

# THE JAMMU AND KASHMIR VALUE ADDED TAX ACT, 2005

(Amended upto March 2009)

(Act No. III of 2005)

(3<sup>rd</sup> April, 2005)

An Act to provide for the levy and collection of Value Added Tax on the sale and purchase of goods in the State of Jammu and Kashmir.

Be it enacted by the Jammu & Kashmir State Legislature in the Fifty Sixth year of the Republic of India as follows:-

## **CHAPTER - I**

### **PRELIMINARY**

#### 1. **1Short title, extent and commencement** –

(1) This Act may be called the Jammu and Kashmir Value Added Tax Act, 2005.

(2) It extends to the whole of the State of Jammu and Kashmir.

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

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

(I) “**Act**” means the Jammu & Kashmir Value Added Tax Act, 2005.

(II) “**Additional Commissioner**” means the Additional Commissioner of Commercial Taxes appointed by the Government under sub-section (2) of section 3;

(III) “**Appellate Authority**” means the ‘appellate authority’ appointed by the Government for the purposes of the Act;

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<sup>1</sup> *Section 3 and Section 5 of the Act shall be deemed to have come into force w.e.f. 1.4.2005 and the remaining provisions of the Act shall come into force from the date of its publication in the Government Gazette [Inserted vide J&K VAT (Amendment) Act, 2006]*

- (IV) **“Appointed day”** means the date on which the Act comes into force;
- (V) **“Assessee”** means any person by whom tax or any other sum of money is payable under the Act and includes every person in respect of whom any proceedings under the Act have been taken;
- (VI) **“Assessing Authority”** means any person appointed under subsection (2) of section 3 to exercise the powers and perform the functions of the Assessing Authority under the Act and includes an officer incharge of a check post or notified area;
- (VII) **“Business”** includes:-
- (a) any trade, commerce or manufacture;
  - (b) any adventure or concern in the nature of the trade, commerce or manufacture;
  - (c) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;
  - (d) any occasional transaction in the nature of such trade, commerce, manufacture, adventure or concern;

whether or not there is volume, frequency, continuity or regularity of such transaction, whether or not such service, trade, commerce, manufacture, adventure or concern is carried on 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;

- (e) the execution of any works contract or the transfer of right to use any goods for any purpose (whether or not for a specified period); and
- (f) any transaction of buying, selling or supplying plant, machinery, raw material, processing material, packing material, empties, consumable stores, waste or by-

products, or any other goods of a similar nature or any unserviceable or obsolete or discarded machinery or any parts or accessories thereof or any waste or scrap or any of them or any other transaction whatsoever which is ancillary to, connected with or incidental to or results from, such trade, commerce, manufacture, adventure or concern or works contract or lease;

(VIII) **“capital goods”** means - plant, machinery and equipment used in manufacturing or processing of goods or packing of manufactured goods for sale by a dealer, (whether directly or indirectly) excluding the civil structures as may be prescribed;

(IX) **“casual trader”** means a person who has no fixed place of business in the State and who makes occasional sale or purchase of goods in the State; and includes, whether he has a fixed place of business in the State or not, –

(a) a transporter who, while carrying any goods in his goods vehicle fails to disclose the name and address of the consignor or consignee or fails to furnish copy of invoice, challan, transport receipt or consignment note or document of like nature in respect of such goods, and

(b) an owner or lessee of a warehouse who fails to disclose the name and address of the owner of any goods stored at his warehouse or fails to satisfy the Commissioner or Assessing Authority that such goods are for his personal use or Consumption:-

and such transporter, or owner or lessee, shall be deemed to have purchased such goods on his own account;

(X) **“Commissioner”** means the Commissioner of Commercial Taxes appointed by the Government under sub-section (1) of section 3;

(XI) **“dealer” means** any person who carries on (whether regularly or otherwise) the business of selling, purchasing, supplying or distributing the goods, transferring the right to use any goods or

supplying by way of or as part of any service, any goods directly or indirectly, for cash or for deferred payment, or for commission, remuneration, or other valuable consideration and includes –

- (i) a factor, broker, commission agent, delcredere agent, or any other mercantile agent by whatever name called and whether of the same description as herein before mentioned or not, who carries on the business of selling, purchasing, supplying or distributing goods or not;
- (ii) notwithstanding any condition to the contrary contained in the agreement with the principal, an auctioneer who carries on the business of selling, purchasing or auctioning the goods belonging to any principal, whether disclosed or not or whether the offer of the intending purchaser is accepted by him or the principal or nominee of the principal;
- (iii) a club or any association selling or purchasing goods ; and
- (iv) a contractor supplying, selling or purchasing goods;

**Explanation I:** - *Every person who acts as an agent in the State of a dealer residing outside the State and sells, purchases or distributes the goods in the State or acts on behalf of such a dealer as –*

- (i) *mercantile agent;*
- (ii) *an agent for handling of goods or documents or title relating to the goods; or*
- (iii) *an agent for the collection or the payment of sale price of goods or as a guarantor for such collection or payment;*

*shall be a dealer for the purposes of the Act.*

**Explanation II:** - *Any Department of the Government which, whether or not in the course of business, sells or buys, supplies or distributes goods, directly or otherwise for cash or for deferred*

*payment or for commission, remuneration or other valuable consideration shall, be deemed to be a dealer for the purposes of the Act.*

**Explanation III:** – *For purposes of this clause Government includes the Central Government and the Government of any other State or Union Territory.*

- (XII) **“declared goods”** means goods declared to be of special importance in interstate trade or commerce under section 14 of Central Sales Tax Act, 1956;
- (XIII) **“Deputy Commissioner”** means - any person appointed to be a Deputy Commissioner of Commercial Taxes under sub-section (2) of section 3;
- (XIV) **“Commercial Taxes Officer”** means an officer appointed by that designation under sub-section (2) of section 3;
- (XV) **“goods”** means all kinds of movable property (other than newspapers, actionable claims, electricity, stocks and shares and securities) and includes live stock, all materials, commodities and articles and every kind of property (whether as goods or in some other form) involved in the execution of a works contract and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale;
- (XVI) **“Government”** means the Government of Jammu and Kashmir;
- (XVII) **“import”** means the bringing of goods into the State from any place outside its territorial limits;
- (XVIII) **“input tax”** means the tax paid or payable as defined under section 19.
- (XIX) **“manufacture”** with all its grammatical variations and cognate expressions means producing, making, extracting, altering, ornamenting, finishing, assembling or otherwise processing ,

treating or adapting any goods, but does not include any such process or mode of manufacture as may be prescribed;

(XX) **“output tax”** means- tax charged or chargeable as defined under section 18.

(XXI) **“person”** includes:-

(i) an individual ;

(ii) a Hindu Undivided family (HUF);

(iii) a company;

(iv) a firm;

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

(vi) the Central Government, the Government of Jammu and Kashmir and the Government of any other State or Union territory in India; and

(vii) a local authority;

(XXII) **“place of business”** means- any place where a dealer carries on the business and includes: -

(a) any warehouse, godown or other place where a dealer stores or processes his goods;

(b) any place where a dealer produces or manufactures goods;

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

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

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

- (XXIII) **“prescribed”** means prescribed by the rules made under the Act;
- (XXIV) **“prescribed authority”** means an authority prescribed by the rules made under the Act;
- (XXV) **“purchase”** with all its grammatical variations and cognate expressions shall be construed from the word “sale”;
- (XXVI) **“registered dealer”** means a dealer registered under the Act;
- (XXVII) **“reverse tax”** means that portion of input tax of goods for which credit has been availed but such goods are used subsequently for any purpose other than resale or manufacture of taxable goods or used as containers or packing materials within the State;
- (XXVIII) **“sale”** with all its grammatical variations and cognate expressions means every transfer of the property in goods, other than by way of mortgage, hypothecation, charge or pledge, by one person to another in the course of trade or business for cash, deferred payment or other valuable consideration and includes:-
- (a) transfer, otherwise than in pursuance of a contract, of property in goods for cash, deferred payment or other valuable consideration;
  - (b) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
  - (c) delivery of goods on hire purchase or any other system of payment by instalments;
  - (d) a transfer of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or any other valuable consideration;
  - (e) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

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

**Explanation :- (I)** A sale or purchase of goods shall not be deemed to have taken place inside the State if the goods are sold –

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

**Explanation: -(II)** Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of Explanation (I) shall apply as if there were separate contracts in respect of the goods at each of such places;

(XXIX) **“sale price”** means the amount of valuable consideration received or receivable by a dealer for sale of any goods and shall include any sum charged for anything done by the dealer in respect of goods at the time or before the delivery thereof, excise duty, special excise duty or any other duty or tax but shall not include –

- (i) any sum allowed by the seller of goods to the purchaser as cash discount, commission or trade discount according to normal trade practice, at the time of sale of goods ;
- (ii) the cost of outward freight or delivery in cases where such cost is separately charged ; and
- (iii) the amount of tax under the Act, if separately charged by the dealer,

**Explanation: -** For the purpose of this clause “sale price” includes,-



- a. in relation to the delivery of goods on hire purchase or any other system of payment by instalments, the total amount of valuable consideration including deposit or other initial payment in order to complete the purchase or the acquisition of property in goods. It includes hire charges, interest and other charges incidental to such transaction, but does not include any sum payable as penalty or as compensation or damages for breach of agreement;
- b. in relation to transfer of right to use any goods for any purpose (whether or not for a specified period) the valuable consideration or hire charges received or receivable for such transfer of right to use goods but does not include any sum payable as a penalty or as compensation or damages for breach of agreement; and
- c. the price of packing material in which goods sold are packed.

(XXX) “**Schedule**” means the Schedule appended to the Act;

(XXXI) “**section**” means a section of the Act;

(XXXII) “**State**” means the State of Jammu and Kashmir;

(XXXIII) “**tax**” means the tax payable under the Act;

(XXXIV) “**tax invoice**” means an invoice in such form and containing such particulars as may be prescribed;

(XXXV) “**Tax Officer**” means an officer not below the rank of Commercial Taxes Officer appointed under section 3 ;

(XXXVI) “**tax period**” means a calendar month or a quarter as may be prescribed by the Government;

(XXXVII) “**taxable person**” means every person who is registered and liable to pay Tax under the Act;

(XXXVIII) **“taxable turnover”** means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover in such manner as may be prescribed;

(XXXIX) **“Tribunal”** means the Appellate Tribunal constituted under section 12-A of The Jammu & Kashmir General Sales Tax Act, 1962;

(XL) **“turnover”** means the aggregate amount for which the goods are either bought or sold, supplied or distributed by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or for other valuable consideration;

**Explanation: (I)** The turnover in respect of delivery of goods on hire purchase or on any system of payment by instalments shall be the market price of the goods so delivered.

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

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

(a) the amount for which the goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of, or before, the delivery thereof;

(b) any cash discount on the price allowed in respect of any sale or any amount refunded in respect of articles returned by customers shall not be included in the turnover; and

(c) where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same to the said customer,

the sale in respect of such goods shall be included in the turnover of the latter dealer but not in that of the former;

- (XLI) “**turnover tax**” means a tax leviable on the turnover as per the provision of the Act;
- (XLII) “**vehicle**” includes every wheeled conveyance used for the carriage of goods solely or in addition to passengers;
- (XLIII) “**vessel**” includes any ship, barge, boat, raft, timber, bamboos or floating materials propelled in any manner;
- (XLIV) “**year**” means the financial year beginning from April 1st and ending with 31st March; and
- (XLV) “**zero rated sales**” means the sales which are subject to tax as per the provision of the Act, but on which no tax is charged and credit for input tax paid in the State is allowable.

## CHAPTER II

### TAXATION AUTHORITIES, APPELLATE TRIBUNAL AND SPECIAL INVESTIGATION UNIT

3. ***Taxation Authorities.*** - (1) For carrying out the purposes of the Act, the **Government** may appoint an officer to be called the Commissioner of Commercial Taxes.

(2) To assist the Commissioner in the execution of his functions under the Act, the Government may appoint such number of,-

- (a) Additional Commissioners
  - (b) Deputy Commissioners; and
  - (c) Commercial Taxes Officers,
- as it deems fit.

4. **Powers of Commissioner.**-The Commissioner shall have all the powers and shall perform all the duties conferred or imposed upon him by or under the Act. All other officers appointed under sub-section (2) of section 3 shall exercise such powers as may be conferred upon them.
5. **Delegation of the Commissioner's powers and functions.**- Subject to such restrictions and conditions as may be prescribed, the Commissioner may by order in writing delegate any of his powers and functions under the Act and the rules made there under (barring the powers vested in him under this section and section 74) to any person appointed under sub-section (2) of section 3.
6. **Power to withdraw and transfer cases** – (1) The Commissioner may withdraw any case pending at any stage before any authority under his control and by a written order refer it for disposal to any other authority of the same or higher rank and the authority to whom the case has been so referred shall have the same powers to deal with it as if it were a case within his jurisdiction.
- (2) Subject to the provisions of sub-section (1) the Commissioner may transfer any case pending before him to any other officer as the Government may by notification in the Government Gazette appoint in this behalf and the said officer shall have the same powers to deal with the case as are vested in the Commissioner under the Act.
- (3) The transfer of any case under sub- section (1) or sub-section (2) shall not render necessary the issue of any fresh notice if already issued by the Commissioner, or any other authority under his control as the case may be, from whom the case is transferred.
- Explanation:-** In this section the word “case” in relation to any person whose name is specified in any order means all proceedings under the Act in respect of any year, which may be pending on the date of such order or which may be completed on or before such date and includes also all proceedings under the Act which may be commenced after the date of such order in respect of any year.
7. **Functions of the Tribunal**:- (1) The Tribunal shall exercise the powers and discharge the functions conferred upon it by or under the Act.

(2) Where the number of members of the Tribunal is more than one and if the members differ in opinion on any point, the point shall be decided according to the opinion of the majority, but if the members are equally divided, the decision of the Chairman of the Tribunal thereon shall be final.

8. **Powers of the Tribunal**:- (1) In discharging the functions under the Act, the Tribunal shall have all the powers of a civil court for the purposes 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 purpose of the Act, any officer appointed by the Tribunal may administer the oath to the deponent.

(3) If on examination of any document, produced by a person on whom a summon was issued by the Tribunal, the Tribunal has reasons to believe that any dealer has evaded, or is attempting to evade, the payment of any tax due from him and the document(s) produced is necessary for establishing the case against such dealer, it may for reasons to be recorded in writing impound such document and shall grant a receipt for the same and shall retain the same for so long as may be necessary in connection with the proceedings under the Act.

9. **Special Investigation Unit. (SIU)** :- (1) The Government shall constitute a Special Investigation Unit, hereafter referred to as "Unit" for discharging the functions referred to in sub-section (3).

(2) The Unit shall be headed by an Additional Commissioner and consist of such number of other officers appointed under clause (b) and

clause (c) of sub-section (2) of section 3 as the Government may deem fit.

(3) The Unit may, either on the basis of any information received or of its own motion or on directions from the Commissioner, under the supervision of the Additional Commissioner carry out an investigation or hold an enquiry where there is reason to believe that evasion of tax is taking place and furnish a report in respect thereof to the Commissioner.

(4) The Additional Commissioner may for the purpose of holding investigation or enquiry under sub-section (3) exercise all the powers under section 66, section 67 and section 91.

(5) The Additional Commissioner may with the prior approval of the Commissioner, for the purpose of holding investigation or enquiry under sub-section (3), require any officer appointed under sub-section (2) of section 3 to transfer to the Unit any accounts, registers or documents seized by him from any person under section 66 and on transfer, such accounts, registers or documents shall, subject to the provisions of section 66 be retained by the Unit for the purpose of carrying out such investigation or holding such enquiry.

