

## **ANDHRA PRADESH VALUE ADDED TAX ACT, 2005**

**5 of 2005**

**[28th March, 2005]**

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# **ANDHRA PRADESH VALUE ADDED TAX ACT, 2005**

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**[28th March, 2005]**

Statement of Objects and Reasons: In order to implement the value Added Tax system In all the States in the Country, an empowered committee of State Finance Ministers has been constituted under the Chairmanship of Dr. Asim Das Gupta, Hon'ble Minister for Finance, Government of West Bengal. And the Committee has arrived at consensus on various policy issues Involved in implementation of the Value Added Tax System In the country. The Andhra Pradesh Value Added Sales Tax Bill. 2003. which has been passed by the Legislative Assembly of the State received the assent of the President on 10-12-2004 and the same has been published as Andhra Pradesh Act No. 9 of 2004 on 28-12-2004 in the Andhra Pradesh Gazette. The provisions of

the Andhra Pradesh value Added Sales Tax Act, 2003 (Act No. 9 of 2004) have not been brought into force, as the intention of the Government is to bring the said system of taxation into force with certain modifications. The empowered committee constituted by the Government of India has suggested certain amendments to the Andhra Pradesh Value Added Sales Tax Act, 2003. It is considered not desirable to carry out the amendments to the said Act as suggested by the empowered committee at this stage, before bringing the Act into force. The registration of dealers must commence from 01-02-2005, so that all the VAT dealers are registered and empowered to issue tax invoices by the time the said provisions of the Act come into force. It is necessary to clear the doubts in the minds of the general public and trading community in particular before the commencement of the registration of dealers. It is also necessary to complete the training for the staff of the Commercial Taxes Department so as to enable them to undertake a State wide awareness programme for dispelling any doubts in the minds of the general public and trading community in particular about the provisions of the Act well in advance prior to implementation of the provisions of the Act. As the Legislative Assembly was not then in session and it has been decided to give effect to the above decision immediately, the Andhra Pradesh Value Added Tax Ordinance, 2005 (Andhra Pradesh Ordinance No. 1 of 2005) has been promulgated by the Governor on the 31st January, 2005. This bill seeks to replace the said Ordinance. The following Act of the Andhra Pradesh Legislative Assembly which was reserved by the Governor on the 16th March, 2005 for the consideration and assent of the President received the assent of the President on the 25th March, 2005 and the said assent is hereby first published on the 28th March, 2005 in the Andhra Pradesh Gazette for general information:-

#### CHAPTER 1

##### Preliminary

### **1. Short title extent and commencement :-**

(1) This Act may be called the Andhra Pradesh Value Added Tax Act, 2005.

(2) It extends to the whole of the State of Andhra Pradesh.

(3) (a) Sections 1,2,17,18 and 78 shall be deemed to have come Into force with effect from 31st January, 2005 and date as the Government may, by notification, appoint,

(b) the remaining provisions shall come into force on such date as the Government may, by notification, appoint.

### **2. Definitions :-**

In this Act, unless the context otherwise requires -

(1) 'Additional Commissioner' means any person appointed to be an Additional Commissioner of Commercial Taxes under Section 3A;

(2) 'Appellate Deputy Commissioner' means any person appointed under Section 3-A to be an Appellate Deputy Commissioner or any other officer not below the rank of Deputy Commissioner authorized by the Commissioner to be an Appellate Deputy Commissioner.

(3) 'Appellate Tribunal' means the Appellate Tribunal appointed under Section 3.

(4) 'Assessing authority' means any officer of the Commercial Taxes Department authorized by the Commissioner to make any assessment in such area or areas or the whole of the State of Andhra Pradesh.

(5) 'Assistant Commissioner' means any person appointed to be an Assistant Commissioner of Commercial Taxes under Section 3-A.

(6) 'Business' includes:

(a) any trade, commerce or manufacture or 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 or undertaken with a motive to make gain or profit and whether or not any gain or profit accrues there from.

(b) Any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern and

(c) Any transaction in connection with commencement or incidental or ancillary to the commencement or closure of such trade, commerce, manufacture, adventure or concern.

Explanation:- For the purpose of this clause -

(i) the activities of raising of manmade forests or rearing of seedlings or plants shall be deemed to be business;

(ii) any transaction of sale or purchase of capital goods pertaining to such trade, commerce manufacture, adventure or concern shall be deemed to be business;

(iii) a sale by a person whether by himself or through an agent of agricultural or horticultural produce grown by himself or grown on any land whether as owner or tenant in a form not different from the one in which it was produced. save mere cleaning, grading or sorting does not constitute business.

(7) 'Casual trader' means a person who, whether as principal, agent or in any other capacity, carries on occasional transactions of a business nature involving the buying, selling, or distribution of goods in the State,

whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration;

(8) 'Commissioner' means any person appointed by the Government to be the Commissioner of Commercial Taxes under Section 3-A;

(9) 'Commercial Tax Officer' means any person appointed to be Commercial Tax Officer under Section 3-A;

(10) 'Dealer' means any person who carries on the business of buying, selling, supplying or distributing goods or delivering goods on hire purchase or on any system of payment by instalments, or carries on or executes any works contract involving supply or use of material directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes:

(a) A company, a Hindu undivided family or any society including a co-operative society, club, firm or association which carries on such business.

