

THE WEST BENGAL VALUE ADDED SALES TAX ACT, 2002

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement &endash;This Act may be called the West Bengal Value Added Sales Tax Act, 2002.

It extends to the whole of West Bengal.

This section shall come into force at once; and the remaining provisions of this Act shall come into force on such date or dates as the State Government may, by Notification, appoint, and different dates may be appointed for different provisions of this Act.

This Act shall not apply in respect of :

transfer of property in goods in execution of a Works Contract in West Bengal;

any 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;

sale of lottery tickets;

sale of motor Spirit except furnace oil and Kerosene oil.

Definitions. &endash; In this Act, unless the context otherwise requires,-

"Additional Commissioner" means an Additional Commissioner of Commercial Taxes appointed sub-section (1) of section 5 or deemed to have been appointed under clause (a) of sub-section (2) of section 106;

"Appellate and Revisional Board" means the West Bengal Commercial Taxes Appellate and Revisional Board deemed to have been constituted under section 6;

'Appointed day', in relation to any provision of this Act, means the date on which such provision comes in to force;

'Bureau' means the Bureau of investigation constituted under section 7 or deemed to have been constituted under clause (c) of sub-section (2) of section 106;

'Business' includes &endash;

any trade, commerce, manufacture, or any adventure or concern in the nature of trade, commerce, manufacture whether or not such trade, commerce, manufacture, adventure or concern is carried on with the motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and

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

(5A) 'Certified dealer' means any person who is not liable to be registered or who is not registered under this Act and who intends to set up a manufacturing unit in West Bengal for sale of goods taxable under this Act and in whose favour a provisional certificate has been issued under section 25 of the Act.

"Commissioner" means the Commissioner of Commercial Taxes appointed under sub-section (1) of section 3 or deemed to have been appointed under clause (a) of sub-section (2) of section 106;

"Company" means a company as defined in section 3 of the Companies Act, 1956 (1 of 1956), and includes a body corporate or corporation within the meaning of clause (7) of section 2, or a foreign company referred to in section 591, of that Act;

"Dealer" means any person who carries on the business of selling or purchasing goods in West Bengal and includes

an occupier of a jute-mill or shipper of jute;

Government, local authority, a statutory body, a trust or other body corporate which, or a liquidator or a receiver appointed by a court in respect of a person, being a dealer as defined in this clause, who, whether or not in the course of business, sells, supplies or distributes directly or otherwise goods for cash or for deferred payment or for commission, remuneration or other valuable consideration.

Explanation 1. &endash; A co-operative society or a club or any association that sells goods to its members is a dealer.

Explanation 2.- A factor, a broker a commission agent, a del credere agent, an auctioneer, an agent for handling or transporting of goods or handling of document of title to goods or any other mercantile agent, by whatever name called, and whether of the same description as herein before mentioned or not, who carries on the business of selling goods and who

has, in the customary course of business, authority to sell goods belonging to principals, is a dealer;

Explanation 3.- A person engaged exclusively in the business of &endash;

any transfer of property in goods in execution of a works contract in West Bengal;

any 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;

selling lottery tickets; and

selling motor spirit, except furnace oil and kerosene oil,

shall not be a dealer under this Act.

"Director", in relation to a company, includes any person occupying the position of director, by whatever name called

"Goods" includes all kinds of movable property other than actionable claims, stock, shares or securities

"Government" means the Central Government, the Government of any State or the Government of any Union Territory, not being a registered dealer ;

"Gross turnover of sales", in relation to any period, means the aggregate of the sale-price on parts of sale-price receivable by a dealer during such period after deducting therefrom the amounts, if any, refunded by the dealer in respect of any goods returned, or rejected by the purchaser within such period;

(13) "Input tax" in relation to any dealer, means tax paid or payable under this Act, excluding special additional tax (SAT), by a dealer on purchase of goods for resale in West Bengal or for use by him directly in the manufacture of taxable goods in West Bengal and containers and other materials for the packing of such goods or of inputs thereof, in West Bengal for sale in West Bengal.

(14) "Tax invoice" means a document listing goods sold with description, quantity, price, etc. as prescribed;

(15) "Jute-mill" means a factory as defined in, or declared to be a factory under, the Factories Act, 1948 (63 of 1948), which is engaged wholly or in part in the manufacture of jute products;

(16) "Manufacture", with all its grammatical variations and cognate expressions, means producing, making, extracting or processing of any goods;

(17) "Motor spirit" means any liquid or admixture of liquids which is ordinarily used directly or indirectly as fuel for a motor vehicle or stationary internal combustion engine.

Explanation ‐ For the purpose of this clause, the expression " motor vehicle" shall include any means of carriage, conveyance or transport by land, air or water;

(18) "Notification" means a notification published in the Official Gazette;

(19) "Occupier of a jute-mill" means the person who has ultimate control over the affairs of the jute-mill;

(20) "Output tax" - in relation to any person or dealer means the tax payable by him in respect of sale of goods as defined under this Act made by him in West Bengal;

(21) "Partnership", "partner" and "firm" shall have the meanings respectively assigned to them in the Indian Partnership Act, 1932 (9 of 1932);

(22) "Period" ‐ means a quarter of a year according to the British calendar, if not otherwise prescribed;

(23) "Place of business" means any place where a dealer sells any goods or keeps accounts relating to sales or purchases of goods, and includes any warehouse of such dealer;

"Prescribed" means prescribed by rules made under this Act;

(24A) "Provisional certificate" means the certificate issued to a person under Section 25 of this Act;

(25) "Principal officer", in relation to a company, means the secretary, manager, director or managing director of such company;

(26) "Purchase" means any transfer of property in goods to the person making the purchase for cash or deferred payment or other valuable consideration, but does not include a transfer by way of mortgage, hypothecation, charge or pledge;

(27) "Purchase price" means the amount of valuable consideration paid or payable by a person for the purchase of any goods, less any sum allowed as cash discount, commission or commercial rebates granted at the time of delivery of such goods but including, cost of freight or cost of delivery or the cost of installation, insurance charges or any sum charged for anything done by the seller in respect of the goods at the time of, or before delivery thereof, other than interest, if separately charged;

(28) "Raw jute" means the fibre of jute which has not been subjected to any process of spinning or weaving, and includes jute cuttings, whether loose or packed in drums or bales;

(29) "Registered" means registered under section 21 or section 22;

(30) "Rules" means the rules made under this Act;

(31) "Sale" means any transfer of property in goods for cash, deferred payment or other valuable consideration, and includes-

any transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration,

any delivery of goods on hire-purchase or any system of payment by installment,

any 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.,

any supply of goods by any unincorporated association or body of persons to a member thereof 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 or unincorporated association or body of persons making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery, or supply is made, but does not include a mortgage, hypothecation, charge or pledge.

Explanation - A sale shall be deemed to take place in West Bengal if the goods are within West Bengal,-

in the case of specific or ascertained goods, at the time the contract of sale made; and

in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller, whether the assent of the buyer to such appropriation is prior or subsequent to the appropriation;

Provided that where there is a single contract of sale in respect of goods situated in West Bengal as well as in places outside West Bengal, provisions of this Explanation shall apply as if there were a separate contract of sale in respect of the goods situated in West Bengal;

(32) "Sale-price"

The sale price shall be the price the seller or supplier charges from buyer as a consideration for sale.

The following amount shall be included in the Sale price-

(i) any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof;

(ii) the amount of all expenditure related to transportation and distribution, installation and insurance charges which was borne by the seller or supplier at the time of or before delivery of the goods;

(iii) Excise duty, special excise or any other duty and all other taxes but not the tax imposed under this Act;

(c) The sale price will not include the amount of discount, commission, or other similar commercial rebates granted on the value of the goods at the time of delivery of such goods;

(d) Except otherwise provided under this Act the sale price for any goods imported from outside the territory of India shall be the value assessed by the Customs authorities, including transportation, insurance, freight, commissions plus custom duties, counter veiling duties plus any other tax, duties or charge levied on import, but it shall not include the tax imposed under this Act;

(33) "Shipper of jute" means any person who purchases raw jute and supplies it himself or by an agent to any person including himself outside West Bengal;

(34) "Special Commissioner" means the Special Commissioner of Commercial Taxes appointed under section 4 of the Act or deemed to have been appointed under clause (a) of sub-section (2) of section 106;

(35) "Tax" means tax payable under this Act;

(36) "Tax Recovery Officer" means a Tax Recovery Officer appointed by the State Government under sub-section (4) of section 46;

(37) "The State Government" means the Government of West Bengal;

(38) "Tribunal" means the West Bengal Taxation Tribunal established under section 3 of the West Bengal Taxation Tribunal Act, 1987;

(39) "Turnover of purchases", in relation to any period, means—

(a) in the case of the occupier of a jute mill, the aggregate of the purchase prices or parts of purchase prices payable by such occupier for the quantities of raw jute purchased by him during such period after deducting the amounts, if any, refunded to him by the seller during such period in respect of any quantity of raw jute returned to the seller within ninety days from the date of its purchase and such other amounts as may be prescribed;

(b) in the case of a shipper of jute, the aggregate of the purchase prices or parts of purchase prices payable by such shipper of jute in respect of the quantities of raw jute purchased by him in West Bengal and despatched by him during such period to any place outside West Bengal by any means of transit;

(c) in the case of the occupier or owner of a sugar mill, the aggregate of the purchase prices or parts of purchase prices payable by such occupier or owner for the quantities of sugar-cane purchased by him during such period after deducting the amounts, if any, refunded to him by the seller during such period in respect of any quantity of sugar-cane returned to the seller within ten days from the date of its purchase and such other amounts as may be prescribed;

(40) "Warehouse" means any enclosure, building or place where a dealer or a person keeps stocks of goods, and includes a vessel, vehicle or godown;

(41) "Year", in relation to any particular dealer, means the year by reference to which, according to a declaration made by such dealer, the accounts of such dealer are ordinarily maintained in his books, and where no such declaration is made, the year commencing on the first day of January and ending on the last day of December according to the British calendar;

Provided that a registered dealer shall not change his year except with the previous permission of the Commissioner and except on such terms and conditions as the Commissioner may determine.

CHAPTER II

TAXING AUTHORITIES, APPELLATE AND REVISIONAL BOARD AND BUREAU

3. Commissioner and other authorities and delegation of power by Commissioner.—

For carrying out the purposes of this Act, the State Government may appoint a person to be the Commissioner of Commercial Taxes, together with such other persons to assist him as it thinks fit and may specify the area or areas over which they shall exercise jurisdiction.

Persons appointed under sub-section (1) shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.

Notwithstanding anything to the contrary contained in sub-section (1), the Commissioner may transfer any case or matter from any person appointed under sub-section (1) to assist the Commissioner to any other person so appointed, whether such other person has jurisdiction over the area to which the case or matter relates or not, provided he is otherwise competent to deal with such case or matter in exercise or performance of the powers or duties referred to in sub-section (2).

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 except those under sub-section (13) of section 83 to any person appointed under sub-section (1) to assist him.

4. Special Commissioner. &endash;

The State Government may appoint one or more persons to be the Special Commissioners of Commercial Taxes.

The Special Commissioner shall have such powers, and shall be entitled to perform such duties, of the Commissioner as the State Government may by notification specify.

Any reference to the Commissioner in this Act shall, in respect of the powers and duties specified in the notification under sub-section (2), be deemed to include a reference to the Special Commissioner.

The Commissioner may, notwithstanding anything contained in sub-section (2), withdraw to himself from the Special Commissioner any case or matter which the Special Commissioner is competent to deal with in exercise or performance of the powers or duties specified in the notification under sub-section (2).

5. Additional Commissioner. &endash;

The State Government may appoint one or more persons to be Additional Commissioners of Commercial Taxes, and such person or persons shall assist the Commissioner.

An Additional Commissioner shall have such of the powers, and shall be entitled to perform such of the duties, of the Commissioner as the State Government may by notification specify.

Any reference to the Commissioner in this Act shall, in respect of the powers and duties specified in the notification under sub-section (2), be deemed to include a reference to an Additional Commissioner.

The Commissioner may transfer to, or withdraw to himself from, an Additional Commissioner any case or matter with which an Additional Commissioner is competent to deal with in exercise or performance of the powers or duties specified in the notification under sub-section (2), or may transfer any such case or matter from an Additional Commissioner competent to deal with the same to another Additional Commissioner so competent.

6. Appellate and Revisional Board. &endash;

With effect from the appointed day, the West Bengal Commercial Taxes Appellate and Revisional Board constituted under the West Bengal Sales Tax Act, 1994, (West Ben. Act XLIX of 1994) shall be deemed to have been constituted under this Act.

The State Government shall appoint such number of members of the Appellate and Revisional Board as the State Government thinks fit and shall appoint one of the members of the Appellate and Revisional Board to be the president thereof (hereinafter referred to in this section as the President).

The qualifications, conditions of service and tenure of the members constituting the Appellate and Revisional Board shall be such as may be prescribed.

No decision or action of the Appellate and Revisional Board shall be called in question merely on the ground of any vacancy in the Appellate and Revisional Board.

The functions of the Appellate and Revisional Board may be discharged by any of the members sitting either singly, or in Benches of two or more members, as may be determined by the President.

If the members of a Bench are divided, the decision shall be the decision of the majority, if there be a majority, but if the members are equally divided, they shall state the point or points on which they differ and the case shall be referred by the President for hearing on such point or points to one or more of the members of the Appellate and Revisional Board, and such point or points shall be decided according to the majority of the members of the Appellate and Revisional Board, who heard the case including those who first heard it :

Provided that if, at any time, the Appellate and Revisional Board consists of only two members and they are divided, the decision of the Appellate and Revisional Board shall be that of the President.

Subject to the previous sanction of the State Government, the Appellate and Revisional Board shall, for the purpose of regulating its procedure (including the place or places at which the Appellate and Revisional Board, the Benches or the members thereof shall sit) and providing the rules of business, make regulations consistent with the provisions of this Act and the rules made thereunder :

Provided that the regulations so made shall be published in the *Official Gazette*.

The Appellate and Revisional Board shall have the power to award costs in any matter decided by it for such amount as it may consider reasonably justified in the facts and circumstances of the case.

The amount of cost awarded by the Appellate and Revisional Board against a dealer shall be recoverable from him as if it were the tax due from him under this Act and, in case of default by him, such dues shall be recovered as an arrear of land revenue:

Provided that the provisions of section 9 and section 10 of the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), shall not apply to a proceeding for recovery of any cost awarded under this sub-section.

On the cost being awarded by the Appellate and Revisional Board against the State Government, the Commissioner shall arrange for the payment of such cost.

7. Bureau of Investigation. &endash;

With effect from the appointed day, the Bureau of Investigation constituted under the West Bengal Sales Tax Act, 1994, (West Ben. Act XLIX of 1994) shall be deemed to have been constituted under this Act for discharging the functions referred to in sub-section (3).

The Bureau shall consist of an Additional Commissioner (hereinafter referred to as the Special Officer) and such number of other persons appointed under sub-section (1) of section 3 to assist the Commissioner as the State Government may deem fit to appoint.

The Bureau may, on information or of its own motion, or when the State Government or the Commissioner so directs, carry out investigation or hold inquiry into any case of alleged or suspected evasion of tax as well as malpractice connected therewith and send a report in respect thereof to the Commissioner.

The Bureau may, for the purpose of holding investigation or inquiry under sub-section (3) exercise all the powers under section 59, 60, 61, 63, 65, 66, 69 and 70.

Provided that the Commissioner may, on receipt of a report under sub-section (3), require the Bureau to transfer to him any accounts, registers or documents relating to the said report seized by the Bureau and, on such transfer, such accounts, registers or documents shall be retained by him subject to the provisions of section 60.

The Bureau may, with the prior approval of the Commissioner, require any person appointed under sub-section (1) of section 3 to assist the Commissioner to transfer to it any accounts, registers or documents seized by him from any dealer or person under section 60 and, on such transfer, such accounts, registers or documents shall, subject to the provisions of section 60, be retained by the Bureau for carrying out the purposes referred to in sub-section (3) and sub-section (6).

The Bureau may, after a case has been investigated or inquired into by it, by order, assess or re-assess tax, impose penalty, determine interest, or collect or enforce payment of tax, penalty or interest in respect of such case under this Act.

The Special Officer shall assign such functions of the Bureau to such of the persons referred to in sub-section (2) as the Special Officer may think fit.

The Bureau shall have, for carrying out purposes of this Act, the same powers as are referred to in section 81.

For the removal of doubts, it is hereby declared that subject to the other provisions of this Act, the Special Officer shall be competent to exercise all the powers which are exercisable under this Act by an Additional Commissioner, and any person appointed under sub-section (1) of section 3 to assist the Commissioner when appointed in the Bureau, shall be competent to exercise all the powers which are exercisable by such person under this Act and the rules made thereunder.

Notwithstanding anything contained in sub-section (1) of section 3, the Special Officer and the other persons appointed in the Bureau under sub-section (2) shall have jurisdiction over the whole of West Bengal.

Persons appointed under the Act to be deemed to be public servants. &endash;

All persons appointed or deemed to have been appointed under this Act to exercise any power or to perform any function thereunder shall be deemed to be public servants within the meaning of section 21 or the Indian Penal Code, 1860 (45 of 1860).