(6) The Additional Commissioner after a case has been investigated or enquired into shall, assess or reassess tax, impose penalty, determine interest or collect or enforce payment of tax, penalty or interest in respect of such case under the Act.

(7) The Commissioner may assign such other functions to any officer of the Unit, as he may consider necessary.

(8) The Additional Commissioner shall have, for carrying out the purposes of the Act the same powers as are specified in section 89.

**10. Authorities under the Act to be public servants:-** The officers appointed under section 3 and the members of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Ranbir Penal Code.

11. **Indemnity**: No suit, prosecution or other legal proceedings shall lie against any government servant employed for the execution of the provisions of the Act and the rules made thereunder for any thing which is done or intended to be done in good faith thereunder.

### **CHAPTER III**

#### **THE INCIDENCE AND LEVY OF TAX**

12. **Incidence of Tax**:- (1) Subject to the provisions of the Act, every dealer:-
- (a) whose gross turnover of sales or purchases during the year immediately preceding the commencement of the Act exceeded the taxable limit shall be liable to pay tax on his sales or purchases, as the case may be, on or after the appointed day;
  - (b) who stands registered or is liable to be registered under the Jammu and Kashmir General Sales Tax Act, 1962 or the Central Sales Tax Act, 1956 shall be liable to pay tax on sales and purchases as the case may be on or after the appointed day; or
  - (c) to whom clauses (a) and (b) do not apply and -
    - (i) whose gross turnover first exceeds the taxable limit during any period of twelve consecutive months, shall be liable to pay tax on sales and purchases as the case may be on or after the appointed day with effect from the date immediately following the day on which his gross turnover first exceeded the taxable limit during a period of any twelve consecutive months; or
    - (ii) who has become liable to pay tax under the Act or the Central Sales Tax Act, 1956 or is registered as a dealer under the Act or the Central Sales Tax Act, 1956 at any time after the commencement of the Act shall be liable to pay tax on sales and purchases as the case may be on or after the appointed day with effect from the date of registration or the date on which he becomes liable to pay tax, whichever is earlier.

(2) Any dealer who has become so liable to pay tax under the Act shall continue to be so liable until the expiry of three consecutive years during each of which his gross turnover does not exceed the taxable limit and his liability to pay tax under the Act shall cease on the expiry of the period specified hereinbefore.

(3) Any dealer who has ceased to be liable under sub-section (2) shall be again liable to pay tax under the Act with effect from the date his gross turnover again exceeds the taxable limit.

(4) For the purpose of the Act, taxable limit means in relation to any dealer who:-

(a) imports for sale or use in manufacturing or processing any goods into the State on his own behalf or on behalf of his principal. Nil

(b) manufactures or produces any goods for sale or is engaged in any business other than the business specified in clause(a). <sup>1</sup>[Rs. 7.50 Lacs)

(5) For the purpose of calculating the gross turnover to determine the liability to pay tax under the Act --

(a) except as otherwise expressly provided, the turnover of all sales or purchases as the case may be, shall be taken, whether such sales or purchases are taxable or not ; and

(b) the turnover shall include all sales or purchases as the case may be, made by a dealer on his own account and also on behalf of principals whether disclosed or not.

(6) Where by an order passed under the Act, it is found that any person registered as a dealer ought not to have been so registered, then notwithstanding anything contained in the Act, such person shall be liable to pay tax for the period commencing with the date of his registration and ending with the date of such order, as if he were a dealer.

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<sup>1</sup> *Substituted vide J&K VAT (Amendment) Act, 2006 in lieu of Rs.5.00 lacs*



**13. Tax on Sales:** - (1) The tax payable on sale of goods by a dealer liable to pay tax under section 12 shall be levied on his taxable turnover of sales.

(2) The taxable turnover of sales in relation to a dealer liable to pay tax on sale of goods under sub section (1) of section 12 shall be the gross turnover of sales during any period, which remains after deducting there from:

(a) turnover of sales of goods declared as exempt from tax in Schedule 'A'; and

(b) turnover of sales of goods which are shown to the satisfaction of the Assessing Authority to have taken place –

(i) in the course of inter-State, trade or commerce;

(ii) outside the State of Jammu and Kashmir; or

(iii) in the course of the import of the goods into, or export of the goods out of, the territory of India.

**Explanation:** Section 3, section 4 and section 5 of the Central Sales Tax Act, 1956 shall apply for determining whether or not a particular sale or purchase has taken place in the manner indicated in clause (b) of sub-section (2); and

(c) such other sales on such conditions and restrictions as may be prescribed.

**14. Tax on purchases:** Any dealer who in the course of his business purchases any taxable goods,-

(i) from a registered dealer in the circumstances in which no tax under section 13 is payable by that registered dealer on the sale price of such goods, or

(ii) from any other person,

shall be liable to pay tax on the purchase price of such goods, if after such purchase, the goods are not sold within the State or in the course of

inter-State trade and commerce or exported out of the territory of India but are -

- (a) sold or disposed otherwise;
- (b) consumed or used in the manufacture of goods declared to be exempt from tax under the Act; or
- (c) after their use or consumption in the manufacture of goods, such manufactured goods are disposed of otherwise than by way of sale in the State or in the course of inter-state trade and commerce or export out of the territory of India; or
- (d) used or consumed otherwise,

and such tax shall be levied at the same rate at which tax under section 13 would have been levied on the sale of such goods within the State on the date of such purchase.

15. **Tax on containers and packing materials.**- The container or packing material in which goods are packed and sold or purchased shall be deemed to have been sold or purchased alongwith the goods and the tax under section 13 or section 14 shall be levied on the sale or purchase of such container or packing material at the rate of tax, if any, applicable to the sale, or as the case may be, the purchase of the goods itself:

Provided that no tax under section 13 or section 14 shall be levied where the container or packing material is sold or purchased alongwith the goods declared as exempt from tax under the Act.

16. **Rate of tax.**-(1) Subject to the provisions of the Act there shall be levied on the taxable turnover of a dealer registered under the Act a tax at such rates as the Government may by notification in the Government Gazette, specify from time to time:

Provided that the rate of tax applicable on purchase or sale of declared goods shall not exceed 4% or such rate as may be specified in clause (a) of section 15 of the Central Sales Tax Act, 1956.

(2) The goods categorized in Schedules A, B, C and D shall be subject to such rate of tax as has been specified in the respective Schedules.

(3) Save as otherwise provided by, or under this Act, the Government may, by notification in the Government Gazette and subject to such conditions, if any, as may be specified therein, notify the point or points of sale or purchase at which any goods or class of goods may be taxed, and on the issue of such notification, the points of purchase or sale in relation to any such goods or class of goods other than the point of purchase or sale so notified, shall be exempt from payment of tax under the Act:

Provided that, no such exemption shall be allowed unless, where the point of sale in relation to any such goods or class of goods is prior to the point so notified, the registered dealer to whom the goods are sold certifies in the prescribed form that the goods purchased are intended for sale by him in the State.

**17. Power to amend Schedules.**- The Government may by notification in the Government Gazette add to or omit from or otherwise amend any Schedule or transpose any entry or part of any entry from one Schedule to the other Schedule and thereupon the Schedules shall be deemed to have been amended accordingly.

**18. Output Tax.**- (1) Output tax in relation to a registered dealer means the tax payable under the Act in respect of any sale of goods by that dealer in the course of his business.

(2) Subject to the provisions of section 21, a dealer shall be liable to pay the output tax under the Act, which shall be levied on the taxable turnover at such rates and subject to such conditions as may be prescribed from time to time.

**19. Input tax.**- Input tax in relation to a registered dealer means the tax charged under the Act by the selling registered dealer to such dealer on the sale to him of any goods for resale or for the manufacture of taxable goods or for use as containers or packing material or for the execution of works contract.

**20. Tax payable.**- (1) The net tax payable by a registered dealer for a tax period shall be the difference between the output tax plus purchase tax, if any, and the input tax, which can be determined by the following formula :

$$\text{Net Tax payable} = (O+P) - I$$

Where 'O' denotes the Output tax payable for any tax period as determined under section 18, 'P' denotes the purchase tax paid by a registered dealer for any tax period as determined under section 14 and 'I' denotes the Input tax paid or payable for the said tax period as determined under section 19.

(2) The net tax payable by a dealer liable to pay tax but not registered under the Act for a tax period shall be equal to the output tax payable for the said period as determined under section 18.

(3) If the amount calculated under sub section (1) is a negative quantum, then the same shall be set off as per section 22.

**21. Input tax credit.**- (1). Subject to the provisions of the Act, for the purpose of calculating the net tax payable by a registered dealer for any tax period after being registered, an input tax credit as determined under this section shall be allowed to such registered dealer for the tax paid or payable in respect of all taxable sales other than the sales as may be prescribed, or purchases under section 14 during that period.

(2) The input tax credit to which the registered dealer is entitled to shall be the amount of tax paid by the registered dealer to the seller, on his turnover of purchases made during the tax period, intended to be used for the purposes and subject to the conditions as specified in sub-section (3), sub-section (4) and sub-section (5) and calculated in such manner as may be prescribed.

(3) Subject to such conditions and restrictions as may be prescribed, partial input tax credit may be allowed in such cases as may be notified by the Government.

(4) Input Tax credit shall be allowed for purchase of goods made within the State from a registered dealer holding a valid certificate of registration and which are intended for the purpose of -

- (a) sale or resale by him in the State ;
- (b) use as raw material or as capital goods in the manufacturing and processing of goods other than those exempt from tax under the Act intended for sale in the State ;
- (c) sale in the course of inter-state trade and commerce;
- (d) sale in the course of export out of the territory of India; or
- (e) for use as containers for packing of goods other than those exempt from tax under the Act for sale or resale in the State:

Provided that in respect of transactions falling under clause (c) input tax credit may be allowed on the tax paid in excess of 4% on the raw materials used directly in the manufacture of the finished products:

Provided further that if purchases are used partially for the purposes specified in this sub -section, input tax credit shall be allowed proportionate to the extent they are used for the purposes specified in this sub- section:

Provided also that partial rebating shall be allowed where inputs are used in the following circumstances:

- (i) sales consisting of both taxable and exempted goods;
- (ii) sales consisting of sale and despatches in the form of consignment and stock transfer to other States; and
- (iii) inputs are used for any other purpose in addition to use in the course of business.

(5) Input Tax credit on capital goods shall be limited to plant and machinery directly connected with the manufacturing or processing of the finished products and input tax credit as admissible under this section shall commence from the date of commencement of commercial production or sale of taxable goods and shall be adjusted against tax payable on output over a period of three years in equal instalments with rebating allowed in every tax period:

Provided that in case of closure of business before the period specified in this sub-section, no further input tax credit shall be allowed and input tax credit carried forward, if any, shall be forfeited.

(6) Input tax credit shall be allowed in respect of inputs used in both taxable and non-taxable goods sent on stock or consignment transfer subject to the condition that tax paid in excess of 4% only shall be rebated.

(7) Input tax credit shall not be claimed by the dealer until the tax period in which he receives from the registered dealer from whom he has purchased the goods a tax invoice in the prescribed form (in original) evidencing the amount of tax (Input tax):

Provided that for good and sufficient reasons to be recorded in writing and in the prescribed manner the Assessing Authority may allow such credit subject to such conditions and restrictions as may be specified. The set off, however, shall not be carried beyond the end of the second financial year.

(8) A registered dealer who intends to claim input tax credit under sub-section (1) shall, for the purpose of determining the amount of input tax credit, maintain accounts, and such other records as may be prescribed in respect of the purchases and sales made by him in the State.

(9) No input tax credit under sub-section (1) shall be claimed or be allowed to a registered dealer -

(i) in respect of any taxable goods under the Act purchased by him from another registered dealer for resale but given away by way of free sample or gift;

(ii) who is liable to turnover tax at a percentage of the turnover of sales, in lieu of tax, as provided under section 25 ;

(iii) in respect of capital goods as specified in Schedule 'E' ;

- (iv) in respect of goods brought from outside the State against the tax paid in other States;
- (v) in respect of stock of goods remaining unsold at the time of closure of business;
- (vi) in respect of goods purchased on payment of tax, if such goods are not sold because of any theft or if such goods get destroyed ;
- (vii) where the tax invoice is not available with the dealer, or there is evidence that the same has not been issued by the selling dealer from whom the goods are purported to have been purchased;
- (viii) in respect of goods purchased by him for the period his certificate of registration is under suspension ; and
- (ix) in respect of sale of goods exempt from tax as specified in Schedule 'A';
- <sup>1</sup>(x) who gets the benefit of tax remission

(10) Reverse Tax Credit : If goods purchased are intended for the use specified under sub-section (4) but are subsequently used, fully or partly, for purposes other than those specified under the said sub - section, or there is loss of goods arising out of theft or destruction for any reason or stock of goods remaining unsold at the time of closure of business, the input tax credit availed at the time of such purchase shall be reduced from the tax credit for the period during which the said utilization has taken place :

Provided that if part of the goods purchased are utilized otherwise, the amount of reverse tax credit shall be proportionately calculated in a manner that is just and reasonable.

(11) Net Tax Credit- The Net Tax Credit to which a registered dealer is entitled shall be determined by the following formula:

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<sup>1</sup> Inserted vide J&K VAT (Amendment) Act, 2006

$$\text{Net Tax Credit} = A + B - C$$

Where —

“A” represents the amount of Input Tax Credit the dealer is entitled to under sub-section (2) of section 21.

“B” represents the outstanding credit brought forward as determined under sub-section (2) of section 22.

“C” represents the Reverse Tax Credit as determined under sub-section (10) of section 21.

(12) The methods that are used by a registered dealer in a year to determine the extent to which goods are used, consumed or supplied or intended to be used, consumed or supplied, in the course of making taxable sales, shall be fair and reasonable in the circumstances. The Assessing Authority may, after giving sufficient reason in writing, reject the method adopted by the registered dealer and calculate the amount of input tax credit after giving the registered dealer concerned, an opportunity of being heard.

**22. Input tax credit exceeding tax liability.**- (1). If the input tax credit of a registered dealer other than an exporter selling goods outside the territory of India determined under section 21 for a tax period exceeds the tax liability for that period, the excess credit shall be set off against any outstanding tax, penalty or interest under the Act or the Central Sales Tax Act, 1956 .

(2). The excess input tax credit remaining after adjustment under sub-section (1) may be carried over as an input tax credit to the subsequent tax period or periods but not beyond the end of the second financial year.

(3). In case where input tax credit is carried forward, an annual credit statement may be forwarded to the dealer concerned and the claims reconciled accordingly.



(4). The refund of excess input tax credit shall be allowed only after the end of the second financial year.

**23. Adjustment of input tax credit .-** Where any purchaser, being a registered dealer, has been issued with a credit note or debit note in terms of sub-section(1) or sub-section (2) of section 26 or if he returns or rejects goods purchased, as a consequence of which, the input tax credit availed by him in any period in respect of which the purchase of goods relates, becomes less or excess, he shall compensate such less credit or excess credit by adjusting the amount of tax credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned subject to conditions as may be prescribed.

**24. Burden of proof.-** In respect of any sale or purchase effected by a dealer the burden of proving that he is not liable to pay tax under section 13 or section 14 or that he is eligible to input tax credit under section 21 shall be on him.