(b) a society including a co-operative society, club, firm or association which buys goods from, or sells, supplies or distributes goods to its members.

(c) a casual trader, as hereinbefore defined

(d) any person, who may, in the course of business of running a restaurant or an eating house or a hotel by whatever name called, sells or supplies 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.

(e) any person, who may transfer the right to the use of any goods for any purpose whatsoever whether or not for a specified period in the course of business to any other person.

(f) a commission agent, a broker, a del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;

Explanation 7: Every person who acts as an agent of a non-resident dealer, that is, as an agent on behalf of a dealer residing outside the State, and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as:-

(a) a mercantile agent as defined in the Sale of Goods Act, 1930 (Central Act III of 1930), or

(b) an agent for handling goods or documents of title relating to goods, or

(c) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or payment and every local branch of a firm or company situated outside the State, shall be deemed to be a dealer for the purpose of the Act.

Explanation II; Where a grower of agricultural or horticultural produce sells such produce grown by himself on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, in a form different from the one in which it was produced after subjecting it to any physical, chemical or any process other than mere cleaning, grading or sorting. he shall be deemed to be a dealer for the purpose of the Act.

Explanation .III : The Central Government or the State Government which, whether or not in the course of business, buys, sells, supplies or distributes goods, directly or otherwise, for cash or the purposes of the Act;

Explanation IV: Each of the following persons and bodies, whether or not in the course of business, who sells or disposes of any goods including unclaimed or confiscated or unserviceable goods or scrap, surplus, old, obsolete, or discarded material or waste products whether by auction or otherwise, directly or through an agent for cash, or for deferred payment or for any other valuable consideration shall be deemed to be a dealer to the extent of such disposals or sales, namely:-

(i) Port Trust;

(ii) Municipal Corporations, Municipal Councils, and other local authorities;

(iii) Railway authorities;

(iv) Shipping, transport and construction companies;

(v) Air transport companies and airlines including National Airport Authority;

(vi) Transporters holding permits for transport vehicles granted under the Motor Vehicles Act, 1988 (Central Act 59 of 1988) which are used or adopted to be used for hire.

(vii) Andhra Pradesh State Road Transport Corporation,

(viii) Customs Department of the Government of India administering the Customs Act, 1962 (Central Act 52 of 1962).

(ix) Insurance and financial corporations or companies and Banks included in the Second Schedule to the Reserve Bank of India Act, 1934 (Central Act 2 of 1934).

(x) Advertising agencies.

(xi) Any other Corporation, company, body or authority owned or set up by or subject to administrative control of the Central Government or any State Government.

Explanation V: Save as otherwise expressly provided for under the Act, the word 'dealer' shall include a VAT dealer and at TOT dealer.

(11) 'Deputy Commercial Tax Officer' means any person appointed to be a Deputy Commercial Tax Officer under Section 3-A.

(12) 'Deputy Commissioner' means any person appointed to be a Deputy Commissioner of Commercial Taxes under Section 3-A.

(13) 'Exempt sale' means a sale of goods on which no tax is chargeable, and consequently no credit for input tax related to that sale is allowable.

(14) 'Exempted Turnover' means the aggregate of sale prices of all goods exempted under the Act and full or part of the actual value or fair market value of all transactions not taxable under the provisions of the Act, including transactions falling under S.6A of the Sales Tax Levy Validation Act, 1956;

(15) 'Fair market value' means the price that the goods would ordinarily fetch on sale in the open market on the date of sale or dispatch or transfer of such goods;

(16) 'Goods' means all kinds of movable property other than newspapers, auctionable claims, stocks, shares and securities, and includes all materials, articles and commodities including the goods as goods or in some other form, involved in the execution of a works contract or those goods used or to be used in the construction, fitting out. Improvement or repair of movable or immovable property and also includes all growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

(17) 'Goods vehicle' means any motor vehicle constructed or adapted for the carriage of goods, or any other motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers and also includes every wheeled conveyance.

(18) 'Government' means the State Government of Andhra Pradesh.;

(19) 'Input tax' means the tax paid or payable under the Act by a VAT dealer to another VAT dealer on the purchase of goods in the course of business;

(20) 'Joint Commissioner' means any person appointed to be a Joint Commissioner of Commercial Taxes under Section 3-A;



(21) 'Notification' means a notification published in the Andhra Pradesh Gazette and the word 'notified\*' shall be construed accordingly ;

(22) 'Output tax' means the tax paid or payable by a VAT dealer on the sale of goods to another VAT dealer or any other person;

(23) 'Place of business' means any place where a dealer purchases or sells goods and includes:

(a) any warehouse, godown or other place where goods are stored or processed or produced or manufactured; or

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

(c) any place where business is carried on through an agent by whatever name called, the place of business of such agent.

(24) 'Prescribed' means prescribed by the Rules made under the Act.

(25) 'Purchase Price' means the amount of valuable consideration paid or payable by a person for any purchase made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof;

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

Explanation II:- The amount of duties levied or leviable on the goods under the Central Excise Act, 1944 (Central Act 1 of 1944), or the Customs Act, 1962 (Central Act 52 of 1962) shall be deemed to be part of the purchase price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person;

Explanation III:- Purchase price shall not include tax paid or payable by a person in respect of such purchase;

(26) 'Return' means any return required to be furnished under the Act or the Rules made thereunder.

