

THE RAJASTHAN VALUE ADDED TAX ACT, 2003

LAW (LEGISLATIVE DRAFTING) DEPARTMENT

(Group-II)

NOTIFICATION

Jaipur, March 31, 2003

No. F. 2(16) Vidhi/2/2003.— In pursuance of clause (3) of Article 348 of the Constitution of India, the Governor is pleased to authorise the publication in the Rajasthan Gazette of the following translation in the English language of the *Rajasthan Moolya Parivardhit Vikraya Kar Adhiniyam, 2003 (2003 Ka Adhiniyam Sankhyank 4)*:—

"THE RAJASTHAN VALUE ADDED TAX ACT, 2003"

(Act No. 4 of 2003)

(Received the assent of the Governor on the 30th day of March, 2003)

An

Act

to consolidate and amend the law relating to the levy of tax on sale or purchase of goods and to introduce value added system of taxation in the State of Rajasthan.

Be it enacted by the Rajasthan State Legislature in the Fifty-fourth Year of the Republic of India as follows: —

CHAPTER— I

PRELIMINARY

1. Short title, extent and commencement. — (1) This Act may be called "the Rajasthan Value Added Tax Act, 2003."

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

(3) It shall come into force on such date as the State Government may by notification in the Official Gazette appoint and the State Government may appoint different dates for the commencement of the different provisions of this Act.

2. Definitions. — In this Act, unless the subject or context otherwise requires, —

(1) "appellate authority" means a person not below the rank of the Deputy Commissioner authorised as such by the State Government;

(2) "assessing authority" means any officer not below the rank of Assistant Commercial Taxes Officer, authorised as such by the Commissioner;

(3) "assessment" means determination of liability under this Act;

(4) "auditor" means any officer not below the rank of Assistant Commercial Taxes Officer authorised as such by the Commissioner;

(5) "awarder" means any person at whose instance or for whose benefit a works contract is executed;

(6) "business" includes—

(i) any trade, commerce or manufacture; or

(ii) any adventure or concern in the nature of trade, commerce or manufacture —

whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit, and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; or

- (iii) any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern; or
 - (iv) any transaction in connection with or incidental or ancillary or consequential to the commencement or closure of such business; or
 - (v) any occasional transaction in the nature of such trade, commerce, manufacture, adventure or concern whether or not there is volume, frequency, continuity or regularity of such transaction;
- “(7) **"capital goods"** means plant and machinery including parts and accessories thereof, meant for use in manufacture unless otherwise notified by the State Government from time to time in the Official Gazette;”
- (8) **"casual trader"** means a person who, whether as principal, agent or in any other capacity, has occasional transactions of a business nature involving buying, selling, supplying or distributing of such goods as may be notified by the State Government whether for cash or deferred payment or for commission or remuneration or other valuable consideration;
- (9) **"Commissioner"** means a person appointed by the State Government to be the Commissioner of Commercial Taxes Department and shall include Additional Commissioner of Commercial Taxes Department;
- (10) **"contractor"** means any person executing a works contract and includes a sub-contractor, or a person to whom contract has been awarded under section 77;
- (11) **"dealer"** means any person, who carries on business in any capacity, of buying, selling, supplying or distributing goods directly or otherwise, or making purchases or sales as defined in clause (35) for himself or others, whether for cash or deferred payment, or for commission, remuneration or other valuable consideration and shall include—
- (i) a factor, broker, commission agent, *del credere* agent or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or distributing any goods belonging to any principal whether disclosed or not;
 - (ii) an auctioneer, who sells or auctions goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;
 - (iii) a manager or an agent, of a non-resident dealer who buys, sells, supplies or distributes goods in the State belonging to such dealer;
 - (iv) any society, club, trust or other association, whether incorporated or not, which buys goods from or sells goods to its members;
 - (v) a casual trader;
 - (vi) the Central or any State Government or any of their Departments or offices which, whether or not in the course of business, buy, sell, supply or distribute goods directly or otherwise, whether for cash or deferred payment or for commission, remuneration or other valuable consideration; and
 - (vii) any trading, commercial or financial establishment including a bank, an insurance company, a transport company and the like which, whether or not in the course of its business, buys, sells, supplies or distributes goods, directly or otherwise, whether for cash or deferred payment, commission, remuneration or other valuable consideration;

Explanation – A person, who sells agricultural or horticultural produce, grown by himself or grown on any land in which he has an interest as owner or tenant as defined in the Rajasthan Tenancy Act, 1955 (Act No. 3 of 1955), shall not be deemed to be a dealer in respect of such sales within the meaning of this clause;

- (12) **"Deputy Commissioner (Administration)", "Assistant Commissioner", "Commercial Taxes Officer", "Assistant Commercial Taxes Officer" or "Junior**

Commercial Taxes Officer" means the person holding office with that designation under the State Government;

- (13) **"exempted goods"** means any goods exempted from tax in accordance with the provisions of this Act;
- (14) **"firm", "partner" and "partnership"** shall have the meanings respectively assigned to them in the Indian Partnership Act, 1932 (Central Act No. 9 of 1932);
- (15) **"goods"** means all kinds of movable property, whether tangible or intangible, other than newspapers, money, actionable claims, stocks, shares and securities, and includes materials, articles and commodities used in any form in the execution of works contract, livestock and all other things attached to or forming part of the land which is agreed to be severed before sale or under the contract of sale;
- (16) **"importer"** means a dealer who brings or causes to be brought into the State any goods or to whom any goods are dispatched from any place outside the State, for the purpose of sale or use in manufacturing and processing of goods for sale;
- (17) **"input tax"** means tax paid or payable by a registered dealer in the course of business, on the purchase of any goods made from a registered dealer;
- (18) **"invoice"** means a document containing such particulars as may be prescribed;
- (19) **"lease"** means any agreement or arrangement whereby the right to use any goods for any purpose is transferred by one person to another whether or not for a specified period for cash, deferred payment or other valuable consideration without the transfer of ownership, and includes a sub-lease but does not include any transfer on hire purchase or any system of payment by instalments;
- (20) **"lessee"** means any person to whom the right to use any goods for any purpose is transferred under a lease;
- (21) **"lessor"** means any person by whom the right to use any goods for any purpose is transferred under a lease;
- (22) **"manufacture"** includes every processing of goods which brings into existence a commercially different and distinct commodity but shall not include such processing as may be notified by the State Government;
- (23) **"non-resident dealer"** means a dealer who effects purchases or sales of any goods in the State but who has no fixed place of business or residence in the State;
- (24) **"out put tax"** means the tax charged or chargeable under this Act by a registered dealer in respect of the sale of goods in the course of his business;
- (25) **"person"** means any individual or association or body of individuals and includes a Hindu Undivided Family or Joint Family, a firm, a company whether incorporated or not, a co-operative society, a trust, a club, an institution, an agency, a corporation, a local authority, a Department of the Government or other artificial or juridical person;
- (26) **"place of business"** means any place in the State of Rajasthan where a dealer purchases or sells goods and includes,—
- (a) any warehouse, godown or other place where the dealer stores goods;
 - (b) any place where the dealer processes, produces or manufactures goods;
 - (c) any place where the dealer keeps his accounts, registers and documents;
 - (d) any vehicle or carrier wherein the goods are stored or business is carried on;
 - “(e) any warehouse, railway station, railway goods yard, parcel office, or any other place where goods for transportation in the course of business or otherwise are kept by dealers;”

Explanation.— The dealer shall declare one of the places of business as his “principal place of business” in the application for registration, and his final accounts, annual statements, registers and documents, whether maintained manually or electronically, shall necessarily be kept at such place;

- (27) **"prescribed"** means prescribed by rules made under this Act;
- (28) **"purchase price"** means the amount paid or payable by a dealer as valuable consideration for the purchase of goods including all ancillary and incidental expenses and statutory levies payable but excluding the tax payable under this Act;

- (29) **“raw material”** means goods used as an ingredient in the manufacture of other goods and includes processing material, consumables, preservative, fuel and lubricant required for the process of manufacture;
- (30) **“registered dealer”** means a dealer registered or deemed to have been registered under the provisions of this Act;
- (31) **“repealed Act”** means the Rajasthan Sales Tax Act, 1994 (Act No. 22 of 1995);
- (32) **“resale”** means sale of goods without performing any operation on them which amounts to or results in a manufacture;
- (33) **“reverse tax”** means that part of the input tax for which credit has been availed in contravention of the provisions of section 18;
- (34) **“rules”** means the rules made under this Act;
- (35) **“sale”** with all its grammatical variations and cognate expressions means every transfer of property in goods by one person to another for cash, deferred payment or other valuable consideration and includes—
- (i) a transfer, otherwise than in pursuance of a contract, of property in goods for cash, deferred payment or other valuable consideration;
 - (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
 - (iii) any delivery of goods on hire—purchase or other system of payment by instalments;
 - (iv) a transfer of the right to use goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
 - (v) a supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration; and
 - (vi) a 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 is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply shall be deemed to be a sale and the word “purchase” or “buy” shall be construed accordingly;

Explanation.— Notwithstanding anything contained in this Act, where any goods are sold in packing, the packing material in such case shall be deemed to have been sold with the goods;

- (36) **“sale price”** means the amount paid or payable to a dealer as consideration for the sale of any goods less any sum allowed by way of any kind of discount or rebate according to the practice normally prevailing in the trade, but inclusive of any statutory levy or any sum charged for anything done by the dealer in respect of the goods or services rendered at the time of or before the delivery thereof, except the tax imposed under this Act;

Explanation I. – In the case of a sale by hire purchase agreement, the prevailing market price of the goods on the date on which such goods are delivered to the buyer under such agreement, shall be deemed to be the sale price of such goods;

Explanation II. – Cash or trade discount at the time of sale as evident from the invoice shall be excluded from the sale price but any *ex post facto* grant of discounts or incentives or rebates or rewards and the like shall not be excluded;

Explanation III. – Where according to the terms of a contract, the cost of freight and other expenses in respect of the transportation of goods are incurred by the dealer for or on behalf of the buyer, such cost of freight and other expenses shall not be included in the sale price, if charged separately in the invoice;

“(36A) **“Schedule”** means a Schedule appended to this Act;

(36B) **“Special Economic Zone”** shall have the same meaning as has been assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (Central Act No. 28 of 2005);”

- (37) **“tax”** means any tax or other levy by any name leviable under the provisions of this Act;

- (38) **“Tax Board”** means Rajasthan Tax Board constituted under section 88;
- (39) **“tax period”** means the period as may be notified by the State Government for deposit of tax payable under this Act;
- (40) **“taxable turnover”** means, that part of turnover, as may be determined after making such deductions from the total turnover as may be prescribed on which a dealer shall be liable to pay tax under this Act ;
- (41) **“turnover”** means the aggregate amount of sale price received or receivable by a dealer including purchase price of the goods which are subject to tax under sub–section (2) of section 4 “but shall exclude the sale price or part of sale price, if any, in respect of sales of goods which were purchased in the State by the dealer upon payment of tax on the maximum retail price of such goods or, where tax on maximum retail price of such goods were paid in the State on an earlier occasion”;
- (42) **“VAT invoice”** means an invoice containing such particulars as may be prescribed, and issued by a dealer authorised under this Act;
- (43) **“vehicle or carrier”** means any mode of transportation including human being or animal carrying goods from one place to another;
- “(44) **“works contract”** means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property;”
- (45) **“year”** means the period commencing from 1st April and ending on 31st March.

CHAPTER – II

INCIDENCE AND LEVY OF TAX

3. Incidence of tax. – (1) Subject to the provisions of this Act, every dealer -

- (a) who is an importer of goods; or
- (b) who is a manufacturer of goods and whose annual turnover exceeds rupees five lacs; or
- (c) whose annual turnover exceeds "rupees ten lacs",

shall be liable to pay tax under this Act.

"(2) Notwithstanding anything contained in sub–section (1) a dealer other than that enumerated in clause (a) or clause (b) of sub–section (1) "or the dealer or class of dealers as may be notified by the State Government", who purchases goods from a registered dealer of the State and sells such goods within the State, may opt for payment of tax on his turnover excluding the turnover of the goods specified in Schedule I, at the rate as may be notified under sub–section (3) of section 4, subject to the condition that such annual turnover does not exceed “rupees seventy five lacs" in a year."

(3) Notwithstanding anything contained in sub–sections (1) and (2) every casual trader shall be liable to pay tax under this Act.

(4) Notwithstanding anything contained in sub–sections (1) and (2) every person, other than a casual trader or a registered dealer, who carries on business temporarily for a period not exceeding one hundred twenty days in a year, shall be liable to pay tax under this Act in the manner as may be prescribed.

(5) A dealer registered under the Central Sales Tax Act, 1956 (Central Act No.74 of 1956) who is not liable to pay tax under sub–sections (1) to (4), shall nevertheless be liable to pay tax in accordance with the provisions of this Act.

(6) Notwithstanding anything contained in this Act, a dealer registered under this Act shall so long as his certificate of registration remains in force, be liable to pay tax, irrespective of his turnover.

[4. Levy of tax and its rate. – (1) Subject to the other provisions of this Act and the provisions of the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956), the tax payable by a dealer under this Act, shall be at such point or points, as may be prescribed, in the series of sales by

successive dealers and shall be levied on the taxable turnover of sale of goods specified in Schedule III to Schedule VI at the rate mentioned against each of such goods in the said Schedules.

(2) Every dealer who in the course of his business purchases any good other than exempted goods in the circumstances in which no tax under sub-section (1) is payable on the sale price of such goods and the goods are disposed off for the purpose other than those specified in clause (a) to (g) of sub-section (1) of section 18, shall be liable to pay tax on the purchase price of such goods at the rate mentioned against each of such goods in Schedule-III to Schedule VI of the Act.

(3) Notwithstanding anything contained in sub-section (1), the tax payable by the dealer covered by sub-section (2) of section 3, shall be levied at the rate not exceeding two percent on the turnover, as may be notified by the State Government.

(4) Where any goods are sold packed in some material, whether charged for separately or not, notwithstanding anything contained in sub-section (1), the tax liability of and the rate of tax on the packing material shall be according to the tax liability of and the rate of tax on the goods packed therein.

(5) Subject to such conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by notification in the Official Gazette, add to or omit from, or otherwise amend or modify the Schedules, prospectively or retrospectively, or reduce the rate of tax payable in respect of any goods and thereupon the Schedule shall be deemed to have been amended accordingly.