**25. Turnover tax .-** Notwithstanding anything to the contrary contained in the Act, all dealers (other than importers and manufacturers )who sell their goods locally and do not consign any goods outside the State and whose gross turnover of sales is more than Rs <sup>1</sup>[Seven lacs and fifty thousand] but does not exceed Rs. twenty lacs, subject to such conditions and restrictions as may be prescribed shall, pay in lieu of the tax as specified under section 13 or section 14, a tax at such percentage of the <sup>2</sup>[taxable] turnover of such sales and purchases as the Government may, by order, notify, subject to the condition -

(a) that no input tax credit shall be available to such dealers; and

(b) that no tax invoice can be issued by such dealers:

Provided that every dealer liable to turnover tax under this section, if not already registered under the Jammu and Kashmir General

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<sup>1</sup> *Substituted for Rs. Five lacs vide J&K VAT (Amendment) Act, 2006*

<sup>2</sup> *Substituted for the word "gross" vide J&K VAT (Amendment) Act, 2006*

Sales Tax Act, 1962 shall be registered as per the provisions of section 27:

Provided further that such a registered dealer may, by exercising option in the prescribed manner, elect to pay tax as specified under section 13 or section 14 of the Act in lieu of the provisions of this section.

26. **Credit notes and debit notes.** - (1). Where a tax invoice has been issued and the amount shown as tax charged in the tax invoice exceeds the tax payable under this Act in respect of that sale the registered dealer making the sale shall provide the purchaser with a credit note containing the requisite particulars as may be prescribed.

(2). Where the tax invoice has been issued and the tax payable under this Act in respect of the sales exceeds the amount of tax charged in that tax invoice the registered dealer making the sale shall provide the purchaser with a debit note containing the requisite particulars as may be prescribed.

(3) In case of goods returned or rejected by the purchaser, a credit note shall be issued by the selling dealer to the purchaser and a debit note will be issued by the purchaser to the selling dealer containing the particulars as may be prescribed.

#### CHAPTER IV

### **REGISTRATION OF DEALERS, AMENDMENT AND CANCELLATION OF REGISTRATION CERTIFICATES**

27. **Registration.**-(1) No dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he has been registered and possesses a certificate of registration:

Provided that a dealer liable to pay tax shall be allowed three months' time from the date from which he is first liable to pay such tax to get himself registered.

(2) Every dealer required by sub-section (1) to be registered shall make application in this behalf in the prescribed manner to the prescribed authority specifying therein the class or classes of goods dealt in or manufactured, by him.

(3) If the said authority is satisfied that the application for registration is in order, he shall, in accordance with such manner and on payment of such fee as may be prescribed grant registration to the applicant and issue a certificate of registration in the prescribed form which shall specify the class or classes of goods dealt in, or manufactured, by him.

(4) Where the application for registration is made under this section, the prescribed authority shall grant to the applicant the certificate of registration from the date of filing such application:

Provided that the prescribed authority shall grant to such dealer the certificate of registration from the date of commencement of his liability to pay tax where the application for registration is made within thirty days of such date.

(5) The prescribed authority may for reasons to be recorded in writing amend, renew, suspend, restore or cancel any certificate of registration after giving the dealer a reasonable opportunity of being heard.

(6) The prescribed authority shall cancel the registration of a dealer when,-

- (a) any business in respect of which a certificate of registration has been granted to a dealer on an application made, has been discontinued ;
- (b) a dealer has ceased to be liable to pay tax;
- (c) an incorporated body is closed down or if it otherwise ceases to exist ;
- (d) the owner of an ownership business dies leaving no successor to carry on business;

- (e) in case of a firm or association of persons if it is dissolved;
- (f) a dealer whose registration certificate has been suspended fails to have it restored within the time prescribed ; or
- (g) a person or dealer is registered by mistake:

Provided that in respect of clause (g) any amount of fee or security paid shall be refunded to such person or dealer.

(7) When any dealer to whom a certificate of registration is granted, fails to furnish any return or fails to pay any tax, penalty or interest payable under the Act, the certificate of registration of such dealer may be suspended by the prescribed Authority in the manner as may be prescribed.

(8) Suspension of certificate of registration will be withdrawn and registration certificate shall be restored on an application made by the dealer on furnishing evidence of payment of all taxes and on furnishing of overdue return or returns within 90 days from the date of suspension:

Provided that if the dealer fails to have his certificate of registration restored within 90 days from the date of its suspension, the registration certificate of the dealer shall be cancelled.

Provided also that during the period the certificate of registration of a dealer remains suspended he shall not be entitled to any of the benefits that a dealer whose certificate of registration is in force, is entitled to.

(9) If certificate of registration of a dealer is cancelled or suspended or if the suspension is withdrawn, the information will be made public through insertion of notice in Newspapers.

(10) The cancellation of a certificate of registration shall not effect the liability of any person to pay tax due for any period till the date of such cancellation and remained unpaid or is assessed thereafter notwithstanding that he is not liable to pay tax under the Act.

- 28. Voluntary registration .-** (1) Any dealer, whose gross turnover of sales during a year exceeds rupees One lac, may, notwithstanding that he is not liable to pay tax, apply in the prescribed manner to the prescribed authority for registration under the Act.
- (2) Every dealer who has been registered on application made under this section shall for so long as his registration remains in force be liable to pay tax under the Act.
- (3) The registration of a dealer made under this section shall be in force for a period of not less than three years and shall remain in force there after unless cancelled under the provisions of the Act.
- (4) Subject to the provisions of sub-section (3) a dealer registered under this section, desirous of having his certificate of registration cancelled may, apply in the prescribed manner to the Authority, which granted him the said registration, for cancellation of the same. The said Authority shall cancel the registration of the dealer within 15 days of the application for cancellation being made, subject to the condition that the dealer has filed all the returns and paid all the outstanding dues.
- (5) When the gross turnover of sales of any dealer registered on application made under this section has for three successive years after the period of three years referred to in sub-section (3) failed to exceed the taxable limit the prescribed authority may after giving the dealer a reasonable opportunity of being heard, cancel registration of such dealer.
- (6) Provisions under sub-sections (3) to (9) of section 27 shall *mutatis mutandis* apply in relation to registration certificate to be granted or granted under this section as those apply to registration under section 27.
- 29. Security to be furnished in certain cases.-** (1)The prescribed authority may at the time of grant of certificate of registration to a dealer, for good and sufficient reasons to be recorded in writing, require the dealer to furnish in the prescribed manner such security or such additional security (after the dealer has been registered) as may be

specified by it for securing proper and timely payment of tax or any other sum payable by him under the Act.

(2) The prescribed authority may, by order in writing and for good and sufficient reasons to be recorded therein, demand from any person other than a registered dealer who imports into the State any consignment of goods, a reasonable security for ensuring that there is no evasion of tax or any other sum payable by him under the Act.

(3) The prescribed authority may by order in writing and for good and sufficient reasons to be recorded therein, forfeit the whole or any part of the security or additional security referred to in sub-section (1) or sub-section (2) for proper realization or recovery of the tax, penalty, interest or any other sum due under the Act.

(4) Where the security furnished by a dealer or any other person is forfeited in whole or is rendered insufficient, such dealer or other person shall, on demand by order of the prescribed authority furnish fresh or further security of the requisite amount or shall make up the deficiency as the case may be, in such manner and within such period as may be specified by the prescribed authority.

(5) The prescribed authority may, on application by the person, who has furnished security as required, refund in the prescribed manner any amount of security or part thereof if such security is not required for the purposes for which it was furnished.

(6) Security shall be furnished under sub-section (1) and sub-section (2) in such manner and by such time as may be specified in the order requiring to furnish, or demanding, such security.

(7) No order shall be passed under this section without giving the person concerned an opportunity of being heard.

**30. Imposition of penalty for failure to get registered.**- (1) If a dealer, who is required to get himself registered within three months from the date from which he is first liable to pay tax fails to get himself so registered, the prescribed authority may, after giving such dealer an

opportunity of being heard, by order impose by way of penalty a sum of five thousand rupees.

(2) If any penalty is imposed under sub-section (1), the prescribed authority shall issue a notice in the prescribed form directing the dealer to pay such penalty by such date as may be specified in the notice, and the date to be specified shall not be less than thirty days from the date of service of such notice and penalty so imposed shall be paid by the dealer in the prescribed manner.

## **CHAPTER V**

### **RETURNS, ASSESSMENT, RECOVERY AND REFUND OF TAX**

31. **Periodical returns and payment of tax:** (1). A registered dealer shall furnish return of his turnover in such form, for such period, by such dates and to such authority, as may be prescribed. The returns furnished by a dealer shall be duly acknowledged in the manner prescribed:

Provided that the Commissioner may, subject to such conditions and restrictions as may be prescribed, exempt any such dealer or class of dealers from furnishing such returns or permit any such dealer,-

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

(2). If the Assessing Authority has reasons to believe that the turnover of sales or the turnover of the purchases of any dealer is likely to exceed or has exceeded the taxable limit as specified in sub-section (4) of section 12, it may, by notice served in the prescribed manner, require such dealer to furnish return as if he was a registered dealer, but no tax shall be payable by him unless his gross turnover exceeds the taxable limit provided under sub-section (4) of section 12.

<sup>1</sup>[(3). Any person or dealer who having furnished a return under sub section (1) or (2), discovers any omission or incorrect statement therein, may furnish a revised return on conditions as may be prescribed, at any time before a notice of 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, for the period to which the return relates, whichever is earlier.]

(4). Any dealer, required to file return under sub-section (1) or sub-section (2), shall pay the full amount of tax payable according to the return or the differential tax payable according to the revised return furnished, if any, in such manner as may be prescribed, and shall furnish alongwith the return or revised return, as the case may be, a receipt showing full payment of such amount.

(5) A return under this section shall be signed and verified -

- (a) in case of an individual, by the individual himself, and where the individual is absent by some person duly authorized by him in this behalf;
- (b) in the case of a Hindu Undivided family, by the Karta;
- (c) in the case of a company or local authority, by the principal officer or Chief Executive thereof;
- (d) in the case of a firm, by any partner thereof not being a minor; and
- (e) in the case of any other association, by the person competent to act on behalf of such association.

(6) If payment of the amount of tax is made by any person through cheque and the same is dishonoured by the bank on which it has been issued, it shall amount to failure on the part of the person to pay the amount of tax.

**32. Return defaults.**- (1) If a dealer, required to file the return under sub-section(1) or sub-section(2) of section 31,-

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<sup>1</sup> Sub-section (3) of Sec. 31 substituted vide J&K Taxation Laws (Amendment) Act, 2009



- (a) fails to pay the amount of tax due as per the return for any tax period;
- (b) furnishes a revised return under sub-section(3) of section 31 showing a higher amount of tax to be due than was shown by him in the original return; but fails to pay the additional amount of tax due according to the revised return; or
- (c) fails to furnish return,-

he shall be liable to pay interest in respect of clause(a) on the tax payable by him according to the return; in respect of clause(b) on the difference of amount of tax according to the revised return; and in respect of clause(c) on the tax payable for the period for which he has failed to furnish the return @ 2% per month from the date the tax payable had become due to the date of its payment or to the date of order of assessment whichever is earlier.

**Explanation:-** 'Month' shall mean a calendar month and the interest payable for part of the month shall be proportionately calculated according to the number of days of default.

(2) For the purpose of the Act, any return signed by a person who is not authorized under sub-section (5) of section 31 shall be treated as if no return has been filed.

**33. Collection of tax only by registered dealers.**- (1) No person who is not a registered dealer shall collect in respect of any sale of goods by him in the State any amount by way of tax under the Act and no registered dealer shall make any such collection except in accordance with the provisions of the Act and the rules made thereunder and not beyond the rate specified under the Act.

(2) Notwithstanding anything contained in sub-section (1), a registered dealer who is liable to pay turnover tax under section 25 shall not collect any sum by way of tax on the sale of goods during the period to which such turnover payment relates.

(3) Tax collected and deposited under the provisions of the Act to which a dealer may be held not liable shall not be refunded and shall stand forfeited.

(4) If any person acts in contravention of the provisions of the Act, he shall be liable to a penalty not exceeding double the amount of tax wrongly collected:

Provided that the Assessing Authority shall not impose such penalty unless the person concerned has been given an opportunity of being heard.

**34. Rounding off of the amount of tax or penalty:** The amount of tax, interest or penalty payable or refundable for any period under the provisions of the Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of rupee, then, if such part is fifty paise or more, it shall be increased to one rupee, if such part is less than fifty paise, it shall be ignored.

**35. Scrutiny of returns.**- (1). Each and every return in relation to any tax period furnished by a registered dealer shall be scrutinized by the Assessing Authority within a period of three months of filing of such return to verify the correctness of calculation, application of correct rate of tax and interest and input tax credit claimed therein; and full payment of tax and interest payable by the dealer during such period.

(2). If any mistake is detected as a result of such scrutiny made as per provision of sub-section (1) the Assessing Authority shall serve a notice in the prescribed form on the dealer to make payment of extra amount of tax along with the interest as per the provisions of the Act, if it is payable by a date specified in the said notice.

**36. Tax Audit.**-(1). The Commissioner or any other Tax Officer as directed by him shall undertake tax audit of records, stock in trade and the related documents of the dealers, who are selected by the Commissioner in the manner as may be prescribed for the purpose.

(2). The tax audit shall be generally taken up in the office, business premises or warehouse of the dealer.

(3). For the purpose of tax audit under sub-section (1) the Commissioner or any other Tax Officer directed by him shall examine the correctness of return or returns filed and admissibility of various claims including input tax credit.

**37. Self assessment.**- (1) Subject to the provisions of sub-section(2), the amount of tax due from a registered dealer or a dealer liable to be registered under the Act shall be assessed in the manner hereinafter provided for each tax period or tax periods during which the dealer is so liable.

(2) Notwithstanding anything contained in this section, if a registered dealer has failed to furnish return or returns under sub-section (1) of section 31 in respect of any tax period or periods, the Assessing Authority shall proceed to make provisional assessment under section 38.

(3) If a registered dealer has filed the return in respect of any tax period within the prescribed time and the return so filed is found to be in order, it shall be accepted as self-assessment subject to adjustment of any arithmetical error apparent on the face of the said return.

**38. Provisional assessment.**- (1) Where a registered dealer fails to furnish the return in respect of any tax period within the prescribed time, the Assessing Authority shall notwithstanding anything contained in Section 37 proceed to assess the dealer provisionally for the period for such default.

<sup>1</sup>[Provided that before proceeding to assess the dealer provisionally, the Assessing Authority shall afford an opportunity to such dealer of being heard.]

(2) The provisional assessment under sub-section (1) shall be made on the basis of past returns or past records where no such returns are available, or on the basis of information received by the Assessing Authority and the Assessing Authority shall direct the dealer to pay the

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<sup>1</sup> Proviso to sub section (1) of Section 38 added vide J&K Taxation Laws (Amendment) Act, 2009.

amount of tax assessed in such manner and by such date as may be prescribed.

(3) If the dealer furnishes return alongwith evidence showing the full payment of tax, interest and penalty, if any, on or before the date of payment specified under sub-section (2) the provisional assessment made under sub-section (1) shall stand revoked to the extent of the tax demanded, interest levied and penalty imposed, on the date on which such return is filed by the dealer.

(4) Nothing contained in this section shall prevent the Assessing Authority from making assessment under section 39 and any tax, interest or penalty paid against provisional assessment shall be adjusted against tax, interest and penalty payable on final assessment under section 39.