(27) 'Rules' means rules made under the Act.

(28) 'Sale' with all its grammatical variations and cognate expressions means every transfer of the property in goods [whether as such goods or in any other form in pursuance of a contract or otherwise] by one person to another in the course of trade or business, for cash, or for deferred

payment, or for any other valuable consideration or in the supply or distribution of goods by a society (including a co-operative society), club, firm or association to its members, but does not include a mortgage, hypothecation or pledge of, or a charge on goods.

Explanation I; A delivery of goods on the hire purchase or any system of payment by instalments shall, notwithstanding the fact that the seller retains the title in the goods, as security for payment of the price, be deemed to be a sale.

Explanation II:-

(a) Notwithstanding anything contained in the Indian Sale of the Goods Act, 1930 (Central Act III of 1930) a sale or purchase of goods shall be deemed, for the purpose of the Act to have taken place in the State, wherever the contract of sale or purchase might have been made, if the goods are within the State,-

(i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and

(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the purchaser, whether the assent of the other party is prior or subsequent to such appropriation.

(b) Whether there is a single contract of sale or purchase of goods situated at more places than one, the provision of Clause (a) shall apply as if there were separate contracts in respect of the goods at each of such places.

Explanation III;- Notwithstanding anything contained in the Act or in the Indian Sale of the Goods Act, 1930 (Central Act III of 1930), two independent sales or purchases shall for the purposes of the Act, be deemed to have taken place.

(1) When the goods are transferred from a principal to his selling agent and from the selling agent to his purchaser, or

(2) When the goods are transferred from the seller to a buying agent and from the buying agent to his principal, if the agent is found in either of the cases aforesaid,-

(i) to have sold the goods at one rate and to have passed on the sale proceeds to his principal at another rate; or

(ii) to have purchased the goods at one rate and to have passed them on to his principal at another rate; or

(iii) not to have accounted to his principal for the entire collections or

deductions made by him, in the sales or purchases effected by him on behalf of his principal; or

(iv) to have acted for a fictitious or nonexistent principal.

Explanation IV:- A transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration shall be deemed to be a sale.

Explanation V:- Notwithstanding anything contained in the Act or in the Indian Sale of the Goods Act, 1930 (Central Act III of 1930) the sale of goods includes the supply, by way of or as part of any service or in any manner whatsoever, of goods, being food or other article for human consumption or any drink (whether or not intoxicating) where such supply or service, is for cash, deferred payment or other valuable consideration and such supply of any goods shall be deemed to be a sale of those goods by the person making the supply of those goods to the person to whom such supply is made.

Explanation VI :- Whenever any goods are supplied or used in the execution of a works contract, there shall be deemed to be a transfer of property in such goods, whether or not the value of the goods so supplied or used in the course of execution of such works contract is shown separately and whether or not the value of such goods or material can be separated from the contract for the service and the work done.

Explanation VII: Notwithstanding anything contained in the Indian Sale of the Goods Act, 1930 (Central Act III of 1930), a sale or purchase of goods shall, for the purposes of the Act be deemed to have taken place where in the course of any scheme whether called as "Lucky Gift Scheme" or by any other name, any goods are transferred by the person who runs such scheme to any other person who is a subscriber to that scheme, provided that all the subscribers to the scheme have agreed to contribute a specific sum periodically or otherwise, towards the cost of any article agreed to be sold or given to the winner of the draw held by the holder of the scheme; and the turnover for the purpose of this explanation shall be the amount which would have been payable by the subscriber had he not won the prize till the end of the series of draw;

Explanation VIII:- Every transfer of property in goods by the Central Government or the State Government for cash or for deferred payment or for any other valuable consideration, whether or not in the course of business shall be deemed to be a sale for the purpose of the Act;

(29) 'Sale Price' means: -

(a) the total amount set out in the tax invoice or bill of sale; or

b) the total amount of consideration for the sale or purchase of goods as

may be determined by the assessing authority, if the tax invoice or bill of sale does not set out correctly the amount for which the goods are sold; or

(c) if there is no tax Invoice or bill of sale, the total amount charged as the consideration for the sale or purchase of goods by a VAT dealer or TOT dealer either directly or through another, on his own account or on account of others, whether such consideration be cash, deferred payment or any other thing of value and shall include.

(i) the value of any goods as determined by the assessing authority,-

(a) to have been used or supplied by the dealer In the course of execution of the works contract; or

(b) to have been delivered by the dealer on hire purchase or any other system of payment by instalments; or

(c) to have been supplied or distributed by a society including a Co-operative Society, Club, firm or association to its members, where the cost of such goods is not separately shown or indicated by the dealer and where the cost of such goods is separately shown or indicated by the dealer, the cost of such goods as shown or indicated;

(ii) any other sum charged by the dealer for anything done in respect of goods sold at the time of, or before, the delivery of the goods;

(iii) any other sum charged by the dealer, whatever be the description, name or object thereof;

Explanation I: -Subject to such conditions and restrictions, if any, as may be prescribed in this behalf, any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the sale price;

Explanation II: For the purpose of determination of sale price and levy of Value Added Tax, the Value Added Tax charged or chargeable shall not form part of Sale Price;

(30) 'Schedule means a Schedule appended to the Act;

(31) 'Special Rate of Tax' means the rates of tax specified in Schedule - VI;

(32) 'State' means the State of Andhra Pradesh.