CHAPTER III

INCIDENCE OF LEVY OF TAX AND RATE OF TAX

Incidence of Tax On Sale &endash;

With effect from the appointed day &endash;

every dealer other than those dealing exclusively in goods enumerated under Schedule B of this Act.
&endash;

who has been liable immediately before the appointed day to pay tax under section 9 or section 10 or sub-section (3) of section 27 of the West Bengal Sales Tax Act, 1994 (Ben. Act XLIX of 1994). And who would have continued to be so liable on such appointed day under that Act had this Act not come into force, or

whose gross turnover during a year first exceeds the taxable quantum as applicable to him under the West Bengal Sales Tax Act, 1994, on the day immediately preceding the appointed day.

(b) every dealer (other than those dealing exclusively in goods enumerated under Schedule B of this Act) registered under the West Bengal Sales Tax Act, 1994, who is in possession of a registration certificate under that Act on the day immediately before the appointed day, and to whom clause (a) does not apply,

shall be liable to pay tax under this Act on all sales effected on or after the appointed day.

(2) Every dealer to whom sub-section (1) does not apply and who does not effect sale of goods imported from outside into West Bengal shall, if his gross turnover of sales calculated from the commencement of any year exceeds the taxable quantum at any time within such year, be liable to pay tax under this Act on all sales, effected on and from the date immediately following the day on which such gross turnover of sales first exceeds the taxable quantum.

(3) Every dealer to whom sub-section (1) or sub-section (2) does not apply and who imports taxable goods in West Bengal shall be liable to pay tax on all his sales.

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

in relation to any dealer who manufactures or produces any goods for sale, 5,00,000 rupees; or

in relation to any other dealer, excluding an importer, 5,00,000 rupees.

(5) Every dealer who has become liable to pay tax under sub-section (1) or sub-section (2) or sub-section (3) shall continue to be so liable until the expiry of three consecutive years, during each of which his gross turnover or sales 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 under sub-section (1) or sub-section (2) or sub-section (3) shall cease.

Explanation. &endash; For the purposes of sub-section (5), in computing the period of three consecutive years in respect of a dealer who has become liable to pay tax under sub-section (1), the year or years which expired before the appointed day during which or each of which the gross turnover failed to exceed the taxable quantum referred to in the West Bengal Sales Tax Act, 1994, shall not be included.

(6) Every dealer whose liability to pay tax under sub-section (1) or sub-section (2) or sub-section (3) has ceased under sub-section (5), shall, if his gross turnover of sales calculated from the commencement of any year again exceeds the taxable quantum at any time within such year, be liable to pay such tax on all sales, effected on and from the date immediately following the day on which such gross turnover of sales again first exceeds the taxable quantum.

(7) The Commissioner shall, after making such enquiry as he may think necessary and after giving the dealer an opportunity of being heard, fix the date on and from which such dealer shall become liable to pay tax under sub-section (2) or sub-section (3) or sub-section (6).

10. Incidence of tax on purchase of raw jute.—

(1) Every dealer whose turnover of purchases of raw jute as occupier of jute-mill or shipper of Jute, as the case may be, is subject to the levy of tax under section 15 of the West Bengal Sales Tax Act, 1994 on the day immediately before the appointed day and who would have continued to be liable, to pay such tax on such appointed day under that Act had this Act not come into force, shall, in addition to his liability to pay tax, if any, under any other provisions of this Act, be liable to pay tax on all his purchases of raw jute in West Bengal with effect from the appointed day.

(2) Every dealer to whom the provisions of sub-section (1) do not apply shall, in addition to his liability to pay tax, if any, under any other provisions of this Act, be liable to pay tax on all his purchases of raw jute effected in West Bengal on or after such appointed day.

11. Incidence of tax on purchase of sugar-cane.—

Every dealer who purchases sugar cane in West Bengal for sale or use in manufacturing in West Bengal shall, in addition to his liability to pay tax, if any, under any other provisions of this Act, be liable to pay tax on all his turnover of purchases of sugar cane effected in West Bengal on or after such appointed day.

12. Rate of tax on turnover of purchase.

Every dealer liable to pay tax under section 10 or 11 shall pay tax at the rate four *per centum* on his turnover of purchases.

13. Levy of tax on sale —

The tax payable by a dealer liable to pay tax under section 9 or sub-section (3) of section 22 shall be levied on his taxable turnover of sales.

In this Act, the expression "taxable turnover of sales" means, in the case of a dealer who is liable to pay tax on sales of goods under Section 9 or sub-section (3) of section 22 that part of his gross turnover of sales during any period which remains after deducting therefrom his gross turnover of sales during that period as represents —

sales of goods declared tax-free under Section 15;

sales of goods which are shown to the satisfaction of the commissioner not have taken place in West Bengal or to have taken place in the course of inter-State trade or commerce within the meaning of the Central Sales Tax Act, 1956 or in the course of

import of the goods into, or export of the goods out of, the territory of India within the meaning of section 5 of that Act;

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

14. Rates of Sale Tax : The tax payable by a dealer, who is liable to pay tax under section 9 or sub-section (3) of section 22 on his taxable turnover of sales shall be levied &endash;

(a) at the rate of four per centum of such part of his taxable turnover of sales as represents sales of any goods specified in Schedule B;

(b) at such rate as may be fixed by the State Government of such part of his taxable turnover of sales as represents sales of any goods specified in Schedule C; and

(c) there shall be Special Additional Tax (SAT) which will not be eligible for input tax credit against the tax payable by a dealer. Special Additional Tax will be applicable to the goods listed in Schedule D.

15. Tax-free sale of goods &endash; No tax shall be payable under this Act on sales of goods specified in column (2) of Schedule A, subject to the conditions and exceptions, if any, set out in the corresponding entry in column (3) thereof.

16. Input Tax credit &endash;

Subject to other provisions of this section, there shall be input tax credit of the amount of tax, other than special additional tax, paid or payable by a registered dealer in respect of his purchase of taxable goods for resale, in West Bengal or for use by him directly in the manufacture of taxable goods in West Bengal and containers and other materials for the packing of such goods or inputs thereof, in West Bengal for sale in West Bengal, against the amount of tax paid or payable by him under this Act on the sales of taxable goods in West Bengal. Tax paid by a purchasing dealer (other than a shipper of jute), under section 10 or 11 shall also be eligible for input tax credit.

Explanation.- No input tax credit shall be available to a registered dealer for tax paid or payable at the time of purchase of goods if such goods are not sold because of any theft, loss or destruction for any reason, including natural calamity, and if a dealer has already taken any input tax credit against purchase of such goods there shall be a reverse tax credit at the end of the month in which such goods are stolen, lost or destroyed.

(2) Where the registered dealer has made purchases of taxable goods (other than those specified in schedule B) under this Act and the amount of tax in respect of such purchases is paid or payable by him to a registered dealer selling such taxable goods and where the registered dealer (who has made the purchases) directly uses such goods so purchased in the manufacture of taxable goods (other than those specified in schedule B) for sale in West Bengal, the registered dealer (who has made the purchases) may claim input tax credit for the amount of tax so realized from him against the amount of tax payable by him under this Act.

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

(4) Subject to other provisions of this sub-section a registered dealer who has claimed input tax credit on his purchases and intends to sell goods other than tea through another registered dealer (an agent) in West Bengal, will get his input tax credit reversed on the date of transfer of such goods to such other dealer and shall issue a certificate, as may be prescribed, in favour of such dealer certifying the amount of input tax credit against purchases of such goods or purchases of inputs thereof, as the case may be, in West Bengal and the agent shall be entitled to get the credit of the same.

(5) (i) When a registered dealer who produces or manufactures tea in West Bengal makes a sale of such tea through an auctioneer in auction, held in Kolkata under the auspices of Calcutta Tea Traders' Association or at Siliguri under the auspices of Siliguri Tea Auction Committee or through a broker-member of the Calcutta Tea Traders' Association or Siliguri Tea Auction Committee, being his agent under the private treaty sales, such registered dealer shall exclude his sales of such tea for determining his gross-turnover of sales provided that the broker-member is a dealer registered under this Act and such registered dealer shall furnish a certificate, as prescribed, with a copy of relevant account of sales;

(ii) Such auctioneer or broker-member shall collect tax at the rate of one per centum on the sale of tea but shall not be entitled to get any input tax credit;

(iii) Dealers purchasing tea from such auctioneers or broker-members shall pay tax at the rate of one per centum on sale of such tea in West Bengal and shall be entitled to claim input tax credit.

(6) No input tax credit under this section shall be allowed to a registered dealer against his purchases, unless the amount of tax has been separately charged and shown in the tax invoice issued to him by a registered dealer from whom purchases of such goods has been made.

(7) Subject to sub-section (8) an input tax credit cannot be claimed by the registered dealer unless the registered dealer has an original tax invoice for the relevant supply or purchases.

(8) Where a registered dealer fails to produce the original tax invoice evidencing the input tax paid, the Commissioner may, subject to such restrictions and conditions as may be prescribed, allow an input tax credit for the period in which the credit arises if the commissioner is satisfied &endash;

that the failure to produce tax invoice is not due to any fault of the dealer and

that the amount of input tax claimed by the registered dealer is correct

(9) Subject to other sub-sections of this section, input tax credit referred to in sub-section (1) in relation to a month shall be determined as follows :

The input tax credit is the aggregate of input tax paid or payable by the dealer in relation to a month, less-

- (i) input tax paid or payable in respect of goods returned or rejected by him during such month;
- (ii) input tax paid or payable in respect of goods taxable under this Act or inputs used for manufacturing of such goods, as the case may be, disposed of otherwise than by way of sale.

Explanation- Where during a period a registered dealer purchases goods and he is entitled to a credit under sub-section (2) or sub-section (3) the amount determined by the following formula shall determine the input tax credit for the period : $M \times N$. Where 'M' is the input tax credit utilized in respect of the purchases that becomes payable by the dealer during a period or that is paid by the dealer during that period, as the case may be, and 'N' is the ratio of the value of the output compared to the total component to which the dealer purchases the goods for use in manufacturing for sales and/or of taxable goods for sale in West Bengal or for resale of goods in West Bengal.

(10) Input tax credit to a dealer exceeding one lakh rupees against a single tax invoice, on the purchase of goods specified in Schedule E (list of selective plant and machinery) shall be admissible over a period of one year from the date of purchase of such goods not exceeding one twelfth of such credit for each month, beginning the month of purchase of such goods and subject to such terms and conditions as may be prescribed.

(11) Notwithstanding anything contained in under any sub-section of this section &endash;

(a) the amount of input tax credit shall not include tax paid or payable in other States or Union Territories on goods brought into West Bengal from outside the State.

(b) no input tax credit shall be allowed against tax paid or payable on goods remaining unsold at the time of stoppage or 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 the date of stoppage or closure of such business.

(c) no input tax credit on tax paid or payable in West Bengal on purchase of goods or inputs used in manufacturing goods in West Bengal and subsequently sent to other States or Union Territories, otherwise than by way of sale shall be available:

Provided that if a dealer has already taken input tax credit either in full or in part, there shall be a reverse credit against each such transfer in the manner as may be prescribed.

(d) No input tax credit shall be allowed against tax paid or payable on such purchases and under such terms and conditions as may be prescribed.

(e) For the purpose of determining the amount of input tax to be reversed under this section any one of the following methods will be applied :

where the finished products are not identifiable with the input used in the manufacture of such finished goods the amount of reverse credit is to be calculated by applying the following formula : Amount of reverse

credit = (Input tax credit claimed x Value of stock transfer at the sale price of such goods in West Bengal) ÷ (Value of stock transfer at the sale price of such goods in West Bengal + Taxable turnover of sales);

where finished goods is identifiable with the inputs used in the manufacture of goods, the reverse credit will be equivalent to the amount of tax enjoyed as input tax credit against such inputs;

where a registered dealer fails to identify the sales of goods with the amount of input tax then the amount of tax to be reversed may be determined proportionately in a manner that is just and reasonable.

(12) Notwithstanding any thing contained elsewhere in this Act, a dealer whose certificate of registration stands suspended under this sub-section shall not be entitled to claim benefit of input tax credit with effect from the date of suspension till the date on which such suspension is withdrawn.

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

(14) A registered dealer who contravenes the provisions the section shall be liable to pay penalty under section 43 of the this Act.

(15) Notwithstanding anything contained in this section, a certified dealer shall be eligible for the benefit of input tax credit on the tax paid or payable by him under this Act on purchase of plant and machinery and containers, packing materials and inputs required for direct use in the manufacture of taxable goods in West Bengal for sale in West Bengal.

17. Input tax credit exceeding tax liability &endash;

If a registered dealer's (other than an exporter) input tax credit determined under section 16 for a period exceeds tax liability for that period the excess may be set off against any outstanding tax under this Act.

The excess input tax credit after adjustment under sub-section (1) may be carried forward as an input tax credit to the following period or periods.

18. Net tax payable by a dealer &endash;

(1) For the purpose of calculating the net tax payable by a registered dealer for a period , the input tax credit as determined under sub-section (9) of section 16 shall be allowed set off against the tax payable by the registered dealer in respect of all taxable sales other than sales, as may be prescribed , made during that period.

(2) Subject to provisions of section 16, The net tax payable by a registered dealer for a period is to be calculated according to the following formula-

‘A’ minus ‘B’, where ‘A’ is the aggregate of the tax payable by the registered dealer during the month and ‘B’ is the total input tax credit determined for that month;

(3) Every registered dealer shall pay in full net tax payable by him for the period at the time of filing his return in accordance with sub-section (4) of section 26.

19. Power of State Government to amend Schedules &endash; The State Government, after giving by notification not less than fourteen days’ notice of its intention so to do, may, by like notification, add to, amend, or alter, any Schedule to this Act.

Provided that no entry or part thereof in respect of any goods specified in Schedule A shall be omitted from that Schedule.

Provided further that no Schedule, shall be so amended by way of addition or alteration as to enhance the rate of tax on sale of any goods to more than thirty five *per centum* of the taxable turnover of sales of such goods.

20. Credit and debit notes:-

(1) Where a tax invoice has been issued and the amount shown as tax charged in the tax invoice exceeds the tax chargeable under this Act in respect of that sale the registered dealer making the sale shall provide the purchaser with a credit note containing the requisite particulars as prescribed.

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

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

CHAPTER IV

REGISTRATION OF DEALER AND DEMAND OF SECURITY, ETC.

21. Compulsory registration of dealers &endash; (1) Subject to the other provisions of this chapter, no dealer shall, while being liable to pay tax under section 9, carry on business as a dealer unless he has been registered and possesses a certificate of registration :

Provided that a dealer liable to pay tax under section 9 shall be allowed thirty days' time from the date from which he is first liable to pay such tax to get himself registered.

Every dealer required by sub-section (1) to be registered shall make application in this behalf in the prescribed manner to the prescribed authority and such application shall be accompanied by a declaration in the prescribed form duly filled up and signed by the dealer specifying therein the class or classes of goods dealt in or manufactured by him.

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

Where the application for registration is made under this section, the prescribed authority shall grant him the certificate of registration effective from the date of order granting such registration.

Where any dealer, who has been registered under the West Bengal Sales Tax Act, 1994 (West Ben. Act XLIX of 1994) on any day before the appointed day, and continues to be so registered on the day immediately before such appointed day, and is liable to pay tax under this Act on such appointed day, the prescribed authority shall issue to such dealer in the prescribed manner a certificate of registration under this Act upon application filed by such dealer in prescribed form. Such application shall be made within thirty days from the commencement of the Act to the prescribed authority in the prescribed form.

The prescribed authority may from time to time amend any certificate of registration in accordance with information furnished under section 91 or otherwise received, and such amendment will be made with effect from the date of passing of such order and subject to such restrictions and conditions as may be prescribed.

When any dealer has been convicted or has paid composition money under section 83 or section 85 as the case may be, in respect of any contravention of the provisions of sub-section (1) of this section, the prescribed authority shall register such dealer and grant him a certificate of registration, and such registration shall take effect from the date of order as if it had been made under sub-section (3) of this section on the dealer's application.

(8) When &endash;

any business in respect of which a certificate of registration has been granted to a dealer on an application made, has been discontinued, or

a dealer has ceased to be liable to pay tax under section 9; or

an incorporated body is closed down or if it otherwise ceases to exist;
or

the owner of an ownership business dies leaving no successor to carry on business; or

in case of a firm or association of persons if it is dissolved; or

a person or dealer is registered by mistake, or

a dealer fails to furnish return and pay tax and interest according to such return or returns within the time extended by the Commissioner upon an application filed for such purpose under sub-section (9) of this section,

the prescribed authority shall cancel the registration of such dealer.

The cancellation of registration will take effect from the end of the period in which it is cancelled unless it is to take effect from a different date as ordered by the prescribed authority.

(9) When any dealer to whom a certificate of registration is granted under sub-section (3), or a fresh certificate of registration is issued under sub-section (5) of this section or a certificate of registration is granted under section 22, has failed to pay any tax, penalty or interest payable under this Act or has failed to furnish return referred to in sub-section (2) of section 26, the certificate of registration of such dealer may be suspended by the appropriate assessing authority in the manner as may be prescribed:

Provided that certificate of registration of a dealer shall not be suspended if he has furnished return or returns within the date prescribed in the notice under sub-section (3) of section 37 and has paid due tax, penalty or interest payable under this Act by such date, as the Commissioner may extend upon an application filed by the dealer within 15 days from the date by which he is required to file such return or returns or make payment of tax, interest or penalty, as the case may be:

(10) Suspension of certificate of registration will be withdrawn and registration certificate shall be restored on an application made by the dealer on furnishing evidence of payment of all taxes and on furnishing of overdue return or returns within 45 days from the date of suspension and in the event of failure to comply with the provisions of sub-section 9 or 10, as the case may be, the registration certificate of such dealer shall be cancelled by the prescribed authority after allowing such dealer a reasonable opportunity of being heard.