**39. Audit assessment.-**(1) Where :

- (a) a registered dealer has failed to furnish any return under sub-section(1) of section 31 in respect of any period;
- (b) a registered dealer is selected for audit assessment by the Commissioner on the basis of any criteria or on random basis;
- (c) the Assessing Authority is not satisfied with the correctness of any return filed under section 31; or bonafide of any claim of exemption, deduction, concession ,input tax credit or genuineness of any declaration furnished by a registered dealer in support thereof; or
- (d) the Commissioner has reason to believe that detailed scrutiny of the case is necessary,-

the Commissioner or the Assessing Authority or any other Tax Officer, authorized by the Commissioner may, notwithstanding the fact that the dealer has already been assessed under section 38, serve on such dealer in the prescribed manner a notice requiring him to appear before him on a date and place specified therein, which may be in the business premises or at a place specified in the notice, to either attend and

produce or cause to be produced the books of accounts and all evidence on which the dealer relies in support of his return including tax invoices, if any, or to produce such evidence as specified in the notice.

(2) The dealer shall provide full cooperation and assistance to the Commissioner or the Assessing Authority or such Tax Officer as the case may be, to conduct proceedings under this section at his business premises.

(3) If proceedings under this section are to be conducted at the business premises of the dealer and it is found that the dealer or his authorized representative is not available or is not functioning from such premises, the Commissioner or the Assessing Authority or such Tax Officer as the case may be, shall assess to the best of his judgment the amount of tax due from him.

(4) If the Commissioner or the Assessing Authority or such Tax Officer as the case may be, is prevented from conducting the proceedings under this section, the Commissioner or the Assessing Authority or such Tax Officer may demand, a sum equal to the amount of tax so assessed, by way of penalty.

(5) On the date specified in the notice under sub-section (1) or as soon as may be thereafter the Commissioner or the Assessing Authority or such Tax Officer as the case may be, shall, after considering all the evidence produced in course of the proceedings or collected by him,-

- (a) confirm the self assessment made under section 37;
- (b) set aside the self assessment made under section 37 and assess the amount of tax due from the dealer; or
- (c) assess the amount of tax due from the dealer if no assessment has been made under section 37;

Provided that if the Commissioner or the Assessing Authority or such Tax Officer as the case may be, proposes to rely on the evidence collected by him, the dealer shall be afforded a reasonable opportunity of being heard before any adverse inference is drawn:

Provided also that in case where the Assessing Authority initiates action under the provision of sub-section (1), sub-section (3) and sub-section (4) of section 39, it shall, submit a report thereof to the Commissioner.

Provided further that the Assessing Authority shall not take any action in respect of clause (b) and clause(c) of sub-section(5) of section 39 unless authorized to do so in writing by the Commissioner.

- (6). If any dealer -
- (a) has not furnished returns in respect of any period by the prescribed date;
  - (b) has furnished incomplete and incorrect return for any period;
  - (c) has failed to comply with any notice under sub-section(1) or sub-section(3); or
  - (d) has failed to maintain accounts in accordance with the provisions of the Act or has not regularly employed any method of accounting,-

the Commissioner or the Assessing Authority or such Tax Officer as the case may be shall, assess to the best of his judgement the amount of tax due from such dealer.

(7). If the Commissioner or the Assessing Authority or such Tax Officer as the case may be, is satisfied that the dealer, in order to evade or avoid payment of tax -

- (a) has failed to furnish without reasonable cause, returns in respect of any period by the prescribed date;
- (b) has furnished incomplete or incorrect returns for any period;
- (c) has availed tax credit to which he is not entitled to; or
- (d) has employed such methods of accounting which do not enable the Commissioner or the Assessing Authority or such Tax Officer

as the case may be, to assess the tax due from him or has knowingly furnished false or incorrect self assessment;

he shall, after giving the dealer a reasonable opportunity of being heard, direct that the dealer shall pay, by way of penalty, a sum equal to twice the amount of additional tax assessed on account of the said reasons under this section.

(8) If a dealer offers an explanation in respect of acts of omission and commission specified in sub-section (7), which is not bonafide or fails to substantiate the explanation offered with evidence he shall be deemed to be guilty of evading or avoiding payment of tax under this section.

(9) Any penalty imposed under this section shall be, without any prejudice to the penalty prescribed under any other provision or prosecution for any offence under the Act.

**40. Assessment of dealer who fails to get himself registered.**- If the Assessing Authority, upon information which has come into his possession, is satisfied that any dealer who has been liable to pay tax under the Act in respect of any period, has failed to get himself registered, the Assessing Authority shall proceed in such manner as may be prescribed to assess to the best of his judgement the amount of tax due from the dealer in respect of such period and all subsequent periods and in making such assessments shall give the dealer reasonable opportunity of being heard.

**<sup>1</sup>[41. No assessment after three years:** No assessment under section 37, section 38, section 39 or section 40 shall be made after the expiry of three years from the end of the year to which the assessment relates and every return filed shall be deemed to have been accepted if not taken up for scrutiny the said period.]

**42. Turnover escaping assessment.**- (1). Where after a dealer is assessed under section 37, section 38, section 39 or section 40 for any year or part thereof, the Assessing Authority has reason to believe that whole or any part of the turnover of the dealer in respect of any period has :-

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<sup>1</sup> Section 41 recast vide J&K VAT (Amendment) Act, 2008 dated 30-12.-2008 w.e.f. 01.04.2008

- (a) escaped assessment;
- (b) been under assessed;
- (c) been assessed at the rate lower than the rate at which it is assessable;
- (d) been wrongly allowed any deduction there from; or
- (e) been wrongly allowed any credit therein,-

the Assessing Authority may, serve a notice on the dealer and after giving the dealer a reasonable opportunity of being heard and making such enquiries as it considers necessary, proceed to assess to the best of its judgment, the amount of tax due from the dealer in respect of such turnover, and the provisions of the Act shall, so far as may be, apply accordingly.

(2). No order of assessment and re-assessment shall be made under sub-section (1) after the expiry of five years from the end of the year in respect of which or part of which the tax is assessable or one year from the end of the year in which notice is served, whichever is latter.

**<sup>1</sup>[42-A.Power to review in certain cases.—** Notwithstanding anything contained in Section 37, 38 and 39, the Government may, if it is of the opinion that it is expedient to do so in public interest, direct review of the cases for the accounting year 200506 where demands have been raised due to technical defaults.]

**43. Power of re-assessment in certain cases.-** (1)Where any order passed by the Assessing Authority in respect of a dealer for any period is found to be erroneous or prejudicial to the interest of revenue consequent to or in the light of an order under section 72, section 73 or section 74 or order of any court which has become final, then notwithstanding anything contained in the Act, the Assessing Authority may proceed to reassess the tax payable by the dealer in accordance

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<sup>1</sup> Section 42-A inserted vide J&K Taxation Laws Amendment Act, 2009 dated 20<sup>th</sup> March 2009



with such order, at any time within a period of two years from the date of such order.

(2) Where any court or Tribunal passes any order in appeal or revision to the effect that any tax assessed under the **Act** or the Central Sales tax Act, 1956 should have been assessed under the provision of a law other than that under which it was assessed, then in consequence of such order or to give effect to any finding or direction contained in such order such turnover and part thereof, may be assessed or reassessed, as the case may be, to tax at any time within four years from the date of such order, notwithstanding any limitation period which would otherwise be applicable to, the assessment or reassessment made.

**44. Payment and Recovery of Tax, Penalty and Interest.**-(1) Tax shall be paid in the manner herein provided and at such intervals as may be prescribed.

(2) A registered dealer furnishing returns under sub-section (1) of section 31 shall pay in such manner and at such intervals as may be prescribed, the amount of tax due from him for the period covered under the return along with the amount of penalty or interest or both payable by him under section 31 and shall furnish the receipt showing the payment of such amount.

(3) A registered dealer furnishing a revised return in accordance with sub-section (3) of section 31, which shows that a greater amount of tax is due than was paid or payable in accordance with the original return, shall furnish along with the return a receipt showing payment of the differential amount in the manner provided in sub-section (2).

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

(b) The amount of tax,-

(i) assessed under section 37, section 38 and section 39 less the sum already paid in respect of such period together with interest , if

any, required to be paid and the penalty , if any, imposed, to be paid under sub-section (7) of section 39;

- (ii) the amount of penalty imposed under any provision of the Act ; or
- (iii) any other amount due under the Act,

shall be paid by the person or dealer or the person liable therefor in the manner prescribed within thirty days from the date of service of the notice issued by the Assessing Authority in respect thereof.

(5). Where any dealer fails to make payment of tax assessed or interest levied or penalty imposed on him or any other amount due from him under the Act within 30 days of the date of service of the notice of demand, the Assessing Authority may , after giving the dealer a reasonable opportunity of being heard, direct that such dealer shall, in addition to the amount due, pay by way of penalty, a sum equal to 2% of such amount of tax, penalty, interest or any other amount due, for every month, for the period for which payment has been delayed by him after the date on which such amount was due to be paid.

(6). The amount that remains unpaid after the due date of payment in pursuance of the notice issued under sub -section (4) or sub-section (5) shall on the issue of Certificate in the prescribed form to the Deputy Commissioner (Recovery), be recoverable as arrears of land revenue. The copy of the said certificate shall be forwarded to the defaulter on his last known address:

Provided that the Commissioner or any other officer not below the rank of Assessing Authority, authorized in writing by the Commissioner may on an application in the prescribed form extend the date of payment specified in the Notice of demand or allow such defaulter to pay demand in instalments subject to such conditions including the payment of interest and furnishing of a security, as the officer may consider necessary.

(7) Any question as to whether a tax or any other sum is recoverable under the Act, the person from whom it is due shall be determined by the Assessing Authority.

(8) A certificate under the signature of the appropriate authority shall be final and conclusive proof, both as to the amount of tax, which is due and as to the person from whom it is due.

(9). For the purpose of recovery of tax and any other sum payable under the Act, the taxation authorities shall exercise the powers vested in the authorities under the Jammu and Kashmir Land Revenue Act, Samvat 1996, as specified hereinafter and all the provisions of the said Act shall so far, as they may, apply to the recovery of arrears specified in the Certificate as amended from time to time:

(a) the Commissioner shall exercise the powers vested in Divisional Commissioner ;

(b) the Deputy Commissioner(Recovery) shall exercise the powers vested in Collector; and

(c) the Assessing Authority shall exercise the powers vested in Assistant Collector Ist Class.

(d) the Commercial Taxes Officer posted in the Recovery Wing shall exercise the powers vested in Assistant Collector Ist Class within such area as may be specified by the Commissioner from time to time.

(10). Where in pursuance of sub-section (6), any proceeding for the recovery as arrears of land revenue of any tax, penalty, interest or part thereof or any other amount remaining unpaid , have been commenced and the amount of tax, penalty, interest or any other amount is subsequently enhanced or reduced as a result of any assessment made or order passed in the appeal, revision or rectification under the Act, the Assessing Authority may , in such manner and within such period as may be prescribed, inform the dealer and the authority by whom or under whose order the recovery is to be made and there upon such proceeding may be continued as if the amount of tax, penalty, interest, or such other amount as modified, enhanced or reduced, had been substituted for the tax, penalty, interest or other amount which was to be recovered under sub-section(6).

<sup>1</sup>[11. If the tax or any other amount due under this Act excluding interest is not paid by the dealer or any other person, by whom it is payable within the period allowed, the dealer or such other person shall be liable to pay interest on the tax or other amount from the date it was payable to the date of actual payment @ 2% per month.]

**45. Special mode of recovery.**- (1) Notwithstanding anything contained in any law or contract to the contrary, the Assessing Authority may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the dealer at his last known address) require any person who holds or may subsequently hold any money for, or on account of any dealer who has failed to pay tax, interest or penalty under the Act, to pay into Government treasury in the manner specified in the notice, either forthwith or upon the money becoming due or being held, or within the time specified in the notice not being before money becomes due or is held, so much of the money as is sufficient to pay the amount of tax including interest due from the dealer or penalty or both, as the case may be, under the Act, or the whole of the money when it is less than that amount.

(2) The Assessing Authority may from time to time, amend or revoke any notice issued under sub-section (1) or extend the time for making the payments in pursuance of such notice.

(3). Any person making any payment in compliance with a notice issued under sub section (1) shall be deemed to have made the payment under the authority of the dealer and the receipt from the Government Treasury shall construe a good and sufficient discharge of the liability of such person to the dealer to the extent of the amount specified in the receipt.

(4) Any person discharging liability to the dealer, after service on him of the notice issued under sub-section (1) shall, if the liability is discharged in any manner other than that required under the said notice, be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the dealer for tax or penalty, or both, whichever is less.

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<sup>1</sup> Sub section (11) inserted vide J&K Taxation Laws Amendment Act, 2009 dated 20<sup>th</sup> March 2009.

(5) Where a person on whom a notice is served under sub-section (1) proves to the satisfaction of the Assessing Authority that the money demanded or any part thereof were not due to the dealer, or that he did not hold any money for or on account of the dealer, at the time the notice was served on him; nor is the money demanded or any part thereof likely to become due to the dealer or to be held on account of the dealer, then such person shall not be liable to pay into Government Treasury any such money or part thereof.

(6) Any amount of money which a person is required to pay under sub-section (1) or for which he is personally liable under sub-section (4) shall, if it remains unpaid, be recoverable in the same manner as provided under sub-section(6) of section 44:

Provided that nothing in this section shall operate to effect any action taken or prevent any action that may be or is being taken under section 44 for recovery from the dealer the amount due from him.

(7) The Assessing Authority may apply to the court in whose custody there is a money belonging to the assessee for the payment to him of the entire amount of such money, or if it is more than the amount due from the assessee under the Act, the amount sufficient to discharge such liability.

(8) Save as otherwise provided in this section, every person to whom a notice is issued under sub- section (1) shall be bound to comply with such notice and in particular, where such notice is issued to a Post office, Banking Company or Insurer, it shall not be necessary for any pass books, policy or any other document to be produced for the purpose of any entry, endorsement or like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

**Explanation:** For the purpose of this section the amount due to an assessee shall be computed after taking into account such claims as may have fallen due for payment by such assessee and may be lawfully subsisting.

(9) No proceeding for the recovery of any sum payable under the Act shall be commenced after the expiry of two years from the last date of the financial year in which assessment is made, or in the case of a person who is deemed to be an assessee in default under sub-section (6) of this section after the expiry of one year from the last date of financial year in which he is deemed to be an assessee in default.

**Explanation I:** The period of one year referred to in sub-section (9) shall be reckoned -

- (i) where the date of payment of tax has been extended to another date, from the last day of the financial year in which such date falls;
- (ii) where a sum payable is allowed to be paid in instalments from the last day of the financial year in which the last of such installments is due; and
- (iii) where recovery proceedings in a case have been stayed by an order of the court from the last day of the financial year in which the order is withdrawn.

**Explanation II:** The proceedings for the recovery of any sum shall be deemed to have been commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the period hereinbefore specified to, by any mode of recovery under the Act.

**46. Collection of tax by dealer:**(1). If any person –

- (a) not being a dealer liable to pay tax under the Act, collects any sum by way of tax; or
- (b) being a registered dealer, collects any amount by way of tax in excess of tax payable by him,-

he shall in respect of clause (a) above be liable in addition to tax for which he may be liable, to a penalty of an amount equal to twice the sum so collected by way of tax and in respect of clause (b) be liable to

deposit the excess tax so collected in the treasury within the tax period of such collection

(2) If the Assessing Authority in the course of any proceedings under the Act or otherwise has reasons to believe that any person has become liable to a tax or penalty, or both, under sub-section (1), he shall serve on such person a notice in the prescribed form requiring him to appear and show cause as to why a penalty of any sum as provided under sub-section (1) should not be imposed on him.

(3) The Assessing Authority shall thereupon hold such an inquiry as may be necessary and shall make such order as he deems fit.