(6) Every notification issued under sub-section (5) shall be laid, as soon as may be after it is so issued, before the House of the State Legislature, while it is in session for period of not less than thirty days which may be comprised in one session or in two successive sessions "and if before the expiry of the sessions" in which it is so laid or of the session immediately following the House of the State Legislature makes any modification in such notification or resolves that any such notification should not be issued, such notification thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of any thing previously done thereunder.

(7) Notwithstanding anything contained in this Act, any registered dealer, who imports into, or manufactures in, the State such goods as may be notified by the State Government, may, at his option, pay, in lieu of the tax payable by him on sale price of such goods under this Act, a tax at full rate on the maximum retail price of such goods in the manner as may be prescribed:

Provided that where a dealer has purchased any goods –

(a) from aforesaid importer or manufacturer upon payment of tax on the maximum retail price of such goods; or

(b) from another registered dealer where tax on the maximum retail price of such goods was paid in the State on an earlier occasion,

the purchasing dealer, irrespective of whether he is registered or not, while making resale of such goods in the State, shall, notwithstanding anything contained elsewhere in the Act, be entitled to recover from the buyer the amount of tax paid by him at the time of purchase of such goods under such conditions and restrictions, and in such manner, and within such time, as may be prescribed “:

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

5. Payment of lump sum in lieu of tax. – (1) Notwithstanding anything contained in this Act, [***], the State Government may provide an option for payment of tax in a lump sum in respect of sales of such class of goods or by such class of dealers on such terms and conditions as may be notified in the Official Gazette.

(2) The tax in lump sum specified in sub-section (1) shall not exceed the limit of maximum tax liability as provided in sub-section (1) of section 4.

6. Levy of tax by weight, volume, measurement or unit on certain goods. – (1) Notwithstanding anything contained in sections 3 and 4, the State Government may fix the amount of tax payable on the sale or purchase of certain goods or a class of goods in respect of a specified area or whole of the State, on the basis of weight, volume, measurement or unit, on such terms and conditions, as may be notified in the Official Gazette.

(2) The amount of tax payable under sub-section (1) may be fixed with reference to the types of vehicles or carriers transporting the said goods, and also with reference to the quality thereof.

(3) The amount of tax notified under sub-sections (1) and (2) shall not exceed the amount of maximum limit of tax liability as provided in sub-section (1) of section 4.

(4) The State Government may, by an order published in the Official Gazette and subject to such terms and conditions as may be specified in such order, delegate its power under this section to the Commissioner.

7. Levy of tax on livestock. – (1) Notwithstanding anything contained in sections 3, 4 and 6, tax on the sale or purchase of live-stock at such rate not exceeding ten percent of the sale or purchase price, as the case may be, of such live-stock and at such point of sale or purchase, as may be notified by the State Government, shall be payable by every person, who sells or purchases live-stock in the State and the provisions of section 28 shall *mutatis mutandis* apply to such person.

(2) Notwithstanding anything contained in sub-section (1), in respect of live-stock of such class as may be specified by the State Government by notification in the Official Gazette, tax shall be payable at such rate per head not exceeding five hundred rupees as may be notified.

(3) Different rates of percentage of price, or different rates per head may be notified by the State Government under sub-sections (1) and (2) for different classes of livestock.

"8. Exemption of tax. – (1) The goods specified in the Schedule-I shall be exempt from tax, subject to such conditions as may be specified therein.

(2) Subject to such conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by notification in the Official Gazette, add to or omit from, or otherwise amend or modify the Schedule-I, prospectively or retrospectively, and thereupon the Schedule shall be deemed to have been amended accordingly.

(3) The State Government in the public interest, by notification in the Official Gazette, may exempt whether prospectively or retrospectively from tax the sale or purchase by any person or class of persons as mentioned in Schedule-II, without any condition or with such condition as may be specified in the notification.

"(3A) Subject to such conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by notification in the Official Gazette, add to or omit from, or otherwise amend or modify the Schedule-II, prospectively or retrospectively, and thereupon the Schedule shall be deemed to have been amended accordingly."

(4) The State Government may, if it considers necessary in the public interest so to do, notify grant of exemption from payment of whole of tax payable under this Act in respect of any class of sales or purchases for the purpose of promoting the scheme of Special Economic Zones or promoting exports, subject to such conditions as may be laid down in the notification.

(5) Every notification issued "under this section" shall be laid, as soon as may be after it is so issued, before the House of the State Legislature, while it is in session for a period of not less than thirty days, which may be comprised in one session or in two successive sessions "and if before the expiry of the sessions" in which it is so laid or of the session immediately following the House of the State Legislature makes any modification in such notification or resolves that any such notification should not be issued, such notification thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder."

9. Bar against collection of tax when not payable. – (1) No person who is not a registered dealer or no registered dealer who is not liable to pay tax in respect of any sale or purchase, shall collect on the sale of any goods any sum by way of tax from any other person.

(2) No registered dealer shall collect any amount by way of tax in excess of the amount of tax payable by him under the provisions of this Act.

(3) No dealer shall collect any sum by way of tax in respect of sale of any goods on which, by virtue of section 8, no tax is payable.

(4) Dealer opting for payment of lump sum amount in lieu of tax under section 5, or who is covered by sub-section (2) of section 3 shall not collect tax or any sum in lieu of tax.

10. Burden of proof.– The burden of proving that any sale or purchase effected by any person is not liable to tax for any reason under this Act or to prove for entitlement of input tax credit on any purchases, shall be on such person.

CHAPTER III

REGISTRATION OF DEALERS

11. Obligatory registration. – (1) Every dealer liable to pay tax under sub-section (1) or (5) of section 3 shall get himself registered by submitting an application to the authority competent to grant registration, in such form and in such manner and within such time as may be prescribed.

(2) The authority competent to grant registration, after making such enquiry as it may consider necessary, may grant a certificate of registration in the prescribed form.

(3) The certificate of registration shall be granted from the date he becomes liable to pay tax under section 3.

(4) The certificate of registration so granted shall not be transferable and it shall remain in force unless it is cancelled.

(5) Where a dealer is registered under the repealed Act he shall be deemed to have been registered under this Act from the date of commencement of this Act, provided he has submitted such information as has been required by the Commissioner under the repealed Act by notification in the Official Gazette.

(6) When a dealer, who is liable to get registration, does not make application under sub-section (1), the authority competent to grant registration, after affording an opportunity of being heard to such dealer, shall grant him a certificate of registration from the date he becomes "liable to pay tax under this Act and such registration" shall take effect as if it has been granted under sub-section (2).

(7) Where a dealer who is already registered, intends to do business at one or more additional places in the State he shall be granted in such manner as may be prescribed, a branch certificate under the certificate of registration already held by him.

(8) Where a dealer has one or more additional registration under the repealed Act, he shall inform to his assessing authority or authority competent to grant registration within sixty days from the commencement of this Act, as to which of the registrations shall be treated registration under this Act and which of the registration certificates may be converted into branch certificates. If the dealer fails to do so, the Commissioner or any officer authorised by him for this purpose, shall declare one such registration to be the registration under this Act and shall issue branch certificate in lieu of remaining registration certificates.

(9) Notwithstanding anything contained in this Act, a dealer dealing exclusively in exempted goods, shall not be required to get registration under this Act.

12. Voluntary registration.– (1) Any person intending to commence or having commenced a business may, notwithstanding that he is not liable to get registration under section 11, apply to the authority competent to grant registration in the prescribed form for registration.

(2) The authority competent to grant registration, after making such enquiry as it may consider necessary, may grant a certificate of registration in the prescribed manner from the date of application or as the case may be from the date of commencement of business and the provisions of section 11 shall *mutatis mutandis* apply.

13. Authority competent to grant registration. – (1) Every dealer liable to get registration shall declare his principal place of business in the application for registration filed by him and the Assistant Commissioner or the Commercial Taxes Officer, as the case may be, having territorial jurisdiction over such principal place of business, or any other officer not below the rank of Assistant Commercial Taxes Officer, authorised specially or generally by the Commissioner, shall be the authority competent to grant registration to such dealer.

(2) In the case of a non-resident dealer, an officer not below the rank of Assistant Commercial Taxes Officer authorised by the Commissioner shall be the authority competent to grant registration and such authority either on the application of such non-resident dealer or otherwise, shall grant him a certificate of registration from such date and with such terms and conditions, as may be specified therein.

(3) Where a dealer, after having been granted registration, changes his principal place of business outside the territorial jurisdiction of the present assessing authority he shall seek the permission in writing for such change of the assessing authority from the Commissioner or any

other officer authorised by the Commissioner in this behalf, and unless such permission is accorded, the present assessing authority shall continue to be the assessing authority of such dealer. "Where a decision on the grant of permission is not accorded within a period of sixty days from the date of the application seeking change of assessing authority, such permission shall be deemed to have been granted."

14. Authorisation for collection of tax. – Subject to the other provisions of this Act, where a dealer makes an application for obligatory registration or voluntary registration he may start collecting tax on his sales in accordance with the provisions of this Act from the date of such application and in that case all the provisions of this Act, as are applicable to a registered dealer, shall *mutatis mutandis* apply to him.

15. Furnishing of security for registration. – (1) The authority competent to grant registration or the assessing authority shall, as a condition to the grant of registration to a dealer or at any time after such grant, require him to furnish in the prescribed manner and within the time specified by such authority, the initial security or such subsequent additional security as may be considered necessary—

- (a) for the timely payment of the amount of tax or other sum payable by him under this Act; and
- (b) for the safe custody of books of accounts or any other documents required to be maintained under this Act and the rules made thereunder “:

Provided that no security under this section shall be required to be furnished by a department of the Central Government or the State Government or a public sector undertaking, corporation or company owned or controlled by the Central Government or the State Government."

(2) At the time of grant of obligatory registration to the dealers covered under sub-section (1) or (5) of section 3, the initial security shall be in the form of surety of two dealers registered under this Act, and where the dealer is not in a position to furnish such surety, he shall submit "security in the form of National Saving Certificate or in cash or in the form of three years bank guarantee of a nationalized bank," of the amount of,—

- "(a) Rs. 10,000/– in case of a small scale manufacturing unit, Rs. 15,000/– in case of a medium scale manufacturing unit and Rs. 25,000/– in case of a large scale manufacturing unit; and
- (b) Rs. 10,000/– in cases not covered by clause (a)."

Explanation. – The small-scale or medium-scale or large scale-manufacturing unit shall have the same meaning as assigned to them by the Government of India from time to time.

(3) At the time of grant of voluntary registration under section 12, "the initial security shall be in the form of surety of two dealers registered under this Act, and where the dealer is not in a position to furnish such surety, he shall submit security" "in the form of National Saving Certificate or in cash or in the form of three years bank guarantee of a nationalized bank, of the amount of Rs. 10,000/–."

(4) The amount of security, in case of a dealer who is already registered or deemed to be registered under this Act, may be increased by the assessing authority, for reasons to be recorded in writing, to twenty five percent of the annual tax liability of the immediate preceding year. However, in case of dealers registered in the current year, such increase in the security amount may be twenty five percent of the highest tax liability of the preceding months or the quarters, as the case may be.

(5) Where the security furnished by a dealer under sub-sections (2) and (4) is in the form of a surety bond and the surety becomes insolvent or dies, the dealer shall, within thirty days of the occurrence of any of the aforesaid events, inform the assessing authority and shall, within ninety days of such occurrence, furnish a fresh surety bond or furnish in a prescribed manner other security for the amount of the surety bond.

(6) The assessing authority may, by order in writing, forfeit the whole or any part of the security furnished by a dealer—

- (a) for realising any amount of tax, penalty, interest, erroneously availed input tax credit or any other sum payable by him under this Act; or
- (b) for any loss caused to the Government by negligence or wilful default on his part in ensuring the safe custody or proper use of the books of accounts or any other documents required to be maintained under this Act and the rules made thereunder.

(7) Where as a result of an order of forfeiture under sub-section (6), the security furnished by any dealer is rendered insufficient, he shall make up the deficiency within a period of thirty days from the date of the communication of the said order.

(8) No dealer shall be required to furnish additional security under sub-section (4) and no order of forfeiture of the whole or any part of the security shall be passed against him under sub-section (6) unless he has been afforded an opportunity of being heard.

16. Amendment and cancellation of registration certificate. – (1) Every registered dealer or his legal representative, as the case may be, shall inform the assessing authority and also to the authority competent to grant registration, about every change or event as referred to in sub-sections (2) and (3), within thirty days of the occurrence of such change or event.

(2) Where any change or event does not alter the basic status of a dealer, such as change in the name of business or place of the business, opening of a new place of business or dropping of old place of business, addition, deletion or modification in the description of goods, acquisition of any business, sale or disposal of the business in part, change in the constitution of the firm without dissolution, the certificate of registration already granted to a dealer shall be amended accordingly from the date of the occurrence of the change or the event.

(3) Where any change or event alters the basic status of a dealer, such as, conversion of a proprietary concern into partnership firm or *vice versa*, dissolution of an existing firm and creation of new firm, formation of a firm into a company or *vice versa*, a fresh certificate of registration shall be required to be obtained by the dealer.

(4) Where-

- (a) any business in respect of which a certificate of registration has been granted to a dealer under this Act, is discontinued permanently; or
- (aa) a dealer has discontinued business at his principal place of business; or
- (b) in the case of transfer of business by a dealer, the transferee already holds a certificate of registration under this Act; or
- (b) a dealer has ceased to be required to be registered and to pay tax under this Act; or
- (c) a dealer has obtained the certificate of registration by misrepresentation of facts or by fraud; or
- (d) a dealer has obtained a certificate of registration against the provisions of this Act; or
- (e) a dealer has failed to furnish security within the period specified under section 15 and a period of ninety days has elapsed ; or
- (f) a dealer issues false or forged VAT "invoices; or"
- "(h) a dealer has failed to furnish information, statement or return as required by Commissioner under sub-section (2) of section 91 within the period specified thereunder".

the assessing authority or the authority competent to grant registration may, after affording such dealer an opportunity of being heard and after recording reasons in writing, cancel the certificate of registration from such date as he may deem appropriate.

(5) If there is any reason which in the opinion of the Commissioner warrants action in the interest of State revenue, the Commissioner may at any time, for reasons to be recorded in writing and after giving the dealer an opportunity of being heard, cancel the certificate of registration held by any dealer from such date as the Commissioner may specify in this behalf.

(6) The cancellation of certificate of registration shall not affect the liability of any person to pay tax due for any period till the date of such cancellation and remained unpaid.

CHAPTER-IV
PAYMENT OF TAX, FILING OF RETURNS AND ASSESSMENTS

17. Tax payable by a dealer. – (1) Subject to the other provisions of this Act, the net tax payable by a registered dealer, other than the dealer covered by sub-section (2) of section 3 or section 5, for a tax period shall be calculated as under: –

$$T = (O+R+P) - I$$

Where –

- T is net tax payable;
- O is amount of output tax;
- R is amount of reverse tax;
- P is the amount of tax payable under sub-section (2) of section 4; and
- I is the amount of input tax.