(11) If certificate of registration of a dealer is suspended or if the suspension is withdrawn, the information will be made public through publication in Official Gazette and insertion in Newspapers.

22. Voluntary registration of dealers – (1) Any dealer, whose gross turnover of sales during a year exceeds twenty five thousand rupees, may, notwithstanding that he is not liable to pay tax under section 9, apply in the prescribed manner to the prescribed authority for registration under this Act.

The provisions of sub-section (2), sub-section (3), sub-section (6), clause (a) of sub-section (8), sub-section (9), and sub-section (10), of section 21 shall apply in respect of any application for registration, or any certificate of registration granted on application made, as the case may be, under sub-section (1) of this section.

Every dealer who has been registered on application made under this section shall, for so long as his registration remains in force, be liable to pay tax under this Act.

The registration of a dealer on application made under this section shall be in force for a period of not less than three complete years and shall remain in force thereafter unless cancelled under the provisions of this Act.

Subject to the provisions of sub-section (4), a dealer registered on application made under this section may apply in the prescribed manner, not less than six months before the end of a year, to the authority which granted him his certificate of registration for the cancellation of such registration to take effect at the end of the year in which the application for such cancellation is made, and the said authority shall, unless the dealer is liable to pay tax under the provisions of section 9 cancel the registration accordingly.

Notwithstanding anything contained in sub-section (3) or sub-section (5), when the gross turnover of sales of any dealer registered on application made under this section has, for three successive years after the period of three years referred to in sub-section (4), has failed to exceed the taxable quantum, the prescribed authority may, after giving the dealer a reasonable opportunity of being heard, cancel registration of such dealer.

23. Security to be furnished in certain cases – (1) The Commissioner may, at the time of grant of certificate of registration to a dealer under section 21 or section 22 or at any time thereafter, for good and sufficient reasons to be recorded in writing, require the dealer to furnish in the prescribed manner such security or such additional security as may be specified by him for securing proper and timely payment of tax or any other sum payable by him under this Act.

The Commissioner may, by order in writing and for good or sufficient reason to be recorded therein, demand from any person other than a registered, dealer who imports into West Bengal any consignment of goods, a reasonable security for ensuring that there is no evasion of tax.

The Commissioner may, by an order in writing and for good and sufficient reason, demand from any person or a dealer a reasonable security for proper use and safe custody of the form referred to in sub-section (2) of section 62 and obtained from the prescribed authority.

The Commissioner may, by order in writing and for good or sufficient reasons to be recorded therein, forfeit the whole or any part of the security or additional security referred to in sub-section (1), sub-section (2), or sub-section (3), as the case may be, furnished by a dealer, registered dealer, undertaking or person as required by sub-section (1) or demanded under sub-section (2), or sub-section (3), for –

realising or recovery of tax or any other sum due, or

recovery of any financial loss caused to the State Government due to negligence or default in not making proper use of, or not keeping in safe custody, blank or unused forms of way bill.

(5) Where, by reason of any order under sub-section (4), the security furnished by a dealer, registered dealer, undertaking or person is forfeited in whole or is rendered insufficient, such dealer, registered dealer, undertaking or person shall, on demand by order of the Commissioner, furnish fresh or further security of the requisite amount or shall make up the deficiency, as the case may be, in such manner and within such period as may be specified in such order.

(6) The Commissioner may, on application by a dealer, registered dealer, undertaking or person, who has furnished security as required by sub-section (1) or demanded under sub-section (2), or sub-section (3), refund in the prescribed manner any amount of security or part thereof if such security is not required for the purposes for which it was furnished.

(7) Security as required by sub-section (1) or demanded under sub-section (2), sub-section (3) or sub-section (5) shall be furnished by a dealer, registered dealer, undertaking or person in such manner and by such time as may be specified in the order requiring to furnish, or demanding, such security.

(8) No order shall be passed under this section without giving the dealer, registered dealer, undertaking or person an opportunity of being heard.

24. Imposition of penalty for failure to get registered &endash; (1) If a dealer, who is required by sub-section (1) of section 21 to get himself registered within two months from the date from which he is first liable to pay tax under section 9, fails to get himself so registered, the prescribed authority may, after giving the dealer an opportunity of being heard, by order impose by way of penalty a sum, not less than five thousand rupees and not exceeding ten thousand rupees, for each month of default:

Provided that no penalty shall be imposed under this sub-section in respect of the same fact for which a prosecution under sub-section (2) of section 83. has been instituted and no such prosecution shall lie in respect of a fact for which a penalty has been imposed under this section.

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

Provided that the prescribed authority may, for reasons to be recorded in writing, extend the date of such payment as specified in the notice in this behalf or allow such dealer to pay the penalty imposed in such number of installments as he may determine :

Any amount of penalty that remains unpaid after the date specified in the notice referred to in sub-section (2) shall be recoverable in accordance with the provisions of section 46.

25. Issue of provisional certificate -

Notwithstanding anything contained in this Act, the Commissioner may, on an application filed by a person who intends to establish business for the manufacture of goods taxable under this Act in his manufacturing unit in West Bengal for sale in West Bengal, issue a provisional certificate in the prescribed manner.

A person who is liable to be registered, or who is registered, under the Act at the time of making application referred to in sub-section (1) shall not be eligible for provisional certificate.

The provisional certificate shall be valid for the period as may be prescribed and in no case it shall be valid on and from the date on which the dealer is registered under this Act.

A person to whom provisional certificate is issued under sub-section (1) shall apply for registration under this Act within 15 days from the date his gross-turnover of sales of goods manufactured in his manufacturing unit exceeds twenty five thousand rupees who intends to set up a manufacturing unit in West Bengal for sale of goods taxable under this Act for the first time.

CHAPTER V

RETURN AND PAYMENT OF TAX, INTEREST, PENALTY, ETC.

26. Periodical returns and payment of tax ‐ (1) Tax payable under this Act shall be paid in the manner hereinafter provided at such intervals as may be prescribed.

Every registered dealer shall, in the prescribed manner, furnish such returns by such dates and to such authority as may be prescribed.

Any dealer, other than a registered dealer referred to in sub-section (2), shall, if so required by the Commissioner by a notice served in the prescribed manner, furnish returns in accordance with the provisions of sub-section (2).

Before any dealer furnishes a return required by sub-section (2) or sub-section (3), he shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of India the full amount of tax due from him under this Act according to such return, and shall furnish along with such return a receipt from the Treasury or Bank showing the payment of such amount :

Provided that a registered dealer shall, subject to such conditions as may be prescribed, pay in the prescribed manner the tax payable under this Act for any prescribed part of the period for which a return is required to be furnished under sub-section (2) or sub-section (3) by such date as may be prescribed after the expiry of the prescribed part of the period as aforesaid :

Provided further that a dealer may furnish return within the prescribed date without making payment of tax either in full or in part subject to such terms and conditions as may be prescribed.

If any dealer discovers any omission or any 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 what was shown in the original return, it shall be accompanied by a receipt showing payment of the extra amount in the manner provided in sub-section (4).

If the Commissioner &endash;

discovers any error or omission in any return furnished by a dealer, or

has reasons to believe upon information or otherwise that a dealer has furnished incorrect statement of his turnover of sales or turnover of purchases or incorrect particulars of his sales or purchases in any return,

he may require such dealer to produce any accounts, registers, statements or documents or to furnish any information regarding purchases, sales, deliveries, stock of goods or payments made or received or any other related or incidental matter for the purpose of verification of such return.

27. Interest for non-payment or delayed payment of tax before assessment &endash;

Where a registered dealer, or a dealer required to furnish return under sub-section (3) of section 26, furnishes a return referred to in that section in respect of any period by the prescribed date or thereafter, but fails to make full payment of the tax payable under sub-section (4) of that section in respect of such period by such prescribed date, he shall pay a simple interest at the rate of two *per centum* for each British calendar month of default from the first day of such month next following the prescribed date up to the month preceding the month of full payment of such tax or up to the month prior to the month of assessment under section 36 or section 39, as the case may be, in respect of such period, whichever is earlier, upon so much of the amount of tax payable by him according to such return as remains unpaid at the end of each such month of default :

Provided that where such dealer admits in writing that the amount of tax payable in respect of such period is an amount which is either more or less than what has been originally shown as payable in the return and where the Commissioner is satisfied on the point of such admission, the interest shall be payable upon so much of the amount of tax payable according to such admission as remains unpaid at the end of each such month of default.

Where a registered dealer, or a dealer required to furnish return under sub-section (3) of section 26, fails to furnish a return referred to in that section in respect of any period by the prescribed date or thereafter before the assessment under section 36 or section 39, as the case may be, in respect of such period, and on such assessment full amount of tax payable for such period is found not to have been paid by him by such prescribed date, he shall pay a simple interest at the rate of two *per centum* for each British calendar month of default from the first day of the month next following the prescribed date up to the month preceding the month of full payment of tax for such period or up to the month prior to the month of assessment under section 36 or section 39, as the case may be, in respect of such period, whichever is earlier, upon so much of the amount of tax payable by him according to such assessment as remains unpaid at the end of each such month of default :

Provided that where an assessment under section 36 or section 39 is made for more than one period and such assessment does not show separately the tax payable for the period in respect of which interest is payable under this sub-section, the Commissioner shall apportion the tax payable for such period on the basis of such assessment.

A dealer liable to pay interest under sub-section (1) or sub-section (2) of this section shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of India the amount of interest payable by, or due from, him by such date as may be prescribed.

Interest under sub-section (1) or sub-section (2) of this section shall be payable in respect of the returns, the prescribed dates for furnishing of which under sub-section (2) or sub-section (3) of section 26 are the dates subsequent to the appointed day.

28. Interest for non-payment or delayed payment of assessed tax &endash; (1) Where a dealer fails to make payment of any tax payable after assessment by the date specified in the notice issued under section

40 for payment thereof, he shall pay a simple interest at the rate of two *per centum* for each British calendar month of default from the first day of the month next following the date specified in such notice up to the month preceding the month of full payment of such tax or up to the month preceding the month of commencement of proceedings under section 46, whichever is earlier, upon so much of the amount of tax payable by him according to such notice as remains unpaid at the end of each such month of default.

A dealer liable to pay interest under sub-section (1) of this section shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of India the amount of interest payable by, or due from, him by such date as may be prescribed.

Where as a result of an order under section 74, section 75, section 76, section 77 or section 79 the amount of tax payable is modified, the interest payable under sub-section (1) of this shall be determined or re-determined on the basis of such modified amount and the excess interest paid, if any, shall be refunded.

Interest under sub-section (1) shall be payable in respect of assessment, notices for which are issued under section 40, on or after the appointed day.

29. Exemption from payment of interest – Notwithstanding anything contained in section 27 or section 28, no interest shall be payable in such cases or under such circumstances and subject to such conditions, if any, as may be prescribed.

30. Interest payable by Commissioner -- The Commissioner shall, in the prescribed manner, pay a simple interest at the rate of two *per centum* for each British calendar month of delay in making refund to a dealer of the amount of tax paid in excess which arises out of an order under section 74, section 75, section 76, section 77 or section 78, passed on or after the appointed day, from the first day of the month next following the date of such order up to the month preceding the month in which the refund is made in the manner referred to in section 54, upon the amount of tax refundable to him according to such order.

31. Rounding off of tax payable for calculation of interest – In calculating the interest payable under section 27, section 28, section 30, the amount of tax in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees, if such part is fifty rupees or more, it shall be increased to one hundred rupees and, if such part is less than fifty rupees it shall be ignored.

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

33. Collection of tax only by dealers liable to pay tax &endash; (1) No dealer who is not liable to pay tax under this Act shall collect, in respect of any sale of goods by him, any amount of tax under this Act, and no dealer, who is liable to pay tax under this Act, shall make any such collection except in accordance with the provisions of this Act or in excess of the amount of tax payable by him under this Act.

If any dealer contravenes the provisions of sub-section (1), he shall, notwithstanding anything contained elsewhere in this act, deposit the amount collected by way of tax or the amount collected by way of tax in excess of the amount payable under this act, as the case may be, into a Government Treasury or the Reserve Bank of India within thirty days from the date of such collection and intimate the Commissioner of such deposit along with a receipt from such Treasury or Bank showing payment of such amount.

The Commissioner shall, on application made by the buyer in respect of sales of goods to him referred to in sub-section (1) and on such terms and conditions as he may deem fit and proper, refund to such buyer (the tax or the excess tax , as the case may be, collected from such buyers) and deposited by the dealer in the manner referred to in sub-section (2).

Provided that no application from any buyer shall be entertained unless the same is made within twelve months from the date on which the tax or excess tax, as the case may be, is paid and supported by relevant cash memo or bill issued by the dealer.

If a dealer is in default in depositing in accordance with the provisions of sub-section (2) the amount collected in contravention of the provisions of sub-section (1), the Commissioner may, after giving such dealer a reasonable opportunity of being heard, by an order in writing direct that he shall pay by way of penalty a sum, not less than the amount of tax so collected and not exceeding twice the amount of tax so collected by him in contravention of the provision of sub-section (1).

The penalty imposed under sub-section (4) shall be paid by the dealer into a Government Treasury or the Reserve Bank of India by such date as may be specified by the commissioner in a notice issued for the purpose and the date to be as specified shall not be less than fifteen days from the date of service of such notice.

Any penalty that remains unpaid after the date specified in the notice referred to in sub-section (5) shall be recoverable in accordance with the provisions of section 46.

34. Scrutiny of Returns - (1) Each and every return in relation to any period furnished by a registered dealer or a dealer to whom notice has been issued by the Commissioner under section 26, shall be scrutinised by the assessing authority to verify the correctness of calculation, application of correct rate of tax and interest and full payment of tax and interest payable by the dealer during such period.

(2) If any mistake is detected as a result of the scrutiny made as per provisions of sub-section (1) the assessing authority will serve a notice in the prescribed form on the registered dealer to make payment of the extra amount of tax along with the interest according to the provisions of this Act. if it is so payable by a date mentioned in the aforesaid notice.

35. Audit of dealer's books of accounts and other documents—(1) Person or persons appointed under section 3 of this Act to assist the Commissioner shall, audit the records of the dealer, who are selected by the Commissioner in the manner as may be prescribed, generally at his office.

In order to make the audit as per provisions of sub-section (1) the person or persons appointed under section 3 of this Act to assist the Commissioner shall examine the correctness of return or returns in general and admissibility of various claims, including input tax credit.

For the purpose of auditing the auditing authority may-

inspect the books of accounts and other documents related to business.

search dealers' place of business, warehouse, residence and other places if there is reasonable suspicion that evidences will be available in such places related to evasion of tax or any offence under this Act.

seize books of accounts or documents, including those in electronic form, if considered necessary for the purposes of this Act.

break open any door, or window of house, room, or warehouse, or any almirah, safe, box or receptacle where the Commissioner or persons appointed under section 3 of this Act, has reason to believe that such dealer, person, transporter or owner or lessee of warehouse keeps or is, for time being keeping any accounts, registers, documents, or records of his business or any stock of goods for sale either before or after entering or searching or during search of any place of business or any other place for the purposes of sub-section (1).

may seal any house, room, warehouse, almirah, safe, box or receptacle in which he has reason to believe a dealer, person, transporter or owner or lessee of warehouse keeps or is, for time being keeping any

accounts, registers, documents, or records of his business or any stock of goods for sale.

The result of audit shall be communicated by the auditing authority to the assessing authority.

CHAPTER VI

Assessment and Provisional Assessment of tax, selection for audit, imposition of penalty, payment, collection and recovery of tax, interest and penalty and refund of tax, interest and penalty

36. Assessment of tax payable by registered dealers. &endash; (1) If no returns are furnished by a registered dealer in respect of any period by the prescribed date, or if the Commissioner is not satisfied that the returns furnished are correct and complete, the Commissioner shall proceed in such manner as may be prescribed to assess to the best of his judgement the amount of tax due from the dealer and, in making such assessment, shall give the dealer a reasonable opportunity of being heard; and in the case of failure by a registered dealer to furnish in respect of any period a return accompanied by a receipt from a Government Treasury or the Reserve Bank of India, as required under sub-section (4) of section 26, by the prescribed date, the Commissioner may, if he is satisfied that the default was made without reasonable cause, direct that the dealer shall pay by way of penalty, in addition to the amount of tax so assessed, a sum not exceeding one and a half times that amount.

Provided that where a registered dealer brings to the notice of the Commissioner in writing, within six months from the end of the year that, due to error in fact or in law, an amount of tax has been paid by him in excess of what was payable by him during any return period relating to such year, and requests the Commissioner for making assessment under this sub-section in respect of such year, the Commissioner may, if he is satisfied on the grounds adduced by such registered dealer making such assessment, proceed to make assessment in respect of such year immediately on receipt of notice by the dealer.

