

## THE HIMACHAL PRADESH VALUE ADDED TAX BILL, 2005.

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

### A BILL

*to re-enact the law to provide for the levy of a value added tax on the sales or purchases of goods in the State of Himachal Pradesh and for certain other matters connected therewith.*

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Fifty-sixth Year of the Republic of India, as follows: -

### CHAPTER -I PRELIMINARY

**Short title and commencement.** 1. (1) This Act may be called the Himachal Pradesh Value Added Tax Act, 2005.

(2) It shall come into force from such date as the Government may, by notification, appoint.

**Definitions.** 2. In this Act, unless there is anything repugnant in the subject or context, --

(a) “**Act**” means the Himachal Pradesh Value Added Tax Act, 2005.

(b) “**Assessing Authority**” means any person appointed by the State Government under sub-section (2) of section 3 to make any assessment under this Act;

(c) “**business**” includes, -

- (i) any trade, commerce, manufacture, any adventure or concern, in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make profit and whether or not any profit accrues therefrom; and
- (ii) any transaction in connection with or ancillary to such trade, commerce, manufacture, adventure or concern;

(d) “**capital goods**” means plant, machinery or equipment used in the process of manufacturing, processing and packing of goods for sale excluding civil structures as may be prescribed;

(e) “**casual dealer**” means any person who carries on occasional transactions of business of buying, selling, supplying or distributing goods whether for cash, deferred payment, commission, remuneration or other valuable consideration;

(f) “**Commissioner**” means the Excise and Taxation Commissioner appointed under sub-section (1) of section 3;

(g) “**dealer**” means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes,--

- (i) a local authority, a body corporate, a company, a co-operative society or other society, club, firm, Hindu Undivided Family or other association of persons which carries on such business;
- (ii) a factor, broker, commission agent, a dealer's agent or any other mercantile agent, by whatever name called;
- (iii) an auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not, and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;
- (iv) every person engaged in the business of,--
  - (a) transfer, otherwise than in pursuance of a contract, of property in any 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 system of payment by instalments;
- (d) 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;
- (e) supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; and
- (f) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating)

where such supply or service, is for cash, deferred payment or other valuable consideration;

Explanation (I). -- Every person who acts as an agent, in Himachal Pradesh, of a dealer residing outside this State and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as—

- (i) a mercantile agent as defined in the Sale of Goods Act, 1930; or
- (ii) an agent for handling of goods or documents of title relating to goods; or
- (iii) an agent for the collection of the payment of the sale price of goods or as a guarantor for such collection or payment;

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and every local branch or office in Himachal Pradesh of a firm registered outside this State or a company or other body corporate, the principal office or headquarters whereof is outside this State, shall be deemed to be a dealer for the purpose of this Act.

Explanation (II). -- Every department, or its subordinate offices, of a Government which whether or not in the course of business, buys, sells, supplies or distributes goods, directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration, shall, except in relation to any sale, supply or distribution of surplus, unserviceable or

old stores or materials or waste products or obsolete or discarded machinery or parts or accessories thereof, be deemed to be a dealer for the purpose of this Act.

Explanation (III). -- For the purpose of this clause "Government" shall include the Central Government or the Government of any other State or Union Territory.

**74 of 1956.** (h) "**declared goods**" shall have the meaning assigned to that expression in clause (c) of section 2 of the Central Sales Tax Act, 1956;

(i) "**Deputy Excise and Taxation Commissioner**" means the Deputy Excise and Taxation Commissioner, appointed under sub-section (1) of section 3 of this Act, to assist the Commissioner and shall also include the Joint/Additional Excise and Taxation Commissioner;

(j) "**document**" includes title deeds, writing or inscription, statement of account and data stored electronically in whatever form and the like that furnishes evidence;

(k) "**goods**" means every kind of movable property (other than news-papers, actionable claims, 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, trees or things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

- (l) "**import**" means the bringing of goods into Himachal Pradesh from any place outside its territorial jurisdiction;
- (m) "**input tax**" means the amount paid or payable by way of tax under this Act, by a purchasing registered dealer to a selling registered dealer on the purchase of goods in the course of business for re-sale, or for use in the manufacture of taxable goods or for use as containers or packing material or for the execution of works contract;
- (n) "**invoice**" means a document listing goods with price, quantity, tax involved and other particulars as may be prescribed and includes a bill, cash memorandum, slip, receipt or similar record, regardless of its form;
- (o) "**motor spirit**" means any inflammable hydrocarbon including any mixture of hydrocarbons or any liquid containing hydrocarbon, which is ordinarily used for providing reasonably efficient motive power for any form of motor vehicle;
- (p) "**notification**" means notification published in the *Rajpatra*, Himachal Pradesh;

(q) “**output tax**” output tax in relation to any registered dealer means the tax payable under this Act in respect of any taxable sale or purchase of goods made by that dealer in the course of his business;

(r) “**prescribed**” means prescribed by rules made under this Act;

(s) “**purchase**” with all its grammatical or cognate expressions, means the acquisition of goods for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge and includes—

- (i) the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
- (ii) the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (iii) the delivery of goods on hire-purchase or any system of payment by instalments;
- (iv) the 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;
- (v) the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other

valuable consideration;

(vi) the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is 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 a purchase of those goods by the person to whom such transfer, delivery or supply is made;

(t) "**registered**" means registered under this Act;

(u) "**reverse input tax**" means that amount of input tax credit in relation to any goods for which input tax credit has been availed of, but which shall stand reversed in the circumstances specified in sub-sections (9) and (10) of section 11;

(v) "**sale**" means any transfer of property in goods for cash or for deferred payment or for any other valuable consideration other than a mortgage, hypothecation, charge or pledge, and includes—

(i) the transfer, otherwise than in pursuance of a contract, of property in any goods for

cash, deferred payment or other valuable consideration;

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

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

(iv) the 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;

(v) the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is 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 a purchase of those goods by the person to whom such transfer, delivery or supply is made;

(w) "**Schedule**" means a Schedule to this Act;

(x) "**section**" means the section of this Act;

(y) "**State Government**" or "**Government**" means the Government of Himachal Pradesh;

(z) "**tax**" or "**value added tax**" means the tax on the sale or purchase of goods, levied under section 6 or 7;

(za) "**tax period**" means the period prescribed for filing a return;

(zb) "**timber**" includes trees when they have fallen, or have been felled or agreed to be felled and all wood whether cut up or fashioned or hollowed out for any purpose or not;

(zc) "**Tribunal**" means the Tribunal established under section 44;

(zd) "**turnover**" means the aggregate amount of sales, purchases and parts of sales and purchases made by any dealer during the given period and includes any sum charged, on account of freight, storage, demurrage, insurance and for anything done by the dealer in respect of the goods at the time of or

before delivery thereof;

*Explanation (I).* — The proceeds of any sale made outside Himachal Pradesh by a dealer, who carries on business both inside and outside Himachal Pradesh, shall not be included in the turnover.

*Explanation (II).* — The turnover of any dealer in respect of transactions of forward contracts, in which goods are actually not delivered, shall not be included in the turnover.

*Explanation (III).* — The proceeds of sale of any goods on the purchase of which tax is leviable under this Act, or the purchase value of any goods on the sale of which tax is leviable under this Act, shall not be included in the turnover.

*Explanation (IV).* — The sum allowed as cash discount according to ordinary trade practice shall not be included in the turnover.

*Explanation (V).* — The amount to be included in the turnover in respect of delivery of goods on hire purchase or any system of payment by instalments shall be the total sum payable by the hirer under the hire-purchase agreement in respect of the goods so delivered, or the amount actually paid in instalments.

*Explanation (VI).* — The amount to be included in the turnover in respect of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract shall be its sale price.

(ze) “**vehicle**” includes any carriage or conveyance used on land, water or air; and

(zf) “**year**” means the financial year.

## **CHAPTER-II** **TAXING AUTHORITIES**

**Taxing authorities.**

3. (1) For carrying out the purposes of this Act, the State Government may, by notification, appoint a person to be the Commissioner and such other persons with such designations, as it thinks fit.

(2) The State Government may, by notification, appoint as many Assessing Authorities as it may think fit.

(3) The Commissioner and other persons appointed under sub-section (1) shall perform such functions and duties as may be required by or under this Act or as may be conferred, by the State Government, by notification.

(4) The jurisdiction of the Commissioner and other officers posted at the State Headquarters shall extend to the whole of the State of Himachal Pradesh, and the

jurisdiction of other officers or officials shall, unless the State Government otherwise directs, by notification, extend to the districts or the areas of the districts for which they are for the time being posted.

### **CHAPTER-III** **INCIDENCE, LEVY AND RATE OF TAX**

#### **Incidence of taxation.**

4. (1) Subject to the provisions of sections 6, 7 and sub-section (2) of section 16, every dealer (except one dealing exclusively in goods declared tax free under section 9) whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected and purchases made after the coming into force of this Act.
- (2) Every dealer, who does not deal exclusively in goods declared to be tax free under section 9, shall be liable to pay tax under this Act from the date on which his gross turnover during any year first exceeds the taxable quantum.
- (3) Notwithstanding anything contained in sub-sections (1) and (2) no tax on the sale of any goods shall be levied if a tax on their purchase is levied under this Act.
- (4) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years during each of which

his gross turnover has failed to exceed the taxable quantum and such further period after the date of such expiry as may be prescribed, and on the expiry of this later period his liability to pay tax shall cease.

(5) Every dealer, whose liability to pay tax has ceased under the provisions of sub-section (4), shall again be liable to pay tax under this Act with effect from the date on which his gross turnover first exceeds the taxable quantum.

(6) In this Act, the expression "taxable quantum" means, --

- (a) in relation to any dealer who imports for sale or use in manufacturing or processing any goods in Himachal Pradesh: Rupee 1/-;
- (b) in relation to any dealer, who himself manufactures or produces any goods for sale: Rs. 2,00,000/- ;
- (c) in relation to any dealer, who runs a hotel, restaurant, bakery or other similar establishment wherein food preparations including tea, are served: Rs.2,00,000/- ;
- (d) in relation to any particular classes of dealers not falling within clauses (a), (b) and/or (c), such sum as may be prescribed; or
- (e) in relation to any other dealer: Rs.4,00,000/-:

Provided that the registration of dealers already registered under this clause shall not be cancelled until their turnover in each of three consecutive years does not entitle them to cancellation under sub-section (4).

**Liability of a dealer registered under the Central Sales Tax Act, 1956. (74 of 1956)**

5. A dealer registered under the Central Sales Tax Act, 1956 who is not liable to pay tax under section 4 shall nevertheless be liable to pay tax under this Act on any sale or purchase made by him inside the State of Himachal Pradesh:

Provided that nothing herein shall apply to a dealer who deals exclusively in goods declared tax free under section 9.

**Levy of tax.**

6. (1) Subject to the provisions of this Act, there shall be levied a tax, --

- (a) at every point of sale in respect of the goods specified in the second column of Schedule 'A',
- (b) at the prescribed points of purchase in respect of goods specified in the second column of Schedule 'C', and
- (c) at the first point of sale in respect of the goods specified in the second column of Schedule 'D',

on the taxable turnover of a dealer, at the rates as specified in the respective Schedules or at such rates

not exceeding 100 paise in a rupee as the State Government may, by notification, direct:

Provided that the State Government may notify different rates in respect of different goods or classes of goods:

Provided further that the rate of tax in respect of declared goods shall not exceed the maximum rate of tax specified in clause (a) of section 15 of the Central Sales Tax Act, 1956:

Provided further that subject to furnishing of a declaration as may be prescribed, the Government may, by notification, reduce the rate of tax levied under sub-section (1) upto 4% in respect of goods sold to the Government, not being a registered dealer, for captive use in telecommunication network, or in the generation or distribution of electricity or any other form of power.

(2) Notwithstanding anything contained in this section, where any goods are sold in container or are packed in any packing material, the rate of tax applicable to such container or packing material, shall, whether the price of the container or packing material is charged separately or not, be the same as is applicable to the goods, contained or packed therein and the turnover in respect of the container and packing material, shall be included in the turnover of such goods. Where the goods, sold in container or packed in packing material are tax free, the sale of such container or packing material shall also be tax free.

(3) In this Act, the expression "taxable turnover" means that part of the dealer's gross turnover during any period which remains after deducting therefrom ---

(a) his turnover during that period on---

(i) the sale of goods declared tax free under section 9;

(ii) sale or purchase of goods falling under section 58; and

(iii) such other sales or purchases as may be prescribed; and

(b) the amount of tax included in the gross turnover.

**Levy of presumptive tax.**

7. Notwithstanding anything contained in this Act, every registered dealer, whose gross turnover in any year does not exceed such amount as may be prescribed, shall, in lieu of the tax payable under this Act, pay presumptive tax on the entire taxable turnover of sales or purchases, as the case may be, at such rates, not exceeding the rates specified in section 6, as the State Government may, by notification, direct, and subject to such conditions and restrictions and in such manner as may be prescribed:

Provided that no input tax credit shall be available to such dealer:

Provided further that no registered dealer, who imports goods for sale or use in manufacturing or processing any goods for sale, shall be entitled to make payment of presumptive tax under this section.