(2) Where the net tax payable under sub-section (1) has a negative value, the same shall be first adjusted against any tax payable or amount outstanding under the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956) "or under this Act or the repealed Act and the balance amount if any, shall be carried forward to the next tax period or periods. In case the dealer claims refund of the balance amount, if any, at the end of the year, the same shall be granted only after the end of the immediately succeeding year. "However," the Commissioner after recording reasons for doing so may, by a general or specific order, direct to grant such refunds even earlier."

(3) Notwithstanding anything contained in this Act, where the sales are made on behalf of the principal registered under this Act by an agent also registered under this Act, such sales shall be deemed to be the sales of the principal and the agent shall render the accounts of such sales in the manner as may be prescribed.

(4) Every person whose registration is cancelled under this Act shall pay tax in the manner prescribed in respect of every taxable goods held in stock and capital goods on the date of such cancellation.

18. Input Tax Credit. – (1) Input tax credit shall be allowed, to registered dealers, other than the dealers covered by sub-section (2) of section 3 or section 5, in respect of purchase of any taxable goods made within the State from a registered dealer to the extent and in such manner as may be prescribed, for the purpose of –

- (a) sale within the State of Rajasthan; or
- (b) sale in the course of inter-State trade and commerce; or
- (c) sale in the course of export outside the territory of India; or
- (d) being used as packing material of the goods, other than exempted goods, for sale; or
- (e) being used as raw material ", except those as may be notified by the State Government," in the manufacture of goods other than exempted goods, for sale within the State or in the course of inter-State trade or commerce; or
- (f) "being used as packing material of goods or as raw material in manufacture of goods for sale" in the course of export outside the territory of India; or
- “(g) being used in the State as capital goods in manufacture of goods other than exempted goods,”;

however, if the goods purchased are used partly for the purposes specified in this sub-section and partly as otherwise, input tax credit shall be allowed proportionate to the extent they are used for the purposes specified in this sub-section.

"(2) The input tax credit under sub-section (1) shall be allowed only after verification of the deposit of tax payable by the selling dealer in the manner as may be notified by the Commissioner.”.

(3) Notwithstanding anything contained in this Act, no input tax credit shall be allowed on the purchases–

- (i) from a registered dealer who is liable to pay tax under sub-section (2) of section 3 or who has opted to pay tax under section 5 of this Act; or
- (ii) of goods made in the course of import from outside the State; or
- “(iiia) of goods taxable at first point in the series of sales, from a registered dealer who pays tax at the first point;

Explanation.- For the purpose of this clause, "first point in the series of sales" means the first sale made by a registered dealer in the State; or”

- (iii) where the original VAT invoice or duplicate copy thereof is not available with the claimant, or there is evidence that the same has not been issued by the selling registered dealer from whom the goods are purported to have been purchased; or
- (iv) of goods where invoice does not show the amount of tax separately; or
- (v) where the purchasing dealer fails to prove the genuineness of the purchase transaction [xxx], on being asked to do so by an officer not below the rank of Assistant Commercial Taxes Officer authorised by the Commissioner.

“(3A) Notwithstanding anything contained in this Act, where any goods purchased in the State are subsequently sold at subsidized price, the input tax allowable under this section in respect of such goods shall not exceed the output tax payable on such goods.”

(4) The State Government may notify cases in which partial input tax credit may be allowed subject to such conditions, as may be notified by it.

“19. Input tax credit for stock on the date of commencement of this Act.– Input tax credit shall be allowed on the goods other than capital goods, which had suffered tax under the repealed Act, and are lying in stock of the dealer on the date of commencement of this Act, provided that such dealer has submitted the details of such stock, as required by the Commissioner under section 93 of the repealed Act or section 91 of this Act, and such goods in stock are used for the purposes specified in clauses (a) to (f) of sub-section (1) of section 18.

However, the input tax credit under this section shall be allowed to the extent of the tax paid under the repealed Act or the amount of tax payable on such goods under this Act, whichever is less.”

20. Payment of tax.– (1) Tax payable under this Act shall be deposited into a Government treasury or a bank authorised to receive money on behalf of the State Government, on the basis of accounts of a dealer in such manner and at such intervals as may be notified by the State Government, and different intervals may be notified for different categories of dealers.

(2) Notwithstanding anything contained in this Act, in the case of works contract, an amount in lieu of tax shall be deducted by the awardee at such rate as notified by the State Government not exceeding twenty percent of the total value of the contract, in such manner and under such circumstances, as may be prescribed, from every bill of payment to a contractor and such sum shall be deposited or credited in the Government account within the specified time and in the prescribed manner.

“(2A)deleted

(3) Notwithstanding anything contained in sub-section (1), where the State Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, defer the payment of tax payable by any class of dealers, with or without interest, for any period on such conditions and under such circumstances as may be specified in the notification.

(4) In case of any delay in payment of amount required to be deposited under any of the sub-sections (1), (2) and (3), the amount of interest under sub-section (1) of section 55 shall also be paid along with the amount of tax.

(5) Every deposit of tax or deduction of amount in lieu of tax made under this section shall be deemed to be provisional subject to adjustment against the tax liability determined in the assessment made under this Act.

“(6) Notwithstanding anything contained in this Act, the State Government may, by notification in the Official Gazette, allow the dealer, availing the facility of deferment under sub-section (3), to make prepayment of the amount of deferred tax on such terms and conditions including the condition of remission from a part of deferred tax, as may be specified in such notification.”

21. Filing of return.—“(1) Every registered dealer shall assess his liability under this Act, and shall furnish return, for such period, in such form and manner, and within such time and with such late fee not exceeding fifty thousand rupees, for delayed furnishing of returns, as may be prescribed, to the assessing authority or to the officer authorized by the Commissioner.”

(2) Any person or a dealer as may be required by a notice to do so by the Assessing authority or by an officer authorized by the Commissioner in this behalf, shall furnish return for such period in such form and manner and within such time as may be specified.

(3) Notwithstanding anything contained in sub-section (1), where "the Commissioner" is of the opinion that it is expedient in the public interest so to do may by a notification in the Official Gazette extend the date of submission of the returns or may dispense with the requirement of filing any or all the returns by a dealer or class of dealers.

"22. Assessment on failure to deposit tax or submit return or audit report.- (1) Where a dealer has failed to deposit tax in accordance with the provisions of section 20 within the notified period or has failed to submit a return in accordance with the provisions of section 21, or an audit report in accordance with the provisions of section 73, within the prescribed period, the assessing authority or the officer authorized by the Commissioner shall, without prejudice to the penal provisions in this Act, after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity of being heard, assess tax for that period to the best of his judgment.

(2) The tax assessed in sub-section (1), after adjustment of input tax credit and the amount deposited in advance in this behalf, if any, shall be payable by the dealer within thirty days from the date of service of the notice of demand. However, the assessing authority or the officer authorized by the Commissioner, after recording reasons in writing, may reduce such period.

(3) The tax deposited under sub-section (2) shall be adjusted in the assessment for the relevant period.

(4) No order under this section shall be passed after the last date of submission of annual return for that year.

23. Self Assessment.- Every registered dealer who has furnished, all the returns under the provisions of section 21 or audit report as contemplated in section 73 along with all the returns under section 21, for the year, before issuance of any notice under sub-section (2) of section 24, shall, subject to the provisions of section 24, be deemed to have been assessed on the basis of such returns and such audit report, as the case may be.

24. Assessment.- (1) Assessment of a dealer shall be for a year and it shall be made after the last date of furnishing of annual return for the year. However, the assessment of a closed business may be made immediately after its closure.

(2) Every return furnished by a registered dealer shall be subject to such scrutiny as may be determined by the Commissioner, to verify its correctness, and if any error is detected in any return or returns, the assessing authority or the officer authorised by the Commissioner shall serve a notice in the prescribed form to the dealer for rectification of the errors and the dealer may file a revised return within such period as specified therein.

(3) Where the dealer, in pursuance of the notice issued under subsection (2),-

(a) furnishes the revised return or returns, as the case may be, in terms of the notice and deposits the tax, interest, late fee, if any, he shall be deemed to have been assessed under section 23;

(b) does not furnish revised return or returns, as the case may be, or the revised return or returns, as the case may be, furnished by the dealer is not in terms of the notice, the assessing authority or the officer authorised by the Commissioner, after giving an opportunity of being heard to the dealer and after conducting such enquiry as he may consider necessary, shall assess the dealer to the best of his judgment on the basis of the material available on record.

(4) Where a dealer, fails to furnish return in accordance with the provisions of section 21, the assessing authority or the officer authorised by the Commissioner, after giving an opportunity of being heard to the dealer and after conducting such enquiry as he may consider necessary, shall assess the dealer to the best of his judgment on the basis of the **material available on record and shall impose a penalty, for non-filing of returns, of an amount equal to twenty percent of the net tax payable subject to a minimum of five thousand rupees.**

(5) No assessment order under this section shall be passed after the expiry of two years from the end of the relevant year. However, the Commissioner may for reasons to be recorded in writing, extend such time limit in any particular case by a period not exceeding six months.

(6) Notwithstanding anything contained in sub-section (5), where any proceeding relating to an assessment is subject to adjudication before the Tax Board or a competent court or any other authority under this Act, assessment in such matters may be passed within two years from the final adjudication of such proceedings. The limitation of two years shall be counted from the date of communication of the order of such final adjudication to the assessing authority.”.

25. Assessment in case of avoidance or evasion of tax. – (1) Where the assessing authority or any officer authorized by the commissioner in this behalf has reasons to believe that a dealer has avoided or evaded tax or has not paid tax in accordance with law or has availed input tax credit wrongly, he may after giving the dealer a reasonable opportunity of being heard, determine at any time and for any period, that taxable turnover of such dealer on which tax has been avoided or evaded or has not been paid in accordance with law or wrong input tax credit has been availed and assess the tax to the best of his judgment.

(2) The tax assessed under sub-section (1), after adjustment of input tax credit and the amount deposited in advance in this behalf, if any, shall be payable by the dealer within thirty days from the date of service of the notice of demand. However, the assessing authority or any officer authorized by the Commissioner, after recording reasons in writing, may reduce such period.

(3) The assessment under sub-section (1) shall not be made after the expiry of a period of six months from the date of making out the case. However, the Commissioner may, for reasons to be recorded in writing, in any particular case, extend this time limit for a further period not exceeding six months.

(4) Notwithstanding anything contained in this Act, where notice has been issued under sub-section (1), the authority issuing such notice shall be competent to make the assessment for the relevant year.

(5) No notice under sub-section (1) shall be issued after the expiry of five years from the end of the relevant year.

(6) Notwithstanding anything contained in sub-sections (3) and (5), where any proceeding relating to an assessment is subject to adjudication before the Tax Board or a competent court or any other authority under this Act, assessment in such matters may be passed within two years from the final adjudication of such proceedings. The limitation of two years shall be counted from the date of communication of the order of such final adjudication to the assessing authority.

“Explanation.- For the purpose of this section the expression “date of making out the case” means the date on which notice in pursuance of this section is issued for the first time to the dealer.”

26. Escaped assessment.– (1) An assessment –

- (a) of a person who is liable to get registration but has not got himself registered; or
- (b) in which, for any reason, the levy of tax or any fee or sum payable under this Act has been escaped wholly or in part; or
- (c) wherein tax has been wholly or in part unassessed or under-assessed in any way or under any circumstances,

shall be deemed to be an escaped assessment and the assessing authority or the officer authorized by the Commissioner, shall on the basis of the material on record or after making such enquiry as it may consider necessary, complete such assessment within the time limit provided in sub-section (3).

Explanation.–

(2) Where the Commissioner or the Deputy Commissioner (Administration) has reason to believe that a dealer has escaped assessment to tax in any manner provided in sub-section (1), he may at any time, subject to the time limit specified in sub-section (3), either direct the assessing authority or the officer authorized by the Commissioner, to assess the tax or the fee or other sum or himself proceed to assess the same.

(3) No notice under sub-section (1) shall be issued after the expiry of five years, and no assessment under this section shall be made after the expiry of eight years, from the end of the relevant year.

(3A) Notwithstanding anything contained in sub-section (3), where any proceeding relating to an assessment is subject to adjudication before the Tax Board or a competent court or any other authority under this Act, assessment in such matters may be passed within two years from the final adjudication of such proceedings.

(4) The assessment, if any, already made shall be subject to the assessment made under this section.

27. Audit of the dealer.— (1) With a view to promoting compliance with the provisions of this Act, the Commissioner may arrange for audit of the business of such of the registered dealers who are selected by the Commissioner on the basis of the application of any criterion or on a random selection basis or in respect of whom the Commissioner has reasons to believe that detail scrutiny of their business is necessary.

(2) The audit of the dealer shall be conducted by the auditor in the prescribed manner.

(3) The auditor while conducting audit shall exercise the powers provided under section 75 and shall examine the books of accounts, stock in trade and the related documents of the dealer of the audit period.

(4) If on such audit, the returns filed by the dealer are not found to be correct, or any avoidance or evasion of tax is detected the auditor shall, issue a show cause notice to the dealer containing details of discrepancies detected.

(5) On receipt of the reply to notice issued under sub-section (4), the auditor shall after considering the reply of the dealer assess his tax and other related liabilities and get such order approved from his immediate higher officer before its issuance to the dealer along with the demand notice. Where the dealer fails to submit the reply, the auditor shall proceed to assess the liability of the dealer under this Act, to the best of his judgment. Such assessment shall be deemed to be the assessment of the dealer for the relevant period and assessment, if any, already made shall be subject to the assessment made under this section.

(6) No notice under sub-section (4) shall be issued after the expiry of five years, and no assessment under this section shall be made after the expiry of eight years, from the end of the relevant year.

(7) Notwithstanding anything contained in sub-section (6), where any proceeding relating to an assessment is subject to adjudication before the Tax Board or a competent court or any other authority under this Act, assessment in such matters may be passed within two years from the final adjudication of such proceedings. The limitation of two years shall be counted from the date of communication of the order of such final adjudication to the assessing authority

28. Assessment in case of a casual trader.— (1) A casual trader shall immediately on completion of a transaction of sale or purchase, for which he is liable to pay tax, report to the assessing authority having jurisdiction with reference to the place of such transaction or to the Incharge of the nearest check-post or barrier, the amount of sale or purchase price and the tax payable thereon and shall deposit the amount of tax with such assessing authority or Incharge of the check-post or barrier within such time and in such manner as such authority or Incharge may direct.