(2) Where upon search or seizure of any accounts, registers or documents, or of any goods of a dealer registered under this Act, or upon enquiry or information received or upon verification of return under sub-section (6) of section 26 or where refund of any tax, interest or penalty arises or the Commissioner has reasons to believe that the dealer has not accounted for the turnover of sales of goods or purchases of goods as appear from such accounts, registers or documents in the books of accounts referred to in section 55 or has not shown such turnover in his return furnished under section 26, in respect of any return period, or has furnished incorrect statement of his turnover of sales or turnover of purchases or incorrect particulars of his sales or purchases in any return, the Commissioner shall, notwithstanding anything contained in sub-section (1), proceed in such manner as may be prescribed to assess to the best of his judgement the amount of tax payable by the dealer in respect of such return period after giving the dealer a reasonable opportunity of being heard and direct such dealer to pay the amount of tax so assessed in such manner and by such date as

may be prescribed; and in the case of failure by the registered dealer to furnish in respect of any period, a return accompanied by a receipt from a government treasury or the Reserve Bank of India, as required under sub-section (4) of section 33 by the prescribed date, the Commissioner may, if he is satisfied that the default was made without reasonable cause, direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessed, a sum not exceeding one and a half times that amount.

(3) No penalty under sub-section (1) or sub-section (3) shall be imposed in respect of the same fact for which a prosecution under clause (b) of sub-section (1) of section 83 has been instituted and no prosecution would lie *vice versa*.

(4) If interest is payable in terms of section 27 in respect of any period, penalty under sub-section (1) or sub-section (2) for failure to furnish a return by the prescribed date for such period shall not exceed fifty *per centum* of the amount of tax so assessed.

(5) Subject to other provisions of this section assessment shall also be made in cases where business is closed by a dealer. Tax on goods that remain in stock at the time of cancellation of registration (including capital goods) on which input tax has already been given credit, shall be assessed and collected in the manner as may be prescribed.

37. Provisional Assessment.-

Where a registered dealer fails to furnish return in respect of any period by the prescribed date the Commissioner or any other person appointed under section 3 to assist him, shall notwithstanding any thing contained in section 36 proceed to assess the dealer provisionally for the period of such default.

The assessing authority shall assess the dealer on the basis of past returns, or past records where no such returns are available, or on the basis of information received by the Commissioner and shall impose penalty not exceeding twice the amount of tax so assessed and direct the dealer to pay the amount of tax assessed and penalty imposed by issuing a notice in such manner and by such date as may be prescribed.

If the dealer furnishes return along with receipted challans showing full payment of tax and interest payable according to such return and fifty per centum of penalty demanded in the notice of demand served on provisional assessment, on or before the date of payment mentioned in such notice, the provisional assessment shall stand revoked to the extent of demand of tax, interest and balance fifty per centum of penalty, on the date on which such return is filed by the dealer :

Provided further that a dealer may file return without making full payment of tax if he pays fifty per centum of penalty demanded in the notice served on provisional assessment and files an application before the Commissioner for extension of payment of the unpaid amount of tax and interest on or before the date prescribed in the notice.

(4) Nothing contained in this section shall prevent Commissioner from making assessment under section 36 of the Act and any tax, interest or penalty paid against provisional assessment or assessments, as the case may be, shall be adjusted against tax, interest and penalty payable on assessment made under that section.

38. Audit in selective cases on the basis of random selection. &endash; The Commissioner may select such class of dealers at random for audit under section 32, as may be prescribed.

39. Assessment of tax payable by dealer other than registered dealers. &endash; If upon information which has come into his possession, the Commissioner is satisfied that any dealer, who has been liable to pay tax under this Act in respect of any period but has failed to get himself registered or has not been registered, the Commissioner shall proceed in such manner as may be prescribed to assess to the best of his judgement the amount of tax due from the dealer in respect of such period and all subsequent periods and, in making such assessment, shall give the dealer a reasonable opportunity of being heard.

40. Payment of assessed tax and penalty. &endash; The amount of tax &endash;

due from a dealer where the returns are furnished without receipt showing full payment of tax, or

assessed under section 36 or section 39 for a period, less the sum, if any, already paid by a dealer in respect of the said period, together with any penalty that may be directed to be paid under section 36, if any,

shall be paid by such dealer into a Government Treasury or the Reserve Bank of India by such date as may be specified in a notice issued by the Commissioner in this behalf, and the date to be so specified shall be ordinarily not less than thirty days from the date of service of such notice.

41. Limitation for assessment. &endash; (1) No assessment under section 36 and section 39 shall be made after the expiry of six years, from the end of the year in respect of which or part of which the assessment is made, where such six years end on the 30th day of June or the 31st day of December.

No assessment under section 36 and 39 shall be made &endash;

(a) after the 30th day of June next following the expiry of six years from the end of the year in respect of which or part of which the assessment is made, where such six years end on any date during the period commencing on the 1st day of January and ending on the 29th day of June; and

(b) after the 31st day of December next following the expiry of six years from the end of the year in respect of which or part of which the assessment is made, where such six years end on any date during the period commencing on the 1st of July and ending on the 30th day of December.

Explanation &endash; In this section, the months of January, June, July and December shall be reckoned according to the British calendar.

Notwithstanding anything contained in sub-section (1) or sub-section (2), assessment of tax due from a registered dealer, not being selected under section 38 for assessment in respect of any year comprising a period or periods, may be made before the expiry of six years from the end of the year in respect of which or part of which the assessment is made.

Notwithstanding anything contained in sub-section (1), sub-section (2) or sub-section (3), when a fresh assessment is required to be made in pursuance of an order under section 74, section 75, section 76, or section 77, or in pursuance of any order of the Tribunal or any court, such fresh assessment may be made at any time within two years from the date of such order.

In computing the time limited by sub-section (1), sub-section (2), sub-section (3) or sub-section (4) for making any assessment under section 36 or section 38, the period during which the Commissioner is restrained from commencing or continuing any proceedings from such assessment by an order of the Tribunal or any court shall be excluded.

42. Determination of interest. &endash; (1) Where the Commissioner is satisfied that a dealer is liable to pay interest under section 27 or section 28, he shall, in such manner as may be prescribed, determine the amount of interest payable by such dealer. If on such determination, any additional amount of interest is found to be payable by the dealer or any excess amount of interest is found to be refundable to the dealer, the Commissioner shall issue a notice, in the prescribed manner, to such dealer directing him to pay such additional amount or informing him of the excess amount paid, as the case may be.

(2) No determination of interest under sub-section (1) in respect of interest payable under section 27 shall be made after the date of assessment under section 36 or 39 in respect of the period for which interest is determined.

43. Rectification of mistake in determination of interest. &endash; (1) Where there is an apparent mistake in the determination of interest under sub-section (1) of section 42, the Commissioner may, on his own motion or upon application made by a dealer within six months from the date of such determination of interest, rectify the amount of interest payable by such dealer or refundable to such dealer and issue a fresh notice for payment of interest in the manner prescribed under that section.

(2) Where on rectification of the amount of interest under sub-section (1), any excess amount is found refundable to a dealer, the Commissioner shall, in the manner referred to in section 54, refund such excess amount of interest to such dealer.

44. Imposition of Penalty :

After hearing the dealer the Commissioner may impose following penalties:

For misuse tax credit &endash; not less than one and half times and not exceeding three times of the tax involved.

For failure to keep up to date account &endash; rupees one hundred per day.

For issue of false or incorrect tax invoice &endash; not less than one and half times and not exceeding three times of the tax involved.

Provided that no penalty under this section shall be imposed if prosecution has been initiated for the same offence.

45. Certain transfers of immovable property by a dealer to be void. &endash; (1) Where during the period commencing on the date of service of a notice of demand under section 40, sub-section (1) of section 42 or sub-section (1) of section 43 and ending on the date of service of notice by the authority competent to issue such notice under clause (a) or clause (b) of sub-section (1) of section 46, as the case may be, any dealer without having made full payment of tax, interest or penalty specified in such notice of demand as aforesaid, creates a charge on, or transfers or delivers possession (by way of sale, mortgage, gift, exchange or any other mode of transfer of right, title or interest) of, any of his immovable properties in favour of other person, such charge, transfer or delivery of possession shall be void as against any claim in respect of the amount of tax, interest or penalty due from such dealer:

Provided that the provisions of this section shall not apply to a dealer unless &endash;

the amount or the aggregate of the amounts specified in the notice as aforesaid as due from him for payment of tax, interest or penalty exceeds one lakh rupees, or

the value of the immovable property on which a charge is created, or which is transferred, or the possession of which is delivered, by him exceeds five lakh rupees.

Notwithstanding anything contained in sub-section (1), no charge or transfer or delivery of possession of immovable property shall be void if it is made *bona fide* and for adequate consideration.

46. Recovery of tax, penalty, interest, appointment of Tax Recovery Officer, etc. (1) Any amount of tax, penalty or interest due under this Act from a dealer, transporter, owner or lessee of warehouse, person or owner of goods which remains unpaid after the date specified in a notice of demand issued in this behalf under this Act or the rules made thereunder, directing payment of such amount of tax, penalty or interest, or such unpaid amount of tax or interest, as is declared by a dealer to be payable by him in the returns furnished remains unpaid even by the date extended for such payment by the Commissioner shall be recoverable—

as an arrear of land revenue as if it were payable to the Collector, or

by the Tax Recovery Officer in accordance with the provisions of sub-section (2) of this section, section 47, section 48, section 49 or section 50 and the rules regulating the procedure for recovery of tax, penalty and interest as laid down in Schedule X, hereinafter referred to as the rules in Schedule X, where the State Government directs by general or special order so to do in respect of such class or classes of dealers having their places of business on such area or areas as may be specified in such order.

(2) Where any amount of tax, penalty or interest is recoverable in accordance with the provisions of clause (b) of sub-section (1), the Commissioner may send to the Tax Recovery Officer a certificate under his signature specifying the amount of tax ,

penalty or interest due from the dealer, owner or lessee of warehouse, person or owner of goods (hereinafter referred to as the certificate-debtor), and the Tax Recovery Officer shall, on receipt of such certificate, proceed to recover from the certificate-debtor the amount specified in the certificate by one or more of the following modes in accordance with the rules in Schedule X:-

attachment and sale of the movable property of the certificate-debtor;

attachment and sale of the immovable property of the certificate-debtor;

arrest of the certificate-debtor and his detention in prison;

appointing a receiver for the management of the movable and immovable properties of the certificate-debtor

The Commissioner may send a certificate under sub-section (2), notwithstanding that proceedings for recovery of such tax, penalty or interest have been initiated or are continuing by any other mode.

For the purposes of this section, section 47, section 48, section 49 or section 50 and the rules in Schedule X, the State Government may by notification appoint such number of Tax Recovery Officers as it may deem fit, and specify in the notification the area or areas over which they shall exercise jurisdiction.

Where a certificate has been sent to a Tax Recovery Officer, he shall cause to be served upon the certificate-debtor, in the prescribed manner, a notice in the prescribed form and a copy of the said certificate.

On the service of notice of any certificate under sub-section (5) upon a certificate-debtor,

any private transfer or delivery of any of his immovable property situated in the area in which the certificate is sent, or of any interest in any such property, shall be void against any claim enforceable in execution of the certificate; and

the amount due from time to time in respect of the certificate shall be a charge upon the immovable property of the certificate-debtor, wherever situated, to which every other charge created subsequently to the service of the said notice shall be postponed.

(7) The certificate-debtor may, within thirty days from the service of the notice required by sub-section (5), or where the notice has not been duly served, then, within thirty days from the execution of any process for enforcing the certificate, present to the Tax Recovery Officer to whom the certificate is sent, or to the Tax Recovery Officer, who is executing the certificate, a petition, in the prescribed form, signed and verified in the prescribed manner, denying his liability in whole or in part.

(8) The Tax Recovery Officer to whom the original certificate is sent shall, subject to the provisions of sub-section (1) section 49 hear the petition, take evidence, if necessary, and determine whether the certificate-debtor is liable for the whole or any part of the amount for which certificate was signed.

(9) Where any proceedings for the recovery of any amount of tax, penalty or interest remaining unpaid have been commenced under this chapter and the amount of tax, penalty or interest is subsequently modified, enhanced or reduced in consequence of any assessment made, or order passed on appeal, revision or review, under this Act, the Commissioner may, in such manner and within such period as may be prescribed, inform in this behalf the certificate-debtor and the Collector or the Tax Recovery Officer, as the case may be, by whom or under whose order the recovery is being made or to be made, and thereupon such proceedings may be continued as if the amount of tax, penalty or interest as so modified, enhanced or reduced has been substituted for the amount of tax, penalty or interest which was to be recovered under sub-section (1)

(10) Where a Tax Recovery Officer causes to be served upon a certificate-debtor a notice in the prescribed manner and in the prescribed form under sub-section (5) such certificate-debtor fails to pay the amount specified in such notice within fifteen days from the date of service of such notice, the certificate-debtor shall pay a simple interest at the rate of two *per centum* for each British calendar month of default from the date immediately following the end of the period of time specified in such notice up to the date preceding the date of full payment of the amount specified in such notice upon so much of the amount as remains unpaid.

(11) The interest payable under sub-section (10) shall be recoverable in accordance with the rules in Schedule X.

47. Tax Recovery Officer to whom certificates to be forwarded. &endash; (1) The Commissioner may forward the certificate referred to in sub-section (2) of section 46 in respect of a certificate-debtor to &endash;

the Tax Recovery Officer within whose jurisdiction such certificate-debtor carries or carried on his business or within whose jurisdiction the principal place of business is situated or within whose jurisdiction the goods are seized under section 65; or

the Tax Recovery Officer within whose jurisdiction such certificate-debtor resides or any movable or immovable property of such certificate-debtor is available or situated.

Where such certificate-debtor has property within the jurisdiction of more than one Tax Recovery Officer, and the Tax Recovery Officer to whom a certificate is sent by the Commissioner &endash;

is not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction, or

is of the opinion that for the purpose of expediting or securing the recovery of the whole or any part of the amount under this section, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered, a copy of the certificate certified in accordance with the rules in Schedule X and specifying the amount to be recovered to a Tax Recovery Officer within whose jurisdiction such certificate-debtor resides or has property, and thereupon that Tax Recovery Officer shall also proceed to recover such amount as if the certificate of the copy thereof had been the certificate sent to him by the Commissioner

48. Amendment of certificates for tax recovery. &endash; (1) Notwithstanding that a certificate has been forwarded to a Tax Recovery Officer, the Commissioner shall have the power to withdraw or cancel such certificate or to correct any clerical or arithmetical mistake in such certificate.

The Commissioner shall intimate to the Tax Recovery Officer any order withdrawing or canceling a certificate or any correction made by him under sub-section (1) of this section.

49. Validity of certificates for tax recovery. &endash; (1) When the Commissioner forwards a certificate to a Tax Recovery Officer under section 46, it shall not be open to the certificate-debtor to dispute before the Tax Recovery Officer the propriety or correctness of the assessment of tax, imposition of penalty or

determination of interest, under this Act and no objection to such certificate on any such ground shall be entertained by the Tax Recovery Officer.

It is hereby declared that where any amount of tax, penalty or interest is recoverable in accordance with the provisions of clause (a) of sub-section (1) of section 46, the provisions of section 9 and section 10 of the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), shall not apply to any proceedings for the recovery of such amount of tax, penalty or interest.

50. Transmission of certificates for tax recovery to Collector in certain cases. &endash;

Notwithstanding anything contained in section 46 where any amount of tax, penalty or interest due from a certificate-debtor cannot be recovered by the Tax Recovery Officer by any one of the modes referred to in that section and where the Tax Recovery Officer has information that such certificate-debtor owns any property outside West Bengal, the amount of such tax, penalty or interest remaining unpaid shall be deemed to be an arrear of land revenue as if it were payable to the collector, and the Tax Recovery Officer shall apply to the Collector of the district in West Bengal in which such certificate-debtor carries on his business, has his principal place of business or his goods have been seized, as the case may be, for the recovery of the said amount in accordance with the provisions of the Revenue Recovery Act, 1890 (1 of 1890).

51. Special mode of recovery of tax, penalty and interest by Commissioner. &endash; (1)

Notwithstanding the forwarding of a certificate under section 46 for recovery of any amount of tax, penalty or interest, the Commissioner may, at any time or from time to time, by notice in the prescribed form, require any person from whom money is due or may become due to a dealer or any person who holds or may subsequently hold money for, or on account of, such dealer, to deposit into a Government Treasury or the Reserve Bank of India under the appropriate head of account, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held), so much of the money as is sufficient to pay the amount due from such dealer in respect of the arrears of such tax, penalty or interest or the whole of the money when such money is equal to or less than that amount.

A notice under this section may be issued to any person who holds or may subsequently hold any money for, or on account of, the dealer jointly with any other person, and for the purposes of this section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

A copy of the notice shall be forwarded to the dealer at his last address known to the Commissioner and, in the case of a joint account, to all the joint-holders at their last addresses known to the Commissioner.

Save as otherwise provided in this section, every person to whom a notice is issued under this section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

Any claim respecting any money, which is due or to become due or is being held or may subsequently be held and in relation to which a notice under this section has been issued, arising after the date of such notice, shall be void as against any demand contained in such notice.

Where a person to whom a notice under this section is sent proves to the satisfaction of the Commissioner that the sum demanded or any part thereof is not due to the dealer or that he does not hold any money for,

or on account of, the dealer or that the money demanded or any part thereof is not likely to be due to the dealer or be held for, or on account of, the dealer, than, nothing contained in this section shall be deemed to require such person to deposit any such sum or part thereof, as the case may be.

