived at under sub-section (1) and accordingly any benefit which is so availed shall be recovered as arrears of tax as provided in sub-section (3).

(3) For recovery of arrears of tax, the Commissioner shall require the Eligible Unit, by order in writing, to pay the tax, interest and penalty on such turnover on which the benefits are not available and serve on the dealer, a notice of demand as provided in sub-section (4) of section 32 accordingly:

Provided that, no order under this section shall be passed without giving the Eligible Unit a reasonable opportunity of being

94. (1) Notwithstanding anything contained in this Act, rules or notifications, but subject to such conditions as the Commissioner may, by general or special order in the *Official Gazette*, specify, where a dealer to whom incentive by way of deferment of sales tax liability under any of the Package Schemes of Incentives designed by the State Government, have been granted by virtue of the Eligibility Certificate, and where a loan liability equal to the amount of any such tax payable by such dealer has been raised by the SICOM or the Directorate of Industries or the relevant Regional Development Corporation or the District Industries Centre concerned (.....)then such tax shall be deemed, in the public interest, to have been paid.

(2) Notwithstanding anything to the contrary contained in the Act or in the rules or in any part of the Package Scheme of Incentives the Eligible Unit to whom an Entitlement Certificate has been granted for availing of the incentives by way of deferment of sale tax or purchase tax, as case may be, may, in respect of any of the periods during which the said certificate is valid, at its option, prematurely pay in place of the amount of tax deferred by it, an amount equal to the net present value of the deferred tax, as may be prescribed, and on making such payment, the deferred tax shall be deemed in the public interest to have been paid.

CHAPTER XV

REPEALS AND SAVINGS

95. (1) The following laws are hereby repealed, namely:—
- (a) The Bombay Sales of Motor Spirit Taxation Act, 1958,
 - (b) The Bombay Sales Tax Act, 1959,

- (c) (.....)
- (d) The Maharashtra Sales Tax Act, 1979,
- (e) The Maharashtra Sales Tax on the Transfer of the Right to use any Goods for any purpose Act, 1985, and
- (f) The Maharashtra Sales Tax on the Transfer of Property in Goods involved in the Execution of Works Contract (Re-enacted) Act, 1989.

(2) Subject to the provisions contained in sub-section (1) of section of 3 and sub-section (1) of section 96, every registration certificate and licence granted under any of the earlier laws shall stand cancelled with effect from the appointed day and shall be returned to the assessing authority for defacement within a period of three months from the appointed day. The assessing authority shall deface its own copy of the said certificate or licence as also the copy returned to it and after defacement return the defaced copy to the previous holder of the certificate or licence.

96. (1) Notwithstanding the repeal by section 95 of any of the laws referred to therein,—

(a) those laws (including any earlier law continued in force under any provisions thereof), and all rules, regulations, orders, notifications, forms, certificates and notices, appointments and delegation of powers issued under those laws and in force immediately before the appointed day shall, subject to the other provisions of this Act, in so far as they apply, continue to have effect after the appointed day for the purposes of the levy, returns, assessment, re-assessment, appeal, determination, revision, rectification, reference, limitation, production and inspection of accounts and documents and search of premises, transfer of proceedings, payment and recovery, calculation of cumulative quantum of benefits, exemption from payment of tax and deferment of due date for payment of tax, cancellation of the certificate of Entitlement. collection, or deduction of tax at source, refund or set off of any tax withholding of any refund, exemption from payment of tax, collection of statistics, the power to make rules, the imposition of any penalty, or of interest or forfeiture of any sum where such levy, returns. assessment, re-assessment, appeal, determination, revision, rectification. reference, limitation, payment and recovery, calculation of cumulative quantum of benefits, exemption from payment of tax and deferment of due date for payment of tax, cancellation of the certificate of entitlement, collection, deduction of tax at source, refund, set off, withholding of any refund exemption, collection of statistics, the power to make rules, limitation, production and inspection of accounts and documents and search of premises, transfer of proceedings, penalty, interest or forfeiture of any sum relates to any period ending before the appointed day, or for any other purpose whatsoever connected with or

incidental to any of the purposes aforesaid and whether or not the tax, penalty, interest, sum forfeited or tax deducted at source, if any, in relation to such proceedings is paid before or after the appointed day;

(b) any registration certificate issued under the Bombay Sales Tax Act, 1959, being a registration certificate in force immediately before the appointed day shall, in so far as the liability to pay tax under sub-section (1) of section 3 of this Act exists, be deemed on the appointed day to be the certificate of registration issued under this Act, and accordingly the dealer holding such registration certificate immediately before the appointed day, shall, until the certificate is duly cancelled under this Act, be deemed to be a registered dealer liable to pay tax under this Act and all the provisions of this Act shall apply to him as they apply to a dealer liable to pay tax under this Act:

(c) any registration certificate or licence issued under any of the earlier laws other than the Bombay Sales Tax Act, 1959, which is in force immediately before the appointed day, to a person who does not hold a certificate of registration under the Bombay Sales Tax Act, 1959, immediately before the appointed day shall, in so far as the liability to pay tax under sub-section (1) of section 3 exists, be deemed on the appointed day to be the certificate of registration issued under this Act till the prescribed time provided under the third proviso to subsection (1) of section 16 expires and accordingly the person holding such registration certificate shall be deemed to be a registered dealer under this Act till the expiry of such time and accordingly all the provisions of this Act shall apply to him as they apply to a dealer liable to pay tax under this Act and subject to the provisions of this Act, all registrations and licences granted under any earlier law shall stand cancelled on the appointed day:

(d) if any person or dealer has applied for registration under the earlier law, before the appointed day but the registration certificate has not been granted before the appointed day or where any dealer who has become liable to pay tax under earlier law before the appointed day applies within the time provided for such application under earlier law but the application is made after the appointed day, then a registration certificate as provided under the law shall be duly granted to such person or dealer and for the purposes of all the provisions of this Act including the provisions contained in section 3, such person or dealer shall be deemed to be holding a valid certificate of registration which is in force immediately before the appointed day and all the provisions of this Act shall apply accordingly:

(i) where any person or any dealer liable to pay tax under the Bombay Sales Tax Act, 1959 holds in stock on the appointed day, any goods purchased by him from a person who was not a dealer under that Act or a dealer who was not a Registered dealer under that Act, then such person or dealer

shall be liable to pay purchase tax on the purchase price of such goods under that Act, as if he had become liable to pay purchase tax under section 13 of that Act at the relevant rates of purchase tax and the said dealer or person shall accordingly disclose such turnover and pay such tax in the last return required to be filed by him under the Bombay Sales Tax Act, 1959;

(ii) Where any person or dealer liable to pay tax under the Bombay Sales Tax Act, 1959 has purchased any goods at any time before the appointed day under a certificate or declaration given by him under section 8A, 11, 12 or 41 of the said Act and the conditions, recitals or undertakings of such certificate or declaration are not complied with, then at any time after the appointed day, such dealer shall be liable to pay under the Bombay Sales Tax Act, 1959 purchase tax on the purchase price of such goods and the purchase tax shall be levied at the rate set out against each of such goods in column 4 of schedule B and C appended to the said Act; and accordingly he shall file a return with the prescribed authority in the prescribed form in respect of the period in which the goods were purchased and shall include the purchase price thereof in the said return and shall file such return within one month of the end of the month in which such liability arises and pay the tax due as per the return before filing such return.

Provided that where purchase tax is payable by a dealer or person under this clause by reason of the fact that he has failed to comply with the conditions, recitals or undertakings of a declaration or certificate issued under section 8A, 11, 12, or 41 of the said Act, within nine months of the appointed day, then an amount equal to the tax paid or payable under section 11, 12, 13A or, as the case may be, section 41, shall be set-off against the purchase tax so payable”

(f) where any dealer liable to pay tax under the Bombay Sales Tax Act, 1959, or, as the case may be, under the Maharashtra Sales Tax on the Transfer of the Right to use any Goods for any purpose Act, 1985, has at any time before the appointed day effected any sale by delivery of goods on the hire purchase or any system of payment by installments or, as the case may be, by transfer of the right to use any goods for any purpose (whether or not for a specified period) and any amount of sale price in respect of such delivery or transfer is due and payable after the appointed day, then unless the full tax pertaining to such delivery or transfer has been admitted or paid before the appointed day, the said amounts shall be shown by the said dealer in the appropriate returns to be filed under this Act and the tax due on such amounts at the rates applicable under this Act shall be paid accordingly and all the provisions of this Act shall apply to the said dealer, delivery or transfer and the said amounts accordingly, notwithstanding that the delivery or transfer has taken place before the appointed day:

Provided that, the liability of the said dealer to pay tax under this Act, in respect of the sale price due and payable after the appointed day, shall not exceed the liability which would have accrued under the repealed Acts, if they had continued to be in force;

(g) where a dealer registered- under the Maharashtra Sales Tax on the Transfer of Property in Goods involved in the execution of Works Contract (Re-Enacted) Act, 1989, is liable to pay tax under this Act, and has at any time prior to the appointed day entered into any works contract and the execution of the said works contract has continued after the appointed day, then the liability of the dealer to pay tax under this Act shall be discharged at the rated applicable under this Act and the liability so discharged in respect of the said contract shall not exceed the liability which would have accrued under the repealed Acts if it had continued to be in force and in the case of a dealer who had opted for composition of tax under the repealed Act, the liability under this Act in respect of a contract where the execution has started before the appointed day and has continued thereafter shall not exceed the sum which would have been payable by way of composition in respect of the said contract under the repealed Acts if it had continued to be in force.

(2) Without prejudice to the provisions contained in the foregoing subsection and subject section 7 of the Bombay General Clauses Act, 1904, shall apply in relation to the repeal of any of the laws referred to in section 95 as if the law so repealed had been an enactment within the meaning of section 7 of the said Act.

97. Any reference in any provision of any law now repealed by this Act to an officer, authority or Tribunal shall for the purpose of carrying into effect the provisions contained in section 96 be construed as reference to the corresponding officer, authority or Tribunal appointed or constituted by or under this Act; and if any question arises as to who such corresponding officer, authority or Tribunal is, then the matter shall be referred to the State Government and the decision of the State Government thereon shall be final.

98. (1) If any difficulty arises in giving effect to the provisions of this Act, including the provisions contained in section 96, the State Government may, by general or special order published in the *Official Gazette*, do anything not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty. In particular and without prejudice to the generality of the foregoing power, any such order may provide for the adaptations or modifications subject to which any earlier law shall apply in relation to the proceedings in respect of the year ending immediately before the appointed day:

Provided that, no order under this section shall be made after the expiry of a period of two years from the appointed day.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of the State Legislature.