(2) Where a casual trader fails to make a report as required under sub-section (1), the assessing authority having jurisdiction or the Incharge of the nearest check-post or barrier may require such casual trader to make a report of the sale or purchase price and the tax due, failing which such assessing authority or Incharge of the check-post or barrier may assess to the best of its judgment the amount of tax due and direct the casual trader to pay the amount of tax within such time and in such manner as it may direct.

(3) Where a casual trader fails to pay the tax as directed by the assessing authority or the Incharge of the check-post or barrier under sub-section (1) or (2), the goods belonging to such casual trader shall be detained until the tax is paid or adequate security for payment of tax is furnished.

(4) No order under sub-section (1) shall be passed after the expiry of one year from the date of making the report, and under sub-section (2) after the expiry of two years from the date of completion of the transaction.

(5) The amount of tax payable by a casual trader under sub-section (1) or (2) shall be deemed to be a demand payable by a registered dealer and all the provisions of recovery under this Act shall apply accordingly to such demand.

(6) The assessing authority may authorise in writing any official subordinate to it to perform all or any of its functions to be performed under this section.

(7) The assessing authority may, *suo motu* or on an application of the casual trader, filed within thirty days of the date of deposit or realisation of tax, review or revise any order passed or action taken by the subordinate official, authorised under sub-section (6).

29. Assessment in special cases. – (1) **Minor and incapacitated person**– In the case of any guardian, trustee or agent of any minor or other incapacitated person carrying on business on behalf of and for the benefit of such minor or other incapacitated person, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in the like manner and to the same extent as it would be leviable upon and recoverable from any other person, and all the provisions of this Act and the rules made thereunder shall apply accordingly.

(2) **Estate under Court of Wards or business managed by other agencies** – Where the estate of a dealer, whether complete or part thereof, is under the control of Court of Wards, or where the business of a dealer is managed by the Administrator, the Official Trustee, the Official Liquidator or Receiver or any Manager or Controller, appointed by him or under the orders of a court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator, Official Trustee, Official Liquidator or Receiver or Manager or Controller in the like manner and to the same extent as it would be leviable upon and recoverable from the dealer and all the provisions of this Act and the rules made thereunder shall apply accordingly.

30. Assessment of a dissolved firm.– In the case of a dissolved partnership firm, assessment thereof under this Act shall be made in the same manner as if the firm had not been dissolved.

31. Rounding-off of tax, interest and penalty.– (1) The amount of tax, interest, penalty or any other sum payable and the amount of refund due, under the provisions of this Act, shall be rounded off to the nearest multiple of ten rupees and, for this purpose, where such amount contains a part of ten rupees, if such part is five rupees or more, it shall be increased to ten rupees and if such part is less than five rupees, it shall be ignored.

(2) Nothing contained in sub-section (1) shall apply to any collection by a dealer of any amount by way of tax in respect of any sale or purchase made by him of goods under this Act.

32. Want of form not to affect proceedings.– Any notice, summons, assessment order, demand notice, order of attachment or any other order passed under this Act, which purports to be made in pursuance of any provision of this Act or the Rules, shall not be deemed to be void or voidable and shall not be quashed for want of the prescribed form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act and the Rules.

33. Rectification of a mistake.– (1) With a view to rectifying any mistake apparent from the record, any officer appointed or any authority constituted under this Act may rectify *suo motu* or otherwise any order passed by him.

Explanation.– A mistake apparent from the record shall include an order which was valid when it was made and is subsequently rendered invalid by an amendment of the law having retrospective operation or by a judgment of the Supreme Court, the Rajasthan High Court or the Rajasthan Tax Board.

(2) No application for rectification shall be filed under sub-section (1) after the expiry of a period of three years from the date of the order sought to be rectified.

(3) Where an application under sub-section (1) is "presented to the assessing authority" and a receipt thereof is obtained, it shall be disposed of within a period of one year from the date of presentation and where such application is not disposed of within the said period, the same shall be deemed to have been accepted.

(4) No rectification under this section shall be made after the expiry of four years from the date of the order sought to be rectified.

(5) An order of rectification which has the effect of increasing the liability of a dealer in any way, shall not be made without affording him an opportunity of being heard.

34. Reopening of ex-parte assessment.– (1) Where an assessment has been made *ex-parte* under sections 22 or "clause (b) of sub-section (2) of section 24, clause (c) of sub-section (3) of section 24, sub-section (4) of section 24" or section 25 or section 26 or section 27, the Deputy Commissioner (Administration) may, on the application of the dealer made within thirty days of the date of service of the notice of demand in consequence of such assessment along with such fee as may be prescribed, by an order direct the assessing authority or the officer authorised by

the Commissioner as the case may be, to cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of law.

(2) Before issuing direction under sub-section (1), the Deputy Commissioner (Administration) should be satisfied that the applicant dealer did not receive notice or summons issued to him under sections 22 or "clause (b) of sub-section (2) of section 24, clause (c) of sub-section (3) of section 24, sub-section (4) of section 24" or section 25 or section 26 or section 27 or that he was prevented by sufficient cause from complying with any notice or summons issued to him for assessment.

(3) Where the order for cancellation of the assessment under sub-section (1) has been passed, the assessing authority or the officer authorised by the Commissioner as the case may be, shall make fresh assessment within sixty days from the communication of the order passed by the Deputy Commissioner (Administration) under sub-section (1).

35. Stay of proceeding.— No civil court or any other authority shall stay assessment proceedings purported to be initiated or already initiated under this Act.

36. Determination of disputed questions.— (1) Where any question arises, otherwise than in proceedings before a court, or in any proceeding under section 22, 24, 25 and 26, whether for the purpose of this Act, —

- (a) any person is a dealer; or
- (b) any particular dealer is required to be registered; or
- (c) any transaction is a sale, and if so the sale price thereof; or
- (d) any tax is payable in respect of any particular sale or purchase or if tax is payable, the point and the rate thereof; or
- (e) any particular thing done to any goods amounts to or results in the manufacture of goods; or
- (f) any dealer is entitled to any particular amount of input tax credit;

on being filing of the application in the prescribed manner, the Commissioner shall make an order determining such question.

(2) Where any such question arises from any order already passed under this Act, no such question shall be entertained for determination under this section, but such question may be raised by the party concerned in the appeal against, or by way of revision of such order.

(3) The Commissioner under sub-section (1) may direct that the determination shall not affect the liability of any person under this Act, in respect of any sale or purchase effected prior to the determination.

(4) Where an order of the Commissioner passed in sub-section (1) is modified in any way in appeal or revision, the modified order shall be effective from the date of order passed in such appeal or revision.

37. Transfer of cases.— (1) A dealer may make an application on plain paper to the Commissioner to transfer any case under this Act from one officer or authority to other officer or authority on the following grounds, namely:—

- (a) Dispute of jurisdiction; or
- (b) Apprehension of miscarriage of justice; or
- (c) Business convenience.

(2) In the face of cogent reasons adduced by a dealer in his application filed under sub-section (1), notwithstanding anything contained in section 35, the Commissioner may stay the proceeding of the case *ex-parte* for a period not exceeding one month and in no case beyond a period exceeding three months and such period of stay shall be excluded from the period of the time limit specified in respect of the disposal of such case.

(3) The Commissioner may after due notice to the dealer, by order in writing transfer a case from one officer or authority to other officer or authority; however, no notice to the dealer shall be necessary where the transfer is from one officer or authority to other officer or authority, whose offices are situated in the same city, town or village.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), the "Commissioner or any other officer authorised by him in this behalf" may, at any time, for

administrative reasons, transfer any case or cases from one officer or authority to other officer or authority, without issuing any notice to the dealer or dealers concerned.

Explanation.— The word “case” in relation to any dealer under this section shall mean any proceeding pending under this Act on the date of the order made under sub-section (2) or which may have been completed on or before such date or which may commence after such date.

CHAPTER V

TAX LIABILITY, RECOVERY AND REFUND

38. Liability for payment of tax or demand.— (1) The tax or the demand shall be payable by a dealer or a person on the basis of an assessment or an order passed, under this Act.

Explanation I.— The interest, penalty, or any sum payable under this Act shall be deemed to be tax for the purpose of collection, recovery and for all matters ancillary or incidental thereto.

Explanation II.— The demand shall include any amount payable by a person or a dealer under this Act or the rules.

(2) The tax paid by a dealer or a person shall be adjusted against the tax determined as a result of an assessment or the amount held payable in pursuance of an order passed, under this Act and the balance of the amount shall be payable by such dealer or person within thirty days from the date of service of the notice, or within a period of less than thirty days, as may be determined by the Assessing Authority or auditor or any other authority authorised by the Commissioner in the special circumstances and for reasons to be recorded in writing.

(3) In default of the payment of tax or demand payable under sub-section (1) or sub-section (2), the amount of tax or demand shall be recoverable in accordance with the provisions of this Act including the provisions of the Rajasthan Land Revenue Act, 1956 (Act No.15 of 1956) and the Revenue Recovery Act, 1890 (Central Act No.1 of 1890).

"(4) Where a dealer or a person has filed an appeal to the Appellate Authority against an order passed by an assessing authority or any other officer, the said Appellate Authority may, after registering such appeal and after having heard the appellant and the assessing authority or officer or any representative thereof, stay the recovery of the disputed amount of tax or demand or any part thereof for a period of one year from the date of such order or till the disposal of the appeal, whichever is earlier, on the condition that the said dealer or the person furnishes sufficient security to the satisfaction of the assessing authority or the officer, as the case may be, in such form and in such manner as may be prescribed:

Provided that where an application for stay is not disposed of within a period of thirty days from its filing and the delay is not attributable to the applicant, the same shall be deemed to have been accepted subject to the condition that such dealer or person furnishes sufficient security to the satisfaction of the assessing authority or the officer, as the case may be, in such form and in such manner as may be prescribed:

Provided further that no security under this section shall be required to be furnished by a department of the Central Government or the State Government or a public sector undertaking, corporation or company owned or controlled by the Central Government or the State Government."

(5) The assessing authority may, subject to such conditions and restrictions as may be prescribed, in respect of any particular dealer or person and for reasons to be recorded in writing, extend the date of such payment and allow such dealer or person to pay any demand in instalments on the condition that the said dealer or the person furnishes sufficient security to the satisfaction of assessing authority.

(6)(a) Where the recovery of tax or demand or any part thereof is stayed under sub-section (4), the amount of such tax or demand ultimately found due shall be recoverable with interest as per provisions of this Act, and such interest shall be payable on such amount from the date the tax or demand first became due.

(b) Where the payment of tax or demand is postponed by instalments under sub-section (5), the dealer or the person shall be required to pay interest for the amount postponed and the period extended in accordance with the provisions of this Act.

(7) Notwithstanding anything contained in this Act the State Government may defer the recovery of demand payable by an industrial unit declared sick under the Sick Industrial

Companies (Special Provisions) Act, 1985 as amended from time to time (Central Act No. 1 of 1986) to such extent, for such period and on such conditions with regard to the payment or rate of interest as may be deemed proper.

39. Liability of a surety.– The liability of a surety under this Act shall be co-extensive to the extent of the amount of security with that of the defaulting dealer and all the modes of recovery enforceable against the dealer shall be simultaneously enforceable against the surety.

40. Liability of the representatives of a deceased person.– (1) Where a person dies and his business devolves by virtue of his death upon any other person, such other person shall be liable to all obligations and liabilities in respect of such business under this Act and he shall within thirty days of the devolvement of such business apply for registration unless he already holds a certificate of registration.

(2) Where a person dies and his executor, administrator or other legal representative does not continue his business except for the purpose of winding it up, such executor, administrator or legal representative shall be assessed as if he were the dealer and shall be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, the tax assessed or other demand payable under this Act.

41. Liability on dissolution, discontinuance or partition of business.– Where any business carried on by a firm, an association of persons or a Hindu Undivided Family liable to pay tax, is dissolved or discontinued permanently or where such Hindu Undivided Family is partitioned –

- (a) such firm, association or family shall be liable to pay tax in respect of the turnover of the goods and other articles including plant and machinery of such firm, association or family as if there was no such dissolution, discontinuance or partition and all the provisions of this Act shall apply accordingly;
- (b) such firm, association or family, as the case may be, shall be liable to pay tax on the goods and other articles including plant and machinery allotted to any partner or member thereof as if the goods or other articles including plant and machinery had been sold to such partner or member unless he holds a certificate of registration or obtains it within a period of three months from the date of such allotment;
- (c) every person who was at the time of such dissolution, discontinuance or partition, partner or member of such firm, association or family and the legal representative of any such person who is deceased, shall, in respect of the turnover of such firm, association or family, be jointly and severally liable to assessment and payment of tax or other sum, and all the provisions of this Act, so far as may be, shall apply to such assessment and the liability for payment of tax or other sum;
- (d) every person who obtains the whole or any part of the stock relating to the business of such firm, association of persons or Hindu Undivided Family, and gets himself registered within a period of three months from the date he obtains such stock, shall be liable to pay tax on the sale or purchase of the goods made by him with effect from the date of such dissolution, discontinuance or partition, as the case may be.

42. Liability on transfer of business.– (1) When the ownership of the business of a dealer liable to pay tax is entirely transferred in any manner, any tax or other sum payable in respect of such business and remaining unpaid at the time of the transfer, shall be payable by the transferee, as if he were the dealer liable to pay tax or other sum; and for the liability to tax accruing from the date of such transfer, he shall within thirty days of the transfer apply for registration, unless he already holds a certificate of registration.

Explanation.– “Transfer of entire ownership of business” means,–

- (a) transfer of business assets, debits and credits and stocks in trade, input tax credit, if any;
or
 - (b) transfer of land, building and plant and machinery.
- (2) When a dealer liable to pay tax transfers the ownership of a part of his business, the transferor shall be liable to pay tax in respect of the stock of goods and other articles including plant and machinery transferred along with the part of his business which is not transferred, as if the goods and other articles including plant and machinery have been sold by him, unless the transferee holds a certificate of registration or obtains it within a period of three months from the date of such transfer.

43. Liability of principal and agent.— (1) When an agent sells any taxable goods on behalf of his principal, such agent and his principal shall both be jointly and severally liable to pay tax on such sales.

(2) Notwithstanding that a principal may not be liable to tax on the sale or purchase of any goods made within the State for any reason, nevertheless his agent shall be liable to pay tax on the sale or purchase of goods in accordance with the provisions of this Act.

44. Liability of firms and partners.— (1) Notwithstanding anything contained in this Act, when any firm, existing or dissolved is liable to pay tax under this Act, such firm as well as each of the partners of such firm shall be jointly and severally liable to pay such tax.