The Commissioner may, at any time or from time to time, amend or revoke any notice issued under this section or extend the time for making any payment in pursuance of such notice.

The Government Treasury or the Reserve Bank of India shall grant a receipt for any amount paid in compliance with a notice issued under this section, and the person so paying the amount shall be fully discharged from his liability to the dealer to the extent of the amount so paid.

Any person discharging any liability to the dealer after receipt of a notice under this section shall be personally liable to the Commissioner to the extent of his own liability to the dealer so discharged or to the extent of the liability of such dealer for any amount due under this Act, whichever is less.

If the person to whom a notice under this section is sent fails to make payment in pursuance thereof, he shall be deemed to be a dealer in default in respect of the amount specified in the notice, and further proceedings may be taken against him for the recovery of the amount as if it were an arrear due from him, and the notice shall have the same effect as attachment of a debt.

The Commissioner may apply to the court in whose custody there is money belonging to the dealer for payment to him of the entire amount of such money or, if it is more than the amount of tax, penalty or interest due, an amount sufficient to discharge the liability of the amount of tax, penalty or interest:

Provided that any dues exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908), shall be exempt from any payment required to be made under this section.

Explanation. &endash; For the purposes of this section, "dealer" shall include a transporter, owner or lessee of warehouse, person or owner of goods for whom or on whose account money is demanded for payment of tax, penalty or interest under this section.

52. Assessment without prejudice to prosecution for any offence,- Any assessment of tax or determination of interest made under this Act shall be without prejudice to any prosecution instituted for an offence under this Act.

53. Assessment after partition of Hindu undivided family or dissolution of firm and tax payable by a deceased dealer,-(1) Where a dealer is a Hindu undivided family, firm or other association of persons, and such family, firm or association is partitioned, disrupted or dissolved, as the case may be,-

(a) the tax, penalty or interest payable under this Act by such family, firm or association of persons for the persons for the period up to the date of such partition, disruption shall

be assessed, imposed or determined as if no such partition, disruption or dissolution 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, disruption or dissolution, a member of the Hindu undivided family, partner of a firm or member of an association of persons, and the legal representative of any such person, who is deceased, shall, notwithstanding such partition, disruption or dissolution, be jointly and severally liable for the payment, of the tax, penalty or interest payable under this Act by such family, firm or association of persons for the period up to the date of such partition, disruption or dissolution, whether assessment of such tax, imposition of such penalty or determination of such interest is made prior to, or after, such partition, disruption or dissolution.

Where a dealer carrying on a business as the sole proprietor dies and the business is partitioned, disrupted or discontinued upon his death, the executor or administrator of, or the legal heir to, the estate of such deceased dealer shall pay tax, penalty or interest payable by, or due from, such deceased dealer out of such estate; and such executor, administrator or legal heir shall notwithstanding the provisions of clause (10) of section 2, be deemed to be a dealer under this Act for the purposes of assessment of tax, determination of interest, and payment, recovery and refund of tax or interest, and all the provisions of this Act relating to appeal, revision or review in respect of the tax assessed or interest determined, shall apply accordingly.

54. Refunds.-

(1) The Commissioner shall, in the prescribed manner, refund to a registered dealer, being an exporter of goods, the amount of tax paid or payable on the purchases of goods or inputs used directly by him in manufacture in West Bengal, on being satisfied that goods so purchased or manufactured were sold outside the territory of India from West Bengal.

(2) The Commissioner shall, in the prescribed manner, refund to Consulates and specialized agencies of the United nations, the amount of tax paid or payable on the purchases of goods in West Bengal, on being satisfied that goods so purchased were for their personal or official use as maybe prescribed.

(3) Subject to other provisions of this Act, if it is found on assessment or re-assessment under section 36 or section 39 of the Act, as the case may be, that a dealer has paid tax, interest or penalty in excess of what is due from him, the Commissioner shall, in the prescribed manner, refund to such dealer the amount of tax, interest or penalty paid in excess by him :

Provided such amount was not realised by such dealer from the buyer or seller, as the case may be:

Provided further that such refund shall be made after adjusting any tax, interest or penalty due from him under the Act for any period, on the date of passing of order for such refund.

(4) The Commissioner shall, in the prescribed manner, refund to a certified dealer the amount of input tax paid or payable by him under this Act on his purchases of plant and machinery, containers, packing materials and inputs required for direct use in the manufacture of taxable goods in West Bengal for sale in West Bengal.

CHAPTER VII

Maintenance, production and inspection of accounts; search and seizure of accounts; measures to regulate transport of goods; checkposts; seizure of goods; imposition of penalty; disposal of seized goods, etc.

55. Maintenance of accounts, records, etc. &endash; (1) Every registered dealer or a dealer on whom a notice has been served to furnish return under sub-section (3) of section 26 shall maintain and keep a true and up to date account of the value of goods purchased or manufactured or sold by him or goods held by him in stock, and, in addition to the books of accounts that a dealer maintains or keeps for the purposes referred to in this sub-section, he shall maintain and keep such registers or accounts in such form as may be prescribed.

Every registered dealer and every dealer referred to in sub-section (1) shall keep at his place of business all accounts, registers and documents which may be required by the Commissioner, Special Commissioner or an Additional Commissioner or any person appointed under sub-section (1) of section 3 to assist the Commissioner for the purpose of inspection under sub-section (2) of section 59, and shall not keep or remove elsewhere such accounts, registers and documents except in accordance with the requirement of law or except for any purpose for which just cause is shown to the satisfaction of the Commissioner or the Additional Commissioner or the person appointed under sub-section (1) of section 3 to assist the Commissioner.

56. Maintenance of accounts by transporter, carrier or transporting agent, and inspection, search and seizure of such accounts and goods transported. &endash; (1) Notwithstanding anything contained in any other law for the time being in force, any other law for the time being in force, any transporter, carrier or transporting agent shall maintain, in the prescribed form, proper accounts of taxable goods transported by him into, or outside, or within, West Bengal on account of any person or dealer, being a consignee or consignor, as the case may be, and shall, on demand by the Commissioner, furnish such information to the Commissioner as may be required by the Commissioner in relation to transport of such goods by such transporter, carrier or transporting agent.

The accounts referred to in sub-section (1), and goods referred to in that sub-section and stored in a godown or warehouse in West Bengal, shall be open to inspection by the Commissioner at all reasonable time.

Where any transporter, carrier or transporting agent fails to maintain proper account in the prescribed form or fails to furnish information to the Commissioner as required by sub-section (1), the Commissioner may enter and search any place of transporting business or any other place where such transporter, carrier or transporting agent for the time being keeps any records or documents in relation to transport of goods, and the Commissioner may, for reasons to be recorded in writing seize such records or documents.

Where any transporter, carrier or transporting agent has &endash;

received any consignment of taxable goods from any person or dealer in West Bengal for transport of such consignment to any place outside, or within, West Bengal, or

transported into West Bengal any consignment of taxable goods on account of any person or dealer, and

the Commissioner has information that such person or dealer is not in existence at the address given in the way bill, tax invoice, invoice, consignment note or any document of like nature in respect of any consignment of goods referred to in clause (a), or clause (b), the Commissioner may direct the transporter, carrier or transporting agent, by an order in writing, that &endash;

the consignment of goods referred to in clause (a) shall not be transported outside, or within, West Bengal, or within, West Bengal, or

the consignment of goods referred to in clause (b) shall not be delivered,

till the matter is investigated into by the Commissioner or till a period of fifteen days (excluding Sunday or a public holiday declared under the Negotiable Instruments Act, 1881 (26 of 1881) expires from the date of communication of such direction to the transporter, carrier or transporting agent, whichever is earlier.

(5) Where the Commissioner, after giving the person or dealer referred to in clause (a), or clause (b), as the case may be, of sub-section 4, a reasonable opportunity of being heard or after causing an enquiry about the existence of such person, or dealer, is satisfied that such person or dealer &endash;

is in existence at the address given in the way bill, tax invoice, invoice, consignment note or any document of like nature, the Commissioner shall forthwith withdraw, by an order in writing, his direction issued under sub-section (4) to the transporter, carrier or transporting agent; or

is not in existence at the address given in the way bill, tax invoice, invoice, consignment note or any document of like nature, the transport of the consignment of taxable goods by such person or dealer to any place outside, or within, or into, West Bengal, shall be deemed to be in contravention of the provisions of section 62, or section 70, as the case may be, and the Commissioner shall seize such consignment of goods under section 65.

57. Compulsory issue of tax invoice, cash memo or bill. &endash;If&emdash;

a registered dealer sells any goods to any person, he shall issue to the purchaser a serially numbered tax invoice in the prescribed form, signed and dated by him or his regular employee, showing such particulars as may be prescribed, and he shall also keep a counterfoil or duplicate of such cash memorandum or bill, duly signed and dated; or

a dealer, not being a registered dealer, whose turnover of sales has exceeded in any year fifty *per centum* of the taxable quantum referred to in sub-section (3) of section 9,

sells any goods to any person, he shall issue to the purchaser a serially numbered invoice or cash memorandum or bill, signed and dated by him or his regular employee, showing such particulars as may be prescribed, and he shall also keep a counterfoil or duplicate of such cash memorandum or bill, duly signed and dated:

Provided that if the State Government is of the opinion that the requirement under this section shall cause hardship to a certain class or classes of dealers included in clause (b), and that such requirement should, subject to fulfillment by any class or classes of dealers of certain conditions and restrictions to be imposed to ensure that there is no evasion of tax, be dispensed with, it may prescribe by rules such class or classes of dealers, and such conditions and restrictions subject to which the requirement of clause (b) of this sub-section in respect of such class or classes of dealers shall be dispensed with.

58. Imposition of penalty for failure to issue tax invoice, cash memo or bill. &endash;

If a registered dealer or a dealer contravenes the provisions of section 57, the Commissioner may, after giving such dealer a reasonable opportunity of being heard, by an order in writing, direct that he shall pay, in the prescribed manner, by way of penalty, a sum equal to double the amount of tax which could have been levied under this Act in respect of the sales referred to in that section where no cash memorandum or bill has been issued, or five thousand rupees, whichever is greater:

Provided that if such registered dealer or dealer proves to the satisfaction of the Commissioner that he deals exclusively in goods specified in Schedule A, sales of which are declared tax-free under section 15, the Commissioner may exempt such registered dealer or dealer from payment of penalty or impose such lesser amount of penalty as he deems fit and proper.

Any penalty imposed under sub-section (1) shall be paid by the registered dealer or dealer into a Government Treasury or the Reserve Bank of India by such date as may be specified in a notice to be issued by the Commissioner in this behalf, and the date to be so specified shall not be less than fifteen days from the date of service of such notice.

Any amount of penalty that remains unpaid after the date specified in the notice referred to in sub-section (2) shall be recoverable in accordance with the provisions of section 46.

59. Production and inspection of accounts, registers and documents. &endash;

The Commissioner, Special Commissioner, Special Commissioner or an Additional Commissioner may, subject to such conditions as may be prescribed, require any person or dealer &endash;

to produce before him any accounts, registers or documents, or

to furnish any information relating to &endash;

stock of goods held by such person
or dealer,

purchases, sales or deliveries of
goods made by such person or
dealer, or

any other matter, and

to explain to the Commissioner, Special Commissioner or the
Additional Commissioner any accounts, registers or documents
produced by such person or dealer,

as may be deemed necessary for the purpose of this Act.

All accounts, registers and documents relating to the stock of goods held, or purchases, sales or deliveries of goods, by any dealer; and all goods kept in any place of business of any dealer shall, at all reasonable time, be open to inspection by the Commissioner, Special Commissioner or an Additional Commissioner.

60. Seizure of dealer's accounts- If the Commissioner, Special Commissioner or an Additional Commissioner or any person appointed under sub-section (1) of section 3 to assist the Commissioner, has reason to suspect that any dealer is attempting to evade payment of any tax, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer including computerised or electronic accounts maintained on any computers or electronic media as may be necessary and shall grant a receipt for such accounts, registers or documents seized by him and shall retain all or any of them only for such period as may be necessary for examination thereof or for prosecution or for any other purpose of this Act;

Provided that-

the Commissioner, Special
Commissioner or an Additional
Commissioner shall not retain any
of the accounts, registers or
documents seized by him under this
section for a period exceeding one
year from the date of the seizure
unless he records in writing the
reasons therefor, and

any person appointed under sub-
section (1) of section 3 to assist the
Commissioner shall not retain any
of the accounts, registers or
documents seized by him under this
section for a period exceeding one
year from the date of the seizure

unless he states the reason in writing therefor and obtains sanction of the Commissioner in writing in respect thereof,

61. Entry and search of place of business or any other place,-

For the purposes of section 59 or section 60, the Commissioner, an Additional Commissioner, or any person appointed under sub-section (1) of section 3 to assist the Commissioner, may enter and search-

any place of business of any dealer,
person, transporter or owner or
lessee of warehouse, or

any other place,

Where the Commissioner, the Special Commissioner, the Additional Commissioner or the person appointed under sub-section (1) of section 3 to assist the Commissioner, has, upon information received, reason to believe that such dealer, person, transporter or owner or lessee of warehouse, keeps or is, for the time being, keeping any accounts, registers, documents or records of his business or any stock of goods for sale.

(2) The Commissioner, the Special Commissioner the Additional Commissioner, or any person appointed under sub-section (1) of section 3 to assist the Commissioner, may, while entering or searching any place of business of a dealer, person, transporter or owner or lessee of warehouse or any other place referred to in sub-section (1), break open any door or window of a house, room or ware house where, or any almirah, safe, box or receptacle in which, the Commissioner, the Additional Commissioner, or the person appointed under sub-section (1) of section 3 to assist the Commissioner, has reason to believe, such dealer, person, transporter or owner or lessee of warehouse keeps or is, for the time being, keeping any accounts, registers, documents or records of his business or any stock of goods for sale either before or after entering or searching or during search of any place of business of any dealer or any other place referred to in sub-section (1) and then, if necessary, break open any door or window of such house, room, or warehouse or any almirah, safe, box or receptacle.

(3) The Commissioner, a Special Commissioner, an Additional Commissioner, or any person appointed under sub-section (1) of section 3 to assist the Commissioner, may, subject to such conditions and restrictions as may be prescribed, seal any house, room, warehouse, almirah, safe, box or receptacle in which, he has reason to believe, a dealer, person, transporter or owner or lessee of warehouse, keeps or is, for the time being, keeping any accounts, registers documents or records of his business or any stock of goods for sale.

62. Restriction on movement of goods

To ensure that there is no evasion of tax, no person shall transport from any railway station, steamer station, airport, port, post office or any checkpost set up under section 66 or from any other place any consignment of goods except in accordance with such restrictions and conditions as may be prescribed

Subject to the restrictions and conditions prescribed under sub-section (1) or sub-section (2), any consignment of goods may be transported by any person after he furnishes in the prescribed manner such particulars in such form obtainable from such authority or in such other form as may be prescribed.

Subject to such restrictions and conditions as may be prescribed, nothing in sub-section (1) shall apply to-

duly accredited diplomatic personnel attached to foreign consulates or other diplomatic offices,

organisations and specialised agencies of the United Nations

Khadi and Village Industries Commission,

Embarkation Headquarters, Shipping Section
Customs Group, Ministry of Defence, Government of India, Kolkata, or

Such other persons, organisations or institutions as may be prescribed.

63. Interception, detention and search of road vehicles and search of warehouse, etc- For the purpose of verifying whether any consignment of goods are being or have been transported in contravention of the provisions of section 62 or section 70, the Commissioner, a Special Commissioner, an Additional Commissioner, or any person appointed under sub-section (1) of section 3 to assist the Commissioner, may subject to such restrictions as may be prescribed,-

intercept, detain and search at any place referred to in sub-section (1) of section 62 a road vehicle or river craft or any load carried by a person, or

search any warehouse or at any other place in which, according to his information, such goods transported in contravention of the provisions of section 62 have been stored, or

intercept, detain and search at any checkpoint or any other place referred to in sub-section (2) of section 70, any goods vehicle.

64. Stock of goods stored in undisclosed warehouse in contravention of section 68- (1) If any registered dealer has not disclosed any warehouse in his application for registration made under sub-section (2) of section 21 or has not furnished information under section 91 regarding change of his warehouse or opening of a new warehouse for amendment of his certificate of registration under sub-section (6) of section 21 and if any stock of goods is found in such warehouse after search made under section 63 by the Commissioner or any person appointed under sub-section (1) of section 3 to assist him, it shall be presumed that such dealer has transported such goods in contravention of section 62 and stored those goods in such warehouse, unless such dealer –

explains to the Commissioner, or any person appointed under sub-section (1) of section 3 to assist him, who conducts such search, the

reason for not disclosing the warehouse or furnishing the information under section 91 and the stock of goods found stored in such warehouse, and

produces on demand by the Commissioner or any person appointed under sub-section (1) of section 3, and explains to such authority the stock register or any account of stock showing entry of such goods therein and purchase bill or cash memo, challan or any document of like nature within twenty-four hours or within such time as may be granted to him upon an application made in writing by such dealer.

(2) Where the dealer prays for time under clause (ii) of sub-section (1), the Commissioner, or any person appointed under sub-section (1) of section 3 to assist him, shall allow a time to produce before him the document referred to in that clause, and shall meanwhile seal such warehouse up to the time allowed by him.