**47. Sales not liable to tax.**-(1). Notwithstanding anything contained in the Act, a value added tax shall not be imposed under the Act -

- (i) where such sale or purchase takes place outside the State ;
- (ii) where such sale or purchase takes place in the course of inter-State trade and commerce; or
- (iii) where such sale or purchase takes place in the course of import of goods into the territory of India or export of goods out of the territory of India.

(2) For the purpose of this section whether a sale or purchase takes place -

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

shall be determined in accordance with the provisions of section 3, section 4 and section 5 of the Central Sales Tax Act, 1956.

- 48. Tax to be first charge on property.**- Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer under the Act on account of tax, penalty or interest or any amount which a person is required to pay under the Act shall be a first charge on the property of the dealer or such person.
- 49. Period of limitation** :- Notwithstanding anything contained in any law for the time being in force, no proceeding for recovery of any amount under clause(b) of sub-section(1) of section 46 shall be initiated after the expiry of two years from the date of relevant assessment:

Provided that when an appeal or revision has been filed the period of limitation shall run from the date on which the amount due is finally determined.

- 50. Refund.**-(1). Subject to the other provisions of the Act and the rules made thereunder, the Assessing Authority shall refund <sup>1</sup>[in the prescribed manner any sum paid by a person under this Act] in excess of the amount due from him.

(2) Where any refund is due to any dealer according to return furnished by him for any period, such refund may provisionally be adjusted by him against the tax due or tax payable as per the returns filed under section 31 for any subsequent period in the year:

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 adjustment.

- 51. Interest.**-(1) A registered dealer entitled to refund in pursuance of any order under the Act (including assessment under section 37, section 38, section 39 or section 40) or in pursuance of any order by any Court shall be entitled to receive in addition to the refund, simple interest at the rate of 24% per annum for the period commencing within sixty days of

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<sup>1</sup> The words” to a dealer the amount of tax, penalty and interest, if any, paid by such dealer” substituted with the words” in the prescribed manner any sum paid by a person under this Act” vide J&K Taxation Law Amendment Act, 2009 dated 20<sup>th</sup> March 2009.



the application claiming refund in pursuance to such order till the date on which the refund is made.

(2) The interest shall be calculated on the amount of refund due after deducting there from any tax, interest, penalty or other dues under the Act.

(3) If as a result of any order passed under the Act, the amount of refund is enhanced or reduced, the interest shall be enhanced or reduced proportionately.

(4) When a dealer is in default or is deemed to be in default in making the payment under section 37, section 38, section 39 or section 40, he shall be liable to pay simple interest on such amount at the rate of two percent per month from the date of such default for so long as he continues to make default in the payment of said tax.

(5) Where as a result of any final order the amount of tax (including any penalty) due or in default is wholly reduced, the amount of interest, if any, paid shall be refunded, or if such amount is modified, the interest due shall be calculated accordingly.

(6) Where any amount of tax payable is enhanced by any such order, interest shall be payable also on the amount by which the tax is enhanced after the expiry of period of three months from the date of the order.

(7) Where the realization of any amount remains stayed by the order of any court or any authority and such order is subsequently vacated, interest shall be payable also for any period during which such order remained in operation.

(8) The Interest payable under this section shall be deemed to be tax due under the Act.

52. **Power to withhold refund in certain cases.**-(1) Where an order giving rise to refund is the subject matter of an appeal or further proceeding or where any other proceeding under the Act is pending and the Commissioner is of the opinion that the grant of such refund is likely to

adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may, withhold the refund till such time as he may determine.

(2) Where a refund is withheld under sub-section (1), the dealer shall be entitled to interest as provided under sub-section (1) of section 51 if as a result of the appeal or further proceeding or any other proceeding he becomes entitled to the refund.

**53. Reimbursement of Tax:-** Tax collected under the Act on purchases made by specialized agencies of the United Nations Organization and Consulates or Embassies or their diplomats shall be reimbursed in such manner and subject to such conditions as may be prescribed

**54. Tax Free Goods.-** No tax shall be payable on the sale of goods in Schedule 'A' and a taxable person shall not charge tax on the sale of goods which are declared tax free under this section.

**55. Zero-Rated Sales:** (1) Where any goods are exported outside the territory of India or are supplied in the course of such export falling within the scope of section 5 of the Central Sales Tax Act, 1956, or where such goods are sold or supplied to SEZ's (Special Economic Zones) within the country, such sales shall be Zero-rated.

(2) For every sale made in terms of sub-section 1 above, an input tax credit shall be allowed and the dealer shall be entitled to the refund of the input tax paid in the State.

(3) Subject to the provisions of the Act and the rules made there under, the Assessing Authority shall refund to the dealer the amount of input tax paid by the dealer as per sub-section 2 above, within a period of 120 days from the date of such sales.

(4) In case where a registered dealer entitled to refund under sub-section (3) is not granted refund within the prescribed period, he shall upon making an application in the prescribed manner to the prescribed authority be entitled to receive in addition to the refund, simple interest @ 18% per annum on the said amount from the day immediately following the expiry of the prescribed period, if the delay in grant of refund does not exceed three months and at the rate of 24% per annum

if the delay exceeds three months from the expiry of the prescribed period.

**56. Composition of tax.-(1)** The Government may by a notification published in the Government Gazette provide for a scheme of composition subject to such conditions and restrictions as may be provided therein, of tax payable by those dealers who are engaged in the business of selling at retail any goods.

(2) 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 officer in charge of the case shall refer the question to the Deputy Commissioner (Appeals) who shall, after hearing the dealer decide the question.

(3) <sup>1</sup>[\*\*\*\*]

## **CHAPTER VI**

### **TAX CLEARANCE CERTIFICATE FOR SUPPLY OF TAXABLE GOODS**

**57. Clearance certificate in relation to taxable goods.-(1)** Any person being-

- (a) a Department of the Government or Central Government or any other Government of a State or Union Territory;
- (b) a local authority;
- (c) a Corporation established by or under Central or State Act;
- (d) a Co-operative Society; or
- (e) any Board constituted by or under Central or State Act;

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<sup>1</sup> *Omitted vide Act No. XIII of 2007*

shall before entertaining a tender for supply of taxable goods or sanctioning any contract for supply of taxable goods, require the supplier or contractor to furnish the tax clearance certificate in the prescribed form issued by the Assessing Authority concerned and if any authority entertains a tender without such certificate from the supplier/contractor, he shall be liable to pay by way of penalty an amount of rupees ten thousand for each such tender.

**(2)** The person referred to in sub-section (1) above shall, furnish a copy of the contract/agreement executed for the supply of taxable goods, to the Deputy Commissioner of Commercial Taxes of the division concerned, in which such Department/agency falls.

**(3)** If any person referred to in sub-section (1) who enters into such contract/agreement fails to submit a copy of the contract/agreement to the Deputy Commissioner of Commercial Taxes of the division concerned, as required under sub-section (2) of this section, he shall be liable to pay by way of penalty an amount of rupees ten thousand per contract/agreement.

Provided that before levy of penalty under sub section (1) and sub section (3) of this section such person shall be afforded a reasonable opportunity of being heard.

## **CHAPTER VII**

### **ACCOUNTS AND RECORDS**

- 58. Maintenance of accounts and records etc.-(1).** A registered dealer or a dealer to whom a notice has been served to furnish return under sub-section (2) of section 31 shall maintain a true and up to date account of the value of goods purchased or manufactured and sold by him or goods held by him in stock, and, in addition to the books of accounts that a dealer maintains and keeps for the purpose referred to in this sub-section, he shall maintain and keep such registers and accounts in such form and in such manner as may be prescribed.

(2). Every dealer referred to in sub-section (1) shall keep at his place of business all accounts, registers and documents maintained in the course of business.

(3) Where a dealer referred to in sub-section (1) has established branch offices of the business in the State other than the principal place of business, the relevant accounts, registers and documents in respect of each such branch shall, without prejudice to the provisions of sub-section (5); be kept by him at such branch.

(4) If the Commissioner is of the opinion that the accounts maintained by any dealer or any class of dealers do not sufficiently enable the Assessing Authority to verify the returns referred to in sub-section (1) of section 31 or the assessment cannot be made on the basis thereof, he may by an order, require such dealer or class of dealers, to keep such accounts, in such form and in such manner as he may, subject to rules made under the Act, direct.

(5) If the Commissioner is satisfied that any dealer is not in a position to maintain accounts in accordance with the provisions of sub-section (1) he may, for reasons to be recorded in writing, exempt such dealer from the operation of the provisions of the said sub-section.

**59. Tax invoice:** Any dealer liable to pay tax under the Act shall in respect of goods sold by him or on his behalf issue to the purchaser, at the time of sale, a VAT invoice or Retail invoice as the case may be, containing such particulars and subject to such conditions as may be prescribed.

**<sup>1</sup>[60. Audit of Accounts (1).** Any dealer whose gross turnover in a year exceeds rupees 40 lacs or such other amount as the Commissioner may, by a notification in the Government Gazette specify, shall get his accounts in respect of that year audited by a Chartered Accountant or Cost and Works Accountant within such period from the end of that year as may be specified by the Commissioner by notification in the Government Gazette. The dealer shall obtain a report of such audit in the prescribed form duly signed and verified by such Chartered Accountant or Costs and Works Accountant and setting forth such particulars as may be prescribed.

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<sup>1</sup> Section 60 substituted vide J&K VAT (Amendment) Act, 2008 dated 30.12.2008 w.e.f. 1.4.2008.

(2). A dealer liable to get his accounts audited under sub-section (1) shall furnish such report to the Assessing Authority within such period as may be specified by the Commissioner by notification in the Government Gazette. A true copy of the audit report shall also be furnished to the Commissioner within the stipulated period.

(3) If any dealer, liable to get his accounts audited under sub-section (1), fails to get his accounts audited or fails to furnish the audit report or true copy thereof within the period specified under sub-section (2), the Assessing Authority shall, after giving such dealer an opportunity of being heard impose on him, in addition to any tax payable, a penalty equal to 0.25% of the turnover as he may determine to the best of his judgment, in his case, in respect of the said period.]

**61. Dealer to declare the name of his business manager.**-(1). Any dealer who is liable to pay tax, and who is a Hindu undivided family or an association of persons, club or society, 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, furnish a declaration in the manner prescribed stating the name of the person or persons who shall be deemed to be manager or managers of such dealer's business for the purposes of the Act.

(2) Such declaration shall be furnished at the time of registration, wherever applicable and shall be revised from time to time.

(3) The declaration furnished under this section shall also contain the name and address with designation in relation to the business of such persons who are authorized to receive notice and other documents under the Act and such service on whom shall be binding on the dealer.

## CHAPTER VIII

### **LIABILITY IN SPECIAL CASES**

**62. Liability to pay tax in case of death:**

(1) Where a dealer, liable to pay a tax under the Act, dies then, -

(a) if the business carried on by the dealer is continued after his death by his legal representative or any other person, such legal representative or other person shall be liable to pay tax including

any penalty, sum forfeited and interest due from such dealer under the Act or under any other law, in the like manner and to the same extent as the deceased dealer, and

(b) if the business carried on by the dealer 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 the Act or under any other 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 the Act, is a Hindu undivided family and the joint family property is partitioned 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 the Act or under any other law, up to the time of partition, whether such tax including any penalty, sum forfeited and interest has been assessed before partition but has remained unpaid, or is assessed after partition.

(3) Where a dealer, liable to pay tax under the Act, is a firm, and the firm is dissolved, then every person or partner shall be jointly and severally liable to pay to the extent to which he is liable under section 64, the tax including any penalty, sum forfeited and interest due from the firm under the Act or under any other 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 the 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 the Act or under any other 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 the Act, -

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

(b) is a trustee who carries on the business under a trust for the beneficiary, then,-

if the guardianship or the 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 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.

(6) Where a dealer, liable to pay tax under the Act, is succeeded in the business by any person in the manner described in clause (a) of sub-section (1) or in sub-section (4) then such person shall be liable to pay tax on the sales or purchases of goods made by him on and after the date of such succession and shall (unless he already holds a certificate of registration) within sixty days thereof apply for registration.

**63. Certain agents liable to tax for sales on behalf of principal.-(1).**

Where any person sells or purchases any taxable goods on behalf of his principal then such person and his principal shall be jointly and severally liable to pay taxes on the turnover of such sales or purchases.

(2) If the principal, on whose behalf the commission agent has sold or purchased any goods, shows to the satisfaction of the Assessing Authority that tax has been paid by such commission agent on such goods under sub-section (1), the principal shall not be liable to pay the tax again in respect of the same transaction.



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

Provided that, if the non-resident dealer shows to the satisfaction of the Assessing Authority that the tax payable in respect of such sale or purchase has been paid by the manager or agent residing in the State, then the non-resident dealer shall not be liable to pay tax in respect of the same transaction.

**64. Liability of partners.**- (1) Notwithstanding anything contained in the Jammu and Kashmir State Partnership Act, Svt, 1996 or any contract to the contrary, where any firm is liable to pay tax under the Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payments and accordingly any notice or order under the Act may be served on any person who was a partner during the relevant time whether or not the firm has been dissolved and the provisions of the Act shall apply accordingly.

(2) Where any such partner retires from the firm, he shall be liable to pay the tax, penalty, sum forfeited and interest remaining unpaid at the time of his retirement and any such amount due up to the date of retirement though unassessed at that date.

**65. Amalgamation of companies.**-(1). When two or more companies are to be amalgamated by the order of a court or of the Central Government and the order is to take effect from a date earlier to the date of the order and any two or more such companies have sold or purchased any goods to or from each other in the period commencing on the date from which the order is to take effect and ending on the date of the order, then such transactions of sale and purchase will be included in the turnover of the sales or of purchases of the respective companies and will be assessed to tax accordingly.

(2). Notwithstanding anything contained in the said order, for all the purposes of the Act, the said two or more companies will be treated as distinct companies and will be treated as such for all periods up to the

date of the said order and the registration certificates of the said companies will be cancelled, where necessary, with effect from the date of said order.

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

## **CHAPTER IX**

### **INSPECTION OF ACCOUNTS, DOCUMENTS, SEARCH OF PREMISES AND ESTABLISHMENT OF CHECK POSTS**

**66. Production and inspection of accounts and documents and search of premises.**-(1) The Commissioner or the Additional Commissioner or the Appellate Authority or any other authority not below the rank of an Assessing Authority 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 or of sale, purchase and delivery of goods or of payments made or received by the dealer, or any other information relating to his business, as may be necessary for the purpose of the Act.

(2) All accounts, registers and documents relating to stocks of goods, or of purchase, sale and delivery of goods, payments made or received 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 authorities specified in sub- section (1), and they may take or cause to be taken such copies or extracts of said accounts, registers or documents and such inventory of the goods and cash found as appears to them necessary for the purpose of the Act.

(3) If the Commissioner has reasons to believe that any dealer is attempting to evade payment of any tax under the Act, and that anything necessary for purposes of investigation into his liability may be found in any accounts, registers or documents he may for reasons to be recorded in writing, by a written order, authorize any officer not below the rank of Inspector of the Commercial Taxes Department to seize such accounts, registers or documents as may be necessary. Upon such

seizure an inventory of such account books, registers and other documents seized shall be prepared and a copy thereof shall be furnished to the dealer before their removal from the place where they are seized. He shall retain the same only for so long, as may be necessary for examination thereof and for prosecution.

(4) For the purpose of sub-section (3) and sub-section (6), the officer authorized in this behalf may enter and search in the prescribed manner any place of business of any dealer or any other place where he has upon information received, reasons to believe, that the dealer keeps or is for the time being keeping any accounts, registers or documents in respect of his business or is holding the 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.