(33) 'State Representative means an officer of the Commercial Taxes Department not below the rank of Assistant Commissioner appointed by the State Government to receive on their behalf notices issued by the Appellate Tribunal and generally to appear, act and plead on their behalf in all proceedings before the Appellate Tribunal and includes an officer

authorized to act on his behalf in his absence.

(34) 'Tax' means a tax on the sale or purchase of goods payable under the Act and includes, -

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

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

(c) a tax on the delivery of goods on hire purchase or any system of payment by instalments;

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

(e) a tax on the supply of goods by any un-incorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever of goods, being good or any other article for human consumption or any drink whether or not intoxicating, where such supply or service is for cash, deferred payment or other valuable consideration.

(35) 'Tax invoice' means a sale invoice containing such details as may be prescribed and issued by a VAT dealer to another VAT dealer;

(36) 'Tax period' means a calendar month or any other period as may be prescribed;

(37) 'Taxable Sale' means a sale of goods taxable under the Act and under the Central Sales Tax Act, 1956 (Central Act 74 of 1956) and shall include sale of any goods exported outside the territory of India or sold in the course of export;

(38) 'Taxable turnover' means the aggregate of sale prices of all taxable goods. Explanation I: For the purpose of a VAT dealer, it shall not include the amount of VAT paid or payable, but shall include the sale price of zero-rated sales.

Explanation II: The sale price relating to second and subsequent sale of goods specified in Schedule VI shall not form part of taxable turnover; .

(39) 'Total turnover' means the aggregate of sale prices of all goods, taxable and exempted, sold at all places of business of the dealer in the State, including transactions falling under Section 8 of the Act and under Section 6A of the Central Sales Tax Act, 1956 and shall also include the

gross consideration received or receivable towards execution of works contract;

(40) 'Turnover tax' or TOT means a tax on the taxable turnover of dealers registered or liable to be registered for TOT.

(41) 'Turnover Tax Dealer' or TOT dealer means any dealer who is registered or liable to be registered for TOT;

(42) VAT means ValueAddedTaxonsales, levied under the provisions of the Act.

(43) VAT dealer' means a dealer who is registered for VAT.

(44) 'Vessel includes any ship, barge, boat, raft, timber, bamboos or floating materials propelled in any manner;

(45) 'Works Contract' includes any agreement for carrying out for cash or for deferred payment or for any other valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, laying, fitting out. improvement, modification, repair or commissioning of any movable or immovable property;

(46) 'Year' means the twelve-month period ending on the thirty first day of March;

(47) 'Zero rated sales' for the purpose of the Act, means a sale of goods in the course of inter-State trade or commerce, exports to outside the territory of India including sales in the course of export and sale of goods to any unit located in Special Economic Zone as may be notified.

## CHAPTER 2

### APPELLATE TRIBUNAL AND APPOINTMENT OF OFFICERS

#### **3. Appellate Tribunal :-**

(1) The Government shall appoint an Appellate Tribunal consisting of a Chairman and two other members to exercise the functions conferred on the Appellate Tribunal by or under the Act. The Chairman shall be a judicial officer not below the rank of a District Judge Grade-I and of the other two members, one shall be an officer of the State Government not below the rank of a Joint Commissioner of Commercial Taxes, and the other shall be an officer of the Indian Revenue Service not below the rank of an Additional Commissioner.

(2) Any vacancy in the membership of the Appellate Tribunal shall be filled up by the Government.

(3) Notwithstanding anything contained in sub-section (1), the Government may at any time, by order, constitute an additional Bench of the Tribunal, consisting of a Chairman who shall be a District Judge

Grade - I and two members of whom one shall be an Officer of the State Government not below the rank of a Joint Commissioner of Commercial Taxes and the other shall be an officer of the Indian Revenue Service not below the rank of an Additional Commissioner to function at such place and for such period as may be specified therein.

(4) Where any orders passed by the Benches specified in sub-sections (1) and (3) are in conflict with each other on same issue the senior Chairman of the two Benches, on application or suo motu shall constitute and preside over a full Bench of not less than five members in the manner specified in the regulations made under subsection (5) and the decision of such Bench shall be final.

(5) The Appellate Tribunal shall, with the previous sanction of the Government make regulations consistent with the provisions of the Act and rules made thereunder, for regulating its procedure and the disposal of its business. Such regulations shall be published in the Andhra Pradesh Gazette.

### **3A. Appointment of Officers :-**

The State Government, may, appoint a Commissioner of Commercial Taxes and as many Additional Commissioners of Commercial Taxes, Joint Commissioners of Commercial Taxes, Appellate Deputy Commissioners of Commercial Taxes, Deputy Commissioners of Commercial Taxes, Assistant Commissioners of Commercial Taxes, Commercial Tax Officers and Deputy Commercial Tax Officers as they think fit, for the purpose of performing the functions respectively conferred on them by or under the Act. Such officers shall perform the said functions within such area or areas or the whole of the State of Andhra Pradesh as the Government or any authority or officer empowered by them in this behalf may assign to them.