65. Seizure of goods.- (1) Where, upon interception or search referred to in clause (a), or clause (c), of section 63, the Commissioner, a Special Commissioner an Additional Commissioner, or any person appointed under sub-section (1) of section 3 to assist the Commissioner, has reason to believe that any goods are being transported in contravention of the provisions of section 62, or section 70, he shall first detain the vehicle carrying such goods for a period not exceeding forty-eight hours and, if the person bringing, importing or receiving such goods fails to furnish such particulars in such form as may be prescribed under section 62, or section 70, shall thereafter seize such goods together with any container or other materials for the packing of such goods:

Provided that in computing the period of detention not exceeding forty-eight hours, Sunday or a public holiday declared under the Negotiable Instruments Act, 1881 (26 of 1881), shall be excluded.

Provided that such authority may, at the option, in writing, of the person from whom the seizure of goods is made under this sub-section give custody of such seized goods to such person on the express condition that he shall keep such seized goods in the warehouse, or at any other place, referred to in clause (b) of section 63, where the seizure has been made, and that he shall not dispose of such seized goods in any manner before the proceedings, if any, initiated in respect of such seized goods under section 57 is concluded :

Provided further that the authority referred to in this sub-section may take physical possession of such seized goods from the custody of such person even before the conclusion of the proceedings under section 66 where such person communicates, in writing, in writing, to such authority his difficulty in keeping such seized goods in his custody after

the expiry of thirty days from the date of giving of custody of such goods to him.

(2) Where, upon search of any warehouse or any other place referred to in clause (b) of section 63, the Commissioner, the Special Commissioner, the Additional Commissioner, or the person appointed under sub-section (1) of section 3 to assist the Commissioner, has reason to believe that any goods transported in contravention of the provisions of section 62, have been stored in such warehouse or other place, he shall seize such goods together with container or any other materials for the packing of such goods or, in case such goods are not seized, he may seal such warehouse.

(3) If the dealer fails to produce before the Commissioner or any person appointed under sub-section (1) of section 3 to assist him the document referred to in clause (ii) of sub-section (1) of section 64 and fails to satisfy him that the goods found in such warehouse have not been transported in contravention of section 62, he shall, for reasons to be recorded in writing, seize the goods and grant a receipt specifying the items of goods so seized.

(4) Where the authority referred to in sub-section (1) seizes any goods under that sub-section, it may, at the option of any transporter, in writing, give custody of such seized goods to him in the manner prescribed, and allow him to transport such seized goods up to the godown or warehouse of the transporter in West Bengal as declared by him, on the express conditions that such transporter shall keep such seized goods in the said godown or warehouse and that he shall not deliver such seized goods to the consignee or owner of such seized goods so transported by him before the proceedings, if any, initiated against the consignee or owner of such seized goods under section 66 is concluded:

Provided that the authority referred to in sub-section (1) may take physical possession of such seized goods from the custody of the transporter even before the conclusion of the proceedings under section 66 where such transporter communicates, in writing, to such authority his difficulty in keeping such seized goods in his custody after the expiry of thirty days from the date of storing of such seized goods in his godown or warehouse.

66. Penalty for transporting goods into West Bengal in contravention of section 62, or section 70.- (1) If any goods are seized under section 65, the Commissioner or the Special Commissioner or the Additional Commissioner may, by an order in writing, impose upon the person from whom such goods are seized or the owner of such goods, where particulars of the owner of such goods are available, or person who subsequently establishes his claim of ownership or possession reasonable opportunity of being heard, a penalty of a sum not exceeding fifty *per centum* of the value of such goods as may be determined by him in accordance with the rules made under this Act:

Provided that the sum of penalty that may be imposed under this sub-section shall not exceed-

thirty *per centum* of the value of goods if the rate or tax leviable under sub-section (2) of section 14 in

respect of such goods does not exceed fifteen *per centum*;

fifty *per centum* of the value of goods if the rate or tax leviable under sub-section (3) of section 14 in respect of such goods exceeds a fifteen *per centum*.

(2) A penalty imposed under sub-section (1) shall be paid by the person or the owner of goods, as the case may be, into a Government Treasury or the Reserve Bank of India by such date as may specified by the Commissioner or the Special Commissioner or the Additional Commissioner in a notice to be issued for this purpose, and the date so specified shall not be earlier than fifteen days from the date of the notice:

Provided that the Commissioner or the Special Commissioner or the Additional Commissioner may, for reasons to be recorded in writing, extend the date of payment of the penalty for such period as he may think fit.

(3) The goods seized under section 65 shall be released in the prescribed manner on payment of the penalty imposed under sub-section (1).

(4) If the penalty is not paid by the date specified in the notice issued under sub-section (2), the Commissioner or the Special Commissioner or the Additional commissioner may, in such manner and subject to such restrictions and conditions as may be prescribed, sell the goods so seized under section 65 in open auction and remit the sale proceeds thereof to a Government Treasury.

(5) Notwithstanding anything contained in sub-section (3),-

the person to whom the commissioner has, under sub-section (4), of section 3, delegated his power for revision under section 76, pending disposal of an application for revision against an order for imposition of penalty referred to in sub-section (1), or

the Commissioner, where there is no application for revision under section 76,

may, for reasons to be recorded in writing, direct release of the goods seized under section 65 on such terms and conditions as he may deem fit.

(6) Notwithstanding anything contained in sub-section (4), the Commissioner may, subject to such rules as may be made under this Act, where the goods seized under section 65 are-

of perishable nature, or

required to be used by a specified date,

sell such goods in open auction after the expiry of such period as he may consider fit and proper, if he is of opinion that such goods may become unusable or unsaleable on detention, or destroy such goods if the said goods become unusable before the sale in open auction actually takes place.

(7) The proceeds of sale of the goods referred to in sub-section (4) or sub-section (6) shall be applied in the prescribed manner for payment in the following order of priority:-

first, for incidental charges, if any, relating to auction sale or such goods;

secondly, for expenses, if any, for storage of such goods;

thirdly, for penalty imposed under sub-section (1); and

the balance of the proceeds of sale, if any, shall be paid to the owner of the goods or, if his particulars are not available, to the persons from whom such goods were seized under section 65, upon application within one year from the date of sale or within such further period as may be allowed by the Commissioner for cause shown to his satisfaction.

(8) Any amount of penalty imposed under sub-section (1), which remains unpaid after the date specified in the notice issued under sub-section (2) or which cannot be recovered in accordance with the provisions of sub-section (4), sub-section (6) or sub-section (7), shall be recoverable in accordance with the provisions of section 46.

67. Penalty on transporter for contravention of the provisions of sub-section (4) of section 65.- Where a transporter, at his option, takes custody under sub-section (4) of section 65 of any goods seized under sub-section (1) of that section and thereafter contravenes the provisions of sub-section (4) of that section by delivering such seized goods wholly or partly to the consignee or owner of such seized goods without prior permission, in writing, of the authority referred to in sub-section (1) of section 65, the said authority shall, after giving the transporter a reasonable opportunity of being heard, impose upon him a penalty, in the manner prescribed, not exceeding fifty *per centum* of the market value of such seized goods in West Bengal.

68. Penalty for contravention of the provisions of section 62 when goods transported are not available.

(1) Where the goods are, or have been, transported by a person, dealer or casual trader in contravention of restrictions or conditions prescribed under section 62 and such goods are not available for seizure under sub-section (1) of section 65, the Commissioner, or the Additional Commissioner, shall, after giving such person or dealer a reasonable opportunity of being heard, impose a penalty of a sum not exceeding twenty-five per centum of the value of such goods.

(2) The procedure for imposition of penalty as prescribed under section 67 shall apply mutatis mutandis in the matter of imposition of penalty under this section .

69. Regulatory measures for transport of goods through West Bengal. &endash; (1) When a goods vehicle, transporting any goods, other than goods sales of which are tax-free under section 15, enters into West Bengal, and such vehicle transporting such goods is bound for any place outside West Bengal, the transporter of such goods shall have to make, in the prescribed manner, a declaration on the body of the consignment note or on a document of like nature that the goods being so transported in his vehicle shall not be unloaded delivered or sold in West Bengal and he shall also specify in such declaration the name of the last checkpost through which the vehicle transporting such goods shall move outside West Bengal:

Provided that if there is any possibility of transshipment in West Bengal of the goods so carried by the transporter, he shall also declare the same on the body of the consignment note or on the document of like nature while making the declaration and shall, thereafter, note therein the particulars of the new vehicle when such transshipment is actually made even when, after leaving the first checkpost, any transshipment of such goods is made by such transporter under any compelling circumstances:

Provided further that the provisions of this sub-section shall not apply where the transporter of such goods proves to the satisfaction of the Commissioner, or the other authority referred to in sub-section (2), that the transport of such goods in such vehicle is in the course of export within the meaning of sub-section (1) of section 5 of the Central Sales Tax Act, 1956 (74 of 1956), to such country as the State Government may by notification specify.

(2) For the purpose of sub-section (1), the consignment note or the document of like nature containing the declaration together with such other documents as may be prescribed, shall be produced before the Commissioner at the first checkpost that the transporter reaches after entry of the vehicle into West Bengal or, where such vehicle is intercepted before it reaches the first checkpost, before such other authority as may be prescribed, at the place where the vehicle is intercepted.

(3) A consignment note or a document of like nature containing the declaration produced in accordance with the provisions of sub-section (2) shall, in the manner prescribed, be countersigned by the Commissioner or the other authority referred to in sub-section (2), as the case may be, and such consignment note and other documents, duly countersigned, shall be returned to the transporter.

(4) The transporter shall carry with him the consignment note or the document of like nature containing the declaration duly countersigned under sub-section (3) while transporting the goods through West Bengal and produce such consignment note or document of like nature before the Commissioner at the last checkpost that he reaches before the exit of the vehicle with such goods from West Bengal, and the Commissioner shall, in the prescribed manner, endorse such consignment note or document of like nature evidencing exit

from West Bengal of the vehicle transporting the same goods as are specified in such consignment note and return the same to the transporter:

Provided that after leaving the first checkpost where any transshipment of goods is made by the transporter under any compelling circumstances and if the fact of such transshipment was not declared by him at the first checkpost as required under the first proviso to sub-section (1), he shall adduce reasons for doing so before the Commissioner at the last checkpost along with supporting evidence wherever necessary, and if the Commissioner is satisfied with the reasons adduced or evidence produced by such transporter, he shall endorse the countersigned consignment note or document of like nature containing the declaration as required under that sub-section and return the same to the transporter allowing movement of the vehicle carrying such goods outside West Bengal.

(5) The Commissioner may, subject to such conditions and restrictions as may be prescribed, intercept at any place, other than those referred to in sub-section (2) and sub-section (4), within West Bengal any goods vehicle and require the transporter to produce before him the declaration and other document referred to in sub-section (2) and search such goods vehicle for verification of the goods with the declaration and other documents produced, if any, by the transporter.

(6) Where after the search of the vehicle made under sub-section (5), the commissioner or the other authority referred to in sub-section (5) is satisfied, for reasons to be recorded in writing, that the transporter has contravened the provisions of this section, he may, after giving the transporter a reasonable opportunity of being heard, impose, by an order to be passed in the prescribed manner, such penalty, not exceeding twenty-five *per centum* of the value of the goods so transported, as may be determined by him in accordance with the rules made under this Act.

(7) Any penalty imposed under sub-section (6) shall be paid by the transporter into a Government Treasury or the Reserve Bank of India by such date as may be specified by the Commissioner or the other authority referred to in sub-section (5) in a notice to be issued for this purpose, and the date so specified shall not be earlier than fifteen days from the date of service of the notice:

Provided that the Commissioner or the other authority referred to in sub-section (5) may, for reasons to be recorded in writing, extend the date of such payment.

(8) Until the penalty imposed under sub-section (6) is paid and a receipt showing payment of such penalty is furnished and the declaration referred to in sub-section (2) is produced, the goods so transported shall be detained by the Commissioner or the other authority who imposed such penalty.

(9) If the penalty is paid by the date specified in the notice referred to in sub-section (7) and transporter furnishes the consignment note or the document of like nature containing the declaration in accordance with the provisions of this section, the Commissioner or the other authority who imposes the penalty shall countersign the consignment not or the document of like nature containing the declaration and the documents in accordance with the provisions of this section and allow the vehicle to resume its journey.

(10) If the penalty is not paid by the date specified in the notice referred to in sub-section (7) the goods shall be seized by the Commissioner or the other authority under whose order such goods are detained.

(11) Notwithstanding anything contained in sub-section (8) and sub-section (10), the Commissioner, pending final disposal of an application for revision under section 76 against an order of imposition of penalty under this section, may direct transport of the goods through West Bengal on such terms and conditions as he may consider fit and proper.

(12) Subject to such restrictions and conditions as may be prescribed, the Commissioner may sell the goods seized under sub-section (10) in open auction or otherwise, and remit the proceeds of sale thereof to a Government Treasury.

(13) The proceeds of sale of the goods referred to in sub-section (12) shall be applied in the prescribed manner for payment in the following order of priority :-

first, the incidental charges, if any, relating to sale in auction or otherwise;

(b) secondly, the expenses, if any, for storage of such goods seized under sub- section (10);

(c) thirdly, the penalty imposed under sub-section (6);

and the balance of such proceeds of sale, if any, shall be paid in the prescribed manner to the owner of such goods seized under sub-section (10).

(14) Subject to the provisions of sub-section (10) and sub-section (12), if the transporter fails to produce the consignment not or the document of like nature containing the declaration countersigned under sub-section (3) or sub-section (9) before the Commissioner as required under sub-section (4) within such time as may be specified in the consignment not or the document of like nature containing the declaration, it shall be presumed that the goods so transported have been sold in West Bengal by the transporter, and he shall be deemed to be a dealer under this Act.

(15) The provisions of this Act shall, for the purposes of levy, collection and assessment of tax, determination of interest, payment and recovery of tax and interest, appeal, review or revision, apply to be transporter deemed to be a dealer under sub-section (14).

(16) If the State Government is, at any time, of the opinion that it would be in the public interest so to do it may, be notification, exempt from such date, for such period and subject to such terms and conditions, as may be specified therein, any class or classes of goods from the operation of the provisions of this section.

Explanation. &endash;For the purposes of this section and section 70,-

"transporter" means the owner, or any person having possession or control, of a goods vehicle who transports on account of any other person for hire or on his own account any goods from one place to another, and includes any person whose name is entered in the permit granted under the Motor Vehicles Act, 1988 (59 of 1988), as the holder thereof, the driver or any other person in charge of such vehicle;

"goods vehicle" means any motor vehicle as defined in the Motor Vehicles Act, 1988, constructed or adapted for use for transportation of goods or any motor vehicle not so constructed or adapted when used for the transportation of goods, and includes a trailer attached to such vehicle.

70. Measures to prevent evasion of tax on sales within West Bengal- (1) Where a transporter carries from any place in West Bengal in a goods vehicle any consignment of goods and such vehicle is bound for any place outside West Bengal, he shall, in addition to a document of title to the goods, carry with him, in respect of such goods,-

where carriage is caused by a sale of such goods, two copies of the bill or cash memorandum issued by the seller of such goods, and a way bill in the prescribed form containing such particulars as may be prescribed, or

where carriage is caused otherwise than by a sale of such goods, two copies of the forwarding note delivery challan or document of like nature, by whatever name called, issued by the owner or consignor of such goods, and a way bill in the prescribed form containing such particulars as may be prescribed.

Provided that the provisions of this sub-section shall not apply where the transporter carrying such goods proves to the satisfaction of the Commissioner that consequent upon a sale of such goods in the course of export within the meaning of sub-section (1) of section 5 of the Central Sales Tax Act, 1956 (74 of 1956), his goods vehicle carrying such goods is bound for such country as the State Government may, by notification specify.

The transporter, while carrying the goods referred to in sub-section (1) shall stop the vehicle at the checkpoint, or at any place when so required by the Commissioner, and produce the documents referred to in sub-section (1) along with the document of title to such goods before the Commissioner, and the Commissioner shall countersign the documents referred to in clause (a) or clause (b), as the case may be, of sub-section (1).

(3) If the State Government is, at any time, of the opinion that it would be in the public interest so to do, it may, by notification, exempt from such date, for such period, and subject to such conditions, as may be specified therein, any class or classes of transporter carrying any class or classes of goods referred to in sub-section (1) from carrying the way bill in the prescribed form referred to in that sub-section.

71. Exemption from operation of the provisions of section 69 and section 70- Nothing in section 69 or section 70 shall apply to transport of goods referred to in section 69 or section 70 where such goods are transported by or on behalf of-

the King of Nepal, the King of Bhutan, the Royal Family of Nepal or Bhutan or the Government of Nepal or Bhutan;

Government or a local authority;

A diplomatic or consular office, any organisation or specialised agency of the United Nations;

Indian Red Cross Society or a Charitable Institution for charitable purposes recognised by Government;

72. Setting up of checkpoints- If the State Government is of the opinion that it is necessary so to do with a view to preventing evasion of tax in respect of sale or purchase of goods in West Bengal, it may, by notification, set up checkpoints or barriers for carrying out the purposes of section 63, section 69 or section 70 at such places within West Bengal as may be specified in such notification.