(6) If the Commissioner or any officer not below the rank of Assessing Authority authorized under sub-section (3), during the course of inspection of any office, shop, godowns, vehicle or any other place of business or any building or place of dealer or any other person or at any other place, finds any goods which are not accounted for by the dealer or such other person in his account books, maintained in the ordinary course of business, the Commissioner or the authorized officer, shall have the powers to seize such goods and levy a penalty which shall be equal to double the amount of tax payable on such goods deeming the invoice value or market value thereof, whichever is higher, as sale price:

Provided that before levy of penalty the affected person shall be given an opportunity of not less than 7 days, unless there are reasons to be recorded in writing for giving a shorter notice to prove to the satisfaction of Commissioner or the authorized officer that the goods are properly and fully accounted for in the said account books. A certified copy of the order of penalty or withdrawal of the order of seizure of goods as the case may be shall be issued to the said person:

Provided further that in case penalty is levied the goods for the value equal to the amount of penalty shall not be released unless the amount of penalty is paid or a security in prescribed form is furnished.

**67. Establishment of Check Posts and Inspection of goods in transit.-**

(1) If the Government considers that with a view to prevent or check avoidance or evasion of tax under the Act in any place or places in the State it is necessary so to do, then it may by notification in the Government Gazette, direct the setting up of Check Posts at such place or places and notify the area of the Check Posts, (hereafter referred to as the notified area), and erect barriers where necessary for the purpose of regulating the passage of goods across such notified area.

(2) No person shall transport within the State across or beyond the notified area any consignment of goods exceeding such quantity or value as may be prescribed, by any vehicle or any other mode of conveyance unless he is in possession of-

(a) either a bill of sale or delivery note or declaration or certificate of ownership containing such particulars as may be prescribed; and

(b) a way bill in such form and containing such particulars as may be prescribed.

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

(3) Notwithstanding the provisions of sub-section (2), the Government may, in addition to the requirements under sub-section (2), by notification require a person importing such goods as may be notified from time to time to furnish such declaration and in such manner as may be prescribed.

(4) (a) In any notified area or at any other place, an officer Incharge of the said area or the Commissioner or any other officer, not below the rank of Inspector, duly authorized by the Commissioner, may require-

- (i). the driver or any other person in charge of the vehicle or any other conveyance, as the case may be, to stop the vehicle or conveyance, and put it stationary, as long as may be necessary, for the purpose of examining the goods under transport and other contents of the vehicle including records relating to the goods which are in the possession of the driver or such other person;
- (ii). any person in charge of a godown or any other premises of transport agency, clearing or forwarding agency, other than a rail head or a post office, to produce for inspection transport receipts, account books and other documents concerning the goods carried, transported, loaded, unloaded, consigned or received for transport maintained in the ordinary course of business and in the prescribed manner.
- (b) The Commissioner and any other authority or officer referred to in clause (a) of this sub-section shall for the purpose of investigation have powers to -
  - (i) search the vehicle or conveyance and the driver or other person incharge of the vehicle or conveyance;
  - (iii) break open any package or packages under transport in a vehicle or found in godown or premises of the transport agency or the clearing or forwarding agency;
  - (iv) examine on oath the driver or owner of the vehicle or conveyance or the person Incharge of the transport agency or clearing or forwarding agency;
  - (iv) seize the goods; and
  - (v) seize the receipts, account books and other documents:

Provided that before seizing, the authority/officer shall record the reasons in writing and make an inventory of the goods seized, a copy of which shall be handed over to the driver or owner of the vehicle or the person Incharge of the transport agency or clearing or forwarding agency as the case may be. The seized records shall be impounded, in

the prescribed manner and retained so long as their retention may be necessary for the purpose of the Act.

5. (a) The goods, covered by sub-section (2) whether found in vehicle or other conveyance, or godown or any other premises of any transporter, clearing or forwarding agency, or any other place, but which are not supported by the documents specified in said sub-section, or are supported by documents which are fake, false or suspected to be fake or false in respect of the particulars contained therein, shall be seized by the Officer Incharge, Notified Area or any other officer or authority referred to in sub-section(4) after recording reasons in writing and the owner of such goods shall be liable to penalty which shall be equal to double the amount of tax leviable on such goods or twenty five percent of the value of goods whichever is higher. The value of goods under this sub-section shall mean the invoice value or market value whichever is higher:

<sup>1</sup>[Explanation: Where the goods as per the accompanying documents are undervalued, the penalty under this sub-section shall be calculated on the different amount of tax that would have been evaded.]

Provided that the goods liable to seizure and /or seized may, subject to the security furnished in prescribed form for a value equal to the amount of maximum leviable penalty, be released.

(b) No order of penalty under clause (a) shall be made unless the affected person is given a reasonable opportunity of being heard. The goods for the value equal to the penalty or the security furnished under sub-section (5), as the case may be, shall not be released unless the amount of penalty levied is paid.

(6) The officer who detained or seized the goods may release them temporarily on cash or other prescribed security being furnished by the person concerned to the extent of the penalty leviable if such officer is satisfied, that it is necessary to do so in the public interest or such other circumstances and subject to such other conditions as may be prescribed.

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<sup>1</sup> Added vide Act No. XIII of 2007.

(7) Nothing contained in sub-section (5) or sub-section (6) shall apply in the case of goods transported, which are exempt from tax under any of the provisions of the Act without any condition or restriction.

(8) No dealer or any other person, including a carrier of goods or agent of a transporter or booking agency acting on behalf of a dealer, shall take delivery of , or transport, from any vehicle or other conveyance, station ,airport, or any other place, whether of a similar nature or otherwise, any consignment of goods, the sale of which is taxable under the Act, except in accordance with such conditions, as may be prescribed, with a view to ensuring that there is no evasion of tax.

(9) (a) The transport agency, by whatever name called, or the owner/ Incharge of the vehicle/carrier/conveyance (by whatever name called) which has booked the goods referred to in sub-section (5) for transport and delivery to the consignee or to which is attached the vehicle which has carried or is carrying those goods, shall be liable to pay, by way of penalty a sum not less than 25% but not more than 50% of the invoice value or the market value of such goods, whichever is higher:

Provided that if the vehicle is not attached to any transport agency or has no place of business in the State, a person deemed to be an agent of such transport agency available in the State or the owner of the vehicle, shall be liable to the said penalty:

Provided further that before levying penalty the affected person shall ordinarily be given an opportunity of not less than 7 days, unless there are reasons to be recorded in writing for giving a shorter notice, to prove to the satisfaction of the concerned officer that the lack of supporting documents specified in sub-section (1) or the fakeness or falsity thereof was not within his knowledge. A certified copy of the order of levying penalty or dropping the proceeding shall be issued to the said person:

Provided also that the vehicle, which has carried or is carrying goods without documents as specified in sub-section (2), shall not be

released unless security equivalent to penalty leviable under clause (a) or clause (b) is furnished. The security thus furnished shall be adjusted against the penalty leviable or refunded after determining the liability or otherwise under the said clauses.

**Explanation:** The lack of supporting documents or the fakeness or falsity thereof shall be deemed to be within the knowledge of the owner of the vehicle or conveyance if he without reasonable cause fails to comply with any of the requirements of the provisions contained in this section.

(b) Where a transport agency (by whatever name called) to whom goods are handed over on supardnama, in accordance with the rules issued under the Act releases such goods without obtaining the release order from the Competent Authority, such transport agency shall be liable to a penalty equal to four times the amount of tax leviable on such goods.

(10) Where the taxable good are transported on behalf of an unregistered dealer, or a registered dealer in whose registration certificate the goods transported are not covered, the officer incharge of the special investigation unit (SIU) or notified area or check post or barrier or any officer authorized under sub-section(4) shall detain and seize the goods, unless the dealer , the driver of the vehicle or conveyance or any other person Incharge of the goods furnishes security in the prescribed form for an amount equal to double the amount of tax leviable on such goods or twenty five percent of the value of goods whichever is higher. The security thus furnished shall be adjusted against the tax, penalty, interest, fee or any other sum that may be payable by such dealer under the provisions of the Act. The excess amount of security, if any, shall be refundable in the manner laid down in this Act. The provisions relating to detention and search of goods contained in this section shall, in so far as may be applicable, apply for the purposes of this sub -section:

Provided that if the said dealer fails to obtain a certificate of registration under the Act within a period of 90 days from the date of deposit of security and the Assessing Authority has no information in



his possession that the dealer is carrying on regular business of selling taxable goods, the amount of security deposited shall be deemed to be the tax payable by the dealer and no claim for refund of such amount or any part thereof shall be entertained.

**Explanation:** - For purpose of this sub-section, the value of goods shall mean the invoice value or market value of the goods, whichever is higher.

(11) The officer referred to in sub-section (10) shall maintain a register in the prescribed form containing the names and the addresses of the dealers against whom action has been taken and such other particulars as may be prescribed. He shall also furnish such information in this behalf as may be prescribed, to the Deputy Commissioner Commercial Taxes having jurisdiction over the place of business of the said dealer.

(12) If the goods seized under sub-section (5) or sub-section (10) are not claimed within a period of 90 days from the date of seizure, or in the case of perishable goods in a lesser period as determined by the authority making the seizure, such goods shall be sold by auction in the prescribed manner and the sale proceeds thereof as reduced by the amount of penalty and security payable under the Act besides other expenses incurred on unloading, handling and auctioning, shall be deposited in the treasury under appropriate head of account. This amount shall be refundable to the owner of such goods on an application made in prescribed form and in prescribed manner within a period not exceeding 90 days from the date of auction. In case no claim of ownership is made within the said period, the amount shall be forfeited to the Government. No interest shall accrue on such amount:

Provided that if the goods seized under sub-section (5) or sub-section (10) are handed over to a transport agency on supardnama, the officer Incharge referred to in this section shall transfer the goods with relevant documents for disposal to the appropriate authority having jurisdiction over the area, or any other officer authorized in this behalf by the Commissioner, who shall take cognizance of the cases referred to him and finalize in accordance with the provisions of the Act as soon as

he receives documents of seizure from the officer Incharge of notified area.

<sup>1</sup>[**67-A Intra-state transit of goods:** The Commissioner may, by notification in the Government Gazette provide for a mechanism for regulating the intra-state transit of goods occasioned by reasons other than by way of sale.]

<sup>2</sup>[**67-B Incentive and rewards.**— The Government, may by a notification in the Government Gazette, provide for a scheme of incentives and rewards for persons and employees of Commercial Taxes Department, who are instrumental in providing vital information leading to better tax recovery and seizures associated with tax evasion.]

<sup>3</sup>[**67-C. Lucky Coupon Scheme.**— The Government may, by a notification in the Government Gazette, provide for a Lucky Coupon Scheme to encourage consumers to demand cash memos for the goods purchased by them.

**68. Forwarding agency, etc. to obtain certificate of registration and submit returns.**- (1) For carrying out the purposes of section 67, every transport agency, clearing or forwarding agency having a place of business in the State and importing or clearing or forwarding goods on behalf of a dealer, shall obtain a certificate of registration in the prescribed manner from the Deputy Commissioner Commercial Taxes of the area in which it has a place of business on payment of a fee of one thousand rupees and on furnishing of security of one lac rupees in the manner as may be prescribed.

(2) The agencies referred to in sub-section (1) shall submit to the Deputy Commissioner Commercial Taxes or an Assessing Authority authorized in writing by the Commissioner, prescribed returns of goods transported, cleared or forwarded by it.

(3) The authorities referred to in sub-section (2) shall have the powers to call for and examine the books of account, documents and other records in possession of such agency with a view to verifying the

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<sup>1</sup> Section 67-A inserted vide J&K VAT (Amendment) Act, 2008 dated 30.12.2008 w.e.f. 01.4.2008

<sup>2</sup> Section 67-B inserted vide J&K Taxation Laws (Amendment) Act, 2009 dt. 20.03.2009

<sup>3</sup> Section 67-C inserted vide J&K Taxation Laws (Amendment) Act, 2009 dt. 20.03.2009

correctness of returns submitted and the compliance of the provisions of section 67.

## **CHAPTER X**

### **OFFENCES AND PENALTIES:-**

69. **Defaults:-** (1) If any person-
- (a) carries on business as a dealer in contravention of any of the provisions of the Act in respect of which penalty has not been prescribed under any other section;
  - (b) without reasonable cause fails to furnish the returns or revised returns as the case may be as prescribed under section 31;
  - (c) without reasonable cause fails to comply with the terms of any notice issued under the Act;
  - (d) without reasonable cause fails to produce accounts, registers, documents or any other information required under sub-section(1) of section 66 ;
  - (e) without reasonable cause fails to furnish the return as required under section 68 ;
  - (f) conceals his turnover or furnishes inaccurate particulars thereof;
  - (g) prevents or obstructs inspection, search or seizure under sub-sections (2) (3) ,(4) or (6) of section 66 or section 67;
  - (h) charges tax on sale of goods in contravention of the provisions of the Act, but does not deposit the same;
  - (i) without reasonable cause fails to comply with the provisions of section 57 ;
  - (j) fails to get his certificate of registration renewed;

- (k) fails to issue a tax invoice or a retail invoice as the case may be simultaneous with making a transaction of sale or issues a false tax invoice or retail invoice or receives and uses a tax invoice, knowing it to be false;
- (l) abets or aids a dealer in concealing his turnover or evasion of tax;
- (m) claims Input Tax Credit in respect of goods purchased by him for the period his certificate of registration is under suspension ;
- (n) stores goods in any place of business other than the place of business declared in the application required to be made for grant of registration.;
- (o) fails to get the vehicle or goods cleared at the Check Post established under section 67 without a reasonable cause;
- (p) makes a statement during the course of any proceeding under the Act or the rules made there-under which he knows to be false or does not believe to be true;
- (q) furnishes before the Commissioner or any officer appointed to assist him under sub-section(2) of section 3, false return, bill, cash memo, vouchers, declarations, account books, registers or other documents with a view to evade tax payable under the Act;
- (r) knowingly uses a false registration number including the registration number of another person with a view to evade, avoid or shift the liability to pay the tax in a return or other document prescribed or used for the purpose of the Act; or
- (s) willfully claims false input tax credit on the basis of ingenuine tax invoice,-

the appropriate authority shall direct that such person shall pay in addition to the fee or tax, by way of penalty,-

- (i) for default specified in clause(a), a sum of rupees five thousand;

- (ii) for default specified in clause (b) if any tax is payable, a sum at the rate of 2% per month of the tax payable as reduced by the amount of tax paid, during the period prescribed for filing of return under the Act or if no tax is payable a sum of rupees one thousand per month per return <sup>1</sup>[subject to maximum of rupees five thousand];
- (iii) for default specified in clause(c) a sum of rupees five thousand;
- (iv) for default specified under clause (d) a sum of rupees five thousand ;
- (v) for default specified in clause(e) a sum of rupees one hundred for each day of default subject to the maximum of rupees ten thousand;
- (vi) for default specified in clause(f) a sum equal to double the amount of the tax attempted to be evaded;
- (vii) for default specified in clause(g) a sum of rupees five thousand.
- (viii) for default specified in clause(h) a sum equivalent to the amount of tax collected;
- (ix) for default specified in clause(i) a sum of rupees five thousand ;
- (x) for default specified in clause(j) a sum of rupees five thousand.;
- (xi) for default specified in clause(k) a penalty equal to ten times of the tax payable on each such default or rupees ten thousand whichever is higher;
- (xii) for default specified in clauses(l), clause(m) or clause(n) a sum equal to double the amount of tax leviable on such goods;
- (xiii) for default specified in clause(o) a sum of rupees five thousand if the goods are of non-taxable nature or exempt from payment of

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<sup>1</sup> The words “till the time such return is furnished” substituted with the words “subject to maximum of rupees five thousand” vide J&K Taxation Law Amendment Act, 2009 dated 20th March 2009.

tax and double the amount of tax payable on such goods if the goods are taxable.