## **CHAPTER 3**

### **INCIDENCE, LEVY AND CALCULATION OF TAX**

#### **4. Charge to tax :-**

(1) Save as otherwise provided in the Act. every dealer registered or liable to be registered as a VAT dealer shall be liable to pay tax on every sale of goods, in the State at the rates specified in the Schedules.

(2) Every dealer who has not opted for registration as a VAT dealer and who is registered or liable to be registered for TOT or whose taxable turnover in a period of twelve (12) consecutive months exceeds Rs.5,00,000/- (Rupees five lakhs only) but does not exceed Rs. 40,00,000/- (Rupees forty lakhs only) shall pay tax at the rate of one percent (1%) on the taxable turnover in such manner as may be prescribed.

(3) Every VAT dealer shall pay tax on every sale of goods taxable under the Act on the sale price at the rates specified in the Schedules III, IV and V, subject to the provisions of Section 13.

(4) Every VAT dealer, who in the course of his business purchases any taxable goods from a person or a dealer not registered as a VAT dealer or from a VAT dealer in circumstances in which no tax is payable by the selling VAT dealer, shall be liable to pay tax at the rate of four per cent (4%) on the purchase price of such goods, if after such purchase, the goods are

(i) used as inputs for goods which are exempt from tax under the Act, or

(ii) used as inputs for goods, which are disposed of otherwise than by way of sale in the State or dispatched outside the State otherwise than by way of sale in the course of inter- State trade and commerce or export out of the territory of India; or

(iii) disposed of otherwise than by way of consumption or by way of sale either within the State or in the course of interstate trade or commerce or export out of the territory of India:

Provided that in respect of purchases of goods specified in Schedule III. the VAT dealer shall be liable to pay tax at the rate specified in that Schedule;

(5) Every dealer shall pay tax on the sale price of goods specified in Schedule VI at the special rates and at the point of levy specified therein;

(6) Every casual trader who sells goods within the State and any dealer covered under Explanation III and IV of Clause(10) of Section 2 shall pay tax on the sale price of such goods at the rates specified in the respective Schedules.

(7) Notwithstanding anything contained in the Act:

(a) every dealer executing works contract shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under the Act:

Provided that where accounts are not maintained to determine the correct value of goods at the time of incorporation, such dealer shall pay tax at the rate of 12.5% on the total consideration received or receivable subject to such deductions as may be prescribed;

(b) any dealer executing any works contracts for the Government or local authority may opt to pay tax by way of composition at the rate of 4% on the total value of the contract executed for the Government or local authority and in such cases, the tax at 4% shall be collected at source by such contractee and remitted to Government in such manner as may be



prescribed:

(c) any dealer executing works contracts other than for Government and local authority may opt to pay tax by way of composition at the rate of 4% of fifty per cent (50%) of the total consideration received or receivable for any specific contract subject to such conditions as may be prescribed;

(d) any dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes may opt to pay tax by way of composition at the rate of 4% of twenty-five per cent (25%) of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher subject to such conditions as may be prescribed;

(e) any dealer who is liable to be registered for TOT and executing any works contracts shall pay tax at the rate of 1% on total value of the goods at the time of incorporation of the goods used: Provided that where accounts are not maintained to determine the correct value of the goods at the time of incorporation, such dealer shall pay tax at the rate of 1% on the total consideration received or receivable subject to such deductions as may be prescribed.

(8) Every VAT dealer who transfer the right to use goods taxable under the Act for any purpose, whatsoever, whether or not for a specified period, to any lessee or licensee for cash, deferred payment or other valuable consideration, in the course of his business shall, on the total amount realized or realizable by him by way of payment in cash or otherwise on such transfer of right to use such goods from the lessee or licensee pay a tax for such goods at the rates specified in the Schedules.

(9) Every VAT dealer running any restaurant, eating house, or hotel by whatever name called, who supplies, by way of or as part of any service or in any other manner what so ever of goods, being food or any other article for human consumption or drink other than liquor and whether or not such goods have suffered tax under the Act, where such supply or service is for cash, deferred payment or other valuable consideration, may opt to pay tax by way of composition at the rate of twelve and half per cent (12.5%) on sixty per cent (60%) of the total amount charged by the said VAT dealer for such supply.

**5. Act not to apply to sales or purchases outside the State, in the course of import or export, etc. :-**

Nothing contained in the Act shall be deemed to impose or authorise the imposition of a tax on the sale or purchase of any goods, where such sale or purchase takes place:

(a) outside the State; or

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

(c) In the course of inter-State trade or commerce.

Explanation; The provisions of Chapter II of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), shall apply for the purpose of determining when a sale or purchase takes place in the course of inter-State trade or commerce or outside a State or in the course of import or export.

#### **6. Tax on packing material :-**

Where goods sold or purchased are contained in containers or are packed in any packing material liable to tax under the Act, the rate of tax applicable to such containers or packing material shall, whether the price of the containers or packing material is charged for separately or not, be the same as the rate of tax applicable to such goods so contained or packed, and where such goods sold or purchased are exempt from tax under the Act, the containers or packing material shall also be exempted.

#### **7. Exemptions :-**

The goods listed in Schedule I to the Act shall be exempted from tax under the Act.