**Levy of  
purchase tax  
on certain  
goods in  
certain  
circumstances.**

8. Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule 'B' from any source, and --

- (a) uses them within the State in the manufacture of goods specified in Schedule 'B', or
- (b) uses them within the State in the manufacture of any goods, other than those specified in Schedule 'B', and sends the goods so manufactured outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or
- (c) uses such goods for a purpose other than that of resale within the State or sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or
- (d) sends them outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India,

and no tax is payable on the purchase of such goods

under any other provisions of this Act, there shall be levied a tax on the purchase of such goods equal to the rate as notified, under sub-section (1) of section 6, by the State Government.

**Tax free Goods.**

**9.** No tax shall be payable on the sale of goods specified in the second column of Schedule 'B', subject to the conditions and exceptions, if any, set out in the corresponding entry in the third column thereof and no dealer shall charge sales tax on the sale of goods which are declared tax free from time to time under this section.

**Power to amend Schedules.**

**10.** The State Government, after giving by notification, not less than thirty days' notice of its intention to do so, may, by like notification, add to or delete from the Schedules 'A', 'B', 'C' or 'D' any goods, or otherwise amend these Schedules, and thereupon the Schedule shall be deemed to have been amended accordingly.

**Input tax credit.**

**11.** (1) The input tax credit which a purchasing registered dealer (hereinafter in this section called 'the purchasing dealer'), is entitled to claim, shall be the amount of input tax paid or payable by such purchasing dealer to the selling registered dealer, on the turnover of purchases made by him during the tax period and input tax credit shall be calculated as provided in this section and allowed subject to such conditions as may be prescribed.

(2) The purchasing dealer availing of the input tax credit

shall maintain the tax invoices, the registers and the books of accounts in the manner as may be prescribed.

(3) The input tax credit shall be allowed to the extent of the amount of input tax paid by the purchasing dealer on the purchases of taxable goods made by him in the State, from a registered dealer holding a valid certificate of registration, which are intended for the purposes of, ---

- (a) sale or re-sale of goods by him in the State; or
- (b) sale in the course of inter-State trade or commerce; or
- (c) sale in the course of export out of the territory of India; or
- (d) use as raw material or as capital goods in the manufacturing or processing of taxable goods for sale of the nature referred to in clauses (a), (b) or (c); or
- (e) use as containers or packing material of taxable goods for sale of the nature referred to in clauses (a), (b), (c) or (d):

Provided that if the goods so purchased are used partially for the purposes specified in this sub-section, the input tax credit shall be allowed proportionate to the extent these are used for the purposes specified in this sub-section:

Provided further that input tax credit on fuels and lubricants, shall be allowed only to the extent by which the amount of input tax paid in the State exceeds

4 percent subject to the condition that such fuels and lubricants are used in the manufacture of taxable goods or captive generation of power.

(4) Notwithstanding anything contained in sub-section (3), the input tax credit shall be allowed only to the extent by which the amount of input tax paid in the State exceeds 4 percent on purchase of goods--

(a) sent outside the State otherwise than by way of sale in the course of *inter-State* trade or commerce or in the course of export out of territory of India; and

(b) used in manufacture or in packing of taxable goods sent outside the State otherwise by way of sale in the course of *inter-State* trade or commerce or in the course of export out of territory of India.

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

Provided that for good and sufficient reasons, to be recorded in writing and in the prescribed manner, the Commissioner or any person appointed under section 3 may allow such credit subject to such conditions and restrictions as may be prescribed.

(6) The input tax credit on capital goods shall be limited to plant and machinery directly connected with the manufacturing or processing of the finished goods and input tax credit as admissible under this section shall commence from the date of commencement of commercial production and shall be adjusted against tax payable on turnover of sales over a period of three years:

Provided that in case of closure of business before the period of three years, no further input tax credit shall be allowed and input tax carried forward, if any, shall be forfeited.

(7) No input tax credit shall be claimed by a purchasing dealer and shall not be allowed to him for, ---

- (a) tax collected on the purchase of goods used in the manufacture or processing or packing of goods declared tax free under section 9;
- (b) purchases of goods made in the course of inter-State trade or commerce or in the course of import of goods into the territory of India or import from outside the State, in respect of tax paid in any other country or other State;
- (c) purchase of goods made in the State from,--
  - (i) an un-registered dealer or a casual dealer, or
  - (ii) a dealer whose certificate of registration has been suspended, or
  - (iii) a registered dealer who has opted to pay

lump-sum amount, in lieu of tax, by way of composition under sub-section (2) of section 16 or presumptive tax under section 7;

- (d) purchase of goods used as free samples or gift or for personal consumption;
- (e) goods purchased for the uses specified in sub-section (3) but not sold because of theft, loss or destruction for any reason including natural calamity;
- (f) purchase of capital goods other than those specified in sub-section (6);
- (g) stock of goods remaining unsold at the time of closure of business and if a dealer has already taken any input tax credit against purchase of such stock of goods there shall be a reverse tax credit on closure of such business;
- (h) save as provided in sub-section (4), tax collected on purchase of goods but subsequently despatched to a place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce;
- (i) save as provided in sub-section (4), tax collected on the purchase of goods used as raw material in the manufacture of goods, and the goods so manufactured are despatched outside the State in any manner otherwise than by way of sale in the course of inter-State trade or

commerce;

(j) purchase of goods for sale under the transfer of right to use goods for any purpose (whether for specified period or not);

(k) purchases where,--

(i) tax invoice is not available with the registered dealer; or

(ii) there is evidence that the tax invoice has not been issued by the selling dealer from whom the goods have been or stated to have been purchased; or

(iii) original tax invoice does not contain the details of tax charged separately by the selling dealer from whom purchasing dealer has purchased the goods.

(8) Notwithstanding anything contained in this Act, the State Government may, as may be prescribed, specify any goods in respect of which input tax credit shall not be allowed in part or in full or specify the class of dealers who shall not be entitled to input tax credit in part or in full.

(9) If the goods purchased are intended for the purposes specified in sub-section (3) and are subsequently used fully or partly for purposes other than those specified in the said sub-section, the input tax credit, if availed of, shall be reduced from the input tax credit being claimed

for the tax period during which such use has taken place; and such reduction, shall be done in the manner as may be prescribed.

(10) Subject to the provisions of this section, input tax credit already availed of shall stand reversed if, --

- (a) the dealer discontinues business; or
- (b) the certificate of registration granted to the dealer is cancelled; or
- (c) the goods fall under clause (d), (e) or (g) of sub-section (7); or
- (d) excess input tax credit has been claimed; or
- (e) the goods purchased are returned to the selling dealer within three months of the date of purchase of such goods; or
- (f) the credit note has been received from selling registered dealer for the amount of tax charged in excess of the tax due according to the provisions of this Act; or
- (g) there exist any other circumstances as may be prescribed.

(11) The dealer shall be liable to pay such amount of reverse input-tax credit alongwith interest under section 19 from the date immediately succeeding the last date prescribed for filing the return for the period for which such input-tax credit was claimed till the date of its payment.

(12) Where any purchasing dealer has been issued with a credit note or debit note or if he returns or rejects goods purchased, as a consequence of which the input tax credit availed of by him during any tax period (to which the purchase of goods relates) becomes either short or excess, he shall compensate such short or excess by adjusting the amount of input tax credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or the goods are returned or rejected, subject to such conditions as may be prescribed.

(13) The amount of net input tax credit, which may be availed of by a purchasing dealer, shall be determined on the basis of the following formula, namely: -

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

Explanation--- In this formula----

- (i) "A" represents the amount of input tax credit for which the purchasing dealer is entitled to;
- (ii) "B" represents outstanding input tax credit brought forward from the previous tax period; and
- (iii) "C" represents reverse input tax credit as determined under sub-section (10).

(14) The methods that are used by a purchasing dealer in a year to determine the extent to which the goods are sold, used, consumed or supplied, or intended to be sold, used, consumed or supplied in the course of

making taxable sales shall be fair and reasonable:

Provided that the Commissioner or any person appointed under section 3 may, after giving the dealer an opportunity of being heard and for the reasons to be recorded in writing, reject the method adopted by the purchasing dealer and calculate the amount of input tax credit.

(15) Where a registered dealer without entering into a transaction of sale, issues to another registered dealer a tax invoice, retail invoice, bill or cash memorandum with the intention to defraud the State Government revenue or with the intention that the State Government may be defrauded of its revenue, the Commissioner or any person appointed under section 3 may, after making such inquiry as he thinks fit and giving a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealer issuing or accepting such tax invoice, retail invoice, bill or cash memorandum or other invoice either prospectively or retrospectively from such date as he may fix.

**Net tax payable.**

12. (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 credit, which can be determined from the following formula, namely:--

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

Explanation. —In this formula---

- (i) 'O' denotes the output tax payable for any tax period;
- (ii) 'P' denotes the purchase tax paid by a registered dealer for any tax period; and
- (iii) 'I' denotes the input tax paid or payable for the said tax period, including input tax credit, if any, carried forward from any preceding tax period as determined under section 11.

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(2) If the amount of input tax credit is more than the amount of output tax, the same may be adjusted, at the option of the dealer, against the tax liability for the said tax period, if any, under the Central Sales Tax Act, 1956 and only the remaining amount of the Central Sales Tax shall be payable.

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(3) Excess amount of input tax credit, if any, after adjustment under sub-section (2) shall be adjusted against any outstanding tax, penalty or interest under this Act or, at the option of the dealer, under the Central Sales Tax Act, 1956.

(4) Excess amount of input tax credit, if any, after adjustment under sub-sections (2) and (3) may be carried forward to subsequent tax period or at the option of the dealer, on application being made in the prescribed manner, be refunded in accordance with the provisions of this Act.

(5) The net tax payable for a tax period by a dealer,

liable to pay tax, but not registered under this Act, shall be equal to the output tax plus purchase tax, if any, payable for the said tax period as per the provisions of this Act and no input tax credit shall be admissible to him.

**Burden of proof.**

13. 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 6 or section 8 or that he is eligible to input tax credit under section 11 shall be on him.

**CHAPTER-IV**  
**REGISTRATION, RETURNS, ASSESSMENT, RECOVERY AND**  
**REFUND OF TAX.**

**Registration of dealers.**

14. (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 registration certificate:

Provided that in the case of a casual dealer, on payment of a fee of Rs.50/-, the Assessing Authority or the Officer-Incharge of the check-post or barrier or any other officer inspecting the goods at any other place, may dispense with the requirement of a valid certificate of registration under this section.

(2) Any person intending to establish a business in Himachal Pradesh for the purpose of manufacturing goods for sale may, notwithstanding that he is not liable to registration under sub-section (1), be granted a

registration certificate subject to such conditions and in the manner as may be prescribed, and such person when granted a registration certificate shall, for so long as such certificate is in force, be liable to pay tax under the Act:

Provided that grant of such a certificate of registration shall be subject to the conditions that if such person fails to establish the business within the period specified in the certificate or fails to comply with any of the conditions specified therein, he shall be liable by order of the Assessing Authority, to pay a penalty equivalent to one-half of the amount of tax which would have been payable by him in respect of all the goods purchased by him as if he had not been registered under this sub-section:

Provided further that a dealer who sells taxable goods, not liable to register under sub-section (1) but who desires to register voluntarily may make an application to the appropriate Assessing Authority in the manner as may be prescribed and shall pay tax only in accordance with section 4 from the date his gross turnover exceeds a taxable quantum as specified in sub-section (6) of section 4.

(3) Every dealer required by sub-section (1) to be registered and every person who may be granted a registration certificate under sub-section (2) shall make

an application in this behalf in the prescribed manner, to the Assessing Authority.

(4) If the Assessing Authority is satisfied that an application for registration made under sub-section (3) is in order, he shall, in accordance with such rules and on payment of such fee and subject to such conditions as may be prescribed, register the applicant and grant him a certificate of registration in the prescribed form.

(5) When any dealer fails to apply for registration in contravention of sub-section (1), the Assessing Authority shall register such dealer and grant him a certificate of registration and such registration shall take effect as if it had been made under sub-section (4) on the dealer's application.

(6) The Assessing Authority may, by order, ----

- (a) amend certificate of registration on the dealer's application if the dealer or his legal representative furnishes the information that he--
  - (i) has transferred his business, or
  - (ii) has changed the name (constitution) or nature of his business, or
  - (iii) wants to open a new place of business or make any change either in the places of business or in the class or classes of goods specified in his

certificate of registration for resale or for use in manufacture of goods for sale;

(b) suspend a certificate of registration, without prejudice to any other penalty, if the dealer or person has violated any provision of this Act or rules made thereunder;

(c) cancel a certificate of registration, on dealer's or, as the case may be, of his legal representative's application or suo-moto, without affecting liability to pay tax till such cancellation,-

(i) if the dealer sells or otherwise disposes of his business or any place of business or discontinues his business, or

(ii) if the dealer dies, or

(iii) for any other sufficient cause including misuse of the certificate of registration or cessation of liability to payment of tax under this Act:

Provided that no order affecting any person adversely shall be made under clauses (b) and (c) of this sub-section without affording him a reasonable opportunity of being heard; and

(d) renew a certificate of registration for such

period and in the manner and on payment of such fee as may be prescribed.