(2) When any partner retires from a firm before it is dissolved, he shall be liable to pay the tax, if any, remaining unpaid at the time of his retirement and also the tax, leviable up to the date of his retirement though it may be un-assessed on that date.

45. Liability of Directors of a private company.— Subject to the provisions of the Companies Act, 1956 (Central Act No.1 of 1956), where any tax and other sums recoverable under this Act from any private company, whether existing or wound up or under liquidation, can not be recovered for any reason whatsoever, every person who was a director, at any time during the period for which the tax or other sums are due, shall be jointly and severally liable for the payment of such tax and other sums unless he proves to the satisfaction of the assessing authority that the non-payment of tax or other sums can not be attributed to any gross neglect, misfeasance or breach of duty on his part.

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

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

(3) Any tax or other sum found recoverable under this Act for the period prior to the operative date of amalgamation, from the company being amalgamated, shall be payable by the company formed after amalgamation.

(4) Words and expressions used in this section, but not defined shall have the respective meanings assigned to them in the Companies Act, 1956 (Central Act No. 1 of 1956).

47. Liability under this Act to be the first charge.— Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax and any other sum payable by a dealer or any other person under this Act, shall be the first charge on the property of such dealer or person.

48. Certain transfers to be void.— Where during the pendency of any proceeding for the determination of any liability to tax, interest, penalty or other sum under this Act, if any dealer or a person against whom such proceeding is pending, creates a charge on, or parts with the possession by way of sale, mortgage, exchange, gift or any other mode of alienation whatsoever, of any of his assets in favour of any other person, such charge, transfer, gift or alienation shall be void as against any claim in respect of any tax, interest, penalty or other sum payable by such dealer or person, which arises as a result of the said proceeding, except when –

(a) such dealer or person has no notice of such proceeding pending against him; and

(b) such transfer is made for adequate valuable consideration.

49. General mode of recovery.— Without prejudice to other provisions of this Act, where any tax or other sum payable by a dealer or a person under this Act is not paid in accordance with the provisions of this Act or the rules made or notifications issued thereunder, it shall be recoverable as an arrear of land revenue and the assessing authority or any other authority authorised by the Commissioner, shall be empowered to recover such tax or other sum by attachment and sale of movable or immovable property of such dealer or person and all the provisions of the Rajasthan Land Revenue Act, 1956 (Act No. 15 of 1956) read with the Rajasthan Land Revenue (Payments, Credits, Refunds and Recovery) Rules, 1958 shall *mutatis mutandis* apply.

50. Special mode of recovery. – (1) Notwithstanding anything contained in section 49 or any law or contract to the contrary, the assessing authority or any other authority authorised by the Commissioner may, at any time or from time to time by notice in writing, a copy of which shall be sent to the dealer at his last known address, require, –

- (a) any person from whom any amount is due or may become due to a dealer who has failed to pay due tax or other sum on demand by the assessing authority; or
- (b) any person who holds or may subsequently hold any money for or on account of such dealer

to pay into the Government Treasury or the Bank authorised to receive money on behalf of the State Government, in the manner specified in the notice issued under this section either forthwith or upon the money becoming due from him or being held by him, within the time specified in the notice (not being before the money becomes due or it is held), so much of the money as is sufficient to pay the amount due from the dealer in respect of the demand of tax and other sum under this Act, or the whole of the money when it is equal to or less than that demand.

Explanation.– For the purpose of this sub-section, the amount due to a dealer or money held for or on account of a dealer by any person shall be computed after taking into account such claims, if any, as may have fallen legally due for payment by such dealer to such person.

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

(3) Any person making any payment in compliance with a notice issued under sub-section (1) shall be deemed to have made the payment under the authority of the dealer and the treasury receipt or the challan of the bank for such payment shall constitute a good and sufficient proof of discharge of the liability of such person to the extent of the amount specified in the receipt or the challan.

(4) Any person, who discharges any liability by making payment to the dealer or otherwise, after service on him of the notice issued under sub-section (1), shall be personally liable to the State Government to the extent of the liability discharged or the amount of demand, whichever is less.

(5) Any amount or money which a person is required to pay under sub-section (1) or for which he is personally liable to the State Government under sub-section (4) shall, if it remains unpaid, be recoverable in accordance with the provisions of this Act.

(6) The provisions of this section shall be without prejudice to any action that may be taken for the recovery of the arrears of tax and other sum, if any, due from a dealer.

Explanation.– For the purposes of this section dealer includes a person from whom any sum is recoverable under this Act.

51. Power to reduce or waive interest and penalty in certain cases.– (1) Notwithstanding anything contained in this Act, the Commissioner may, on an application made in this behalf by a dealer and after having got conducted such enquiry as he deems necessary and after recording his reasons in writing for so doing, reduce or waive, the amount of interest or penalty or both payable by such dealer under this Act, if he is satisfied that –

- (a) the dealer is under financial hardship and is not in position to make full payment of the demand; or
- (b) to do otherwise would cause genuine hardship to the dealer.

(2) Every order made under this section shall be final and shall not be called in question by any civil court or any other authority.

“51A. Power of State Government to waive penalty and interest in certain cases.– Notwithstanding anything contained in this Act, the State Government in the public interest, by notification in Official Gazette, may reduce or waive any amount of interest or penalty payable for any period by any class of dealers, subject to such terms and conditions as may be specified in the notification.”

51B. Rebate of tax.– Notwithstanding anything contained in this Act, if the State Government is of the opinion that it is expedient in the public interest so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified therein, allow, whether prospectively or retrospectively, a rebate up to the full amount of tax to such dealers or class of dealers as may be specified in the notification.

52. Power to write off demand.— Where a demand against a dealer payable under this Act including the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956) has been outstanding for more than ten years from the date it became due and such demand has been rendered irrecoverable for want of any kind of property for being attached and sold, without prejudice to the provisions of other law or rules providing for writing off of demands, such demand may be written off through an order in writing, in the manner prescribed—

- (a) by the Assistant Commercial Taxes Officer, if it does not exceed rupees ten thousand;
- (b) by the Assistant Commissioner or the Commercial Taxes Officer, as the case may be, if it exceeds rupees ten thousand but does not exceed rupees twenty five thousand;
- (c) by the Deputy Commissioner (Administration), if it exceeds rupees twenty five thousand but does not exceed rupees one lac;
- (d) by the Commissioner, if it exceeds rupees one lac but does not exceed rupees ten lacs; and
- (e) by the State Government, if it exceeds rupees ten lacs.

53. Refund.— (1) Where any amount is refundable to a dealer under the provisions of this Act, after having duly verified the fact of "deposit of such amount", the assessing authority or the officer authorised by the Commissioner, shall in the prescribed manner refund to such dealer the amount to be refunded either by cash payment or by adjustment against the tax or other sum due in respect of any tax period.

"xxx"

(2) Notwithstanding anything contained in this Act, where a registered dealer files a return and claims refund on account of sales in the course of export outside the territory of India, the assessing authority or officer authorised by the Commissioner may require such dealer to furnish such documents as may be prescribed and after having been satisfied shall within thirty days from the date of such claim, grant the dealer a refund in cash.

(3) Where an amount or tax is collected from any person who is not registered under this Act and such amount or tax is not found payable by him, or where an amount in lieu of tax for any works contract is deducted in any manner by an awardee from any bill of payment to a contractor, who is not liable to pay tax under this Act, the amount so collected or deducted shall be refunded in the prescribed manner by the Assistant Commissioner or the Commercial Taxes Officer, as the case may be, in whose territorial jurisdiction such person or contractor ordinarily resides; and where such person or contractor does not reside in the State, then such refund shall be made by such officer as may be directed by the Commissioner.

(4) Where refund of any amount becomes due to a dealer, he shall be entitled to receive, in addition to the amount of refund, simple interest at such rate as may be notified by the State Government with effect from 1st April of the year immediately following the year to which it relates upto the date of payment:

Provided that where the dealer has paid any amount of tax after the closing of the year and such amount is required to be refunded, no interest shall be payable for the period prior to the date of the deposit of such amount.

(5) Notwithstanding anything contained in this section or in any other law for the time being in force, only the dealer or the person, who has actually suffered the incidence of tax or has paid the amount, can claim a refund and the burden of proving the incidence of tax so suffered or the amount so paid shall be on the dealer or the person claiming the refund.

“(6) Where tax is collected on any official or personal purchase by Foreign Diplomatic Missions or their Diplomats or by UN Bodies or their Diplomats, it shall be refunded to such person or Mission or Bodies, as the case may be, within thirty days of the receipt of the application, by such officer as may be authorised by the State Government in this behalf by notification.”

54. Power to obtain security or withhold refund in certain cases.— Where an order giving rise to refund is subject matter of an appeal, revision or other proceeding and such appeal, revision or other proceeding is contemplated or pending, and the officer concerned or the assessing authority for reasons to be recorded in writing is of the opinion that the grant of the refund is likely to adversely affect the State revenue, the said officer or the assessing authority may, with previous approval of the Commissioner, either obtain the security equal to the amount to be refunded to the dealer or the person or withhold the refund till such time as the Commissioner may determine.

CHAPTER VI
INTEREST, PENALTIES, COMPOSITION AND PROSECUTION

55. Interest on failure to pay tax or other sum payable.— (1) Where any person or a dealer commits a default in making the payment of any amount of –

- (a) tax leviable or payable; or
- (b) any amount of tax, fee, penalty or interest assessed or determined; or
- (c) any other amount payable by him,

within the specified time under the provisions of this Act or the rules made or notifications issued thereunder, he shall be liable to pay interest on such amount at such rate, as may be notified by the State Government from time to time, for the period commencing from the day immediately succeeding the date specified for such payment and ending with the day on which such payment is made.

(2) Subject to the provisions of sub-section (2) of section 66, interest under sub-section (1) shall be calculated—

- (a) at the time of assessment under any section or in continuation of such assessment; and
- (b) on payment including the adjustment of a demand in full.

(3) The liability to pay interest under the provisions of this section shall also arise for a period which is less than a month.

(4) Where a dealer, registered under this Act, has wrongly availed input tax credit or has been granted an erroneous refund in any manner, such dealer shall be liable to pay interest, at such rate as may be notified by the State Government from time to time, on the amount of wrongly availed credit or the amount of such refund as the case may be and such interest shall be calculated from the first day of the month succeeding the month in which the credit was wrongly availed or the refund was erroneously granted till the day on which such payment is made.

56. Penalty for not making application for registration.— Where any person has, without reasonable cause, failed to make an application to get himself registered as required under the provisions of this Act, within the time specified in the Act or prescribed in the rules, the assessing authority or the authority competent to grant him registration may direct that such person shall pay by way of penalty "a sum not exceeding one thousand rupees".

57. Penalty for failure to furnish security or additional security.— Where a dealer fails to furnish the initial security or the additional security as directed to be furnished under section 15 within the time specified therein, the authority competent to grant him registration or the assessing authority, as the case may be, may direct that such person shall pay by way of penalty "a sum not exceeding rupees two thousand and a further penalty of rupees twenty five for every day" till the requisite security or additional security is furnished.

59. Penalty for not maintaining or keeping accounts.— Where any dealer does not maintain accounts, registers and documents as required under the provisions of sub-sections (1) and (2) of section 71, or does not keep his accounts, registers and documents at a place in accordance with the provisions of sub-sections (3) and (4) of section 71, the assessing authority or any other officer not below the rank of Assistant Commercial Taxes Officer as authorised by the Commissioner may direct that such person shall pay by way of penalty "a sum not exceeding rupees five thousand and in case of continuing default a further penalty of rupees fifty for every day of such continuance."

60. Forfeiture and penalty for unauthorised collection of tax.— (1) Where any person –

- (a) not being a registered dealer or being a registered dealer not liable to pay tax under this Act, collects any amount by way of tax; or
- (b) who being a registered dealer, collects any amount by way of tax in excess of the tax payable by him; or
- (c) who otherwise collects tax in contravention of any of the provisions of this Act, the assessing authority or any other officer, not below the rank of an Assistant Commercial Taxes Officer authorised by the Commissioner, shall by an order forfeit the amount so collected.

(2) Where any person or dealer has collected any amount in the manner specified in sub-section (1), the assessing authority or any other officer not below the rank of an Assistant Commercial Taxes Officer authorised by the Commissioner, may direct such person or dealer to pay, in addition to the amount forfeited under sub-section (1), a penalty equal to double the amount of tax which has been so collected by him.

61. Penalty for avoidance or evasion of tax.— (1) Where any dealer has-

- (a) disclosed taxable turnover of sale of goods in any return furnished by him at a lower rate of tax than the rate of tax as specified under this Act or otherwise furnished inaccurate particulars deliberately in the return furnished by him; or
- (b) incorporated any transaction of sale or purchase in his accounts, registers or documents required to be maintained by him under this Act at a lower rate of tax than the rate of tax as specified under this Act; or
- (c) concealed any particulars from any return furnished by him; or
- (d) concealed any transactions of sale or purchase from his accounts, registers or documents required to be maintained by him under this Act; or
- (e) failed to get himself registered as required under section 11 of this Act and has avoided tax; or
- (f) avoided or evaded tax in any other manner, the assessing authority or any officer not below the rank of an Assistant Commercial Taxes Officer as may be authorised by the Commissioner, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty in addition to tax payable by him under this Act, a sum equal to two times the amount of tax avoided or evaded.”.

62. Penalty for not furnishing statistics.— Where any person or a dealer, has without reasonable cause failed to furnish within the time allowed, statistics or other information required to be furnished in pursuance of any direction given by any officer or authority appointed or constituted under this Act, the assessing authority or any officer not below the rank of an Assistant Commercial Taxes Officer as may be authorised by the Commissioner, may direct that such person or dealer "shall pay by way of penalty, a sum not exceeding rupees one thousand."

63. Penalty on awarders.— (1) Where an awarder of a works contract, fails to deduct the amount in lieu of tax from the bill of a contractor as prescribed, or after having deducted such amount from such bill does not deposit the same in the prescribed manner and time, he shall be liable to pay tax deducted by him and a penalty for each violation, "which may extend upto rupees one thousand in the case of non-deduction, and a penalty at the rate of two percent per month on the amount so deducted" but not deposited for the period during which such default continues.

"(2) Any officer not below the rank of an Assistant Commercial Taxes Officer as may be authorized by the Commissioner shall be empowered to recover tax and impose penalty under sub-section (1)."