#### **8. Zero-rated sales :-**

Subject to the conditions in Section 9 and Section 13 of the Act, the following shall be zero-rated sales for the purpose of the Act and shall be eligible for input tax credit:

(a) Sale of taxable goods in the course of inter-State trade and commerce falling within the scope of Section 3 of the Central Sales Tax Act, 1956 ;

(b) Sale of goods falling within the scope of sub sections (1) and (3) of Section 5 of the Central Sales Tax Act, 1956 .

(c) Sale of goods to any unit located in Special Economic Zone.

#### **9. Input tax credit for dealers for goods in Schedule VI :-**

Every dealer, who is liable to pay tax on the sale of goods specified in Schedule VI. shall be eligible for input tax credit subject to the conditions in Section 13 of the Act and in the manner prescribed.

#### **10. Turnover tax :-**

(1) Any dealer who is not registered or does not opt to be registered as VAT dealer shall not be entitled to claim input tax credit for any purchase, and shall not be eligible to issue a tax invoice.

(2) Any dealer who is registered as a VAT dealer shall not be liable to Turnover Tax from the effective date of such registration.

## **11. Calculation of Tax payable :-**

(1) Subject to sub-section (2), the VAT payable on a sale liable to VAT shall be calculated by applying the rate of tax specified in the Schedules, on the sale price of goods.

(2) Where the sale price of goods is inclusive of VAT, the amount of VAT shall be determined in accordance with the formula prescribed.

(3) Where a dealer is liable to pay turnover tax under sub-section (2) of Section 4, the tax shall be calculated by applying the rate of Turnover Tax specified therein on the taxable turnover.

## **12. VAT payable :-**

The VAT payable by a VAT dealer or VAT credit or refund due to a VAT dealer for a tax period shall be calculated in accordance with the formula prescribed.

## **13. Credit for input tax :-**

(1) Subject to the conditions if any, prescribed, an input tax credit shall be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods, made by that dealer during the tax period, if such goods are for use in the business of the VAT dealer. No input tax credit shall be allowed in respect of the tax paid on the purchase of goods specified in Schedule VI.

(2)

(a) A dealer registered as a VAT dealer on the date of commencement of the Act, shall be entitled to claim for the sales tax paid under APGST Act, 1957 (Act VI of 1957) on the stocks held in the State on the date of commencement of the Act subject to the conditions and in the manner as may be prescribed: Provided that such goods should have been purchased from 1-4-2004 to 31-03-2005 and are goods eligible for input tax credit,

(b) Subject to the conditions if any, prescribed, input tax credit shall be allowed to a VAT dealer on registering as VAT dealer if any input tax is paid or payable in respect of all purchases of taxable goods, where such goods are for use in the business as VAT dealer, provided the goods are in stock on the effective date of registration and such purchase occurred not more than three months prior to such date of registration.

(3) A VAT dealer shall be entitled to claim: -

(a) input tax credit under sub-section (1), on the date the goods are received by him, provided he is in possession of a tax invoice:

(b) input tax credit or sales tax credit under sub-section (2), on the date

of registration, provided he is in possession of documentary evidence therefor.

(4) A VAT dealer shall not be entitled for input tax credit or sales tax credit in respect of the purchases of such taxable goods as may be prescribed.

(5) No input tax credit shall be allowed on the following:

(a) Works contracts where the VAT dealer pays tax under the provisions of clauses (b), (c) and (d) of subsection (7) of Section 4;

(b) transfer of a business as a whole;

(c) sale of exempted goods except when such goods are sold in the course of export or exported outside the territory of India;

(d) exempt sale;

(e) Transfer of exempted goods on consignment basis or to branches of the VAT dealer outside the State otherwise than by way of sale;

(f) supply of goods by the VAT dealer as mentioned in sub-section (9) of Section 4.

(6) The input tax credit for transfer of taxable goods outside the State by any VAT dealer otherwise than by way of sale shall be allowed for the amount of tax in excess of 4%.

(7) Where any VAT dealer pays tax under clause (a) of sub-section (7) of Section 4, the input tax credit shall be limited to 90% of the related input tax.

(8) Where goods purchased by a VAT dealer are partly for his business use and partly for other than his business use, the amount of the input tax credit shall be limited to the extent of input tax that relates to the goods used in his business.

(9) A Turnover Tax dealer or a casual trader shall not be entitled to claim input tax credit.

(10) Any dealer covered by Explanation III and IV of clause (10) of Section 2 shall not be eligible for input tax credit against or relatable to sale of unserviceable goods or scrap, surplus, old, obsolete or discarded material or waste products whether by auction or otherwise.

(11) Any VAT dealer who purchases any taxable goods from a dealer covered under sub-section (10) above, shall be eligible for input tax credit, on production of documentary evidence that tax has been charged.

#### **14. Tax invoices :-**

A VAT dealer making a sale liable to tax to another VAT dealer shall issue at the time of sale, a tax invoice in such form as may be prescribed.

**15. Power of State Government to grant refund of tax :-**

(1) The Government may, if it is necessary so to do in the public interest and subject to such conditions as it may impose, by a notification, provide, for grant of refund of tax paid to any person, on the purchases effected by him and specified in the said Notification.