**Security from certain class of dealers.**

**15.** (1) The Commissioner or any other person appointed to assist him under sub-section (1) of section 3, if it appears to him to be necessary so to do for the proper realisation of the tax levied under this Act, may, for reasons to be recorded in writing, impose as a condition of the issue of a certificate of registration to a dealer, or of the continuance in effect of such certificate issued to any dealer, a requirement that the dealer shall give security, in the manner as may be prescribed, for such amount as may be specified in the order.

(2) No dealer shall be required to furnish security under sub-section (1), unless he has been given an opportunity of being heard.

(3) Where the security furnished by a dealer under sub-section (1) is in the form of a surety bond and the surety becomes insolvent or is otherwise incapacitated or dies or withdraws, the dealer shall, within fifteen days of the occurrence of any of the aforesaid events, inform the Authority granting the certificate of registration and shall within thirty days of such occurrence furnish a fresh surety bond.

(4) The Authority granting the certificate of registration may, by an order in writing, for good and sufficient cause, forfeit the whole or any part of the security

furnished by a dealer for realising any amount of tax, penalty or interest payable by a dealer:

Provided that no order shall be passed under this sub-section without giving the dealer and the surety a reasonable opportunity of being heard.

(5) The Authority granting a certificate of registration may, on application by the dealer, order the refund of security furnished by him or any part thereof, if the same is not required for the purposes of this Act.

**Payment of tax and returns.** 16. (1) Tax payable under the Act shall be paid in the manner hereinafter provided at such intervals as may be prescribed.

(2) The State Government may, in public interest and subject to such conditions as it may deem fit, accept from any class of dealers in lieu of the amount of tax payable under this Act for any period, by way of composition, a lumpsum to be determined and to be paid at such intervals and in such manner as may be prescribed, or the lumpsum amount may be calculated at a fixed rate on the taxable turnover, as may be prescribed in respect of such class of dealers and for this purpose a simplified system of registration, maintenance of accounts, filing of returns may also be prescribed which shall remain in force during the period of such composition.

(3) Such dealers as may be required so to do by the Assessing Authority by notice served in the prescribed manner and every registered dealer shall furnish such returns by such dates and to such Authority as may be prescribed.

(4) Before a registered dealer furnishes the return required by sub-section (3), he shall, in the prescribed manner, pay into a Government Treasury or the Scheduled Bank which is a treasury bank, or at the office of the Assistant Excise and Taxation Commissioner or Excise and Taxation Officer-in-charge of the District, the full amount of tax due from him under the Act according to such returns and shall furnish along with the returns a receipt from such treasury, bank or office of the Assistant Excise and Taxation Commissioner or Excise and Taxation Officer-in-charge of the District showing the payment of such amount:

Provided that no payment of such amount shall be accepted at the office of the Assistant Excise and Taxation Commissioner or Excise and Taxation Officer-in-Charge of the District save through a crossed cheque or bank draft payable at a local branch of a Scheduled Bank in favour of the Assessing Authority:

Provided further that when a dealer makes payment through a Scheduled Bank other than the treasury bank, he shall obtain from such bank a certificate, as may be prescribed, to the effect that the bank has

remitted the amount of tax to the treasury bank on the dealer's directions and on production of such certificate to the Assessing Authority the dealer shall be deemed to have paid the tax on the date following the date on which such certificate is issued by such bank:

Provided further that in case of payment through a Scheduled Bank which is located at a station other than that of the treasury bank, the dealer shall need to procure the prescribed certificate from the concerned bank, as mentioned under the preceding proviso, at least three days before the expiry of the due date prescribed under sub-section (2) for filing the return and only in that case the dealer shall be deemed to have made the payment by due date:

Provided further that where the payment is made through a crossed cheque, such crossed cheque must be delivered in the office of the Assessing Authority concerned, not less than ten clear days before the expiry of the due date prescribed under sub-section (3) for filing the return, and the dealer shall be deemed to have made the payment on the date on which such crossed cheque, after its presentation in the bank, is actually credited into the Government account and necessary receipt is issued by the bank in favour of the dealer:

Provided further that where the payment is made through a crossed cheque and the cheque is dishonoured, the dealer shall be deemed to have not made the payment and shall be liable to any action which may be taken for not making payment under this Act or the rules framed there under.

*Explanation.* For the purposes of this sub-section "Scheduled Bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934.

**2 of 1934.**

(5) If any dealer discovers any omission or other error in any return furnished by him, he may, at any time, before the date prescribed for the furnishing of the next return by him, furnish a revised return, and if the revised return shows a greater amount of tax to be due than was shown in the original return, it shall be accompanied by a receipt showing payment, as may be prescribed, in sub-section (4), of extra amount.

(6) If a dealer fails without sufficient cause to furnish the returns by the prescribed date as required under sub-section (3), the dealer shall be liable to pay, by way of penalty, a sum equal to Rs.25/- per day for delay in furnishing such return upto 10 days, whereafter the penalty shall be Rs.50/- per day till the default continues, but such penalty shall not exceed Rs.3000/- provided that where no tax is payable, such penalty shall not exceed Rs.500/-for every return.

(7) If a dealer fails without sufficient cause to comply with the requirements of the provisions of sub-section (4), the Commissioner or any person appointed to assist him under sub-section (1) of section 3 may, after giving such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty, a sum which shall not be less than ten percentum, but which shall not exceed one-and-a-half times of the amount of tax to which he is assessed or is liable to be assessed under section 21 in addition to the amount of tax to which he is assessed or is liable to be assessed.

(8) If a dealer has maintained false or incorrect accounts with a view to suppressing his sales, purchases or stocks of goods, or has concealed any particulars of his sales or purchases or has furnished to, or produced before, any Authority under this Act or the rules made thereunder any account, return or information which is false or incorrect in any material particular, the Commissioner or any person appointed to assist him under sub-section (1) of section 3 may, after affording such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty in addition to the tax to which he is assessed or is liable to be assessed, an amount which shall not be less than twenty-five percentum, but which shall not exceed one and a half times of the amount of tax to which he is assessed.

**Tax deduction from the bills or invoices of the works contractors etc.**

17. (1) Notwithstanding anything contrary contained in section 20, every person making any payment or discharge or any liability on account of valuable consideration payable—

- (a) for the transfer of property in goods, whether as goods or in some other form, involved in the execution of works contract, and
- (b) for the transfer of property in goods on account of sales of such goods made to the Government of India or to any State Government,

shall deduct an amount not exceeding four percentum, as may be prescribed, purporting to be a part or full of the tax payable on such sales, from the bills or invoices raised by the works contractor or by the dealer selling such goods, as payable by the person:

Provided that no deduction of such amount shall be made in respect of any transfer of property in goods, the turnover of which is deductible, from the dealer's gross turnover, under sub-section (3) of section 6:

Provided further that no such payment or discharge of any bill raised by the works contractor or the dealer selling such goods shall be made without deductions:

Provided further that if the State Government is satisfied that it is necessary to do so in the interest of

the State revenue, it may notify the names/posts of such persons who shall be competent persons to make such deduction.

(2) The deduction referred to in sub-section (1) shall be made in the manner, as may be prescribed, and the payment of such deduction into the Government treasury shall be the responsibility of the person making such deduction.

(3) The person making such deduction shall issue deduction certificate in the prescribed manner to the person or dealer from whose bill or invoice, such deduction has been made.

(4) If any person contravenes any or all of the provisions of sub-section (1) or (2) or (3), the prescribed Authority shall, after giving an opportunity of being heard, by an order, in writing, direct that such person shall pay by way of penalty, a sum not exceeding twice the amount of tax deductible under sub-section (1).

(5) The provisions of sections 25 and 27 for recovery of any amount of tax due from a dealer shall mutatis mutandis apply for recovery of any amount of tax, deducted and / or any penalty imposed but not deposited under this section.

**Declaration  
and  
certificates to**

**18. Every dealer claiming, -**  
(i) any deduction from his gross turnover, or

**be filed  
alongwith  
returns.**

(ii) any part of his taxable turnover to be a sale to Government, or

(iii) any part of the taxable turnover to be liable to tax at concessional rate of tax under this Act,

shall, alongwith the return under sub-section (3) of section 16, furnish to the Assessing Authority, the declaration or the certificate as required under this Act.

**Payment of  
interest.**

**19.** (1) If any dealer fails to pay the amount of tax due from him under this Act except to the extent mentioned in sub-section (2), he shall, in addition to the amount of tax, be liable to pay simple interest on the amount of tax due and payable by him at the rate of one percentum per month, from the date immediately following the last date on which the dealer should have either filed the return or paid the tax under this Act, for a period of one month and thereafter at the rate of one and a half per centum per month till the default continues.

(2) If the amount of tax or penalty due from a dealer is not paid by him within the period specified in the notice of demand or, if no period is specified within thirty days from the service of such notice, the dealer shall, in addition to the amount of tax or penalty, be liable to pay simple interest on such amount at the rate of one percentum per month from the date immediately following the date on which the period specified in the notice or the period of thirty days, as the case may be, expires, for a period of one

month and thereafter at the rate of one and a half percentum per month till the default continues:

Provided that where the recovery of any tax or penalty is stayed by an order of any court, the amount of tax or penalty shall, after the order of stay is vacated, be recoverable alongwith interest at the aforesaid rate on the amount ultimately found to be due and such interest shall be payable from the date the tax or penalty first became due.

(3) The amount of interest payable under this section shall-

- (i) for the purposes of collection and recovery, be deemed to be tax under this Act; and
- (ii) be in addition to the penalty, if any, imposed under this Act.

**Prohibition  
against  
collection of  
tax in certain  
cases.**

**20.** (1) No person shall collect any sum by way of tax in respect of sale or purchase of any goods on which no tax is payable under this Act.

(2) No person, who is not a registered dealer and liable to pay tax in respect of any sale or purchase, shall collect on the sale or purchase of any goods any sum by way of tax from any other person and no registered dealer shall collect any amount by way of tax in excess of the amount of tax payable by him under this Act.

(3) If any person, or a dealer referred to in sub-section (1) and (2) contravenes any of these provisions he shall be

liable to pay, in addition to any tax for which he may be liable, a penalty of an amount not exceeding five hundred rupees, or double the amount so collected, whichever is greater.

(4) If the Commissioner, or any person appointed to assist him under sub-section (1) of section 3, in the course of any proceedings under this Act or otherwise, has reason to believe that any person has become liable to pay penalty under sub-section (3), he shall serve on such person a notice in the prescribed form requiring him to show cause why a penalty as provided in sub-section (3) should not be imposed on him and there upon hold an enquiry and shall make such order as he thinks fit.

**Assessment of tax.**

**21.** (1) The returns furnished by a dealer shall be duly acknowledged in the manner prescribed and where all the returns relating to any year have been filed and are correct and complete in material particulars, the dealer shall, subject to the provisions of sub-section (2), be deemed to have been assessed for that year:

Provided that where the returns are not complete in material particulars, the dealer shall be given an opportunity to complete the same within fifteen days of service of the notice.

*Explanation.--* For the purpose of sub-section (1) a return shall be deemed to be---

(i) correct, if its version conforms to that of the accounts

maintained by the dealer and the account version cannot be impeached by any adverse information available on record till 31<sup>st</sup> October of the following year; and

(ii) complete, in material particulars, if it contains the entire information required to be furnished therein, is correct arithmetically and is accompanied by the statutory or prescribed lists, documents and proof of payment of the full amount of tax due according to the returns and is duly signed by the dealer.

(2) The State Government may prescribe the manner of selection of cases for scrutiny of returns filed by the dealers specified in sub-section (1) and the Assessing Authority shall, in respect of each selected case, serve on the dealer a notice in the prescribed manner requiring him, on a date and at a place specified therein, either to attend in person or to produce or cause to be produced any evidence on which such dealer may rely in support of the returns filed by him under sub-section (1) and after hearing the dealer and considering the evidence produced by him assess the amount of tax, if any, due from him.

(3) Notwithstanding anything contained in this Act, if the Government considers it necessary and expedient, in public interest so to do, it may in respect of a dealer, whose gross turnover in a year does not exceed such amount as the Government may specify, in a special scheme of self-assessment for any year which may be

notified, under this Act:

Provided that in case any dealer, whose taxable turnover has been assessed under the self-assessment scheme, is found to have evaded the tax, the Assessing Authority shall, after affording such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty, in addition to the amount of tax assessed, a sum which shall not be less than one hundred per centum but which shall not exceed one and a half times of the amount of tax found to have been evaded and assessed.

(4) The Assessing Authority shall serve on the dealer not covered under sub-section (1) a notice in the prescribed manner requiring him, on a date and at a place specified therein, either to attend in person or to produce or cause to be produced any evidence on which such dealer may rely in support of such returns and after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, assess the amount of tax due from the dealer.

(5) If a dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (2) or (4), the Assessing Authority shall, within five years after the expiry of such period, proceed to assess to the best of his judgment the amount of the tax

due from the dealer.

(6) If a dealer does not furnish returns in respect of any period by the prescribed date, the Assessing Authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax, if any, due from the dealer.