64. Penalty for other violations.— Where any person or a dealer –

- (i) fails to comply with a direction given by any officer or authority appointed or authorised or constituted under this Act; or
- (ii) violates any of the provisions of this Act or the rules made thereunder for which no specific penalty has been provided elsewhere under this Act or the rules,

the assessing authority or any other officer not below the rank of an Assistant Commercial Taxes Officer as authorised by the Commissioner, may direct that such person or dealer "shall pay by way of penalty a sum not exceeding rupees two thousand, and in case of a continuing default, a further penalty of rupees twenty five for every day of such continuance."

65. Opportunity before imposition of penalty.— No penalty under this Act shall be imposed unless a reasonable opportunity of being heard is afforded to the dealer or the person concerned.

66. Time limit for imposition of penalty or levy of interest.— (1) No order for imposing penalty shall be passed—

- (a) after expiry of two years from the end of the year in which the relevant assessment or rectification order is passed; and

- (b) if the assessment or rectification order is subject matter of appeal, revision or other proceeding, after expiry of two years from the end of the year in which the order in appeal, revision or other proceeding is passed.
- (2) (a) Subject to the provisions of clause (b) of sub-section (1), no order for levy of interest shall be passed –
- (i) after expiry of two years from the end of the year in which relevant assessment or rectification order is passed; and
 - (ii) if the assessment or rectification order is the subject matter of appeal, revision or other proceeding, after expiry of two years from the end of the year in which the order in appeal, revision or other proceeding is passed.
- (b) No order for levy of interest in the case of recovery of demand shall be passed after expiry of two years from the end of the year in which such demand in full is recovered or adjusted or partly recovered and partly adjusted.

Explanation.– In computing the period of limitation under this section, the period during which the proceeding for imposition of penalty or levy of interest remains stayed or restrained under the orders of any competent authority or court shall be excluded.

67. Prosecution for offences.– (1) Where any person –

- (a) though not registered under this Act, yet falsely represents that he is a registered dealer at the time of any sale or purchase made by him or at the time of making any statement or declaration before any officer or authority appointed or constituted under this Act; or
- (b) knowingly prepares or produces false accounts, sales and purchase invoices, VAT invoices, registers or documents; or knowingly furnishes false returns in relation to his business or makes a false disclosure or averment in any statement required to be recorded or in any declaration required to be filed under this Act or the rules or notifications; or
- (c) fraudulently avoids or evades tax or deliberately conceals his tax liability in any manner; or
- (d) fails to pay the amount of any demand notice and a period of not less than six months has elapsed since the receipt of the demand notice by him;

Explanation.– An offence under this clause shall be deemed to be a continuing offence until full payment is made; or

- (e) deliberately disregards a notice issued under sections 50 and 91; or
- (f) prevents or obstructs, in any manner, the competent officer under this Act, to enter, inspect and search the business place or any other place where the goods or the accounts, registers and other documents are believed to be kept, or prevents or obstructs such officer to seize the goods or the accounts, registers and documents; or
- (g) fails to stop the vehicle or carrier transporting the goods, of which he is the driver or otherwise Incharge, for being inspected in accordance with the provisions of this Act, or prevents or obstructs the inspection, of the goods or the vehicle or the carrier transporting the goods, by the Incharge of a check post or barrier or other officer empowered in this behalf to discharge his duties by the Commissioner; or
- (h) imports into or exports from the State of Rajasthan, any goods showing incorrect or fictitious names or addresses of consignors or consignees or incorrect details of goods or incorrect particulars in vouchers, way bills or goods receipts or other documents accompanying the goods while in movement; or
- (i) fraudulently avails wrong credit of input tax; or
- (j) aids or abets any person in the commission of any such offence as aforesaid,

on a complaint being made against such person by the assessing authority or any other competent officer after having obtained “sanction from the Commissioner, he shall, on conviction by a Judicial Magistrate having jurisdiction,

(I) for offences described under clauses (c) or (i) or offences where amount of demand notice exceeds rupees one crore under clause (d) be punishable with simple imprisonment for a term which may extend upto three years and also be liable to fine but the minimum sentence shall not be less than simple imprisonment of six months and fine of rupees five thousand; and

(II) for other offences not covered under clause (I), be punishable with simple imprisonment for a term which may extend upto six months and also be liable to fine.

(2) Where an offence under this section is committed with regard to a business, every person, who was responsible for the conduct of the business at the time when the offence was committed or who was answerable for a legal lapse in any manner by his action or omission, shall be liable to be proceeded against and punished under this section.

(3) Without prejudice to the provisions contained in sub-section (2), where an offence under this section is committed by a firm or a company and it is found that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any partner of the firm or Chairperson-cum-Managing Director, Managing Director, Executive Director or Director of the Company, such partner, Chairperson-cum-Managing Director, Managing Director, Executive Director or Director, shall be liable to be proceeded against and punished under this section.

(4) Any proceedings under this Act including the proceedings of assessment, rectification or recovery, other than the proceedings for imposition of penalty, shall be carried on without prejudice to any prosecution under this section.

68. Composition of offences.— (1) Where a person or a dealer is charged under this Act with the offence of avoidance or evasion of tax in any manner and at any time; he may make an application in the prescribed form and manner to the Deputy Commissioner (Administration) having jurisdiction, admitting his offence and making request therein for composition of the offence in lieu of penalty or prosecution.

(2) The Deputy Commissioner (Administration) may, whether or not an assessment order under any section of this Act has been passed, accept from the person who made the application under sub-section (1), by way of composition of the offence in lieu of penalty or prosecution “a sum equal to” of the amount of tax avoided or evaded.

[(3) Notwithstanding anything contained in sub-sections (1) and (2), on an application by a person admitting the offence committed by him under sub-section (8) of section 75 or under sub-section (6) or (9) or (11) of section 76, the officer "authorized under sub-section (4) of section 75 or the officers authorized under sub-section (4) of section 76 or Incharge of a check-post", as the case may be, may accept composition money from such person in lieu of penalty or prosecution, which shall be,—

- (a) in case of offence committed under sub-section (8) of section 75 or sub-section (6) of section 76, equal to the amount of four times of the tax leviable on the goods involved or twenty five percent of the value of such goods, whichever is less;
- (b) in case of offence committed by him under subsection (9) of section 76, equal to fifteen percent of the value of the goods;
- (c) in case of offence committed under sub-section (11) of section 76, equal to twenty five percent of the value of such goods.]

(4) The composition of any offence in lieu of penalty or prosecution under sub-section (2), shall be without prejudice to the liability of the person or dealer, charged with the offence, to pay the tax with interest so avoided or evaded or wrongly credited by him.

(5) On the payment of the amount of composition determined under sub-section (2) and (3), no further proceeding under the provisions of this Act for imposition of penalty or launching of prosecution for the same offence, shall be initiated.

(6) Notwithstanding anything contained in section 51, no amount of composition accepted and no amount of interest levied under this section, shall be waived or reduced by the Commissioner.

(7) Notwithstanding anything contained in section 82, no appeal shall lie or subsist against an order of composition made under this Act.

69. Penalty or composition under this Act not to interfere with punishment under other law.— Any penalty proceeding under this Act whether pending or completed or any composition of offence in lieu of penalty or prosecution, shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law.

70. Investigation of offence.— (1) Subject to such conditions as may be prescribed, the Commissioner may authorize either generally or in respect of a particular case or class of cases, any officer not below the rank of an Assistant Commercial Taxes Officer to investigate all or any of the offences punishable under this Act.

(2) Every officer so authorised shall, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974) upon the Officer-Incharge of a Police Station for the investigation of a cognisable offence.

CHAPTER VII MAINTENANCE AND KEEPING OF ACCOUNTS

71. Accounts to be maintained by a dealer.— (1) Every dealer liable to pay tax under this Act shall keep and maintain a true and correct account of his business activities in an intelligible form including the value and quantity of the goods received, manufactured, sold or otherwise disposed of or held in stock by him. However, the State Government may exempt, such class of dealers as may be notified, from the provisions of this sub-section.

(2) Notwithstanding anything contained in sub-rule (1) (*sic*), the State Government, if deemed proper, may prescribe forms for maintaining accounts of sales and purchase of goods, stock of raw materials used and finished goods produced.

(3) The accounts required to be maintained under sub-section (1) shall be kept by the dealer at the place(s) of business as recorded in his certificate of registration, and the stock book as referred to in sub-section (2) shall be kept at the place where manufacturing activity is carried on; however, final accounts, annual statements, registers and documents shall be kept at the principal place of business.

(4) Where a dealer has established branches at places in the State other than the principal place of business, the necessary accounts, registers and documents relating to the business activities being carried on at each branch shall, without prejudice to the provisions of sub-section (3), be kept by him at such branch.

(5) The accounts, registers and other documents relating to a year, shall be preserved and kept by a dealer for five years excluding the year to which they relate, and this period of five years shall be deemed to have been extended by such time until any pending proceeding referring thereto under this Act is finally disposed of.

72. Registered dealers to issue VAT invoice.— (1) A registered dealer, other than that who opts for payment of tax under sub-section (2) of section 3 or section 5 shall issue for each sale, except the sale of exempted goods, made by him, a VAT invoice in such manner as may be prescribed.

(2) Where any dealer, contravenes the provisions of sub-section (1), the assessing authority or the officer authorised by the Commissioner may, after giving such dealer a reasonable opportunity of being heard, direct him to pay by way of penalty a sum equal to double the amount of tax leviable on the sale of goods in respect of which an invoice has not been issued.

73. Audit of accounts.— [(1) Every registered dealer, other than the dealer who has opted for payment of tax under sub-section (2) of section 3 or under section 5 or who files e>Returns with prescribed documents or submits returns and documents in soft copy to the assessing authority or the officer authorised by the Commissioner "or the dealer or class of dealers as may be notified by the State Government", shall, if his turnover "exceeds rupees one hundred lac" in any year, get his accounts in respect of such year audited by an Accountant within the prescribed period from the end of that year and furnish within the prescribed period the report of such audit in the prescribed form duly signed and verified by such Accountant setting forth such particulars and certificates as may be prescribed.

" **Explanation.**— For the purposes of this section "Accountant" means:-

- (i) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (Central Act No. 38 of 1949); and
- (ii) a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 (Central Act No. 23 of 1959)."]

(2) If any dealer liable to get his accounts audited under sub-section (1) fails to furnish a copy of such report within the time as aforesaid, the assessing authority or the officer not below the rank of Assistant Commercial Taxes Officer authorised by the Commissioner may, impose on him, in addition to any tax payable, a sum by way of penalty equal to one tenth percent of the total turnover of that year or rupees one lac, whichever is less.

74. Dealer to declare the name of his business manager.— Every dealer, who is liable to pay tax, shall furnish a declaration within such time and in such manner as may be prescribed, stating the name of the person or persons to be manager or managers of his business for the purposes of this Act and also the name or names of person or persons authorised to receive notice and other documents under this Act on behalf of the dealer and such service on such person shall be binding on the dealer.

CHAPTER VIII

INSPECTION, SEARCH, SEIZURE AND ANTI-EVASION PROVISIONS

75. Power of entry, inspection and seizure of accounts and goods.— (1) An assessing authority or any officer not below the rank of Junior Commercial Taxes Officer authorised by the Commissioner in this behalf with such conditions and restrictions as may be specified by the Commissioner, shall have the power—

- (a) to inspect or survey the place of business of a dealer or any other place where it is believed by such authority or officer that business is being done or accounts are being kept by such dealer;
- (b) to direct such dealer to produce accounts, registers and documents relating to his business activities for examination;
- (c) to inspect the goods in the possession of the dealer or in the possession of anybody else on behalf of such dealer, wherever such goods are placed;
- (d) to make search of such place including the search of the person found there, where concealment of facts relating to business is suspected;
- (e) to break open the door of any premises or to break open any almirah, box, receptacle in which any goods, accounts, registers or documents of the dealer are suspected to be concealed, where access to such premises, almirah, box or receptacle is denied;
- (f) to record the statement of the dealer or his manager, agent or servant or to take extracts from any record and to put identification marks on accounts, registers or documents and on any door, almirah, box or receptacle.

Explanation.— There shall be a presumption in respect of goods, accounts, registers or documents, which are found at any place of business of a dealer during any inspection or search, that they relate to his business unless the contrary is proved by him.

(2) The power under clauses (d) and (e) of sub-section (1) shall be exercised by the Junior Commercial Taxes Officer in the presence of an authority not below the rank of Assistant Commercial Taxes Officer.

(3) Where any accounts, registers or documents are produced before any assessing authority or any officer not below the rank of Assistant Commercial Taxes Officer in any proceeding under this Act, such authority or officer may, for reasons to be recorded in writing, impound and retain them in its custody for a period not exceeding six months, and shall give the dealer or any other person who has produced such accounts, registers or documents a receipt of the same. The dealer may obtain copy of such accounts, registers or documents on payment of copying fee as may be prescribed. However, such copy may not be given unless the dealer produces the remaining accounts, statements, registers and documents required to be maintained under the provisions of this Act or the rules made there under.

(4) Where at the time of inspection, the assessing authority or any officer not below the rank of Assistant Commercial Taxes Officer authorised by the Commissioner in this behalf has reason to suspect that the dealer is attempting to avoid or evade tax or is concealing his tax liability in any manner, it may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer as it may consider necessary and shall give the dealer or any other person from whose custody such accounts, registers or documents are seized a receipt for the same, and may retain the same in its custody for examination, enquiry, prosecution or other legal action for a period not exceeding six months. The dealer may obtain copy of the seized record on payment of copying fee as may be prescribed. However, such copy may not be given unless the dealer

produces the remaining accounts, statements, registers and documents required to be maintained under the provisions of this Act or the rules made thereunder.

(5) The accounts, registers or documents impounded under sub-section (3) or seized under sub-section (4) may be retained even beyond a period of six months and up to a maximum period of two years from the date of impounding or seizure, as the case may be, by such authority or officer, after having obtained permission in writing of the Commissioner or the Deputy Commissioner (Administration) authorised by the Commissioner.

(6) The assessing authority or any other officer not below the rank of Assistant Commercial Taxes Officer authorised by the Commissioner under sub-section (4) may seize any goods liable to tax, which are found in the possession of a dealer or in the possession of anybody else on behalf of such dealer and which are not accounted for in his accounts, registers or documents maintained in the course of his business; and a list of goods so seized shall be prepared by such authority or officer and a copy thereof shall be given to the dealer or any other person from whose custody such goods are seized.

(7) Where it is not feasible to seize the accounts, registers or documents under sub-section (4) or the goods under sub-section (6), the assessing authority or the officer concerned may serve on the owner or the person who is in immediate possession or control thereof an order that he shall not remove, part with or otherwise deal with them except with the previous permission of such authority or officer, which may, after serving such order, take such steps as may be deemed necessary under the circumstances.