- (xiv) for default specified in clauses (p) or clause(q) a sum of rupees five thousand; and.
- (xv) for default specified in clauses (r) or clause(s) a sum equal to double the amount of tax evaded on this account.

**Explanation (I):** For the purpose of clause (f) a dealer who has concealed his turnover or furnished inaccurate particulars of his turnover in the original return but gives correct turnover and accurate particulars thereof in the revised return shall not be deemed to have concealed his turnover or furnished inaccurate particulars thereof; provided he proves to the satisfaction of the concerned authority that the revised return was furnished voluntarily and not in consequence of any information having come to the knowledge of any authority appointed under this Act before the date of furnishing the revised return;

**Explanation (II):** For the purpose of clause (l) a person shall be deemed to have abetted or aided the dealer in concealing his turnover or evasion of tax, if he purchases goods from the dealer without tax invoice, or abets or aids in the evasion of tax in any manner whatsoever, as the case may be.

(2) Before passing an order under sub-section (1), the authority concerned shall give the person in default an opportunity of being heard:

Provided that no order of penalty shall be passed after the expiry of two years from the close of the financial year in which such penalty proceedings were initiated:

Provided further that a fresh order under sub-section (1) in pursuance of order under section 72, section 73 or section 74 shall be passed within two years after close of the financial year in which the order under section 72, section 73 or section 74 is passed:

Provided also that the period during which such proceedings remained stayed under the orders of any competent court shall be excluded in determining the period of two years for purposes of this sub-section.

**70. Conviction for offences.**-(1) If any person-

- (a) prevents or obstructs the inspection under sub-section (2), sub-section(3) and sub-section 6 of section 66;
- (b) wilfully fails to furnish the return as required under the Act;
- (c) conceals taxable turnover or furnishes inaccurate particulars thereof;
- (d) fails to obtain certificate of registration as required under sub-section(1) of section 27 or section 68;
- (e) furnishes returns without maintaining regular books of accounts to support them;
- (f) makes a statement during the course of any proceeding under the Act or the rules made there under which he knows to be false or does not believe to be true;
- (g) prevents or obstructs inspection of any vehicle or conveyance carrying goods at a Check Post or barrier or a godown or other premises of clearing or forwarding agencies or transport operators or any other place under section 67;
- (h) fails to pay tax payable under the Act; or
- (i) fails to furnish a return under section 68 or furnishes an incorrect return,-

he shall on conviction by a judicial Magistrate, be liable to simple imprisonment which may extend to six months or with fine which may extend to Rupees 5000 or with both:

Provided that a person shall not be proceeded against if,-

- (i) the offence is under clause(b) and the return is furnished by him before the extended period allowed by the prescribed authority for filing such returns;
- (ii) the offence is under clause (e) and the taxable turnover of a dealer does not exceed Rs.50,000; or
- (iii) the offence is under clause (h) and the amount of tax payable does not exceed Rs. 5,000:

Provided further that no prosecution shall be launched under this section unless prior permission of the Commissioner has been obtained.

(2) No court shall take cognizance of an offence under this section except on a complaint in writing by the appropriate authority having jurisdiction.

**71. Composition of offences.**- (1) The Commissioner may accept from any person who is reasonably suspected of having committed an offence under the Act, a sum of money as he may determine by way of composition of such offences.

(2) On payment of such sum as may be determined by the Commissioner under sub-section (1), no proceedings shall be commenced against such person as aforesaid and if any proceedings had been already commenced against such person as aforesaid such proceedings shall not be further proceeded with.

## **CHAPTER XI**

### **APPEALS AND REVISION**

**72. Appeal.**- (1) A dealer or any other assessee objecting to any order passed by the Assessing Authority or any other officer authorized under section 66 or section 67, other than an Additional Commissioner or a Deputy Commissioner Commercial Taxes, may within thirty days from the date on which he is served with the order, appeal to the Appellate



Authority or if the order is made by the Additional Commissioner or the Deputy Commissioner, to the Commissioner:

Provided that no appeal shall be entertained by the said authority against an order of assessment unless it is satisfied that:-

- (a) where all the returns for a year have been filed, the amount of tax due under the **Act** on the turnover of sales or purchases, as the case may be, admitted by the appellant in the returns filed by him or at any stage in any proceeding under the **Act**, whichever is higher, has been paid;
- (b) where some of the returns for a year have not been filed or no return has been filed for such year, the amount of tax due under the **Act**, admitted by the appellant in the returns, if any, filed by him under the **Act** or 20% of the tax assessed has been paid; or
- (c) in case the appeal is against the imposition of penalty, 5% of the penalty levied has been paid:

Provided also that the Appellate Authority may, for reasons to be recorded in writing, stay the recovery of the demand disputed in appeal, except the amount of tax and penalty payable under first proviso.

**Exception:** -Nothing in this sub-section shall apply to cases where the Commissioner in exercise of the powers vested under sub-section (6) of section 44 makes an order extending the date of payment.

(2) The Appellate Authority or the Commissioner as the case may be may, after giving the appellant reasonable opportunity of being heard, -

- (a) confirm, reduce, enhance or annul the assessment or penalty; or
- (b) set aside the order and direct the Assessing Authority to pass a fresh order after such further enquiry as it may direct.

(3) If the amount of assessment or penalty is reduced by the Appellate Authority or the Commissioner as the case may be under

clause (a) of sub-section (2) , the excess amount of tax or penalty if realized shall be refunded.

(4) Every order passed in appeal under this section shall, subject to any order passed in appeal or revision under section 73 or section 74, be final.

**73. Appeals to the Tribunal.**- (1) Notwithstanding anything contained in any other law for the time being in force, any person aggrieved by an order passed under section 72 may within three months from the date of such order prefer an appeal to the Tribunal.

(2) The Tribunal may, after calling for and examining the relevant record and giving the parties a reasonable opportunity of being heard,-

(a) confirm or cancel such order, or pass any other order which it may deem fit; or

(b) set aside such order with a direction to pass fresh order after such enquiry as it may direct.

(3) During the pendency of an appeal the Tribunal may, for reasons to be recorded in writing, stay the recovery of the disputed amount of tax and penalty.

**74. Revision.**-(1) The Commissioner may, on his own motion call for the records of any proceedings which are pending before, or have been disposed off by the Appellate Authority or any other authority appointed under sub-section (2) of section 3, for the purpose of satisfying himself as to the correctness, legality or propriety of such proceedings or of any order made therein and may pass such orders in relation thereto as he may think fit.

(2) No order shall be made under this section, which adversely affects the rights of a dealer without giving him a reasonable opportunity of being heard.

**75. Statement of the case to the High Court.**- (1) Within sixty days from the date of communication of the order of the Tribunal, passed in appeal

being an order which affects the liability of any person to pay tax or penalty or interest or to forfeiture of any sum or which effects the recovery from any person of any amount under section 73 that person or the Commissioner, may by application in writing (accompanied where the application is made by any person other than the Commissioner by a fee of five hundred rupees) require the Tribunal to refer to the High Court any question of law arising out of such order and where the Tribunal agrees, it shall as soon as may be but not later than ninety days from the receipt of such application draw up a statement of the case and refer it to the High Court:

Provided that the Tribunal may, if it is satisfied that dealer or the Commissioner was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days:

Provided further that, if in exercise of its power under this sub-section, the Tribunal refuses to state the case which it has been required to do, on the ground that no question of law arises that person or the Commissioner may within ninety days of such refusal, either withdraw his application and if he does so, any fee paid shall be refunded, or apply to the High Court against such refusal.

(2) If upon receipt of an application under sub-section (1) the High Court is not satisfied as to the correctness of the decision of the Tribunal, it may require the Tribunal to state the case and refer it, and accordingly on receipt of any such order, the Tribunal shall state the case and refer to the High Court.

(3) If the High Court is not satisfied that the statements in the case referred under this section are sufficient to enable it to determine the question raised thereby, it may refer the case back to the Tribunal to make such additions thereto or alterations therein, as the High Court may direct in that behalf.

(4) The High Court, upon the hearing of any such case, shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded and

shall send to the Tribunal a copy of such judgment and the Tribunal shall dispose of the case accordingly.

**Explanation:** For the purpose of this sub-section, certified copy of the judgment of the High Court submitted by the Commissioner to the Tribunal shall be deemed to be the copy of the judgment of the High Court delivered to the Tribunal.

(5) The payment of the amount of tax, penalty, interest or sum forfeited, if any, due in accordance with the order of the Tribunal in respect of which an application has been made under sub-section (1) shall not be stayed pending the disposal of such application or any reference made in consequence thereof, but if such amount is reduced as the result of such reference, the excess tax, penalty, interest or sum forfeited or paid shall be refunded in accordance with section 51.

76. **Application of limitation Act.**-The provisions of sections 5 and 12 of the limitation Act, Samvat 1995, shall apply to appeals and revisions filed under the Act before the Appellate, Reviewing Authorities or the Tribunal.
77. **Bar on Certain Proceedings.**- No assessment made and no order passed under the Act, or the rules made there under shall be called in question in any Civil Court.
78. **Rectification of mistakes.**-(1) The authority appointed under section 3 or the Tribunal either of its own motion or on an application may, at any time, within three years from the date of any order passed by it, rectify any mistakes apparent on the face of record:

Provided that no such rectification which is prejudicial to the assessee or any other person shall be made unless the authority concerned has given notice to the dealer or such other person of its intention to do so and allowed him a reasonable opportunity of being heard.

(2) Where such rectification has the effect of enhancing the assessment, the authority concerned shall serve on the dealer a revised

notice of demand in the prescribed form and there from all the provisions of the Act and rules framed there-under shall apply as if such notice had been served in the first instance.

**79. Immunity from prosecution, penalty and interest in certain cases.**- Notwithstanding anything contained in the Act, the Government may, if it is of the opinion, for reasons to be recorded in writing that it is necessary or expedient so to do in public interest by notification in the Government Gazette grant immunity from prosecution or penalty for any offence under the Act or reduce or remit interest on arrears of tax admitted by the dealer or assessed by concerned authorities subject to such conditions as it may impose.

**179-A. Remission of tax :** Notwithstanding anything contained in the Act, the Government may for the purpose of promotion of industry in the State, by notification, grant remission from payment of tax under the Act, subject to such restrictions and conditions as it may impose.

## **CHAPTER XII**

### **SURVEY AND DATA COLLECTION**

**80. Survey.**- (1). With a view to identify dealers who are liable to pay tax under the Act, but have remained unregistered, the Commissioner shall from time to time cause a survey of unregistered dealers to be conducted.

(2) For the purpose 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 the survey, the Commissioner may call for such details and particulars regarding the services provided by public utilities and financial institutions including banking companies, which he is of the opinion will be relevant and useful for the purposes of the

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<sup>1</sup>

Inserted vide J&K VAT (Amendment) Act, 2006

survey. He may from time to time cause the results of the survey to be published in any manner that he thinks fit so however as not to disclose or indicate the identity of any particular unregistered dealer identified during the survey.

(4) The Commissioner or an officer authorized by him may for the purposes of the survey enter any place where a person is engaged in business but is unregistered or has not applied for grant of the certificate of registration, whether such place will be principal place of business or not of such business and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the business: -

- (i) to afford him the necessary facility to inspect such books of 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, stock or other valuable articles or things which may be found therein, and
- (iii) to furnish such other information as he may require as to any matter, which may be useful for, or relevant to, any proceedings under the Act.

**Explanation-** For the purposes of this sub-section a place where the person is engaged in business will also include any other place in which the person engaged in business or the said employee or other person attending or helping in business, states, that any of the books of accounts or other documents or any part of the cash, stock or other valuable articles or things relating to the business are, or is, kept.

(5) The Commissioner or the officer authorized by him shall enter the place where the person is carrying on the business only during the hours at which such place is open for business and in no case before sunrise and after sunset. The Commissioner or the officer authorized by him may make or cause to be made extracts or copies from books of accounts and other documents inspected by him, make an inventory of any cash, stock or other valuable article or thing checked or verified by

him, and record the statement of any person which may be useful for, or relevant to, any proceeding under the Act.

(6) The Commissioner or the officer authorized by him shall not remove or cause to be removed from the place where he has entered any books of accounts, other documents or any cash, stock or other valuable article or thing.

**81. Power to Collect Data and Information.**-(1) If the Commissioner considers that for the purposes of better administration of the Act, it is necessary so to do, he may by notification in the Government Gazette, direct that data and information be collected relating to any matter dealt with, by or in connection with the Act by such officer as may be specified in the notification.

(2) Upon such direction being made, the Commissioner or the officer authorized by him in this behalf may, if found necessary, by notice in any news paper(s) or in such other manner as in his opinion is best calculated 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 data and information or returns as may be stated therein relating to any matter in respect of which data and information is to be collected. The form in which, the persons to whom or, the authorities to which, such data, information or returns should be furnished, the particulars which they should contain, and the intervals in which such data, information or returns should be furnished, shall be such as may be specified in such notice.

(3) Without prejudice to the generality of the foregoing provisions, the Government may by rules provide that every registered dealer or, as the case may be, any class of registered dealer shall furnish, in addition to any other returns provided for elsewhere, an annual return in such form, by such date and to such authority as may be prescribed and different provisions may be made for different classes of registered dealers.

**82. Failure to provide data or furnish information under section 81.**-(1). If any person required to furnish any data, information or return under section 81 -

- (a) wilfully refuses or without lawful excuse neglects to furnish such data, information or return ; or
- (b) wilfully furnishes or causes to be furnished any data information or return which he knows or has reasons to believe to be incorrect or false,-

he shall be liable to a penalty, which may extend to five thousand rupees and in case of continuing default to a further penalty which may extend to one hundred rupees for each day after the first day during which the default continues.

(2) If any person, engaged in connection with the collection of data, or information under section 81 or compilation or computerization thereof wilfully discloses any such data, 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 the Act or under any other law for the time being in force, he shall be liable to a penalty which may extend to ten thousand rupees.

**83. Publication and disclosure of information pertaining to dealers and other persons in public interest.**-(1). Notwithstanding anything contained in section 92, if the Government is of the opinion that it is necessary or expedient in the public interest to publish or disclose the names of any dealers or other persons and any of the particulars relating to any proceedings under the Act in respect of such dealers and persons, it may publish or disclose or cause to be published or disclose 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 the Act, until the time of 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, 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 Government, it is necessary or expedient so to do in the public interest.

### **CHAPTER XIII**

#### **MISCELLANEOUS**

**84. Appearance before any authority in proceedings.**-(1) Any person who is entitled or required to attend before any authority including the Tribunal in connection with any proceeding under the Act, otherwise than when required to attend personally for examination on oath or affirmation, may authorize in prescribed form -

- (a) any relative or other person regularly employed by him;
- (b) any legal practitioner, or Chartered Accountant or Cost and Works Accountant who is not disqualified by or under sub section(2);
- (c) any 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 the Act was a sales tax practitioner under any earlier law,

to attend before such authority and to act on behalf of such person in such proceedings.