(7) If upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration, the Assessing Authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent period and in cases where such dealer has wilfully failed to apply for registration, the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum which shall not be less than fifteen percentum, but which shall not exceed one and a half times that amount.

(8) The amount of any tax, penalty or interest payable under this Act shall be paid by the dealer by such date as may be specified in the notice issued by the Assessing Authority for the purpose and the date so specified shall

not be less than fifteen days and not more than thirty days from the date of service of such notice:

Provided that the Assessing Authority may, with the prior approval of the Assistant Excise and Taxation Commissioner or the Excise and Taxation Officer in-charge of the district, extend the date of such payment, but not more than 90 days, or allow payment by monthly instalments not exceeding three, against an adequate security or a bank guarantee.

(9) If the tax assessed under this Act or any instalment thereof is not paid by any dealer within the time specified therefore in the notice of assessment or in the order permitting payment in instalments, the Commissioner, or any person appointed to assist him under sub- section (1) of section 3, may after giving such dealer an opportunity of being heard, impose on him a penalty not exceeding the sum due from him.

(10) Any assessment made under this section shall be without prejudice to any penalty imposed under this Act.

**Assessment  
of a casual  
dealer.**

22. (1) A casual dealer who is registered under this Act, shall be assessed like any other registered dealer under section 21.

(2) A casual dealer who is not registered shall, immediately on completion of transaction of sale or purchase for which he is liable to pay tax, report to the

Assessing Authority having jurisdiction with reference to the place of such transaction or to the Officer-incharge of the nearest check-post or barrier, the amount of sale or purchase price and the tax payable thereon and shall deposit the amount of tax with such Assessing Authority or such Incharge of the check-post or barrier within such time and in such manner as such Authority or Incharge may direct:

Provided that if a casual dealer desires voluntarily to pay the tax in advance in respect of the goods which such dealer intends to sell or purchase, he may pay the amount of tax on the sale or purchase value of such goods enhanced by ten percentum to the Assessing Authority or the Officer-Incharge of the nearest check-post or barrier.

(3) Where a casual dealer fails to make a report as required in sub-section (2), the Assessing Authority having jurisdiction or Excise and Taxation officer Incharge of the nearest check-post or barrier may require such casual dealer to make a report of the sale or purchase price and the tax due, failing which such Assessing Authority or such Incharge of the check-post or barrier may assess to the best of his judgement the amount of tax due and direct the casual dealer to pay the amount of tax within such time and in such manner as he may direct.

(4) Where a casual dealer fails to pay the tax as directed by the Assessing Authority or the Excise and Taxation Officer, Incharge of the check-post or barrier under sub-section (2) or (3), the goods belonging to such casual dealer shall be detained until the tax is paid or adequate security for payment of tax is furnished.

**Re-assessment of tax.** 23. (1) If in consequence of definite information which has come into his possession, the Assessing Authority discovers that the turnover of the business of a dealer has been under-assessed or escaped assessment in any year, the Assessing Authority may, at any time within three years from the date of assessment under section 21, proceed to re-assess the tax payable on the turnover which has been under-assessed or has escaped assessment:

Provided that the Assessing Authority may also take action to impose the penalty and interest under this Act:

Provided further that no order of re-assessment or imposition of penalty and interest shall be made unless the dealer is afforded a reasonable opportunity of being heard in the prescribed manner.

(2) The Assessing Authority or any such Authority as may be prescribed may, at any time, within one year from the date of any order passed by him and subject to such conditions as may be prescribed, rectify any clerical or

arithmetical mistake apparent from the record.

**Period of limitation for completion of assessment or re-assessment not to apply in certain cases.**

**24.** (1) Notwithstanding the provisions relating to the period of limitation contained in section 21 or section 23 or in any other provision of this Act, assessment or re-assessment may be made at any time in consequence of, or to give effect to, any order made by any court or other Authority under this Act.

(2) Where the assessment proceedings relating to any dealer remained stayed under the orders of any court or other Authority for any period, such period shall be excluded in computing the period of limitation for assessment or re-assessment specified in section 21 or section 23 or in any other provision of this Act.

**Tax and penalty recoverable as arrears of land revenue.**

**25.** The amount of any tax and penalty imposed or interest payable under this Act, which remains unpaid after the due date, shall be recoverable as arrears of land revenue.

**Tax, penalty and interest to be first charge on property.**

**26.** Notwithstanding anything to the contrary contained in any law, any amount of tax and penalty including interest, if any, payable by a dealer or any other person under this Act shall be a first charge on the property of the dealer or such other person.

**Special mode of recovery.**

**27.** (1) Notwithstanding anything contained in section 25 or any law or contract to the contrary, Commissioner, or any officer other than an Excise and Taxation Inspector, appointed under section 3 to assist the Commissioner,

may, at any time or from time to time, by notice in writing (a copy of which shall be sent to the dealer at his last address known to the officer issuing the notice), require –

- (a) any person from whom any amount is due or may become due to a dealer who has failed to comply with a notice of demand for any amount due under this Act;
- (b) any person who holds or may subsequently hold any money for or on account of such dealer,

to pay into the Government treasury in the manner specified in the notice issued under this sub-section, so much of the money as is sufficient to pay the amount due from the dealer in respect of the arrears of the tax, interest and penalty under this Act.

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

(2) The officer issuing a notice under sub-section (1) may at any time, or from time to time, amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(3) Any person making any payment in compliance with a

notice issued under sub-section (1) shall be deemed to have made the payment under the Authority of the dealer and the treasury receipt for such payment shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount specified in the receipt.

(4) Any person discharging any liability to the dealer after service on him of the notice issued under sub-section (1) shall be personally liable to the State Government to the extent of the liability discharged or to the extent of the liability of the dealer for tax, interest and penalty, whichever is less.

(5) Where a person on whom a notice is served under sub-section (1), proves to the satisfaction of the officer who issued the notice that the sum demanded or any part thereof was 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, then nothing contained in this section shall be deemed to require such person to pay into the Government treasury any such money or part thereof, as the case may be.

(6) Any amount of money which a person is required to pay under sub-section (1), or for which he is personally liable to the State Government under sub-section (4) shall, if it remains un-paid, be recoverable as an arrear of land revenue.

(7) The provisions of this section shall be without prejudice

to any action that may be taken for the recovery of the arrears of tax, interest and penalty, if any, due from the dealer.

**Refund.**

**28.** (1) The Assessing Authority either suo-moto or on an application shall, in the prescribed manner, refund to a registered dealer or any other person any amount of tax, interest or penalty paid by such dealer or any such other person under this Act, if the amount of tax, penalty or interest so paid is in excess of the amount due from him under this Act, either by a refund voucher or, at the option of the dealer or such other person, by adjustment of the amount so paid with the amount due from him, in respect of any other period:

Provided that no application for refund of any excess amount of input tax credit under sub-section (4) of section 12 shall be made and no refund allowed until the expiry of two years from the date of the commencement of this Act, and thereafter the claim may be made at the end of each subsequent year:

Provided further that no refund under this section shall be allowed unless the claim for refund is made within a period of three years from the date on which such claim accrues.

(2) Where any amount required to be refunded by the Assessing Authority to any person by virtue of an order sanctioning such refund issued under this Act is not

refunded to him within ninety days of the date of the order, the dealer shall be entitled to get simple interest on such amount at the rate of one percentum per month from the date immediately following the date of expiry of the said period for a period of one month and thereafter at the rate of one and a half percentum per month till the refund is made.

(3) Notwithstanding anything contained in sub-section (1) or (2), the Assessing Authority shall first adjust the amount to be refunded towards the recovery of any amount due from the dealer on the date of such adjustment, and shall thereafter refund the balance, if any.

(4) If the delay in allowing refund within the aforesaid period of ninety days is for reasons beyond the control of the Assessing Authority or attributable to the dealer, whether wholly or in part, the period of such delay shall be excluded from the period for which interest is payable.

(5) If any question arises whether any period is to be excluded for the purposes of calculation of interest under sub-section (4), the same shall be referred to the Commissioner, or such other officer as the State Government may, by notification, appoint, whose decision shall be final.

(6) Where an order allowing refund is the subject-matter of any appeal or further proceedings or where any other proceedings under this Act are pending, and the Assessing

Authority is of the opinion that the refund is likely to adversely affect the recovery, the Assessing Authority may withhold the refund and refer the case to the Commissioner whose orders shall be final.

(7) The period during which the refund remains withheld under sub-section (6) shall be excluded for the purpose of calculation of interest under this section.

## **CHAPTER-V** **ACCOUNTS, SURVEY AND INSPECTION**

### **Accounts.**

**29.** (1) Every registered dealer or a dealer on whom a notice has been served to furnish returns under sub-section (3) of section 16 shall maintain a true and upto date account of the value of goods purchased, 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 as may be prescribed.

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

(3) Where a dealer as 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 maintained and retained by him at such branch also.

(4) If the Assessing Authority is of the opinion that the accounts maintained by any dealer or class of dealers do not sufficiently enable him to verify the returns or to properly make assessment on the basis thereof, he may, by an order, require such dealer or class of dealers to maintain such accounts, in such manner as may be prescribed.

(5) The State Government may, by notification, in public interest, exempt any class of registered dealers from the operation of the provisions of this section.

**Tax invoice,  
retail invoice  
etc.**

**30.** (1) The tax invoice shall contain such particulars as are specified in this section and shall be issued by one registered dealer to another dealer (whether registered or not) on the basis of which the purchasing registered dealer shall be entitled to claim input tax credit.

(2) Every registered dealer making a taxable sale to another dealer (whether registered or not) shall issue to such purchasing dealer a tax invoice, at the time of sale, containing such particulars as specified in sub-section (5), and retain a copy thereof.

(3) The tax invoice shall not be issued by the registered dealer when the sale is—

(a) by a registered dealer paying presumptive tax

under section 7 or lumpsum under sub-section (2) of section 16 of this Act; or

(b) of goods declared tax free under section 9 of this Act; or

(c) in the course of *inter-State* trade and commerce; or

(d) the sale is in the course of export out of the territory of India;

(4) For every taxable sale only one invoice shall be issued.

(5) The tax invoice issued under sub-section (2) shall contain the following particulars, namely: -

(a) the words 'Tax Invoice' in bold letters at the top or at other prominent place;

(b) the name, address and number of certificate of registration of the selling registered dealer;

(c) the name, address and number of certificate of registration of the purchasing registered dealer;

(d) serial number and the date on which the tax invoice is issued;

(e) description, quantity, volume and value of goods sold, and amount of tax involved shown separately;

(f) signatures of the selling dealer or his servant, manager or agent, duly authorized by him; and

(g) the name and address of the printer.

(6) Except where tax invoice is required to be issued under

sub-section (2), every registered dealer who sells any goods exceeding two hundred rupees, in any one transaction, to any person, he shall issue to the purchaser a retail invoice containing the particulars specified in sub-section (7), and retain a copy thereof.

(7) The retail invoice shall contain the following particulars, namely: -

- (a) the words 'Retail Invoice' or 'Cash Memo-random' or 'Bill' in bold letters at the top or at a prominent place;
- (b) the name, address and number of certificate of registration of the selling registered dealer;
- (c) in case the sale is in the course of inter-State trade or commerce or export out of the territory of India, the name, address and registration number, if any, of the purchasing dealer/foreign buyer and the type of statutory form, if any, against which the sale has been made;
- (d) serial number and the date on which the retail invoice is issued;
- (e) description, quantity, volume and value of goods sold, amount of tax involved, if any ;
- (f) signature of the selling dealer or his servant, manager or agent, duly authorized by him; and
- (g) the name and address of the printer.

(8) Every registered dealer shall intimate, in writing, to the Assessing Authority, the total number of the tax invoices

and the retail invoices got printed and kept for use by him during each year.

(9) The tax invoice shall be issued in triplicate and the original alongwith second copy shall be given to the purchaser or the person taking delivery of the goods, as the case may be, and the third copy shall be retained by the selling dealer.

(10) The retail invoice shall be issued in duplicate and the original copy shall be given to the purchaser and the second copy shall be retained by the selling dealer.

(11) Where tax invoice or retail invoice are not required to be issued, every registered dealer shall issue such other invoice as may be prescribed.

(12) Every dealer shall preserve books of accounts including tax invoices and retail invoices until the expiry of five years after the end of the year to which they relate or for such other period as may be prescribed or until the assessment attains its finality whichever is later.

(13) Where any dealer is a party to any appeal or revision under this Act or any other proceeding, he shall retain every record and accounts which pertain to the subject matter of such appeal, revision or other proceeding, until it is finally disposed of.

(14) Every dealer who maintains the records electronically shall also maintain day to day print-out of all such records and shall retain them for the period specified in sub-section (12), or, as the case may be, in sub-section (13).

(15) The State Government may, by notification, in public interest, exempt any class of the registered dealers from the provisions contained in sub-sections (2) to (14).

(16) Where any dealer contravenes the provisions of sub-sections (2) to (14), the Commissioner or any other person appointed under section 3 may, after affording such dealer a reasonable opportunity of being heard, impose upon him a penalty which may extend to five thousand rupees for every contravention.