(2) Any notification under sub-section (1) may be issued so as to be retrospective to any day not earlier than the appointed day and such Notification shall take effect from the date of its publication in the Gazette or such other earlier or later date as may be mentioned therein.

(3) An application for refunds shall be made In duplicate to the Commissioner within a period of six months from the date of purchase or as the Government may prescribe In the notification and it shall be accompanied by the purchase invoice in original.

**16. Burden of proof :-**

(1) The burden of proving that any sale or purchase effected by a dealer is not liable to any tax or is liable to be taxed at a reduced rate or eligible for input tax credit shall lie on the dealer.

(2) Where a dealer issues or produces a false bill, voucher, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him or any other dealer, is not liable to tax or liable to be taxed at a reduced rate, or eligible for input tax credit is guilty of an offence under Section 55 of the Act.

CHAPTER 4  
REGISTRATION

**17. Registration of Dealers :-**

(1) Every dealer other than a casual trader shall be liable to be registered in accordance with the provisions of the Act.

(2) Every dealer commencing business and whose estimated taxable turnover for twelve consecutive months is more than Rs. 40,00,000/- (Rupees forty laks only) shall be liable to be registered as a VAT dealer before the commencement of business.

(3) Every dealer whose taxable turnover in the preceding three months exceeds Rs. 10,00,000/- (Rupees ten lakhs only) or in the twelve preceding months exceeds Rs. 40,00,000/- (Rupees forty lakhs only) shall be liable to be registered as a VAT dealer.

(4) Every dealer whose taxable turnover during the period from 1st January 2004 to 31st December 2004 is more than Rs. 40,00,000/- (Rupees forty lakhs only), shall be liable to be registered as a VAT dealer.

(5) Notwithstanding anything contained in sub-sections (2), (3) and (4), the following classes of dealers shall be liable to be registered as VAT dealers irrespective of their taxable turnover namely :-

(a) every dealer importing goods in the course of business from outside the territory of India;

(b) every dealer registered or liable to be registered under the Central Sales Tax Act, 1956 , (Central Act, 74 of 1956), or any dealer making purchases or sales in the course of inter-State trade or commerce or dispatches any goods to a place outside the State otherwise than by way of sale;

(c) every dealer residing outside the State but carrying on business within the State and not having any permanent place of business;

(d) every dealer liable to pay tax on goods listed in Schedule VI.

(e) every commission agent, broker, delcredere agent, auctioneer or any other mercantile agent by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any non-resident principal;

(f) every dealer availing sales tax deferment or sales tax holiday;

(g) every dealer executing any works contract exceeding Rs. 5,00,000/- (Rupees five lakhs only) for the Government or local authority or every dealer opting to pay tax by way of composition on works contract.

(6)

(a) any dealer effecting sale of goods liable to tax under the Act and who is not otherwise liable to register may also opt for registration as a VAT dealer and such registration shall be subject to such conditions as may be prescribed.

(b) any dealer, intending to effect sale of goods liable to tax under the Act, and who is not otherwise liable to register, may also opt for registration as a VAT dealer and such registration shall be subject to such conditions as may be prescribed.

(7) Every dealer not registered or not liable for registration as VAT dealer and who sells any goods and has a taxable turnover exceeding Rs.5,00,000/- (Rupees five lakhs only) in a period of twelve consecutive months or has reason to believe that his taxable turnover in a period of twelve consecutive months will exceed Rs.5,00,000/- (Rupees five lakhs

only), shall apply for registration as TOT dealer in the manner prescribed.

(8) Subject to the provisions contained in sub-section (5), every dealer who held a registration certificate under the Andhra Pradesh General Sales Tax Act, 1957 shall be deemed to be registered as TOT dealer under the Act provided the dealer had a taxable turnover exceeding Rs.5,00,000/- (Rupees five lakhs only) but below Rs.40,00,000/- (Rupees forty lakhs only) during the period from 1st January, 2004 to 31st December, 2004 and had not discontinued his business or his Registration Certificate had not been cancelled during that period.

(9) Where a registered dealer dies or transfers or otherwise disposes of his business in whole, the successor or the transferee, unless already in possession of registration shall be liable to be registered under the Act.

(10) An application for registration shall be made to the authority prescribed in such manner and within such time as may be prescribed.

(11) If the authority to whom an application is made under sub-section (10) is satisfied that the application is bona fide and is in order and in conformity with the provisions of the Act and the rules made thereunder, he shall register the applicant and grant him a certificate of registration in the prescribed form.

### **18. Tax payer Identification Number and General Registration Number :-**

(1) The authority prescribed shall issue a registration identification number known as:

(a) Taxpayer Identification Number (TIN) to a dealer registered as VAT dealer;

(b) General Registration Number (CRN) to a dealer registered as TOT dealer.

(2) Every VAT dealer or TOT dealer who is allotted a Taxpayer Identification Number (TIN) or General Registration Number (GRN) shall indicate such number on all returns, forms, tax invoices or any other documents used for the purposes of the Act.

### **19. Cancellation and Amendment of Registration :-**

(1) Any VAT dealer or TOT dealer registered under Section 17 of the Act shall apply for cancellation or amendment of registration, in such circumstances as may be prescribed.

(2) The authority prescribed may, for good and sufficient reasons cancel, modify or amend any certificate of registration issued by him:

Provided that no order shall be passed under this sub-section without

giving the dealer a reasonable opportunity of being heard.