73. Penalty for concealment of sales and for furnishing of incorrect particulars of sales and purchases.- (1) Where-

(a) a dealer has concealed any sales or any particulars thereof, or

(b) a dealer, being a registered dealer or a dealer required by the Commissioner to furnish return under sub-section (3) of section 33, has furnished incorrect statement of his turnover of sales or purchases or incorrect particulars of such sales or purchases in the return furnished by him under sub-section (2) of that section or otherwise,

with intent to reduce the amount of tax payable by him, Commissioner may, after giving such dealer a reasonable opportunity of being heard, by an order in writing direct that he shall, in addition to any tax levied or penalty imposed under this Act, pay, by way of penalty, a sum, not less than one and half times but not exceeding thrice the amount of tax which would have been avoided by him if such concealed sales or purchases or particulars thereof or incorrect statement of turnover of sales or purchases or particulars thereof or incorrect statement of his turnover of sales or purchases or incorrect particulars of such sales or purchases were not detected and taken into account or if turnover of sales or particulars of sales furnished in returns or shown in his books of account were accepted as correct, as the case may be, in making an assessment or passing any order upon appeal, revision or review under the Act.

(2) Any penalty imposed under sub-section (1) shall be paid by the dealer into a Government Treasury or the Reserve Bank of India by such date as may be specified by the Commissioner in a notice issued for the purpose, and the date to be so specified shall not be less than fifteen days from the date of such notice,

Provided that the Commissioner may, for reasons to be recorded in writing, extend the date of such payment or allow the dealer to pay the penalty imposed in such number of installment as the Commissioner may determine.

(3) Any amount of penalty that remains unpaid after the date specified in the notice referred to in sub-section (2) or, where such date has been extended under the proviso to that sub-section, after the expiry of extended time, shall be recoverable in accordance with the provisions of section 46.

CHAPTER VIII

Appeal, revision, review, power of taking evidence on oath and reference

74. Appeal against assessment. &endash; (1) Any dealer may, in the prescribed manner, appeal to the prescribed authority against any assessment within forty-five days or such further period as may be allowed by the said authority for cause shown to his satisfaction from the receipt of a notice of demand in respect thereof:

Provided that no appeal shall be entertained by the said authority unless he is satisfied that such amount of the tax, penalty or interest, as the case may be, as the appellant may

admit to be due from him and such percentage of the disputed tax, as may be prescribed, has been paid.

Subject to such rules of procedure as may be prescribed, the appellate authority, in disposing of any appeal under sub-section (1), may &endash;

confirm, reduce, enhance or annul the assessment, or

when such authority is satisfied, for reasons to be recorded in writing, that it is not practicable or desirable to act in accordance with the provisions of clause (a) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed.

(3) While acting in accordance with the provisions of clause (b) of sub-section (2), the appellate authority may set aside any part or parts of an assessment and, if he does so, the assessing authority shall make a fresh assessment in respect of such part or parts only, and the remaining part or parts of the previous assessment shall remain unaltered and valid.

(40) Pending disposal of an appeal referred to in sub-section (2), the appellate authority may, on application, at his discretion and subject to such conditions and restrictions as may be prescribed, stay realization of the amount of tax, penalty or interest in dispute wholly or in part.

Explanation. &endash; For the purposes of this section or section 77, -

(a) "assessment" includes &endash;

assessment of tax and imposition of penalty under section 36,

assessment of tax under section 39,

determination of interest under section 42, or

rectification of mistake in determination of interest under section 43.

(b) "notice of demand" means any notice served in accordance with the provisions of this Act for realisation of the tax, penalty or interest referred to in clause (a).

75. *Suo motu* revision by the Commissioner. -- Subject to such rules as may be made and for reasons to be recorded in writing, the Commissioner may, on his own motion, revise any assessment made or order passed by a person appointed under sub-section (1) of section 3 to assist him.

76. Revision by Commissioner upon application. &endash; Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Commissioner may, upon application, revise any order, other than an order referred to in section 77 and an order of assessment against which an appeal lies under section 74, passed by a person appointed under sub-section (1) of section 3 to assist him.

77. Revision by Appellate and Revisional Board. &endash; (1) Subject to such rules as may be prescribed and for reasons to be recorded in writing, the Appellate and Revisional Board may, upon application, revise a final appellate or revisional order from an order of assessment.

Provided that here an applicant fails to appear in person or through an authorized agent on the date and at the time and at the time and place fixed for hearing on the application for revision preferred by him, the Appellate and Revisional Board may, in its dismiss such application for such default of the applicant :

Provided further that the Appellate and Revisional Board may, upon application filed by an applicant within forty-five days from the date of order of dismissal of an application for revision for default passed by it under the first proviso, or within such further time as it may allow for cause shown to its satisfaction, restore the application for revision so dismissed.

(2) Where during the pendency of an application for revision preferred by a dealer under sub-section (1) before the Appellate and Revisional Board, the Commissioner, having discovered &endash;

any error or omission, whether in fact or law, in the final appellate or revisional order referred to in sub-section (1), or

any concealment by a dealer of his turnover of sales or purchases or incorrect statement by such dealer or particulars of his sales or purchases or claim for deduction of any part of gross turnover of sales or purchases or claim for lower rate of tax payable under this Act,

is of the opinion that the amount of tax assessed is liable to be enhanced from what has been made in the order of assessment or in the final appellate or revisional order in the matter of the amount of tax so assessed, as the case may be, he may, subject to such rules as may be made, file, at any time before the application for revisional is finally heard by the Appellate and Revisional Board, a memorandum bringing to its notice the error or omission referred to in clause (a) or the concealment by the dealer of the turnover of sales or purchases or incorrect statement by him of the particulars referred to in clause (b).

(3) The Appellate and Revisional Board shall, while proceeding to revise under sub-section (1) any final appellate or revisional order from order of assessment, entertain the memorandum filed under sub-section (2) as an application by the Commissioner for revision and pass such revisional order as it deems fit.

(4) Where the Commissioner, after revision made by the Appellate and Revisional Board under sub-section (1), discovers any concealment by a dealer of his turnover of sales or purchases or incorrect statement by a dealer of particulars of his sales or purchases or claim for deduction of any part of gross turnover of sales or claim for lower rate of tax, he may, subject to such rules as may be made, make, within four years from the date of order of the Appellate and Revisional Board, an application to the Appellate and Revisional Board, and the Appellate and Revisional Board, may thereupon, after giving the Commissioner and the dealer a reasonable opportunity of being heard, review its order passed under sub-section (1) and pass such order as it deems fit.

78. Review of order. &endash; Subject to such rules as may be made, any assessment made or order passed under this Act or the rules made thereunder by any person appointed under sub-section (1) of section 3, section 4 or section 5 may be reviewed by the person passing it upon application or on his own motion, and , subject to the rules as aforesaid, the Appellate and Revisional Board may, in the like manner and for reasons to be recorded in writing, review any order passed by it, either on its own motion or upon an application:

Provided that if the Commissioner considers it necessary to modify any order passed either by any of his predecessors-in-office, or by any person in the rank of Additional Commissioner when such person ceases to hold the rank of the Additional Commissioner, the Commissioner may review any such order.

79. Appeal, review or revision in certain cases to lie in the manner and to the authority provided in rules in Schedule X.&endash; An appeal, review or revision in respect o any order passed in the matter of tax recoverable under clause (b)of sub-section (1) of section 46, section 47, section 48 or section 50 shall lie in the manner and to the authority provided in the rules in Schedule X.

80. Reasonable opportunity for hearing. &endash; Before any order under section 74 section 75, section 76, section 78 or section 79, which likely to affect any person adversely, is passed, such person shall be given a reasonable opportunity of being heard.

81. Power of taking evidence on oath. &endash; The Appellate and Revisional Board, the Commissioner, the Special Commissioner, the Additional Commissioner, or any person appointed under sub-section (1) of section 3 to assist the Commissioner, shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely, -

enforcing the attendance of any person and examining him on oath or affirmation;

compelling the production of documents; and

issuing commissions for the examination of witnesses,

and any proceeding under this Act before the Appellate and Revisional Board, the Commissioner, the Special Commissioner, the Additional Commissioner, or any person appointed under sub-section (1) of section 3 to assist the Commissioner, shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

82. Reference to Tribunal. &endash; (1) Within sixty days from the date of passing by the Appellate and Revisional Board of any order under section 77 affecting any liability of any dealer to pay tax, penalty or interest under this Act, such dealer, by application in writing accompanied by a fee of one hundred rupees, or the Commissioner, by application in writing, may require the Appellate and Revisional Board to refer to the Tribunal any question of law arising out of such order.

If, for reasons to be recorded in writing, the Appellate and Revisional Board refuses to make such reference, the applicant may, within ninety days of such refusal, either &endash;

withdraw his application and if he does so, the fee, if any paid, shall be refunded, or

apply to the Tribunal against such refusal.

(3) If upon the receipt of an application under clause (b) of sub-section (2) the Tribunal is not satisfied with the correctness of the decision of the Appellate and Revisional Board, it may require the Appellate and Revisional Board to state the case and refer it, and, on the receipt of such requisition, the Appellate and Revisional Board shall state and refer the case to the Tribunal accordingly.

(4) If the Tribunal is not satisfied that the statements in a case referred to it under this section are sufficient to enable it to determine the question of law raised thereby, it may refer the case back to the Appellate and Revisional Board to make such addition thereto or alterations therein as it may direct in this behalf.

(5) The Tribunal upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgement thereon containing the grounds on which such decision is founded, and shall send to the Appellate and Revisional Board a copy of such judgement under the seal, and the signature of the Registrar, of the Tribunal, and the Appellate and Revisional Board shall dispose of the case accordingly.

(6) Where a reference is made to the Tribunal under this section, the costs (including fees) shall be in the discretion of the Tribunal.

(7) The payment of the amount, if any, of tax, penalty or interest due in accordance with the order of the Appellate and Revisional Board in respect of which an application has been made under sub-section (1), shall not be stayed pending the disposal of such application or any reference made in consequence thereof, but if such amount is reduced as the result of such reference, the amount of tax, penalty or interest paid in excess shall be refunded in accordance with the provisions of section 54.

83. Offences and penalties. &endash; (1) Whoever &endash;

carries on business as a dealer without furnishing the security demanded under section 23; or

fails to pay full amount of tax payable for any period in accordance with the provisions of sub-section (4) of section 26; or

fails to make payment of interest payable under section 27 or section 28; or

fails to comply with the provisions of section 55; or

contravenes the provisions of section 62; or

fails to comply with any requirement under section 70; or

neglects or refuses to furnish information required by section 83; or

neglects or refuses to furnish information required by section 89; or

neglects to furnish any information required by section 91,

shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both and, a court having jurisdiction may, in addition to any fine as aforesaid, order confiscation of any goods seized under section 65 for the offence of contravention of section 62.

Whoever carries on business as a dealer in contravention of sub-section (1) of section 21 shall be punishable with simple imprisonment which may extend to one year or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of the continuance of the offence.

(3) Whoever, being a transporter, carrier or transporting agent, fails or neglects to comply with the provisions of section 56, shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.

(4) Whoever &endash;

furnishes a false return referred to in section 26; or

(b) produces a fake or fabricated tax invoice referred to in section 16;

(c) fails without reasonable cause to furnish a return under section 26;

(d) refuses to comply with any requirement under section 59; or

(e) fails to submit before the prescribed authority statements, accounts or declarations under section 92, within prescribed time;

shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years and with fine not exceeding ten thousand rupees or with both, and when the offence is a continuing one, with a daily fine, not exceeding fifty rupees, during the period of the continuance of the offence.

(5) Whoever has in his possession any prescribed form referred to in section 62, not obtained by him or by his principal or agent in accordance with the provisions of this Act or any rules made thereunder, shall be deemed to have committed the offence of criminal breach of trust under section 405 of the Indian Penal Code (45 of 1860), and every such person who commit such criminal breach of trust, shall, on conviction, be punishable with imprisonment of either description which shall not be less than three months but which shall not be less than three months but which may extend to three years or with fine not exceeding ten thousand rupees or with both.

(6) Whoever willfully attempts in any manner to evade or defeat any tax imposed under this Act, shall, in addition to any other penalty provided by any law for the time being in force, be liable also for the offence of dishonest misappropriation of property under section 403 of the Indian Penal Code, and shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years or with fine not exceeding ten thousand rupees or with both.

(7) Whoever knowingly produces incorrect accounts, registers or documents, or knowingly furnishes incorrect information or suppresses material information shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years or with fine not exceeding ten thousand rupees or with both.

(8) Whoever obstructs any officer making inspection or search or seizure or taking other actions under section 56, section 59, section 60, section 61, section 63, section 65 section 69 or section 70 shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years or with fine not exceeding ten thousand rupees or with both.

(9) Whoever realises any amount of special additional sales tax referred to in sub-section (3) section 14 in contravention of the provisions thereof shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to one year or with fine not exceeding five thousand rupees or with both.

(10) Whoever abets any of the offences mentioned in sub-section (2), sub-section (4), sub-section (6), sub-section (7), sub-section (8), shall, if the act of offence is committed in consequence of the abatement, be punishable with the same punishable with the same punishment as provided for the offence.

(11) Any offence punishable under sub-section (1), sub-section (2), sub-section (4), or sub-section (10), shall be cognizable and bailable while that punishable under sub-section (3), sub-section (5), sub-section (6), sub-section (7), sub-section (8), sub-section (9) shall be cognizable and non-bailable.

(12) In any prosecution for an offence under this Act which requires a culpable mental state on the part of accused, the court shall presume the existence of such culpable mental state until the contrary is proved.

Explanation 1. &endash; In this sub-section, "culpable mental state" includes intention, motive, knowledge of a fact, or belief in, or reason to believe, a fact.

Explanation 2. &endash; If any of the offences under sub-section (2), sub-section(3), or clause (c) of sub-section (5) continues, such offence shall be deemed to be a continuing offence.

(13) No court shall take cognizance of any offence under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate shall try such offence.

84. Special provision for liability to prosecution,- (1) Where an offence referred in section 83 has been committed by a dealer, every person who, at the time the offence was committed, was in charge of, and was responsible to the dealer for the conduct of, the business of the dealer, as well as the dealer shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided under section 83, if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under section 83 has been committed by a dealer and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer, as the case may be, of the dealer, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

85. Compounding of offences,- (1) Subject to such conditions as may be prescribed, any person alleged to have committed an offence under clause (b), clause (c), clause (d), clause (e), clause (f) or clause (i) clause of sub-section (1), sub-section (2), sub-section (3), sub-section (4), clause (c) of sub-section (4), sub-section (5), sub-section (6), sub-section (7), sub-section (9) or sub-section (10), of section 83, or under any rules made under this Act, may, either before or after the commencement of any proceedings against him in respect of such offence, at his option, compound such offence, and the Commissioner may, at his discretion, accept from such person, by way of composition of such offence, such sum not exceeding five lakh rupees as may be determined by the Commissioner.

(2) On payment in full of the sum determined by the Commissioner under sub-section (1),-

(a) no proceedings shall be commenced against such person as aforesaid; and

(b) if any proceedings have already been commenced against such person as aforesaid, such proceedings shall not be further proceeded with.

86. Compounding of penalty that may be imposed under section 95.&endash;

Subject to such conditions as may be prescribed, any dealer to whom a notice has been issued under sub-section (1) of section 95, may, before the date fixed in such notice for hearing, at his option, compound the penalty proposed to be imposed, as mentioned in such notice, and the Commissioner may, at his discretion, accept from such dealer, by way of composition of penalty proposed to be imposed under sub-section (1) of that section, an amount equal to ten per centum of the value of goods claimed by the dealer to have transferred by him otherwise than by way of sale in West Bengal in the statement furnished by him under section 94.

(2) On payment in full of the amount referred to in sub-section (1), the proceedings commenced against the dealer under sub-section (1) of section 95 shall not be proceeded with further.

CHAPTER IX

Miscellaneous

87. Indemnity of Government servant. &endash; No suit, prosecution or other legal proceedings shall lie against any Government servant for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

88. Returns etc. to be confidential &endash; (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 the 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 (1 of 1872), no court shall save as aforesaid be entitled to require any Government servant to produce before it any such statement return, accounts, documents, or record or any part thereof or to give evidence before it in respect thereof.

If save as provided in sub-section (3) any Government servant 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.

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

for the purposes of any prosecution under the Indian Penal Code (45 of 1860), the Prevention of Corruption Act, 1988 (49 of 1988), or this act or any preliminary inquiry for ascertaining whether such prosecution lies,

in connection with any suit or proceeding in a civil court to which the State Government or any person appointed under this Act is a party and which relates to any matter arising out of any proceeding under this Act,

where it is necessary to make such disclosure for the purposes of this Act.

To an officer of Government to levy or realise any tax or duty imposed by it,

To an officer of government for the audit of receipts and refunds of tax, penalty or interest under this Act,

In connection with an inquiry concerning allegations of corruption or official misconduct against any Government for the audit of receipts and refunds of tax, penalty or interest under this act,

In any inquiry into a charge of misconduct in connection with any proceeding under this Act against any legal practitioner, chartered accountant or other person entitled to appear on behalf of a dealer or person before the taxing authorities under this Act, to the authority competent to take disciplinary action against such legal practitioner, chartered accountant or other person,

To any officer of the State Government to enable such, officer to perform his executive functions relation to the affairs of the State.