(8) The assessing authority or the officer referred to in sub-section (6) may, after having given the dealer an opportunity of being heard and after having held such further enquiry as it may consider fit, impose on him, for the possession of goods not accounted for, whether seized or not under sub-section (6), "a penalty equal to the amount of five times of the tax leviable on such goods or thirty percent of the value of such goods, whichever is less", and such authority or officer may release the goods, if seized, on payment of the penalty imposed or on furnishing such security for the payment thereof as it may consider necessary.

(9) The assessing authority or other officer as referred to in sub-section (6) may require any person, –

(a) who transports or holds in custody any goods of a dealer, to give any information in his possession in respect of such goods or to allow inspection thereof, as the case may be; and

(b) who maintains or has in his possession any accounts, registers or documents relating to the business of a dealer, to produce such accounts, registers or documents for inspection.

76. Establishment of check-post or barrier and inspection of goods while in movement.–

(1) The Commissioner may, with a view to prevent or check avoidance or evasion of tax, by notification in the Official Gazette, direct the setting up of a check-post or the erection of barrier or both, at such places as may be specified in the notification, and every officer or official who exercises his powers and discharges his duties at such check-post or barrier by way of inspection of documents produced and goods being moved shall be its Incharge.

(2) The owner or a person duly authorised by such owner or the driver or the person Incharge of a vehicle or carrier or of goods in movement shall–

(a) stop the vehicle or carrier at every check post or barrier, and while entering and leaving the limits of the State bring and stop the vehicle at the nearest check post or barrier, set-up under sub-section (1);

(b) carry with him a goods vehicle record including "challans" and "bilties", invoices, prescribed declaration forms and bills of sale or despatch memos;

(c) produce all the documents including prescribed declaration forms relating to the goods before the Incharge of the check-post or barrier;

(d) furnish all the information in his possession relating to the goods; and

(e) allow the inspection of the goods by the Incharge of the check-post or barrier or any other person authorised by such Incharge.

Explanation.– For the purpose of this Chapter 'goods in movement' shall mean –

(i) the goods which are in the possession or control of a transporting agency or person or other such bailee;

(ii) the goods which are being carried in a vehicle or carrier belonging to the owner of such goods; and

(iii) the goods which are being carried by a person.

(3) The State Government may require by notification that the documents required to be furnished under sub-section (2), shall be furnished by means of such electronic devices, and be accompanied by such processing fee, as may be prescribed.

(4) Where any goods are in movement within the territory of the State of Rajasthan, the assessing authority or "an officer authorized by the Commissioner" in this behalf may stop the vehicle or the carrier or the person carrying such goods, for inspection, at any place within his jurisdiction and the provisions of sub-section (2) shall *mutatis mutandis* apply.

(5) Where any goods in movement, other than exempted goods, are without documents, or are not supported by documents as referred to in sub-section (2), or documents produced appears to be false or forged, the Incharge of the check-post or barrier or "the officer authorized" under sub-section (4), may—

(a) direct the owner or a person duly authorised by such owner or the driver or the person Incharge of the vehicle or carrier or of the goods not to part with the goods in any manner including by re-transporting or re-booking, till a verification is done or an enquiry is made, which shall not take more than seven days;

(b) seize the goods for reasons to be recorded in writing and shall give a receipt of the goods to the person from whose possession or control they are seized;

(c) release the goods seized under clause (b) to the owner of the goods or to a person duly authorised by such owner, during the course of the proceeding, if adequate security of the amount equal to the estimated value of the goods is furnished.

(6) The Incharge of the check-post or barrier or "the officer authorized" under sub-section (4), after having given the owner of the goods or person duly authorised in writing by such owner or person Incharge of the goods, a reasonable opportunity of being heard and after having held such enquiry as he may deem fit, shall impose on him for possession or movement of goods, whether seized or not, in violation of the provisions of "clause (b) of sub-section (2)" or for submission of false or forged documents or declaration, a penalty equal to thirty percent of the value of such goods.

(7) During the pendency of the proceeding under sub-section (6), if any person appears before the Incharge of the check-post or barrier or "the officer authorized" under sub-section (4) and prays for being impleaded as a party to the case on the ground of involvement of his interest therein, the said Incharge or the officer on being satisfied may permit him to be impleaded as a party to the case; and thereafter, all the provisions of this section shall *mutatis mutandis* apply to him.

(8) The Incharge of the check-post or barrier or "the officer authorized" under sub-section (4) may release the goods to the owner of the goods or to a person duly authorised by such owner, if seized and not already released under clause (b) of sub-section (5), on payment of the penalty imposed under sub-section (6) or on furnishing such security for the payment thereof, as such Incharge or officer may consider necessary.

(9) Where the owner or a person duly authorised by such owner or the driver or the person Incharge of the vehicle or the carrier is found guilty for violation of the provisions of sub-section (2), the Incharge of the check-post or barrier or "the officer authorized" under sub-section (4) may detain such vehicle or carrier and after affording an opportunity of being heard to such owner, driver or person, may impose a penalty equal to thirty percent of the value of such goods.

(10) The Incharge of the check-post or barrier or "the officer authorized" under sub-section (4) may release the vehicle or the carrier on the payment of the amount of penalty imposed under sub-section (9) or on furnishing such security as may be directed by such Incharge or officer.

"(11) Notwithstanding anything contained in this section, where the driver or the person Incharge of the vehicle or the carrier abstains from bringing or stopping the vehicle or carrier at the nearest check-post as provided under clause (a) of subsection (2), the Incharge of the check-post or "the officer authorized" under sub-section (4) may detain such vehicle or carrier and, after affording an opportunity of being heard to the owner or a person duly authorised by such owner or the driver or the person Incharge of the vehicle or carrier, may impose a penalty equal to fifty percent of the value of such goods."

"(12)" If a transporter fails to give information as required from him under clause (d) of sub-section (2) about the consignor, consignee or the goods within such time as may be specified or transports the goods "with false or forged documents," besides imposing the penalty under sub-section (6), it shall be presumed that the goods so transported have been sold in the State of Rajasthan by him and he shall be deemed to be a dealer for those goods under this Act.

"(13)" The provisions of this Act shall, for the purpose of levy, collection and assessment of tax, determination of interest, payment and recovery of tax and interest, appeal, review or revision, apply to the transporter deemed to be a dealer under "sub-section (12)".

“77. Establishment of check-post on contract basis.– (1) Where the Commissioner is of the opinion that without establishing a departmental check-post, it is in the public interest to collect tax on contract basis in respect of all kinds of building stones, marble and granite in all their forms, *gitti, bazari*, all other goods specified under clause (8) of section 2 and livestock at a particular check-post or for a specified area, he may, through a contract, permit a contractor to collect such tax at such check-post for such area, at the rates as may be notified under the Act from time to time, in the manner and on such terms and conditions as may be prescribed, for a period not exceeding two years at a time.”

Explanation.– For the purposes of this section any transaction involving buying, supplying, distributing, carrying or otherwise disposal of the goods or the livestock referred to above, shall be construed to be sale.

“(2) Notwithstanding any thing contrary contained in any contract under sub-section (1), a contractor covered by sub-section (1) shall deposit the amount of-

- (i) tax collected; or
- (ii) the amount of contracted annual tax revenue,

whichever is higher, subject to revision on account of any increase or decrease in the rate of tax or grant of exemption from tax, in such manner and within such time as may be prescribed, and all the provisions of this Act including the provisions of recovery and interest shall, so far as may be, apply to such contractor.

(2A) Notwithstanding anything contained in any rule, judgment, order or any other instrument, the amount of tax payable in accordance with the provisions of sub-section (2) as amended by the Rajasthan Finance Act, 2009 (Act No. 13 of 2009), if not paid, shall be deposited to the State Government within two months from the commencement of this Act."

(3) Where the period of a contract entered into sub-section (1) expires and no further contract is awarded, the same contract may be extended by the Commissioner, for a further period of three months or up to the date of the award of the next contract, whichever is earlier, and the extended period shall be governed by the terms and conditions of the original contract.

(4) The contractor shall not collect tax on the goods under sub-section (1) exceeding the amount of tax leviable thereon under the provisions of this Act.

(5) Where a contractor violates the provisions of subsection (4), the Commissioner or any officer not below the rank of Assistant Commercial Taxes Officer authorized by the Commissioner, shall, after affording an opportunity of being heard, direct that such contractor shall pay by way of penalty, in addition to the amount of excess tax collected, a sum equal to double the amount of excess tax collected by him or any other person on his behalf.

(6) Where a contractor violates any of the terms or conditions of the contract, the Commissioner may after affording opportunity of being heard and recording reasons in writing, terminate the contract at any time and shall be empowered to recover the full amount of tax as stipulated under the contract from such contractor, as if such amount was a demand of tax under this Act.”

78. Transit of goods by road through the State and issue of transit pass.– (1) Where a vehicle or carrier coming from any place outside the State and bound for any place outside the State and carrying any goods bound for any place outside the State, passes through the State, the owner, the driver or the person incharge of such vehicle or carrier or goods shall obtain in such manner and on payment of such fee, as may be prescribed, a transit pass for such goods from the Incharge of the first check-post or barrier after his entry into the State and deliver it to the Incharge of the last check-post or barrier before his exit from the State.

(2) In case of transshipment of goods being transported under sub-section (1) the owner or driver or person incharge of such vehicle or carrier of such goods shall furnish such information to such authority and in such manner as may be prescribed.

(3) Where such owner, driver or person incharge fails to deliver such transit pass in respect of any goods in accordance with the provisions of sub-section (1) or is found to have suppressed or given false particulars of any consignment of goods in his application for issue of transit pass, it shall be presumed that such goods have been sold within the State by the owner, the driver or the person incharge of the vehicle or the carrier or the goods and the Incharge of the check-post or barrier from where such transit pass was issued or an officer not below the rank of Assistant Commercial Taxes Officer authorised by the Commissioner, after having afforded an opportunity of being heard to such owner, driver or person incharge, shall make an order that notwithstanding anything contained in this Act, such owner, driver or person incharge shall pay tax on such sale together with the penalty equal to double the amount of such tax.

(4) The system of transit pass as provided in sub-sections (1) and (3) shall come into force from such date and at such check-post or barrier as may be notified by the Commissioner from time to time.

79. Import of goods into the State or export of goods outside the State.— (1) Any registered dealer or any other person, who intends to import or bring any goods, or otherwise receives within the State of Rajasthan goods as may be notified by the State Government from outside the State, for sale, use, consumption or for other disposal in the State, shall, unless otherwise prescribed, obtain a prescribed declaration form from the prescribed authority, and shall cause it to be carried with the goods as part of the documents specified in sub-section (2) of section 76 and produce along with other documents before the Incharge of the entry check-post or barrier of the State or any other officer authorised by the Commissioner in this behalf.

(2) Any registered dealer or any other person by whom any goods taxable within the State of Rajasthan are dispatched from within the State to a place outside the State either in the course of inter-State trade or commerce or for sale outside the State, such registered dealer or other person shall, unless otherwise prescribed, furnish or cause to be furnished a prescribed declaration form obtained from the prescribed authority as part of the documents specified in sub-section (2) of section 76, before the Incharge of the exit check-post or barrier of the State or any other officer authorised by the Commissioner in this behalf.

(3) The State Government may require by notification that the declaration forms required to be furnished under sub-sections (1) and (2) shall be furnished by means of such electronic devices, as may be prescribed.

80. Liability to “xxx” furnish information by certain agents.— "(1) A clearing or forwarding agent who in the course of his business renders his service for booking or taking delivery of any consignment of goods liable to tax or handles any document of title relating to goods liable to tax, shall furnish information about his place of business to the Assistant Commissioner or the Commercial Taxes Officer, as the case may be, in whose territorial jurisdiction he conducts his business, within such time, in such form and in such manner as may be prescribed."

(2) Every such clearing or forwarding agent shall furnish to the Assistant Commissioner or the Commercial Taxes Officer, as the case may be, such particulars and information in such form and manner as may be prescribed.

(3) Where any clearing or forwarding agent violates any of the provisions of sub-section (1) or sub-section (2), the Assistant Commissioner or the Commercial Taxes Officer, as the case may be, may, after affording a reasonable opportunity of being heard, direct him to pay an amount by way of penalty,—

(a) in case of violation of provisions of sub-section (1), not more than Rs. 2000 /— and not less than Rs. 1000/—; and

(b) in case of violation of provisions of sub-section (2), equal to the amount of tax leviable at the full rate on the value of the goods in respect of which violation has been made.

81. Special provisions relating to under-billing.— (1) Where the assessing authority or an officer not below the rank of an Assistant Commercial Taxes Officer authorised by the Commissioner in this behalf, has reason to believe that the value of the goods shown in the sale or purchase bill, invoice or VAT invoice is less than the fair market price of such goods, he may seize the goods and shall conduct an enquiry to determine the actual market price of such goods and where, after such enquiry, he is satisfied that the price shown in the sale or purchase bill, invoice or VAT invoice is less than the market price, he may, after seeking approval of the concerned Deputy Commissioner (Administration), proceed to realise the amount of tax to be paid as per such approved market price of the goods, in addition to the tax already paid in respect

of such goods, along with a penalty equal to the additional amount of tax so levied, from the owner or Incharge of such goods.

(2) In case the owner or Incharge of such goods fails to deposit such amount within the specified time, the goods so seized shall be sold by auction and the additional amount as determined under sub-section (1), along with the expenses of auction, shall be realised out of such sale proceeds by the assessing authority or the said authorised officer.

(3) The owner or Incharge of the goods shall be afforded a reasonable opportunity of being heard before initiating action under sub-section (1) or (2).

CHAPTER IX

APPEALS AND REVISIONS

82. Appeal to the appellate authority.— (1) Subject to the provisions of section 86, an appeal against any order of an Assistant Commissioner, a Commercial Taxes Officer, an Assistant Commercial Taxes Officer or Junior Commercial Taxes Officer or Incharge of a check-post or barrier shall lie to the appellate authority.

(2) The appeal shall be presented within sixty days of the date on which the order sought to be appealed against is communicated; but the appellate authority may admit an appeal even after the said period of sixty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(3) Notwithstanding anything contained in sub-section (4) of section 38, no appeal under this section shall be entertained unless it is accompanied by a satisfactory proof of the payment of tax and other amounts admitted by the appellant to be due from him or of such instalment thereof as might have become payable and in case of an appeal from an *ex-parte* assessment order, five percent of, and in other cases ten percent of the "disputed tax amount".