**Issue of credit notes and debit notes.**

31. (1) Where a tax invoice has been issued for any sale of goods but if within six months from the date of such sale, the amount shown as tax charged in such tax invoice is found to exceed the tax payable, the registered dealer effecting the sale shall immediately issue to the purchasing registered dealer a credit note containing such particulars as may be prescribed.

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

(3) Any registered dealer who receives or issues a credit note or a debit note shall modify his return for the period in which the credit note or debit note is received or issued, as the case may be, and pay any tax due before furnishing such return.

**Production and inspection of books, documents and accounts.**

**32.** (1) The Commissioner, or any person appointed to assist him under sub-section (1) of section 3 not below the rank of Excise and Taxation Officer may, for the purposes of this Act, require any dealer to produce before him any book, document or account relating to his business and may inspect, examine and copy the same and make such enquiries from such dealer relating to his business as may be necessary:

Provided that books, documents and accounts of a period more than five years prior to the year in which assessment is made shall not be so required.

(2) Every registered dealer shall-

(a) maintain day to day accounts of his business;

(b) maintain a list of his account books, display it alongwith his registration certificate and furnish a copy of such list to the Assessing Authority ;

(c) produce, if so required, account books of his business before the Assessing Authority for authentication in the

prescribed manner;

(d) retain his account books at the place of his business unless removed therefrom by an official for inspection, by any official agency, or by auditors, or for any other reasons which may be considered to be satisfactory by the Assessing Authority.

(3) If any officer referred to in sub-section (1) has reasonable grounds for believing that any dealer is trying to evade liability for tax or other dues under this Act, and that anything necessary for the purpose of an investigation into his liability may be found in any books, account, register or document, he may seize such book, account, register or document as may be necessary. The officer seizing the book, account, register or document shall forthwith grant a receipt for the same and shall, -

(a) in the case of book, account, register or document which was being used at the time of seizing, within a period of twenty-one days from the date of seizure, and  
(b) in any other case, within a period of ninety days from the date of seizure,

return it to the dealer or the person from whose custody it was seized after examination or after having such copies or extracts taken therefrom as may be considered necessary, provided the dealer or the aforesaid person

gives a receipt in writing for the books, account, register or document returned to him and the officer may, before returning the books, account, register or document, affix his signatures and his official seal at one or more places thereon:

Provided that where the dealer fails to comply with the directions of the officer seizing the books or any other officer under this Act, such officer may further retain such books for such period as he may think fit after obtaining the permission of the Commissioner:

Provided further that such officer shall inform the dealer the reasons for which the books are required to be retained beyond the period prescribed under this sub-section.

(4) For the purposes of sub-section (2) or sub-section (3), an officer referred to in sub-section (1) may enter and search any office, shop, godown, vessel, vehicle, or any other place of business of the dealer or any building, dwelling house, or place where such officer has reason to believe that the dealer keeps or is, for the time being, keeping any books, accounts, registers, documents or goods relating to his business:

Provided that no entry or search in the dwelling house shall be made-

- (i) after the sunset and before the sunrise;
- (ii) by an officer below the rank of an Excise

and Taxation Officer; and

(iii) without obtaining the sanction of the District Magistrate within whose jurisdiction such house is situated.

(5) The powers conferred by sub-section (4) shall include the power to open and search any box or receptacle in which any books, accounts, registers or other relevant documents of the dealer may be contained and to take copies or extracts of the said accounts, registers or documents and such inventory of the goods and cash found as appears to him necessary for the purpose of this Act.

(6) Any officer empowered to act under sub-section (3) or sub-section (4) shall have power to seize any goods which are found in any office, shop, godown, vessel, vehicle or any other place of business or any building or place of the dealer but not accounted for by the dealer in his books, accounts, registers, records and other documents.

**Power of survey.**

**33.** (1) Notwithstanding anything contained in any other provision of this Act, any Assistant Excise and Taxation Commissioner or Excise and Taxation Officer appointed to assist the Commissioner under sub-section (1) of section 3 or an Excise and Taxation Inspector, duly authorized by the Commissioner may, for the purpose of survey regarding ascertainment of commencement of liability to pay tax for registration under section 14 of this Act, and

extent of business, enter-

- (a) any place within the limits of the area assigned to him, or
- (b) any place occupied by any dealer in respect of which he exercises jurisdiction,

at which the dealer carrying on the business, keeps any of his books of accounts or other documents or any part of his cash relating to the sale or purchase of goods or stock of goods relating to his business and require any dealer, employee or any other person who may at that time and place be attending in any manner to, or helping in carrying on of such 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 and stock of goods which may be found therein, and
- (iii) to furnish such information including such statement as he may require as to any matter which may be useful for, or relevant to, any proceedings under this Act.

(2) For the purpose of sub-section (1), no entry in the dwelling house shall be made-

- (i) after sunset or before the sunrise;
- (ii) by any officer below the rank of an Excise and Taxation Officer; and
- (iii) without obtaining the sanction of the District Magistrate within whose jurisdiction such house is situated.

**Establishment of check-posts or barriers and inspection of goods in transit.**

34. (1) If, with a view to preventing or checking evasion of tax under this Act, the State Government considers it necessary so to do, it may, by notification direct the establishment of a check post or the erection of a barrier or both at such place or places as may be notified.

(2) The owner or person in-charge of a goods carriage or vessel shall carry with him a goods carriage record, a trip sheet or a log book, as the case may be, and a tax invoice or a bill of sale or a delivery note containing such particulars as may be prescribed, in respect of such goods, meant for the purpose of business, and produce the same before an officer in-charge of a check post or barrier or any other officer not below the rank of an Excise and Taxation Inspector checking the vehicle or vessel at any place.

(3) At every check post or barrier or at any other place when so required by any officer referred to in sub-section (2), the driver or any other person-in-charge of the [goods carriage] or vessel, shall stop the vehicle or vessel, as the

case may be, and keep it stationary as long as may reasonably be necessary, and allow the officer-in-charge of the check post or barrier or the aforesaid officer to examine the contents in the vehicle or vessel and inspect all records relating to the goods carried which are in the possession of such driver or other person-in-charge, who shall also furnish such other information as may be required by the aforesaid officer, and if considered necessary such officer may also search the [goods carriage] or vessel and the driver or other person-in-charge of the vehicle or vessel or of the goods.

(4) The owner or person-in-charge of a goods carriage or vessel entering the limits of State or leaving the State limits shall also give in triplicate a declaration (generated electronically or otherwise) containing such particulars of goods carried in such vehicle or vessel, as the case may be, before the officer-in-charge of the check post or barrier and shall produce the copy of the said declaration duly verified and returned to him by the said officer or before any other officer referred to in sub-section (2) at the time of checking under this section:

Provided that where a goods carriage or vessel bound for any place outside the State passes through the State, the owner or person-in-charge of such vehicle or vessel shall furnish, in duplicate, to the officer-in-charge of the check post or barrier of his entry into the State a declaration in the prescribed form and obtain from him a

copy duly verified. The owner or person-in-charge of the goods carriage or vessel, as the case may be, shall deliver within seventy two hours the said copy to the officer-in-charge of the check post or barrier at the point of its exit from the State, failing which he shall be liable to pay a penalty to be imposed by the officer-in-charge of the check post or barrier of the entry not exceeding twenty-five percentum of the value of the goods but which shall not be less than fifteen percentum of the value of the goods:

Provided further that no penalty shall be imposed unless the person concerned has been given a reasonable opportunity of being heard.

(5) At every station of transport of goods, bus stand or any other station or place of loading or unloading of goods, other than a rail head or a Post Office, when so required by the Commissioner, or any person appointed to assist him under sub-section (1) of section 3, the driver or the owner of goods carriage or the employee of a transport company or goods booking agency shall produce for examination transport receipt and all other documents and account books concerning the goods carried, transported, loaded, unloaded, consigned or received for transport (maintained by him in the prescribed manner). The Commissioner or the person so appointed shall, for the purpose of examining that such transport receipts or other documents or account books are in respect of the goods carried, transported, loaded, unloaded, or consigned or

received for transport, have the powers to break open any package or packages of such goods.

(6) If the officer-in-charge of the check post or barrier or other officer as mentioned in sub-section (2) has reasons to suspect that the goods under transport are meant for business and are not covered by proper and genuine documents as mentioned in sub-section (2) or sub-section (4), as the case may be, or that the person transporting the goods is attempting to evade payment of tax due under this Act, he may, for reasons to be recorded in writing and after hearing the said person, but subject to previous approval of the Excise and Taxation Officer Incharge of the barrier order the unloading or detention of the goods, for such period as may reasonably be necessary and shall allow the same to be transported only on the owner of goods or his representative or the driver or other person in-charge of the goods carriage or vessel on behalf of the owner of the goods, furnishing to his satisfaction a security or executing a bond with or without sureties for securing the amount of tax, in the prescribed form and manner, for an amount not exceeding twenty-five percentum of the value of the goods but which shall not be less than fifteen percentum of the value of the goods:

Provided that where any goods are detained a report shall be made immediately and in any case within twenty four hours of the detention of the goods by the officer detaining the goods to the Assistant Excise and

Taxation Commissioner incharge of the District or the Excise and Taxation Officer incharge of the District or barrier, as the case may be, seeking the latter's permission for the detention of the goods for a period exceeding twenty-four hours, as and when so required and if no intimation to the contrary is received from the latter the former may assume that his proposal has been accepted.

(7) The officer detaining the goods shall record the statement, if any, given by the owner of the goods or his representative or the driver or other person-in-charge of the goods carriage or vessel and shall require him to produce proper and genuine documents as referred to in sub-section (2) or sub-section (4), as the case may be, before him in his office on a specified date on which date the officer shall submit the proceeding along with the connected records to such officer as may be authorised in that behalf by the State Government for conducting necessary enquiry in the matter. The said officer shall, before conducting the enquiry, serve a notice on the owner of the goods and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to evade the tax due under this Act, he shall, by order, impose on the owner of the goods a penalty not exceeding twenty-five percentum of the value of the goods but which shall not be less than fifteen percentum of the value of the goods, and in case he finds otherwise, shall order the release of the goods.

(8) If the owner of the goods or his representative or the driver or other person-in-charge of the goods carriage or vessel does not furnish security or does not execute the bond as required by sub-section (6) within ten days from the date of detaining the goods or goods carriage or vessel, the officer referred to in that sub-section may order further detention of the goods and in the event of the owner of the goods not paying the penalty imposed under sub-section (7) within twenty days from the date of the order imposing the penalty, the goods detained shall be made liable to be sold by the officer, who imposed the penalty, for the realisation of the penalty by public auction as may be prescribed . If the goods detained are of a perishable nature or subject to speedy or natural decay or when the expenses of keeping them in custody are likely to exceed their value the officer –in-charge of the check post or barrier or any other officer referred to in sub-section (2), as the case may be, shall immediately sell such goods or otherwise dispose them of. The sale proceeds shall be deposited in the Government treasury and the owner of the goods shall be entitled to only the balance amount of sale proceeds after deducting the expenses and other incidental charges incurred in detaining and disposing of the goods.

(9) The officer detaining the goods shall issue to the owner of the goods or his representative or the driver or the person-in –charge of the goods carriage or vessel receipt specifying the description and quantity of the goods so

detained and obtain an acknowledgement from such person or if such person refuses to give an acknowledgment, record the fact of refusal in the presence of the two witnesses.

(10) If the order of detention of goods under sub-section (6) or of imposition of penalty under sub-section (7) or sub-section (8) is in the meantime set aside or modified in appeal or other proceedings, the Officer detaining the goods and imposing the penalty, as the case may be, shall also pass consequential orders for giving effect to the orders in such appeal or other proceedings as the case may be.

(11) No dealer or any person, including a carrier of goods or agent of a transport company or booking agency acting on behalf of a dealer, shall take delivery of, or transport, from any vessel, station, airport or any other place, whether of similar nature or otherwise, any consignment of goods other than personal luggage or goods for personal consumption, the sale or purchase of which is taxable under this Act, except in accordance with such conditions as may be prescribed with a view to ensuring that there is no evasion of the tax imposed by or under this Act:

Provided that no place which is a railhead or post-office shall be so notified by the State Government.

*Explanation--* I.-In this section the expression 'goods carriage' has the same meaning as is assigned to it in

**Central Act clause (14) of section 2 of the Motor Vehicles Act, 1988.  
No. 59 of 1988**

*Explanation-- II.-* For the purposes of sub-section (2), the goods meant for the purposes of personal consumption shall not be construed as meant for the purposes of business.

*Explanation-- III.-* For purposes of sub-section (7), service of notice on the representative of the owner or the driver or other person-in-charge of the goods carriage or vessel shall be deemed to be a valid service on the owner of the goods.

**Registration  
and  
submission of  
returns by  
carrier of  
goods and  
agent of  
transport  
companies.**

35. (1) For carrying out the purposes of section 34, every carrier of goods, agent of transport company and booking agency having a place of business in the State of Himachal Pradesh and transporting or clearing or forwarding goods on behalf of a dealer, shall be required to obtain a certificate of registration, in the prescribed manner, from the Assessing Authority of the area in which it has a place of business, on payment of such fee as may be prescribed and on furnishing of a security to the satisfaction of the said Authority in the manner as may be prescribed.