(2) The Commissioner may by an order in writing and for reasons to be recorded therein disqualify any such person as is stated in the order from attending before any such authority -

- (i) who has been removed or dismissed from Govt. service ; or
- (ii) who being a sales tax practitioner, a legal practitioner or a Chartered Accountant or Cost and Works Accountant is found

guilty of misconduct in connection with any proceedings under the Act by the Commissioner or by an authority, if any, empowered to take disciplinary action against the member of the profession to which he belongs.

(3) No order of disqualification shall be made under sub-section (2) in respect of any person unless he is given a reasonable opportunity of being heard.

(4) 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 as may be contained in such order.

**85. Power to make rules.**-(1) The Government may make rules for carrying out the purposes of the Act.

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

- (a) all matters expressly required or allowed by the Act to be prescribed;
- (b) the manner in which the turnover shall be ascertained and the tax shall be assessed levied or collected;
- (c) the instalments by which the tax shall be paid;
- (d) granting of licenses and certificates to dealers and agents and imposing of conditions applicable to, and fee payable for, such licenses and certificates;
- (e) the submission of returns, the maintenance of books of accounts and documents and production thereof and the attendance of persons and their examination on oath or affirmation;

(f) the duties and powers of officers appointed for the purpose of implementing the provisions of the Act; and

(g) the general regulation of the procedure to be followed and the forms to be adopted in proceedings under the Act.

(3) Any rule under this section may provide that a breach thereof shall be punishable with fine, which may extend to five thousand rupees.

**86. Power to remove difficulties.**- If any difficulty arises in giving effect to the provisions of the Act, the Government may, by general or special order published in the Government Gazette, make such provisions not inconsistent with the provisions of the Act as appear to it to be necessary or expedient for the removal of the difficulties:

Provided that no such order shall be made after the expiration of two years from the commencement of the Act.

**87. Determination of issues.**- (1) If any issue arises, otherwise than in a proceeding pending before a court, Tribunal or before Assessing Authority under the Act, as to whether for the purpose of the Act, -

(a) any person or association of persons, society, club, firm, company, corporation, undertaking or Government Department. is a dealer;

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

(c) any transaction is a sale or purchase and, if so, the sale or purchase price, as the case may be, thereof;

(d) any particular dealer is required to be registered; or

(e) any taxes payable in respect of any particular sale or purchase and, if so the rate of such tax,-

the persons or the dealer concerned may, after depositing such fee as may be prescribed submit an application in prescribed form to the Commissioner.

(2) The Commissioner shall after giving the applicant an opportunity of being heard and making such enquiry as may be necessary, decide the issue as he deems fit.

(3) No decision of Commissioner under this section shall affect the validity or operation of any order passed by any authority prior to such decision.

(4) No question, which arises from an order already passed by an authority under the Act, shall be entertained for determination under this section.

(5) Copies of decision under this section shall be sent to the applicant and the concerned authority.

**88. Power to give instructions.**- The Commissioner may, from time to time issue such instructions not inconsistent with the provisions of the Act, and the rules made there under, as he may consider necessary for purposes of implementing the provisions of the Act or the rules made there-under.

**89. Powers of Commissioner and his assistants to take evidence on oath etc.**- The Commissioner , the Additional Commissioner, the Appellate Authority or any other authority not below the rank of Assessing Authority appointed to assist the Commissioner shall, for the purposes of the Act, have the same powers as are vested in a Court under the Code of Civil Procedure , Svt. 1977, when trying a suit in respect of the following matters, namely :-

- (a) summoning and enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents; and
- (c) issuing commissions for the examination of witnesses.

**90. Power to call for information.**- The Commissioner or any other person appointed under sub-section (2) of section 3 may, for carrying out the

purposes of the Act, require any person, including a Banking company, Railways, Airlines, Post office, or any officer thereof to furnish any information or statement useful for, or relevant to, any proceeding under the Act.

**91. Cross-Checking of transactions.**-(1) With a view to preventing evasion of tax and ensuring proper compliance with the provisions of the Act, the Commissioner or any other officer appointed under sub-section (2) of section 3 not below the rank of Assessing Authority may from time to time collect information regarding sales and purchase effected by any person or any class of persons and cause any of such transactions of sale and purchase to be cross-checked.

(2) The officer referred to in sub-section (1) may from, time to time require any person or any class of persons to furnish such information, detail and particulars as may be specified regarding the transactions of sales and purchases effected by them for a period, to such authority, and by such date, as may be required.

(3) The Commissioner or any other officer appointed under sub-section (2) of section 3 shall cause any of such transactions to be cross-checked by reference to the books of accounts of the purchasing and selling persons. For this purpose, the concerned officer shall send an intimation in the prescribed form to the person whose books of accounts are required for the purpose of cross-checking, stating therein the detail of the transactions proposed to be cross-checked and the time and date on which any officer, duly authorized to cross-check the transactions will visit the place where the books of accounts are ordinarily kept by the taxable or registered person.

**92. Certain information to be confidential.**-(1) The particulars contained in any statement made, return furnished or accounts or documents produced under any provisions of the Act or of the rules made there-under, or in any evidence given or affidavit or deposition made in the course of any proceedings under the Act or the rules made there-under, or in record of any proceedings relating to the recovery of a demand prepared for purpose of the Act or the rules made there- under, shall be treated as confidential.

(2) Nothing in sub-section (1) shall apply to the disclosure of any particulars-

- (i) for the purpose of a prosecution under the Jammu and Kashmir State Ranbir Penal Code in respect of any such statement, return, account, documents, affidavit or deposition or for the purposes of prosecution under the Act or the rules made there under;
- (ii) to any person acting in the execution of the Act or the rules made there under where it is necessary to disclose the same to him for the purposes of the Act or the rules made there under,
- (iii) occasioned by the lawful employment under the Act or the rules made there under of any person for the recovery of any demand;
- (iv) to an officer of Central-Government, or Government of any other State for the purpose of enabling that Government to levy or realize any tax imposed by it;
- (v) to any officer appointed by the Comptroller and Auditor General of India or the Government to audit sales tax receipts or refunds; or
- (vi) required for the lawful exercise of his powers by a public servant under the Stamps Act, Samvat 1977 to impound an insufficiently stamped document.

93. **Court fee stamps on memorandum of appeal and application for revision.**- A memorandum of appeal filed under section 72 or section 73 and an application for revision under section 74 shall bear court fee stamps of such value as may be prescribed.

94. **Levy of fee on applications for copies of orders, documents and of fees for making copies.**-(1) On every application -

- (a) for a certified or duplicate copy of a certificate of registration;

- (b) for a certified copy of an order of assessment or any order passed or any document produced or filed in any proceeding under the Act; or
- (c) for the determination of any question under section 87 or a copy of order or document under the Act. –

there shall be paid such fee in court fee stamps as may be prescribed.

**95. Declaration of stocks of goods held on the appointed day.**-The Commissioner may by notification in the Government Gazette require that any class of registered dealers as may be specified in the notification declare such details regarding the stocks of goods held by them on the day immediately preceding the appointed day in such a manner and with such particulars and to such authority, as may be notified in this behalf.

**96. Input tax credit in respect of the stocks held on the Appointed Day.**-The Government may, in such circumstances and subject to such conditions as may be specified in the rules, provide that a setoff of the whole or any part of the tax paid under the Jammu and Kashmir General Sales Tax Act, 1962, in respect of sales or purchases of goods which are held in stock on the appointed day by a taxable person under the Act, be granted to such person.

**<sup>1</sup>[96-A Effect of registration.** — If at the time at which registration of an unregistered dealer takes effect after the commencement of this Act, and the dealer holds trading stock, for the purpose of sale, or for use as raw materials for the production of finished goods, the dealer shall be entitled to a tax credit for the trading stock or raw materials held by him on the date when his registration takes effect:

Provided that the dealer furnishes a statement of his trading stock and raw material to the Assessing Authority, in the form as may be prescribed by the Commissioner and is able to prove to the satisfaction of the Assessing Authority, through documentary evidence that he has borne input tax on the purchase of the trading stock or raw materials.

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<sup>1</sup> Section 96-A inserted vide J&K Taxation Law Amendment Act, 2009 dated 20 March 2009

*Explanation I:* - The dealer must claim the entire amount of tax credit to which he is entitled, in a single claim, which accompanies the first return to be furnished under the Act.

*Explanation II:* - This section applies where goods have borne tax after the commencement of the Act.

*Explanation III:* - In case of manufacturers claiming remission/availing remission, no input tax credit shall be available on the raw material purchased.]

**97. Information to be furnished regarding change of business.** -If any person or a registered dealer, liable to pay tax -

- (i) sells or otherwise disposes of his business or any place of business;
- (ii) discontinues or transfers his business or changes his place of business or opens a new place of business;
- (iii) changes the name, constitution or nature of his business; or
- (iv) wants to make any change in the class or classes of goods specified in his certificate of registration for use in the manufacture of any goods for sale,-

he shall within the prescribed time inform the prescribed authority accordingly and if any such person dies, his legal representative shall in like manner inform the said authority.

**98. Transfer of business.**- Where the ownership of the business of a person is entirely transferred and the transferee carries on such business either in its old name or in some other name, the transferee shall for all the purposes of the Act (except for liabilities under the Act already discharged by such person) be deemed to be and to have always been registered as if the certificate of registration of such person had initially been granted to the transferee; and the transferee shall on application to the prescribed authority be entitled to have the registration certificate amended accordingly.



99. **Liability to tax on stocks in certain cases.**-Where the certificate of registration of any person is cancelled under any provision of the Act, such person shall, save when he has transferred his business to someone else, subject to the provision of section 54 be liable to pay tax on goods purchased by him after registration and remaining unsold at the time of cancellation of certificate at a rate leviable for the sale of such goods.

100. **Special powers for reconstitution of records in certain circumstances.**-(1) If the Commissioner is satisfied that any records pertaining to any dealer have been destroyed as a result of fire, flood, earthquake or otherwise as a result of any natural or other calamity or event, he may by a notice in writing, require such dealer to attend before him on a date and at a place specified in the notice, or to produce before him any accounts, registers, documents or copies thereof or to furnish fresh returns or declarations under the Act or any earlier law for such period, by such dates and to such authority as may be specified in the notice (being returns for a period for which a dealer has not yet been assessed ), or to furnish true copies of, or extract from, any documents already submitted to the Commissioner, on or before the date specified in the notice, or to furnish any other information relating to the business of the dealer as may be specified in the notice, being information which the Commissioner considers necessary for facilitating the work of assessment including re-assessment or the collection of the tax from such dealer under the Act or under any earlier law.

(2) Without prejudice to the generality of the powers conferred by sub-section (1) the Commissioner may require any dealer to produce for inspection or furnish copies of, or extracts from, all or any of the following, namely:-

- (a) application for the issue of a certificate of registration made under the Act;
- (b) certificate of registration granted to the dealer;
- (c) returns furnished by the dealer;

- (d) proof of payment of tax and penalty by the dealer;
- (e) a certified copy of the assessment order given to the dealer;
- (f) any notice of demand served on the dealer;
- (g) specimen signature furnished by a dealer; and
- (h) any nomination made by a dealer;

(3) For securing compliance with any notice given under this section, the Commissioner shall have all the powers mentioned in sub-sections (1), (2), (3) of section 66 and section 102.

(4) Where any person is prosecuted for failure to comply with any requirement made of him under this section, the burden of proving that he had reasonable excuse for such failure shall be on him.

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

**102. Power to seek assistance from Police Officer or other officer.**-Any officer exercising the powers under the Act may seek the assistance of any Police officer or other officer of the Government, as and when required and upon such request for assistance being made, the Police officer or other officer, as the case may be, shall render the necessary help in accordance with law.

#### **CHAPTER XIV**

#### **EXCLUSION AND SAVINGS**

**103. Exclusion & Savings** .-(1) With effect from the appointed day, the Jammu and Kashmir General Sales Tax Act.1962 (Act No XX of 1962)

shall cease to have application in respect of goods to which the Act applies.

(2) Notwithstanding anything contained in sub-section (1), the application of the Act to any such goods shall not---

- (a) revive anything not in force, or in existence, at the time of such application;
- (b) affect the previous operation of the Jammu & Kashmir General Sales Tax Act, 1962 or anything done or suffered thereunder;
- (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the Jammu & Kashmir General Sales Tax Act, 1962;
- (d) affect any penalty, forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the Jammu & Kashmir General Sales Tax Act, 1962; or
- (e) affect any investigation, enquiry, assessment, proceeding, any other legal proceeding or remedy instituted, continued or enforced under the Jammu & Kashmir General Sales Tax Act, 1962;

**104. Transitional Provisions.** (1) A registered dealer under the Jammu & Kashmir General Sales Tax Act, 1962, on the appointed day shall on making an application for registration in terms of the provisions of this Act, shall be deemed to be registered under the Act till the application is decided by the competent authority.

(2) Notwithstanding anything contained elsewhere in the Act for purpose of goods to which the Act applies:-

- (a) levy, assessment, reassessment, appeal, revision, review, rectification, reference, registration, collection, refund imposition of any penalty or of interest or forfeiture of any sum or recovery any period before the appointed day shall continue to be governed by the Jammu & Kashmir General Sales Tax Act., 1962 and all the rules, regulations, orders, notifications, forms and

- notices issued thereunder shall continue to apply till the conclusion of the proceedings ;
- (b) any person appointed as Commissioner or any person appointed to assist the Commissioner under the Jammu & Kashmir General Sales Tax Act., 1962 before the appointed day, shall, on and from the appointed day, be deemed to have also been appointed under the Act and shall continue in office as such till such person ceases to be Commissioner or ceases to be the person appointed to assist the Commissioner;
  - (c) any order or notification issued by the Commissioner for delegating any power or conferring any jurisdiction under the Jammu & Kashmir General Sales Tax Act., 1962 or the Rules made thereunder to any person appointed by any designation, under sub-section (2) of section 3 of the Jammu & Kashmir General Sales Tax Act., 1962 before the appointed day shall, with effect from such appointed day, continue to be in force until the Commissioner amends, varies or rescinds such order or notification after the appointed day ;
  - (d) any accounts, registers or documents of any person seized before the appointed day under any of the provisions of the Jammu & Kashmir General Sales Tax Act., 1962 and not returned till the day immediately before the appointed day shall continue to be retained in accordance with the provisions of such Act;
  - (e) all forms and declarations under the Jammu & Kashmir General Sales Tax Act., 1962 or the rules made thereunder shall mutatis mutandis apply until the Government directs by notification, the discontinuance of the use of such forms.
  - (f) a person liable to furnish return under the Jammu & Kashmir General Sales Tax Act., 1962 immediately before the appointed day shall, notwithstanding that a period in respect of which he is so liable to furnish return begins on any day before such appointed day and ends on any day after such appointed day, furnish such return in respect of tax payable for sales or purchases made up to the day immediately before such appointed day and pay tax in accordance with the provisions of the Jammu & Kashmir General Sales Tax Act., 1962 and shall furnish a separate return in respect of the remaining part of the period which

commences on such appointed day and pay tax due on such return for sales or purchases made on and from such appointed day in accordance with the provisions of the Act;

(g) any prescribed declaration or form obtained or obtainable by the person from any prescribed authority or any declaration furnished by or to the person under the Jammu & Kashmir General Sales Tax Act, 1962 or the rules made thereunder in respect of any sale of goods before the appointed day shall be valid where such declaration or form is furnished on or after such appointed day; and

(h) The limitations provided in the Act shall apply prospectively and all events occurred and all issues which arose prior to the appointed day shall be governed by the limitations provided under the Jammu & Kashmir General Sales Tax Act, 1962.

105. **Repeal of Ordinance.**- The Jammu & Kashmir Value Added Tax Ordinance, 2005 (Ordinance No.III of 2005) is hereby repealed.

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