To any person for purposes other than those referred to in clause (a) clause (b) clause (c) clause (d) clause (e) clause (g) and clause (h), if the State Government considers such disclosure necessary in the public interest.

89. Power to call for information or statement from bank, post office, railway, etc.- Subject to the provisions of any law for the time being in force, the Commissioner, the Additional Commissioner, or any person appointed under sub-section (1) of section 3 to assist the Commissioner, may require, by notice, any bank, post office, railway, transporter, carrier, shipper, owner or lessee of a warehouse, or clearing,

forwarding or transporting agent to furnish to him any information or statement useful for, or relevant to, any proceedings under this Act or to produce before him any accounts registers, documents or other records in the possession of such bank, post office, railway, transporter, carrier, shipper, owner or lessee of a warehouse or clearing, forwarding or transporting agent for examination for the purposes of this Act.

90. Statement to be furnished by dealer, transporter, owner or lessee of warehouse, etc.,- If, in the opinion of the State Government, there is appreciable evasion of tax in respect of any goods, the State Government may, by notification, specify such goods, and thereupon every person dealing in transporting, carrying, shipping, or clearing, forwarding or warehousing, whether as owner or lessee of a warehouse, such goods, shall furnish a statement or declaration in such form, within such time, in such manner, and for such period, as may be specified in the notification.

91. Information to be furnished by dealers regarding changes of business.-If any dealer to whom the provisions of sub-section (2), or sub-section (3), of section 23 apply,-

sells or otherwise disposes of his business or any part of his business or effects or comes to know of any change in the ownership of his business, or

discontinues his business or changes his place of business or opens a new place of business, or

discontinues or changes his warehouse or opens a new warehouse, or

changes the name or nature of his business or effects any change in the class or classes of goods in which he carries on his business and which is or are specified in his certificate of registration, or

in the case of a company, effects any change in the constitution of its board of directors,

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

92. Statements, accounts or declarations to be furnished by dealers .-

(1) Every registered dealer shall, in the manner as may be prescribed, submit before the prescribed authority such statements, accounts or declarations within such time as may be prescribed and shall verify that such statements, accounts or declarations are true to the best of his knowledge and belief.

(2) If a registered dealer fails to submit statements, accounts or declarations referred to in sub-section (1), he shall be liable to pay a penalty not exceeding Rupees twenty five thousand for each time of default, in the manner as may be prescribed.

93. Additional information to be furnished by dealers.- Every registered dealer shall, within the period prescribed, send to the prescribed authority a declaration in the prescribed manner stating the names of the manager and of all officers of other designations who are responsible for ensuring compliance with any requirement made of such dealer under this act, and in the event of any change of such manager or other officers, the dealer shall send a revised declaration in the like manner to the said authority within such time as may be prescribed

94. Information to be furnished by dealers in respect of transfer of goods otherwise than by way of sale.- If , in the opinion of the State Government, it is necessary to obtain information relating to transfer of goods otherwise than by way of sale in West Bengal, it may be notification, call upon dealers or such class or classes of dealers as may be specified in the notification to furnish such information relating to such goods, in such manner, at such intervals, for such period and to such authority, as may be specified in the notification.

95. Penalty for furnishing incorrect information under section 94
‐ (1) where upon verification of the information in the statement furnished under section 87 by a dealer relating to transfer of goods otherwise than by way of way of sale in West Bengal, it comes to the knowledge of Commissioner that ‐

any of the particulars furnished in such statement is not correct or complete; or

the goods transferred by such dealer otherwise than by way of sale in West Bengal have not been accounted for by the dealer's head office, or branch office, or agent, as the case may be; or

the agent of such dealer is not traceable or is not in existence at the addresses furnished in such statement; or

the agent of the dealer to whom the transfer of goods has been made otherwise than by way of sale

denies to have any knowledge of
the goods claimed to have been
transferred to him by the dealer; or

the goods have not been
transported by the transporter
named in such statement under the
consignment note or railway receipt
referred to in the said statement,

the Commissioner may, in such manner as may be prescribed, impose on such dealer, by way of penalty, a sum, not less than fifteen per centum but not exceeding twenty-five per centum of the value of the goods so claimed to have been transferred by him.

(2) If any penalty is imposed under sub-section (1) for concealment of any sale with any intent to evade payment of tax thereon in respect of any period, such sale shall be excluded in determining the turnover of sales in respect of such period for the purpose of imposition of penalty, if any, under section 82.

96. Transfer of business by registered dealers.- Where the ownership of the business of a registered dealer is transferred absolutely by sale, gift, bequest, inheritance or otherwise, or transferred by way of lease, and the transferee or the lessee carries on such business, either in its old name or in some other name, the transferee or the lessee shall, for all the purposes of this Act except for the liabilities under this Act already discharged by such dealer, be deemed to be and to have always been registered in the case of a lease for so long as the lease subsists as if the certificate of registration of such dealer had initially been granted to the transferee or the lessee; and the transferee or the lessee shall, on application to the Commissioner, be entitled to have the certificate of registration amended accordingly.

97. Partial transfer of business by a registered dealer.-

Where the ownership of a part, division or unit of the business of a registered dealer is transferred by sale, gift, bequest, inheritance or otherwise, or transferred by way of a lease or license, and if the transferee, lessee or licensee, as the case may be carries on such business as a part of his existing business or a new business in some other name, he shall, for the purposes of this Act except for the liabilities under this Act already discharged by the transferor be deemed to be a dealer in default in the matter of payment of any tax, penalty or interest payable by or due from the transferor in respect of all the periods immediately preceding the date of such transfer in relation to such part, division or unit.

If the transferee, lessee or licensee is a registered dealer and carries on the business referred to in sub-section (1), he shall, by an application under section 91, get his certificate of registration duly amended.

If the transferee, lessee or licensee is not a dealer registered under his Act and if he carries on business from such part, division or unit, he shall, notwithstanding anything contained in section 9 be liable to pay tax under this Act from the date of such transfer and be liable for registration under section 21.

(4) Where the transferee, lessee or licensee is deemed to be a dealer in default under sub-section (1) for any amount of tax, penalty or interest payable by, or due from, the transferor, such amount of tax, penalty or interest shall be recoverable from such transferee, lessee or licensee under section 46.

98. Cancellation of registration and transfer of business

(1) The prescribed authority shall cancel the registration of a registered dealer in any of the following cases:-

in the case of incorporated body, closed down, sold or transferred or if the incorporated body otherwise ceases to exit.

In the case of individual ownership &endash; if the owner dies.

In the case of a firm or association of persons &endash; if it is dissolved, if the registered dealer ceases to be engaged in the business.
If a person is registered by mistake.

(2) The cancellation of registration may be on prayer from the dealer or on the prescribed authority's findings. Cancellation shall be made in the manner as prescribed.

(3) All the goods that remain in stock at the time of cancellation of registration (including capital goods) on which input tax has already been given credit, tax shall be assessed and collected in the manner as may be prescribed.

(4) The cancellation of registration will take effect from the end of the period in which the registration is cancelled unless the prescribed authority orders the cancellation to take effect on an earlier date.

99. Bar to proceedings in civil court.- (1) Save as provided in section 82, no assessment made and no order passed under this Act or the rules made thereunder by the Commissioner, the Special Commissioner, an Additional Commissioner, or any person appointed under sub-section (1) of section 3 to assist the Commissioner, and no order passed by the Appellate and Revisional Board under this Act or the rules made thereunder shall be called into question in any civil court, and save as provided in section 74, section 75, section 76 or section 77, no appeal or application for revision or review shall lie against such assessment or order.

(2) Save as provided in section 79, no order passed by Tax Recovery Officer under this Act or the rules in Schedule X and no order passed upon an appeal from, or review or revision of, any order of the Tax Recovery Officer in accordance with the provisions of this Act and the rules in Schedule X shall be called into question in any civil court, and, save as provided in section 79, no appeal, review or revision shall lie against such order.

100. Manner of payment of tax, penalty, interest, etc.- Where the manner of payment of any tax, penalty, or interest, payable by a person, or any sum determined by the Commissioner in compounding any offence, under this Act, is not provided specifically elsewhere in this Act, such tax, penalty, interest or sum shall be paid into a Government Treasury or the Reserve Bank of India in the prescribed manner.

101. Power of Commissioner to collect statistics from dealers.- If the Commissioner considers that for the purpose of better administration of this Act, it is necessary to collect statistics relating to any matter dealt with by or under this Act, he may, by notification, call upon dealers or such class or classes of dealers as may be specified in the notification, to furnish such information relating to any matter in respect of which it is necessary to collect statistics, in such form, containing such particulars, to such authorities, and at such intervals, as may be specified in the notification.

102. Power of State Government to prescribe rates of fees. &endash; (1) Fees payable upon a memorandum of appeal or application for review or revision, or upon any other miscellaneous application or petition, other than an application referred to in sub-section (1) section 82, for relief shall be such as may be prescribed:

Provided that any fee prescribed under this section shall not exceed one thousand rupees.

(2) The fee as aforesaid shall be paid in court-fee stamp to be affixed to the memorandum of appeal, application for review or revision or other miscellaneous application or petition, as the case may be, referred to in sub-section (1).

103. Power of State Government to engage any person, firm or company to collect certain information -. The State Government may, for the purpose of collection of information regarding existence of godown or warehouse of dealers, or transporters, where goods are stored by them and the nature, quantity or value of such goods stored in such godown or warehouse, engage the services of any person, firm or company to perform such work on such terms and conditions, as may be prescribed.

104. Power of State Government to make rules.- (1) The State Government may, by notification, make rules, with prospective or retrospective effect, for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which under any provision of this act are required to be prescribed , or to be provided for by rules.

(3) In making any rules under this section, the State Government may direct that a breach thereof shall be punishable with fine not exceeding one thousand rupees and, when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the continuance of such offence.

105. Saving in relation to sales outside West Bengal, inter-State sales, and sales in course of import or export.- Nothing in this Act shall be construed to impose, or authorise the imposition of, tax on the sale or purchase of goods where such sale or purchase takes place-

outside West Bengal;

in the course of import of the goods into, or export of the goods out of, the territory of India;

in the course of inter-State trade or commerce.

106. Transitional provision,- (1) a registered dealer who would have continued to be so liable to pay tax under that Act had this Act not come into force, and who makes an application for registration in terms of the provisions of sub-section (2) of section 21 of this Act, shall be deemed to be a registered dealer till the time a certificate of registration is granted to him under this Act.

(2) Notwithstanding anything contained elsewhere in this Act -

(a) any person appointed as the Commissioner, Special Commissioner or Additional Commissioner, or any person appointed to assist the Commissioner, under the West Bengal Sales Tax Act, 1994, and continuing in office as such immediately before the appointed day, shall, on and from the appointed day, be deemed to have been appointed under this Act and shall continue in office as such till such person ceases to be the Commissioner, Special Commissioner or Additional Commissioner or ceases to be the person appointed to assist the Commissioner.

(b) The President or any member of the West Bengal Commercial Taxes Tribunal appointed under West Bengal Sales Tax Act, 1994, and continuing in office as such immediately before the appointed day, shall, on and from the appointed day, be deemed to have been appointed as the President or the member of the Appellate and Revisional Board under this Act and shall continue in office as such till he ceases to be such President or member.

(c) The Bureau of Investigation constituted under the West Bengal Sales Tax Act, 1994, and continuing to have jurisdiction and powers under that Act immediately before the appointed day, shall on and from the appointed day, be deemed to have been constituted, and shall be jurisdiction and powers, under this Act, and the Special Officer, and other persons appointed under sub-section (1) of section 3 of that Act to assist the Commissioner, appointed in the Bureau of Investigation as aforesaid and continuing in office immediately before the appointed day, shall, on and from the appointed day, be deemed to have been appointed in the Bureau under this Act and shall continue in office as such till such special officer or other person ceases to be appointed in the Bureau;

(d) A dealer liable to furnish return under the West Bengal Sales Tax Act, 1994 immediately before the appointed day shall notwithstanding that a period, in respect of which he is so liable to furnish return, commences on and day before such appointed day and ends on any day after such appointed day, furnish such return in respect of tax payable for sales or purchases made up to the day immediately before such appointed day and pay tax in accordance with the provisions of the West Bengal Sales Tax Act, 1994, and shall furnish a separate return in respect of the remaining part of the period which

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

(e) Any order delegating any power under any of the West Bengal Sales Tax Act, 1994, or the rules made thereunder by the Commissioner to any person appointed, by any designation, under sub-section (1) of section 3 of the West Bengal Sales Tax Act, 1994, to assist him before the appointed day and continuing in force on the day immediately before such appointed day shall, on and from such appointed day, continue in force until the Commissioner amends, varies or rescinds such order after such appointed day under this Act;

(f) any dealer, who is no longer liable to pay tax under the West Bengal Sales Tax Act, 1994 and whose accounts, registers or documents had been seized under that Act, shall continue to be retained in accordance with provisions of that Act on or after appointed day;

(g) all forms of waybill under the West Bengal Sales Tax Act, 1994 or the rules made thereunder and continuing in force on the day immediately before the appointed day shall, with effect from such appointed day, continue in force and shall be used mutatis mutandis for the purposes for which they were being used before such appointed day until the State Government directs, by notification, the discontinuance of the use of such forms till such time as the State Government may, by notification, specify in this behalf;

(h) all rules, regulations, notifications or orders made or issued under any of the West Bengal Sales Tax Act, 1994 and continuing in force on the day immediately before the appointed day shall continue to be in force on or after such appointed day in so far as they are not inconsistent with the provisions of this Act or the rules made thereunder until they are repealed or amended;

(i) any waybill obtained or obtainable by a dealer from any prescribed authority or any declaration furnished or to be furnished by or to a dealer under any of the Acts so repealed or the rules made thereunder in respect of any sale of goods before the appointed day shall be valid where such waybill is obtained or such waybill is furnished on or after such appointed day

(j) any waybill endorsed, order passed before the appointed day under the West Bengal Sales Tax Act, 1994 or the rules made thereunder for the transport of any consignment of goods specified in Schedule IV or notified goods into West Bengal or outside West Bengal and continuing to be valid on the day immediately before the appointed day shall continue to be valid on or after such appointed day for the purposes as aforesaid unless the periods of validity of such declaration, permit or order otherwise expires;

(k) any application for revision, review or reference arising from any order passed before the appointed day or any appeal arising from any assessment of tax or determination of interest made before such appointed day or any application for refund, or for waybill, in respect of any period before such appointed day, under the West Bengal Sales Tax Act, 1994, if made before such appointed day and pending on such appointed day or if made on or after such appointed day, shall be disposed of in accordance with the provisions of the Act or Acts so repealed;

(l) the Appellate and Revisional Board, or the Commissioner or any other authority to whom power in this behalf has been delegated by the Commissioner under the West

Bengal Sales Tax Act,1994 , may on its or his own motion, review or revise any order passed before the appointed day in accordance with the provisions of that Act;

(m) any application for waybill, for transport of goods into West Bengal, pending on the day immediately before the appointed day, shall be deemed to have been made under this Act and shall be disposed of in accordance with the provisions of this Act.

(n) any tax assessed, interest determined or penalty imposed under the West Bengal Sales Tax Act,1994 in respect of sales or purchases made, or in respect of tax payable, or in respect of contravention of any provision of the West Bengal Sales Tax Act,1994 , before the appointed day, shall be payable or recoverable in accordance with the provisions of the Act or Acts so repealed.

(o) where a registered dealer was enjoying the benefit of deferment of tax under the State Sales Tax Act immediately before the appointed day and who would have continued to be so eligible on such appointed day under that Act had this Act not come into force, may be allowed deferment of payment of tax payable by him under this Act by the Commissioner, for the balance un-expired period or such percentage of gross value of the fixed assets, as may have been allowed to such dealer under that Act, whichever is earlier.

Nothing in this sub-section shall prevent the Commissioner from withdrawing the benefits of deferment of tax if the dealer holding the certificate of eligibility violates the terms and conditions subject to which such certificate was issued under the West Bengal Sales Tax Act, 1994 and rules framed thereunder.

(p) [Issue of dealers enjoying the benefit of tax holiday to be finalized.]

(q) [Issue of dealers enjoying the benefit of remission of tax to be finalized.]

107. Power to remove difficulties &endash; If any difficulty arises in giving effect to any of the provisions of this Act, the State Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

108. Clearance Certificate.&endash;

(1) Notwithstanding anything contained in any other law for the time being in force no Government, local authority, educational institution, or corporation or body corporate established by or under a Central or State Act shall place order with, or make purchases of any goods from, any dealer or make any payment to such dealer for such purchases, unless the Commissioner certifies in the prescribed manner that such dealer&endash;

(i) has no liability to pay tax or has not defaulted in furnishing any return or returns together with the

receipted challan or challans
showing payment of all tax payable
under this Act or the Central Sales
Tax Act, 1956, (74 of 1956.),

(ii) has not defaulted in making
payment of tax otherwise payable
by, or due from, him under this Act
or the Central Sales Tax Act, 1956,
(74 of 1956), or

(iii) has made satisfactory provision
for securing the payment of tax by
furnishing bank guarantee in favour
of the Commissioner or otherwise,

as the case may be:

(2) The application for the certificate required under sub-section (1) shall be made by the dealer referred to in that sub-section to the Commissioner and shall be in such form and shall contain such particulars as may be prescribed.