(2) Every agency, referred to in sub-section (1), shall submit to the Assessing Authority such returns of the goods transported, cleared or forwarded by it, by such dates and in such manner as may be prescribed.

(3) The Assessing Authority shall have the powers to call for and examine the books of accounts, documents and other record in possession of such agency with a view to verifying the correctness of returns submitted and the compliance to the requirements of provisions of section 34.

**Assessee etc. permitted to attend through authorised agent.**

36. Any assessee, dealer or other person, who is entitled or required to attend before any Authority in connection with any proceedings under this Act, except when required to attend in person, may attend through a person authorised by him in writing in this behalf, in the prescribed manner.

**Power to call for information from Banking Companies etc.**

37. The Commissioner or any other person appointed to assist him under sub-section (1) of section 3 may, for carrying out the purposes of this Act, require any person including a banking company, post office or any officer thereof to furnish any information or statement useful for, or relevant to, any proceedings under this Act.

**Delegation of powers.**

38. Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers under this Act to an officer not below the rank of Additional Excise and Taxation Commissioner posted at the State Headquarters.

**Transfer of business.**

39. Where the ownership of the business of a registered dealer is entirely or in part 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 this

Act (except for liabilities under this Act already discharged by such dealer), be deemed to be and to have always been registered as if the certificate of registration of such dealer 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.

**Liability on stock in certain cases.**

**40.** Should his certificate of registration be cancelled under any provision of this Act, a dealer, save when he has transferred his business to some one else, and notwithstanding clause (s) of section 2 but subject to the provisions of section 9, shall be liable to pay tax on goods purchased by him in the State of Himachal Pradesh after registration, and remaining unsold at the time of cancellation of certificate at a rate leviable on the sale of such goods.

**Liability to pay tax of a partitioned Hindu family, dissolved firm etc.**

**41.** (1) Where a dealer is an undivided Hindu family, firm or other association of persons, and such family, firm or association is partitioned, dissolved or disrupted, as the case may be, -

(a) the tax payable under this Act by such family, firm or association of persons for the period upto the date of such partition, dissolution or disruption may be assessed as if no such partition, dissolution or disruption had taken place and all the provisions of this Act shall

apply accordingly; and

(b) every person who was, at the time of such partition, dissolution or disruption, a member or partner of an undivided Hindu family, firm or association of persons shall, notwithstanding such partition, dissolution or disruption, be liable severally and jointly for the payment of the tax including interest and penalty, if any, payable under this Act by such family, firm or association of persons, whether assessment is made prior to or after such partition, dissolution or disruption.

(2) Where the registration certificate of a dealer is cancelled under this Act in any case, other than that of a partition of Hindu Undivided Family or dissolution or disruption of a firm or association of persons, the tax payable under this Act by such dealer for the period upto the date of cancellation of the registration certificate may be assessed on such dealer as if no such cancellation had taken place and all the provisions of this Act shall apply accordingly.

**Liability of  
legal heirs to  
pay tax.**

**42. Where a dealer, liable to pay tax under this 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 the tax (including any penalty ) due from the dealer under this Act, whether such tax (including any penalty) has been assessed before his death but has remained un-paid, or is assessed after his death; and

(b) if the business carried on by the dealer is discontinued after his death, his legal representative shall be liable to pay out of the estate of the deceased to the extent the estate is capable of meeting the charge, the tax (including any penalty) due from the dealer under this Act, whether such tax (including any penalty) has been assessed before his death, or is assessed after his death,

the provisions of this Act shall, so far as may be, apply to such legal representative, or other person as if he were the dealer himself.

**Bar of  
certain  
proceedings.**

**43.** No assessment made and no order passed, under this Act, or the rules made thereunder, by the Commissioner or any person appointed under section 3 to assist him shall be called into question in any civil court and, save as provided in sections 45, 46 and 48, no appeal or application for revision shall lie against any such assessment or order.

## **CHAPTER-VI** **APPEAL, REVISION AND RECTIFICATION.**

### **Tribunal**

**44.** (1) The State Government shall by notification, establish an appellate tribunal consisting of a Chairperson and as many members as the Government may, from time to time, deem fit for the proper discharge of the functions conferred on the Tribunal by or under this Act.

(2) The Chairperson and the member shall possess such qualification as may be prescribed, and their terms of office shall be such as may be prescribed.

(3) The tenure of the Chairperson and members shall ordinarily be four years which may be extended by the State Government, by such period as it may think fit, but shall not be beyond the age of 62 years in any case.

(4) The salary, allowances and conditions of service of the Chairperson and other members of the tribunal, shall be such as may be prescribed.

(5) All cases coming before the tribunal shall be decided by a bench according to the opinion of the majority, and in any case where the Chairperson and the members are divided in their opinion on any point or points, they shall state the point or points on which they differ and refer the case for hearing by a bench consisting of, -

- (i) the Chairperson and the member who first heard it; and
- (ii) an additional co-opted member who is serving

and qualified to be appointed as member under sub-section (2),

and such case shall be decided in accordance with the opinion of the majority of members of the bench:

Provided that the additional member shall cease to hold the office on the disposal of the case.

(6) Subject to such conditions and limitations as may be prescribed, the tribunal may award costs and the amount of such costs which remains unpaid after the due date, shall be recoverable from the person ordered to pay the same as arrears of Land Revenue.

(7) The seal of the tribunal and the procedure to be followed by it shall be such as the State Government may prescribe.

(8) The State Government may appoint such officers and officials, as may be required, to assist the tribunal in the discharge of its functions under this Act:

Provided that the cases of the State shall be represented before the Tribunal by an officer not below the rank of Assistant Excise and Taxation Commissioner (Legal).

**Appeal**      **45.** (1) An appeal from every original order passed under this Act or rules made thereunder shall lie-

(a) if the order is made by an Assessing Authority or by an officer-in-charge of the check post or barrier or any other

officer not below the rank of the Excise and Taxation Officer, to the Deputy Excise and Taxation Commissioner;

- (b) if the order is made by the Deputy Excise and Taxation Commissioner, to the Commissioner or the Additional Excise and Taxation Commissioner, posted at the State Headquarters;
- (c) if the order is made by the Commissioner or the Additional Excise and Taxation Commissioner posted at the State Headquarters any officer exercising the powers of the Commissioner, to the Tribunal.

(2) An order passed in appeal by a Deputy Excise and Taxation Commissioner or by the Additional Excise and Taxation Commissioner posted at the State Headquarters or by the Commissioner or any officer, on whom the powers of the Commissioner are conferred, shall be further appealable to the Tribunal.

(3) Every order of the Tribunal, the Commissioner or any officer exercising the powers of the Commissioner or the Additional Excise and Taxation Commissioner posted at the State Headquarters or the order of the Deputy Excise and Taxation Commissioner or of the Assessing Authority or an officer in-charge of check-post or barrier or any

other officer not below the rank of an Excise and Taxation Officer, if not challenged in appeal or revision, shall be final.

(4) No appeal shall be entertained unless it is filed within sixty days from the date of communication of the order appealed against, or such longer period as the Appellate Authority may allow, for reasons to be recorded in writing.

(5) No appeal under sub-section (1) shall be entertained by an Appellate Authority unless such appeal is accompanied by satisfactory proof of the payment of the tax (including interest payable) or of the penalty, if any, imposed or both as the case may be:

Provided that if such Authority is satisfied that the dealer is unable to pay the tax (including interest payable) assessed or the penalty, if any, imposed or both, he may, for reasons to be recorded in writing, entertain an appeal without the tax (including interest payable) or penalty or both having been paid in full or after part payment of such tax (including interest payable) or penalty or both.

(6) Subject to such rules of procedure as may be prescribed, an Appellate Authority may pass such order on appeal as it deems just and proper.

**Revision.**

**46.** (1) The Commissioner may, of his own motion, call for the record of any proceedings which are pending before, or have been disposed of by, any Authority subordinate to

him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and, on finding the proceedings or the orders prejudicial to the interest of revenue, may pass such order in relation thereto as he may think fit:

Provided that the powers under this sub-section shall be exercisable only within a period of five years from the date on which such order was communicated.

(2) The State Government may, by notification, confer on any officer powers of the Commissioner under sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification and such officer shall be deemed to be the Commissioner for the purposes of sub-section (1).

(3) The tribunal, on application made to it against an order of the Commissioner under this section within sixty days from the date of the communication of the order, for the purpose of satisfying itself as to the legality or propriety of such order, may call for and examine the record of any such case and may pass such orders thereon as it thinks just and proper.

(4) No order shall be passed under this section, which adversely affects any person unless such person has been given a reasonable opportunity of being heard.

**Rectification  
of mistakes.**

47. (1) The Tribunal or Commissioner or the officer on whom powers of the Commissioner for the purposes of

sub-section (1) of section 46 have been conferred by the State Government may at any time within one year from the date of any order passed by him on an application made to him or of his own motion, rectify any mistake apparent from the record, and shall within a like period rectify any such mistake which has been brought to his notice by any person affected by such order:

Provided that the Commissioner may entertain an application under this sub-section after the expiry of the said period of one year, if he is satisfied that the applicant was prevented by sufficient cause from making the application in time:

Provided further that no such rectification shall be made if it has the effect of enhancing the tax or reducing the amount of refund, unless the Commissioner has given notice in writing to such person of his intention to do so and has allowed such person a reasonable opportunity of being heard.

(2) Where any such rectification has the effect of enhancing or reducing the amount of tax or penalty, the Commissioner shall, in the prescribed manner, order the recovery of the amount due from or as the case may be, order the refund of the amount due to, such person.

**Revision to  
High Court.**

**48.** (1) Any person aggrieved by an order made by the tribunal under sub-section (2) of section 45 or under sub-section (3) of section 46, may, within 90 days of the

communication of such order, apply to the High Court of Himachal Pradesh for revision of such order if it involves any question of law arising out of erroneous decision of law or failure to decide a question of law.

(2) The application for revision under sub-section (1) shall precisely state the question of law involved in the order, and it shall be competent for the High Court to formulate the question of law.

(3) Where an application under this section is pending, the High Court may, or on application, in this behalf, stay recovery of any disputed amount of tax, penalty or interest payable or refund of any amount due under the order sought to be revised:

Provided that no order for stay of recovery of such disputed amount shall remain in force for more than 30 days unless the applicant furnishes adequate security to the satisfaction of the Assessing Authority concerned.

(4) The application for revision under sub-section (1) or the application for stay under sub-section (3) shall be heard and decided by a bench consisting of not less than two judges.

(5) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.

**Power of authorities to take evidence on oath etc.**

**49.** The Tribunal or the Commissioner or any person appointed under sub-section (1) of section 3 shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters, namely:--

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents and impounding or detaining them;
- (c) issuing commissions for the examination of witnesses;
- (d) requiring or accepting proof of facts by affidavits;
- (e) such other powers as may be prescribed;

and any proceeding under this Act before the Commissioner or any person appointed to assist him under sub-section (1) of section 3 shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 and for the purposes of section 199 of the Indian Penal Code, 1860.

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## **CHAPTER-VII OFFENCES AND PENALTIES**

**Offences and penalties.**

**50. (1)** Any person who----

- (a) wilfully acts in contravention of the provisions of this Act or the rules made thereunder; or
- (b) furnishes any certificate, declaration, bill, cash memorandum, voucher, delivery note, goods

receipt or other document, which he knows or has reason to believe it to be false; or

- (c) being a registered dealer, falsely represents when purchasing any class of goods for use by him in the manufacture of any goods for sale, that goods of such class are covered by his certificate of registration; or
- (d) not being a registered dealer, falsely represents when purchasing goods in Himachal Pradesh that he is a registered dealer; or
- (e) after purchasing any goods for any of the purposes specified in the Act, fails, without reasonable excuse, to make use of the goods for any such purpose; or
- (f) has in his possession any form issued under the Act on payment by the Government, which has not been obtained by him or by his principal or by his agent in accordance with the provisions of this Act or any rules made thereunder; or
- (g) prevents inspection or examination of books, documents and accounts or knowingly maintains false books, documents and accounts or wilfully fails to produce the books, documents and accounts mentioned in section 32; or
- (h) fails to carry with him any of the records or

documents specified in section 34; or

- (i) makes any statement or declaration in any of the documents specified in section 34 or section 35, as the case may be, which statement or declaration he knows or, has reasons to believe to be false; or
- (j) in any way is knowingly concerned in any fraudulent evasion or attempt at evasion or abetment of evasion of any tax payable in respect of the sale or purchase of any goods under this Act; or
- (k) if he is a driver or any other person-in-charge of goods vehicle or vessel or an owner of the goods, refuses on demand by the officer-in-charge of the check post or barrier or any other officer, not below the rank of an Excise and Taxation Inspector, to give his name and address or the name and address of the owner of the goods vehicle or of the consignor or consignee of the goods or gives any name and address of any of these persons, which he knows or has reason to believe to be false; or
- (l) aids or abets any person in the commission of any offence specified in this sub-section;

he shall, without prejudice to the recovery of any tax or interest or penalty which may be due from him, be punishable with simple imprisonment which may extend to

six months, or with fine, or with both; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

(2) Whosoever contravenes or fails to comply with, any of the provisions of this Act or the rules made thereunder, or any order or direction made or given thereunder, shall, if no other penalty is provided either under sub-section (1) of this section or under any other provisions of this Act for such contravention or failure, be liable to imposition of a penalty, not exceeding two thousand rupees, and where such contravention or failure is continuing one, to a daily penalty not exceeding fifty rupees during the period of the continuance of the contravention or failure.