(4) Notwithstanding that an appeal has been preferred to the appellate authority, the tax or any other sum shall, subject to the provisions contained in sub-sections (4) and (5) of section 38, be paid in accordance with the order against which appeal has been preferred.

(5) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(6) The following shall have the right to be heard at the hearing of the appeal, —

(a) the appellant, either in person or by the authorised representative;

(b) the authority or officer against whose order the appeal has been preferred either in person or by a representative.

(7) The appellate authority may, before disposing of any appeal make such further enquiry as it thinks fit, or may direct the assessing authority or the officer against whose order appeal has been preferred to make further enquiry and report the result of the same to the appellate authority and in disposing of the appeal the said authority may,—

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

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

(ii) set aside the order of assessment, interest or penalty and direct the assessing authority to pass fresh order after such further enquiry as may be directed; and

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

(8) The appellate authority shall send a copy of the order passed by it to the appellant, the assessing authority or such authority against whose order the appeal has been preferred, the Deputy Commissioner (Administration) concerned and the Commissioner.

83. Appeal to the Tax Board.— (1) An appeal shall lie to the Tax Board against —

“(a) an order passed by the Commissioner under subsection (2) of section 26, section 36, section 77 or section 85; ”

“(b) an order passed under the Act by the Deputy Commissioner (Administration);”

(c) an order passed by an “appellate authority; and”

"(d) an order of the State Level Screening Committee or the District Level Screening Committee passed under the Incentive, Exemption or Deferment Schemes notified under section 8 or under sub-section (3) of section 20 of the Act."

(2) Any person aggrieved by any order referred to in "xxx" sub-section (1), may file an appeal before the Tax Board within ninety days of the date on which the order sought to be appealed against is communicated to him in writing.

(3) Notwithstanding anything contained in sub-section (2), the Commissioner or a Deputy Commissioner (Administration) authorised specially or generally by the Commissioner may, if aggrieved by any order referred to in "xxx" sub-section (1), direct any officer or Incharge of a check-post or barrier to file an appeal before the Tax Board and such officer or Incharge shall file such appeal under his signatures within one hundred and eighty days of the date on which the order sought to be appealed against is communicated in writing to the Commissioner or the Deputy Commissioner (Administration).

(4) The respondent may, on receipt of notice that an appeal against an order referred to in sub-section (1) has been preferred by the appellant, notwithstanding that he may not have appealed against such order, within one hundred and twenty days in the case of an officer of the Commercial Taxes Department and within sixty days in the case of a dealer, of receipt of the notice, file a memorandum of cross-objections verified in the prescribed manner, against any part of the said referred order and such memorandum shall be disposed of by the Tax Board as if it were an appeal within the time specified in sub-section (2) or (3).

(5) The Tax Board may admit an appeal or permit the filing of memorandum of cross-objections after the expiry of the limitation provided in sub-section (2), (3) and (4), if it is satisfied that there was sufficient cause for not presenting the same within that limitation.

(6) An appeal to the Tax Board shall be made in the prescribed form and shall be verified in the prescribed manner.

(7) The Tax Board, during the pendency of an appeal before it, shall not stay any proceeding but it may, on an application in writing from the dealer, stay the recovery of the disputed amount of tax or any other sum or any part thereof on the condition of furnishing adequate security to the satisfaction of the assessing authority or the officer authorised by the Commissioner in this behalf; and the amount found ultimately due shall be subject to interest from the date it became first due, in accordance with the provisions of this Act “:

Provided that no security under this section shall be required to be furnished by a department of the Central Government or the State Government or a public sector undertaking, corporation or company owned or controlled by the Central Government or the State Government."

(8) Notwithstanding that an appeal against an order has been preferred to the Tax Board, the tax or any other sum shall be paid in accordance with the order against which appeal has been preferred, unless recovery of such tax or any other sum has been stayed by the Tax Board.

(9) The Tax Board shall, with the previous sanction of the State Government, make, by notification in the Official Gazette, regulations consistent with the provisions of this Act and the rules made there under for regulating its own procedure and the procedure of the benches thereof in all matters arising out of the exercise of its powers or the discharge of its functions; however, until the regulations are made, the Tax Board shall, subject to the provisions of this Act and the rules made there under, have power to regulate its own procedure and the procedure of the benches thereof in all matters arising out of the exercise of its powers and discharge of its functions.

(10) The Tax Board shall, after giving both the parties to the appeal an opportunity of being heard, pass such order thereon as it thinks fit and send a copy thereof to the appellant, the assessing authority, the authority whose order was appealed against and the Commissioner.

84. Revision to the High Court.– (1) Any dealer aggrieved by an order passed by the Tax Board under sub-section (10) of section 83 or under sub-section (1) of section 33, may, within ninety days from the date of service of such order, apply to the High Court in the prescribed form accompanied by the prescribed fee, for revision of such order on the ground that it involves a question of law.

(2) The Commissioner may, if he feels aggrieved by any order passed by the Tax Board under sub-section (10) of section 83, or under sub-section (1) of section 33, direct any officer or Incharge of a check-post or barrier to apply to the High Court for revision of such order on the ground that it involves a question of law; and such officer or Incharge of a check-post or barrier shall make the application to the High Court within one hundred

and eighty days of the date on which the order sought to be revised is communicated in writing to the Commissioner.

(3) The application for revision under sub-section (1) or sub-section (2) shall state the question of law involved in the order sought to be revised, and the High Court may formulate the question of law in any form or allow any other question of law to be raised.

(4) The High Court shall after hearing the parties to the revision, decide the question of law stated to it or formulated by it, and shall thereupon pass such order as is necessary to dispose of the case.

85. Revision by the Commissioner.— (1) The Commissioner may *suo motu* or otherwise, call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by Assistant Commissioner, Commercial Taxes Officer, Assistant Commercial Taxes Officer or Junior Commercial Taxes Officer or Incharge of a check-post or barrier is either erroneous, or prejudicial to the interest of the State revenue, he may, after having made or after having caused to be made such enquiry as he considers necessary, and after having given to the dealer a reasonable opportunity of being heard, pass such order or issue such direction as he deems proper under the circumstances of the case.

(2) No order or direction under sub-section (1) shall be passed or issued by the Commissioner if a period of five years has already elapsed from the date on which the order sought to be revised was passed.

86. No appeal or revision in certain cases.— Notwithstanding anything contained in section 82, 83 and 84, no appeal or revision shall lie against, —

- (a) a notice or summons issued under this Act for the purpose of assessment or for any other purpose including for recording statements; or
- (b) a direction to maintain certain accounts or furnish certain information, statement, statistics or return; or
- (c) an order for impounding, seizure or retention of accounts, registers or documents; or
- (d) an interim order passed in assessment or other proceeding, subject however, it will be open to the party aggrieved to challenge such interim order in any appeal or revision preferred against the final order;
- (e) any guide-lines formulated, instructions issued, directions given or orders passed by the Commissioner under section 91.

CHAPTER—X

OFFICERS, POWERS AND IMMUNITIES

87. Persons appointed under this Act to be public servants.— All the officers and officials, with whatever designation appointed or posted to discharge a duty under this Act, including the members of the Tax Board shall be deemed to be public servants within the meaning of section 21 of the Indian penal Code (Central Act XLV of 1860).

88. Constitution of the Rajasthan Tax Board.— (1) The State Government shall constitute the Rajasthan Tax Board for the State consisting of a "Chairperson" and as many members as it thinks fit, to exercise the powers and to discharge the duties conferred on the said Tax Board by this Act or any other law.

(2) The Tax Board shall, subject to any direction given by the State Government, sit at such place or places as it may deem fit.

(3) The State Government shall prescribe the qualifications of persons who shall be eligible for appointment as "Chairperson" and member of the Tax Board, the method of their selection for appointment and conditions of their service.

(4) The constitution of the Tax Board shall not be deemed to be invalid if any vacancy occurs or continues on account of death, resignation, retirement, transfer, expiry or termination of the appointment, or due to temporary absence of the "Chairperson" or of any member.

89. Indemnity.— No suit, prosecution or other legal proceeding shall lie against any officer or official of the State Government for anything which is done or intended to be done under this Act or the rules made thereunder in good faith.

90. Bar to proceedings except as provided in this Act.— No assessment made and no order passed by any officer appointed or authority constituted under this Act, shall be called into question, except as provided in this Act.

91. General powers of the Commissioner.— (1) The Commissioner may from time to time, issue such orders, instructions and directions to all officers and persons employed in the execution of this Act as he may deem fit for the administration of this Act, and all such officers and persons shall observe and follow such orders, instructions and directions of the Commissioner.

(2) For the purposes of official use, the Commissioner may, by notice in any newspaper, or in such other manner as he deems proper, call upon all dealers or any class of dealers or persons to furnish such information, statement or return as may be specified in the notice issued in this behalf.

(3) No such orders, instructions, or directions shall be issued under subsection (1) so as to interfere with the discretion of any appellate authority in the exercise of its appellate functions.

(4) Without prejudice to the generality of the foregoing power, the Commissioner may, on his own motion or on an application by a registered dealer liable to pay tax under this Act, if he considers it necessary or expedient so to do, for the purpose of maintaining uniformity in the work of assessments and collection of revenue, clarify the rate of tax payable under this Act in respect of goods liable to tax under this Act, and all officers and persons employed in the execution of this Act shall observe and follow such clarification.

(5) No such application under sub-section (4) shall be entertained unless it is accompanied by proof of payment of such fee, paid in such manner, as may be prescribed.

92. Power to enforce evidence.— Any officer not below the rank of Assistant Commercial Taxes Officer or the appellate authority or the Tax Board, while exercising powers or discharging duties under any of the provisions of this Act, shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Central Act No. V of 1908) when trying a suit, in respect of the following matters arising in any proceeding under this Act, namely: —

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents; and
- (c) issuing commission for examination of witness,

and the proceeding before the said officer or authority shall be deemed to be a judicial proceeding within the meaning of sections 193, 196 and 228 of the Indian Penal Code (Central Act XLV of 1860).

93. Power to seek assistance from police officer or other officer.— An officer or official exercising the powers under this Act, may take the assistance of any police officer or other officer of the Government, and upon such request for assistance being made, the police officer or such other officer shall render necessary help in accordance with law.

94. Disclosure of information relating to a dealer.— (1) Where any information about the registration, returns and assessment or matters incidental thereto, of a dealer is required—

- (a) by a court in connection with any proceeding before it; or
- (b) by a police officer in connection with any investigation of a case; or
- (c) by any Government department for any official purpose,

the assessing authority or any other officer may furnish the information under his possession to such court, police officer or Government department.

(2) Where any information as referred to in sub-section (1) is required by a person other than a court, a police officer or a Government department, such person shall make an application to the Commissioner in the prescribed manner and on payment of a prescribed fee, and the Commissioner may after he is satisfied that there are no considerations justifying its refusal, furnish or cause to be furnished the information to the applicant.

95. Automation.— (1) The State Government may, by notification in Official Gazette, provide that the provisions contained in the Information Technology Act, 2000 and the rules made and directions given there under, including the provisions relating to digital signatures, electronic governance, attribution, acknowledgement and dispatch of electronic records, secure electronic

records and secure digital signatures and digital signature certificates as are specified in the said notification, shall, in so far as they may, as far as feasible, apply to the procedures under this Act.

(2) Where any return, application, communication or intimation is submitted by a dealer or his business manager or by a person, electronically through the official website of the Commercial Taxes Department, such return, application, communication or intimation shall be deemed to be submitted by him, if the dealer or business manager or person has given his consent to use the website for e-filing in the prescribed manner:

Provided that dealer or business manager or person, who has consented to use the official website of the Department shall not retract from or repudiate such e-documents submitted by him through the website.

(3) Where any notice, communication or intimation is served on a dealer or his business manager or any person electronically through the official website of the Commercial Taxes Department, then, said notice, communication or intimation shall not be deemed to be invalid only on the ground that it is not personally signed or digitally signed or is not served properly.

CHAPTER –XI MISCELLANEOUS PROVISIONS

96. Deleted

97. Court fees payable under this Act.– (1) Notwithstanding anything contained in any other law for the time being in force, all applications, appeals and other proceedings under this Act shall require court fee stamps of such value as may be prescribed.

(2) The State Government shall be exempted from court fee leviable under this Act and the rules made there under.

"97A. No refund etc. in case of retrospective exemption.– Notwithstanding anything contained in this Act, where amendment in a Schedule results in exemption from tax or, otherwise tax is exempted under this Act, with retrospective effect, the amount charged or collected by a dealer till the date of such amendment or exemption–

- (i) shall be deposited with the State Governments; and
- (ii) if already deposited, shall not be refunded,

and any input tax credit availed in respect of such amount shall be reversed."

"97B. Delegation of powers.– The State Government may, by notification in the Official Gazette, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by an assessing authority under this Act may be exercised by such officer of the State Government, as may be specified in the notification."

98. Power to remove difficulties. – (1) Where any difficulty arises in giving effect to the provisions of this Act, the State Government may, by notification make such orders not inconsistent with this Act, as may appear to be necessary or expedient for removing the difficulty.

(2) No order under sub–section (1) shall be made after the expiration of three years from the date of commencement of this Act.

(3) Every order made under sub–section (1) shall be laid before the House of the State Legislature.

99. Power to make rules.– (1) The State Government may by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) All rules made under this Act, shall be laid, as soon as may be after they are so made, before the House of the State legislature, while it is in session, for a period of not less than fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the sessions in which they are so laid or in the session immediately following the House of the State Legislature makes any modification in any of such rules or resolves that any such rules should not be made, such rules shall thereafter have effect only in such modified form or be of no effect, as the case may be, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done there under.

100. Repeal and savings.— (1) The Rajasthan Sales Tax Act, 1994 (Act No. 22 of 1995) shall stand repealed on and from the date of the commencement of this Act and the provisions of the Rajasthan General Clauses Act, "1955" (Act No. 8 of 1955) shall apply to such repeal.

(2) Without prejudice to the generality of sub-section (1)—

- (a) anything done or any action taken including any appointment, notification, notice, order, rule or form made or issued, authorities or powers conferred, processes issued under the repealed Act shall be deemed to have been done or taken or issued under the provisions of this Act in so far as the same is not inconsistent with the provisions of this Act or rules made there under and shall continue to be in force accordingly unless and until superseded by anything done or action taken under this Act.
- (b) any authorities or Board constituted under the repealed Act shall be deemed to have been constituted under the provisions of this Act.
- (c) the modified limitations or the newly introduced limitations provided in this Act shall apply prospectively and all events occurred and all issues arose prior to the date of commencement of this Act, shall be governed by the limitations provided or the provisions contained in the repealed Act.