(3) Any officer-in-charge of the check post or barrier or any other officer, not below the rank of an Excise and Taxation Officer, appointed under sub-section (1) of section 3 or such other officer as the State Government may, by notification, appoint, may, after affording to the person concerned a reasonable opportunity of being heard, impose the penalty mentioned in sub-section (2):

Provided that the officer-in-charge of the check post or a barrier shall exercise such powers only at such check posts or barriers.

**Compounding of offences.** 51. (1) The Commissioner or any other officer not below the rank of Assistant Excise and Taxation Commissioner

or Excise and Taxation Officer-Incharge of the district may, either before or after the institution of proceedings for any offence punishable under section 50 or under any rule made under this Act, accept from any person accused of such offence by way of composition of offence a sum of money equal to double the amount of tax which would have been payable on the turnover of sales or purchases to which the said offence relates, whichever is greater.

(2) On payment of such sum as may be determined under sub-section (1), no further proceedings shall be taken against the accused person in respect of the same offence and any proceedings, if already taken, shall stand abated.

**Cognizance  
of offences.**

**52.** (1) No Court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with previous sanction of the State Government or of such officer as may be authorised by a notification published in Official Gazette and no Court inferior to that of a Magistrate of the first class shall try any such offence.

(2) Subject to the condition, if any, as may be prescribed, the Commissioner, may authorise, either generally or in respect of a particular case or class of cases, any officer or person subordinate to him to investigate all or any of the offences punishable under this Act.

(3) All offences punishable under sub-section (1) of section

49 shall be non-cognisable and bailable.

## **CHAPTER-VIII** **MISCELLANEOUS**

### **Directors of defaulting companies to be liable to pay tax etc.**

**53.** Notwithstanding anything contained in any other law, where any tax assessed or penalty imposed under this Act on a company cannot be recovered by reason of the company having gone into liquidation or for any other reason, then every person, who was Director of such company at any time during the relevant period for which the tax is due or in respect of which the default for which the penalty is imposed was committed, shall be jointly and severally liable for the payment of such tax and penalty unless he proves that the non-payment or non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

### **Disposal of certain property.**

**54.** Any property seized or detained under this Act, which is not claimed by any person, shall be disposed of in accordance with the provisions of sections 25, 26 and 27 of the Police Act, 1861, as if the officer or Authority seizing or detaining such property were a police officer:

Provided that if, during the period allowed in accordance with such provisions, any person claims the property, it shall not be released to him unless the tax or penalty or both due in respect of the same under this Act is paid by such person.

<b>Indemnity.</b>	<b>55.</b> No suit, prosecution or other legal proceedings shall lie against any officer or servant of the State Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.
<b>Returns etc. to be confidential.</b>	<b>56.</b> (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act other than proceedings before a criminal court, shall, save as provided in sub-section (3), be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as aforesaid, be entitled to require any officer, of the State Government to produce before it any such statement, return, accounts, document or record or any part thereof, or to give evidence before it in respect thereof.
<b>1 of 1872</b>	<p>(2) If, save as provided in sub-section (3), any officer of the State Government discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.</p> <p>(3) Nothing contained in this section shall apply to the disclosure-</p> <p>(a) of any such particulars in respect of any such statement, return, accounts, document, evidence, affidavit or deposition</p>

for the purpose of any prosecution under this Act or the Indian Penal Code, 1860; or

(b) of any such particulars to any person entrusted with the administration of this Act for the purposes of carrying out the objects of this Act; or

(c) of any such particulars when such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or summons or the recovery of any demand; or

(d) of any such particulars to a civil court in any suit to which the State Government in the Excise and Taxation Department or any officer of the said Department is a party and which relates to any matter arising out of any proceeding under this Act; or

(e) of any such particulars to any officer appointed to audit receipts or refunds of the tax imposed by this Act; or

(f) of any such particulars where such particulars are relevant to any enquiry into the conduct of an official of the Excise and Taxation Department of the State Government to any person or persons appointed by the Commissioner under the Public Servants (Inquiries) Act, 1850, or to any officer otherwise appointed to hold such

inquiry or to a Public Service Commission established under the Constitution when exercising its functions in relation to any matter arising out of such inquiry; or

(g) of the annual gross turnover, shown in any return furnished or determined in any assessment order passed under this Act, to any officer of the Central or any State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it; or

(h) of any such particulars which are relevant to any inquiry into the charge of misconduct, against an income- tax practitioner or other person who represents any assessee before any Authority in any proceeding under this Act; or

(i) of any such particulars to the Director of Economics and Statistics Department of the State Government as may be necessary for enabling him to work out the incidence of tax on any commodity or for carrying out any statistical survey of trade, commodity or dealer; and

(j) of any such particulars for the purpose of preparing data by computerization :

Provided that the information mentioned in

clauses (a), (f) and (g) may be permitted to be disclosed by the Assistant Excise and Taxation Commissioner or the Excise and Taxation Officer, In-charge of the District only when he is satisfied, after scrutiny of the request made in this behalf and after such enquiries as he considers necessary, that the disclosure is admissible under this sub-section.

**Persons appointed to be public servants.**

**57.** All persons appointed under sections 3 and 44 shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

**Provision in case of inter-State trade etc.**

**58.** Notwithstanding anything contained in this Act, -

- (a) a tax on the sale or purchase of goods shall not be imposed under this Act -
  - (i) where such sale or purchase takes place outside the State of Himachal Pradesh; or
  - (ii) where such sale or purchase takes place in course of import of the goods into, or export of the goods out of, the territory of India; and
- (b) a tax on the sale or purchase of any goods shall not be imposed where such sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide.

**Power to seek assistance from police and other officers.**

**59.** An officer exercising the powers under this Act may take 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 the other

officer shall render necessary assistance in accordance with law.

**Scrutiny of returns.**

**60.** (1) Without prejudice to the provisions of sub-section (4) of section 21, at any time in the year, every Assessing Authority may undertake scrutiny of the returns filed during any tax period for ascertaining compliance of the provisions of sub-sections (3) and (4) of section 16 and to check correctness of application and calculation of rates of tax, penalty and interest payable, claim of input tax credit and payment of full amount of tax due according to such return.

(2) If any mistake is detected as a result of such scrutiny made as per the provisions of sub-section (1), the Assessing Authority shall serve a notice in the prescribed form on the dealer to make payment of the extra amount of tax, penalty and interest.

(3) The Assessing Authority may also identify the dealers who have not filed the return for any tax period or not paid the tax, and shall, besides initiating action under section 16, serve a notice in the prescribed form directing such dealer to forthwith file such return and pay the amount of tax, penalty and interest due.

**Audit and inspection.**

**61.** (1) The Commissioner or any other Authority as may be authorised by him in this behalf may, for ascertaining the correctness of returns furnished, admissibility of various claims and input tax credit, on the basis of any prescribed criteria or on random basis, inspect or audit or cause to be

audited any of the returns furnished, documents or statutory forms submitted by a dealer, subject to such conditions and in such manner as may be prescribed.

(2) The inspection or audit as required under sub-section (1), may either be undertaken in the office of such Authority or in the business premises, or warehouse, or office of the dealer.

(3) The prescribed authority shall after considering all the evidence produced in the course of proceedings either, --

- (a) confirm the self-assessment under sub-section (1) of section 21; or
- (b) not confirm the self-assessment under sub-section (1) of section 21 and calculate the amount of tax due from the dealer; or
- (c) calculate the amount of tax due from a dealer, if no such assessment has been made:

Provided that if the prescribed authority proposes to rely upon any evidence collected by him in the course of inspection, audit or investigation, the dealer shall, by a notice, be afforded an opportunity of correcting his self-assessment within a period not exceeding thirty days and if he fails to rectify his self-assessment, such authority shall re-assess the tax due, under the Act.

**Transitional provisions.**

**62.** (1) Any registered dealer, who would have continued to be so liable to pay tax under the Himachal Pradesh General Sales Tax Act, 1968, (hereinafter in this section called the

‘said Act’) had this Act not come into force, shall be deemed to be registered under this Act.

(2) Where, on the date of commencement of this Act, a registered dealer holds the stock of any taxable goods, purchased by him on or after 1<sup>st</sup> April, 2004, he shall furnish the particulars thereof, in such form within such period, in such manner and to such Authority, as may be prescribed.

(3) Where the taxable goods, referred to in sub-section (2), held in stock by a registered dealer (other than the dealers falling in section 7 or sub-section (2) of section 16) on the date of commencement of this Act are those on which tax under the said Act has suffered at the first stage of sale, and are resold by him after the commencement of this Act, an input tax credit shall be allowed to him in respect of the amount of tax proved to have been paid, on the purchase of such goods, under the said Act:

Provided that the input tax credit shall be allowed to a dealer, registered under this Act on or after 1<sup>st</sup> day of April, 2005, in respect of purchases of taxable goods where such purchases are for resale or use in manufacture of goods for sale and that such purchases have been made within three months prior to the date of registration.

(4) The Financial Commissioner functioning under the said Act before the commencement of this Act shall, on and from the date of commencement of this Act, continue to function as such under this Act, until the State Government,

establishes the Tribunal under section 44.

(5) Any dealer who manufactures and sells goods and who, immediately before the commencement of this Act, was enjoying the benefit of any incentive of sales tax leviable on the sale of manufactured goods under the said Act and who would have continued to be eligible for such incentive on the date of commencement of this Act, had this Act not come into force, may be allowed by the State Government, by notification, --

- (a) to continue to avail of the benefit of exemption from payment of tax on the sale of manufactured goods made by such dealer himself for the unexpired period, subject to the condition that no input tax credit shall be allowed to the subsequent dealer purchasing goods manufactured and sold by such dealer (industrial unit), or
- (b) to opt, in the prescribed manner, to avail of the facility of making deferred payment of tax for the unexpired period of incentive instead of availing the exemption specified in clause (a), or
- (c) to continue to avail of the facility of making deferred payment of tax on the sale of manufactured goods made by such dealer himself for the unexpired period and such dealer (industrial unit) shall be eligible to issue

tax invoice and to claim input tax credit subject to the provisions of section 11 of this Act.

(6) Notwithstanding anything to the contrary, contained in this Act, the State Government may accept from any registered dealer, who is an importer, or manufacturer and is not entitled to enjoy the benefit of exemption from payment of tax, or deferment of payment of tax, who, may at his option pay, in lieu of the tax payable by him on the sale of such goods, the tax at such rate on the maximum retail price of such goods, as the State Government may by notification, specify, and different rates of tax may be fixed for different items of such goods.

**Power to make rules.**

63. (1) The State Government may by notification in the Official Gazette, make rules consistent with this Act, for securing the levy and collection of tax and generally for carrying out the purposes of this Act.

(2) All rules made under this Act shall be laid, as soon as may be, after they are made, before the Legislative Assembly, while it is in session, for a total period of fifteen days which may be comprised in one session or in two successive sessions and, if before the expiry of the session in which they are so laid or of the session immediately following, the Assembly agrees in making any modifications in the rules or the Assembly decides that the rule should not be made, such rules shall have effect only in such modified form or be of no effect, as the case may be. However, that any such modification or annulment shall be without

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prejudice to the validity of anything done earlier under that rule.

**64.** (1) The Himachal Pradesh General Sales Tax Act, 1968, (hereinafter in this section called the 'aforesaid Act') is hereby repealed from the date of coming into force of this Act:

Provided that such repeal of the aforesaid Act shall not affect, --

- (a) the previous operation of the aforesaid Act or anything duly done or suffered thereunder; or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the aforesaid Act; or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the aforesaid Act; or
- (d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, punishment as aforesaid; and

any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the aforesaid Act had not been repealed.

(2) Unless it is otherwise expressly provided—

- (a) anything done or any action taken (including any appointment, notification, notice, order or rule or use of any form or declaration) in the exercise of any power

conferred by or under the aforesaid Act shall, in so far as it is not inconsistent with the provisions of this Act, continue to be in force and be deemed to have been done or taken in the exercise of the powers conferred by or under the provisions of this Act as if this Act were in force on the date on which such thing was done or such action was taken unless and until it is superseded by or under this Act and all arrears of tax and other amount due under the aforesaid Act, at the commencement of this Act may be recovered as if they had accrued under this Act;

- (b) any account, register or document seized under any provision of the aforesaid Act and not released shall continue to be retained, till the same is released, in accordance with the provisions of the aforesaid Act; and
- (c) any goods seized or detained under any provision of the aforesaid Act or the rules made thereunder and not released shall continue to remain seized or detained, till such goods are released, in accordance with the provisions of aforesaid Act.

(3) Any assessment, appeal, revision or other proceeding arising under the aforesaid Act and the rules made thereunder and or pending before an officer or Authority duly empowered to make assessment or hear and decide such appeal, revision or other proceeding immediately preceding

the commencement of this Act shall, on the date of such commencement stand transferred to the officer or Authority competent to make assessment or to hear and decide appeal or revision or other proceedings under this Act and thereupon such assessment shall be made or such appeal or revision or other proceeding shall be heard and decided within the period, if any, specified therefore, by such officer or Authority in accordance with the provisions of the aforesaid Act or the rules made thereunder as if they were the officers or authorities duly empowered for the purpose under the aforesaid Act.

(4) Any application by a dealer or the Commissioner to the Financial Commissioner for making a reference to the High Court under section 33 of the aforesaid Act; or any reference made to the High Court under section 33 of aforesaid Act, pending on the date of commencement of this Act shall be disposed of by the Financial Commissioner or the High Court, as the case may be, in accordance with the provisions of section 33 of the aforesaid Act as if this Act had not been enacted and the aforesaid Act had not been repealed.

(5) Notwithstanding anything contained in sub-section (1), any appeal, revision or other proceeding arising under the aforesaid Act but preferred or initiated after the commencement of this Act, shall be heard and decided by the Authority competent to entertain any appeal, revision or any other proceeding in accordance with the provisions of this Act.

## SCHEDULE 'A'

(See clause (a) of sub-section (1) of section 6)  
**PART-I: GOODS TAXABLE @ 1 percentum**

Sr.No.	Goods
1.	2.
1.	Gold, silver, other precious metals, precious stones and ornaments thereof.

## **PART-II: GOODS TAXABLE @ 4 percentum**

1.	Agricultural implements not operated manually or not driven by animal.
2.	All equipments for communication such as, Private Branch Exchange (P.B.X.) and Electronic Private Automatic Branch Exchange (E.P.A.B.X.) etc.
3.	All intangible goods like copyright, patent and representative licence etc.
4.	All kinds of bricks including fly ash bricks, refractory bricks and asphaltic roofing earthen tiles.
5.	All types of yarn other than cotton and silk yarn in hank and sewing thread.
6.	Aluminium utensils and enamelled utensils.
7.	Areca nut, betel nut and betel nut powder.
8.	Bamboo, pulp of bamboo, bamboo paper, wood and its articles (other than those covered by item No. 5 of Schedule 'B').
9.	Bearings.
10.	Belting.
11.	Betel leaves.
12.	Bidi leaves.
13.	Bicycles, tricycles, cycle rickshaws and parts.
14.	Bitumen.
15.	Bone meal.
16.	Branded Bread.
17.	Bulk drugs and other drugs, medicines and medical plant and equipment.
18.	Capital Goods.
19.	Castings.
20.	Centrifugal, mono block and submersible pumps and parts thereof.

21.	Coffee beans and seeds, cocoa pod, green tea leaves and chicory.
22.	Chemical fertilizers and chemical fertilizer mixtures; Insecticides, pesticides, rodenticides, fungicides, weedicides, herbicides, plant regulators and plant growth nutrients.
23.	Coir and coir products excluding coir mattresses.
24.	Cotton and cotton waste.
25.	Crucibles.
26.	Declared goods as specified in section 14 of the Central Sales Tax Act, 1956 (Central Act, 74 of 1956).
27.	Edible oils, oil cake and de-oiled cake.
28.	Electrodes including welding electrodes and welding rods.
29.	Exercise books (except those specified in item No. 25 of Schedule 'B'), graph book and laboratory note book.
30.	Ferrous and non-ferrous metals and alloys; non-metals such as aluminium, copper, zinc and extrusions thereof
31.	Fibres of all types and fibre waste.
32.	Flour (atta), maida, suji, besan etc.
33.	Fried grams.
34.	Gur, jaggery and edible variety of rub-gur.
35.	Hand pumps and spare parts.
36.	Herbs, bark, dry plants or dry roots, commonly known as jari booti and dry flowers.
37.	Hose pipes.
38.	Hosiery goods.
39.	Husk and bran of cereals.
40.	Ice.
41.	Imitation jewellery
42.	Incense sticks commonly known as aggarbati, dhupkathi and dhup bati.
43.	Industrial cables (high voltage cable, XL PE cables, jelly-filled cables, optical fibre cables).
44.	IT products including computers, telephone (including mobile handsets and parts thereof, teleprinter and wireless equipments and parts thereof) and other products as may be notified.
45.	Industrial input and packing materials as may be notified.
46.	Kerosene oil sold through Public Distribution System.
47.	Leaf plates and cups (other than those specified in item No. 29 of Schedule 'B').
48.	Murmuralu, pelalu, atakutu, puffed rise, muri.
49.	Newars.

50.	Napa slabs (rough flooring stones).
51.	Ores and minerals.
52.	Paddy, rice, wheat and pulses.
53.	Paper and news print.
54.	Pipes of all varieties including G.I. pipes, C.I. pipes, Ductile pipes and PVC pipes.
55.	Plastic footwear.
56.	Printed material including diary and calendar.
57.	Printing ink excluding toner and cartridges.
58.	Processed and branded salt.
59.	Rail coaches, engines and wagons.
60.	Readymade garments.
61.	Renewable energy devices and parts thereof.
62.	Safety matches.
63.	Sewing machines.
64.	Ship and other water vessels.
65.	Silk fabrics (subject to abolition of rental agreement).
66.	Skimmed milk powder.
67.	Solvent oils other than organic solvent oil.
68.	Spices of all varieties and forms including cumin seed, aniseed, turmeric and dry chillies.
69.	Sports goods excluding apparels and footwear.
70.	Starch.
71.	Sugar and khandsari.
72.	Tamarind.
73.	Textile fabrics.
74.	Tobacco.
75.	Tractors, threshers harvesters and attachments and parts thereof.
76.	Transmission towers.
77.	Umbrella except garden umbrella.
78.	Vanaspati (hydrogenated vegetable oil).
79.	Vegetable oil including gingili oil and bran oil.
80.	Writing instruments (other than those specified in item No. 25 of Schedule 'B').

**Note:** - The rate of tax in respect of Sugar, Textile fabrics and Tobacco, specified at Sr. No. 71, 73 and 74 of this Schedule, shall be applicable from the date as the State Government may notify.

**PART-III: GOODS TAXABLE @ 12.5 percentum**

1.	All other goods than those specified in Part-I, Part-II, Part-IV, Part-V and Part-VI of Schedule 'A' or in Schedule 'B' or in Schedule 'C' or in Schedule 'D'.
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**PART-IV: GOODS TAXABLE @ 20 percentum**

<b>Sr.No.</b>	<b>Goods</b>
1.	2.
1.	Arms and ammunition
2.	Lottery tickets

**PART-V: GOODS TAXABLE @ 30 percentum**

<b>Sr.No.</b>	<b>Goods</b>
1.	2.
1.	Lime-stone (non-L.D. Grade)
2.	Timber (excluding converted timber)

**PART-VI: GOODS TAXABLE @100 percentum**

<b>Sr.No.</b>	<b>Goods</b>
1.	2.
1.	Lime-stone (L.D. grade)

**SCHEDULE 'B'**  
**(See section 9)**

**GOODS EXEMPTED FROM TAX**

<b>Sr. No.</b>	<b>Goods</b>	<b>Conditions of exemption</b>
<b>1.</b>	<b>2.</b>	<b>3.</b>
1.	Agriculture or horticulture produce, including herbs or saplings of trees sold by person or a member of his family, grown by himself or grown on any land in which he has an interest whether as owner or usufructuary mortgagee, tenant or otherwise.	-
2.	Agricultural implements manually operated or animal driven.	-
3.	Aids and implements used by handicapped persons.	-
4.	Animal feed and feed supplements, namely, processed commodity sold as poultry feed, cattle feed, pig feed, fish feed, fish meal, prawn feed, shrimp feed and feed supplements and mineral mixture concentrates, intended for use as feed supplements including grass, hay and straw.	-
5.	Articles made of bamboo-wood used for agricultural purposes.	-
6.	Baan.	-
7.	Books, periodicals and journals.	-
8.	Charkha, Ambar Charkha; handlooms, Himachali handloom articles, Himachali handloom shawls, caps and handspun yarn, and Gandhi Topi.	-
9.	Charcoal.	-
10.	Coarse grains other than paddy, rice and wheat.	-
11.	Condoms and contraceptives.	-
12.	Cotton yarn in hank and silk yarn in hank.	-
13.	Curd, lassi, butter milk and separated milk.	-
14.	Earthen pots (unglazed).	-
15.	Electric Energy.	-
16.	Fire wood.	When sold for domestic use

17.	Fishnet, fish fabrics and fish seeds.	-
18.	Foodgrains supplied free of cost by the Government of India.	-
19.	Fresh fruits.	-
20.	Fresh milk and pasteurised milk.	-
21.	Fresh plants, sapling and fresh flowers.	-
22.	Fresh vegetables.	-
23.	Garlic, ginger, green chillies, onions, potatoes, sweet potatoes, tapioca and their seeds.	-
24.	Glass bangles (including plastic shell and lac bangles).	-
25.	Graphite pencils, writing chalk, crayons, sketch, pens, drawing colour eraser, sharpener, footrules, geometry boxes, ink tablets, exercise and drawing books of the type used in schools and takhties used by students.	-
26.	Human blood and blood plasma.	-
27.	Indigenous handmade musical instruments.	-
28.	Kumkum, bindi, alta and sindur.	-
29.	Leaf plates and leaf-cups (when not compressed).	
30.	Meat, fish, prawn and other aquatic products when not cured or frozen; eggs and live stock and animal hair.	Except when sold in sealed containers
31.	National flag.	-
32.	Non-Judicial stamp paper sold by Government Treasuries; postal items like envelope, postcard etc. sold by Government; rupee note when sold to the Reserve Bank of India and cheques, loose or in book form.	-
33.	Organic manure.	-
34.	Raw wool.	-
35.	Seeds.	
36.	Semen including frozen semen.	-
37.	Silk worm laying cocoon and raw silk.	-
38.	Tender green coconut.	-
39.	Toddy, Neera and Arak.	-
40.	Unbranded bread.	-
41.	Unprocessed and unbranded salt.	-
42.	Water other than – (i) aerated, mineral, distilled, medicinal, ionic, battery, demineralised water,	-

	and (ii) water sold in sealed container.	
43.	Writing slate and slate pencils.	-

## **SCHEDULE 'C'**

**(See clause (b) of sub-section (1) of section 6)**

### **GOODS SUBJECT TO PURCHASE TAX**

<b>Sr.No.</b>	<b>Goods</b>
<b>1.</b>	<b>2.</b>
1.	Resin (crude pine gum)
2.	Khair, Eucalyptus and Popular trees when they have fallen or have been felled or agreed to be felled including their stumps, roots, fuel wood and other wood in all forms when purchased from the growers within the State.

## **SCHEDULE 'D'**

**(See clause (c) of sub-section (1) of section 6)**

<b>Sr.No.</b>	<b>Goods</b>
<b>1.</b>	<b>2.</b>
1.	Motor-spirit (Petrol including Aviation Turbine Fuel and Diesel).
2.	Liquor.

## **STATEMENT OF OBJECTS AND REASONS**

The taxes on the sale and purchase of goods are at present levied under the Himachal Pradesh General Sales Tax Act, 1968 and tax is being collected at the first point only. With a view to evenly distribute the impact of levy on all value additions in the course of transactions, avoid cascading effect of taxation and eliminate fiscally unsalutary and harmful tax practices like tax havens or preferential tax regimes creating tax-rate war amongst the States, it has been decided at the national level conferences of the Chief Ministers of all the States to uniformly reform the existing commodity-taxation and replace it by a more wholesome, rational and effective system of value added taxation. Accordingly, it is considered essential to introduce the value added tax system of levy of tax on sales or purchases of goods in the State. This has necessitated the enactment of new legislation.

The Bill seeks to achieve the aforesaid objectives.

**(RANGILA RAM RAO),**  
***Minister-in-Charge.***

**SHIMLA:**

**The .....2005.**

## **FINANCIAL MEMORANDUM**

The provisions of this Bill are designed to replace levy of tax on purchases and sales under the Himachal Pradesh General Sales Tax Act, 1968, by a more rationalised levy which is likely to yield about Rs.500 crores per annum. The provisions of the Bill, when enacted will be administered by the existing machinery of the Excise and Taxation Department without incurring extra expenditure.

## **MEMORANDUM REGARDING DELEGATED LEGISLATION**

Clause 63 of the Bill seeks to empower the State Government to make rules for carrying out the purposes of the Act. The proposed delegation of powers are essential and normal in character.

## **RECOMMENDATION OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA.**

(Excise and Taxation Department File No. EXN-F (11) 5/ 2004)

The Governor, Himachal Pradesh after having been informed of the subject matter of the Himachal Pradesh Value Added Tax Bill, 2005, recommends, under article 207 of the Constitution of India, the introduction in and consideration by the Legislative Assembly of the said Bill.

# **THE HIMACHAL PRADESH VALUE ADDED TAX BILL, 2005.**

**A**

**BILL**

to re-enact the law to provide for the levy of a value added tax on the sales or purchases of goods in the State of Himachal Pradesh and for certain other matters connected therewith.

**(RANGILA RAM RAO),**  
***Minister-in-Charge.***

(SURINDER SINGH THAKUR),  
Secretary(Law).

SHIMLA:

The .....2005.