## CHAPTER 5

### PROCEDURE AND ADMINISTRATION OF TAX

#### **20. Returns and self- assessments :-**

(1) Every dealer registered under Section 17 of the Act, shall submit such return or returns, along with proof of payment of tax in such manner, within such time, and to such authority as may be prescribed.

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

(3)

(a) Without prejudice to the powers of the authority prescribed, under sub-section (3) of Section 21, every return shall be subject to scrutiny to verify the correctness of calculation, application of correct rate of tax and input tax credit claimed therein and full payment of tax payable for such tax period,

(b) If any mistake is detected as a result of such scrutiny made as specified in clause (a), the authority prescribed shall issue a notice of demand in the prescribed form for any short payment of tax or for recovery of any excess input tax credit claimed.

(4) Every dealer shall be deemed to have been assessed to tax based on the return filed by him, if no assessment is made within a period of four years from the date of filing of the return.

#### **21. Assessments :-**

(1) Where a VAT dealer or TOT dealer fails to file a return in respect of any tax period within the prescribed time, the authority prescribed shall assess the dealer for the said period for such default in the manner prescribed

(2) If a VAT dealer or TOT dealer submits a return along with evidence for full payment of tax, subsequent to the prescribed time the assessment made under sub-section (1) may be withdrawn without prejudice to any interest or penalty leviable.

(3) Where the authority prescribed is not satisfied with a return filed by the VAT dealer or TOT dealer or the return appears to be incorrect or incomplete, he shall assess to the best of his judgment within four years of due date of the return or within four years of the date of filing of the return whichever is later.



(4) The authority prescribed may, based on any information available or on any other basis, conduct a detailed scrutiny of the accounts of any VAT dealer or TOT dealer and where any assessment as a result of such scrutiny becomes necessary, such assessment shall be made within a period of four years from the end of the period for which the assessment is to be made.

(5) Where any willful evasion of tax has been committed by a dealer, an assessment shall be made to the best of his judgement by the authority prescribed within a period of six years of date of filing of the return or the first return relating to such offence.

(6) The authority prescribed may reassess, where an assessment was already made under sub-sections (1) to (5) and such assessment understates the correct tax liability of the dealer within a period of four years from the date of such assessment.

(7) Where any assessment has been deferred on account of any stay order granted by the High Court or where an appeal or other proceedings is pending before the High Court or Supreme Court involving a question of law having a direct bearing on the assessment in question, the period during which the stay order was in force or such appeal or proceedings was pending shall be excluded in computing the period of four years or six years as the case may be for the purpose of making the assessment.

(8) Where an assessment made has been set aside by any Court, the period between the date of such assessment and the date on which it has been set aside shall be excluded in computing the period of four years or six years as the case may be, for making any fresh assessment.

## **22. Due date for Payment of Tax :-**

(1) The tax payable in respect of a tax period along with a return and the tax assessed under the Act shall be payable in such manner and within such time as may be prescribed.

(2) If any dealer fails to pay the tax due on the basis of return submitted by him or fails to pay any tax or penalty levied or any other amount due under the Act, within the time prescribed or specified there for, he shall pay, in addition to the amount of such tax or penalty or any other amount, interest calculated at the rate of one per cent per month for the period of delay from such prescribed or specified date for its payment. The interest in respect of part of a month shall be computed proportionately and for this purpose, a month shall mean a period of 30 days.

(3) In the case of a dealer executing works contract for Government or local authority, a tax at the rate of 4% shall be deducted from the amount payable to him and such contractee deducting tax at source shall

remit such amount in the manner as may be prescribed.

(4) In case of a VAT dealer executing works contract for a company or a statutory body or an undertaking or an institution other than Government or local authority irrespective of the quantum of value of the contract or for any other dealer or a firm where the value of the contract exceeds Rs. 10,00,000/- (Rupees ten lakhs only), a tax at the rate of 2% shall be deducted from the amount payable to him and such contractee deducting tax at source shall remit such amount in the manner as may be prescribed.

(5) Where a VAT dealer paid entry tax on any goods under Andhra Pradesh Entry Tax on Motor Vehicles Into Local Areas Act, 1996 (Act 26 of 1996) and Andhra Pradesh Tax on Entry of Goods into Local Areas Act, 2001 (Act 40 of 2001), such amount shall be adjusted against VAT payable provided the credit for input tax is not restricted under the provision of sub-section (4) of Section 13 of the Act.

(6)

(a) The Deputy Commissioner, on an application made by a VAT dealer or any other dealer, permit the payment of any tax, penalty or other amount due under the Act in such instalments within such intervals and subject to such conditions, as he may specify in the said order, having regard to the circumstances of the each case;

(b) Where such payment in instalments is permitted, the dealer shall pay in addition to such tax, penalty, instalment or other amount, interest at the rate of one per cent per month for the amount for the period from the date specified for its payment on the instalments so permitted.

### **23. Liability of executor, administrator, legal representative :-**

(1) Where any dealer doing business in respect of which tax is payable under the Act, is dead, the Executor, Administrator, Successor-in-title or other legal representative of the deceased dealer shall, in respect of such business, be liable to submit the returns due under the Act and to assessment under Section 21 and to pay out of the estate of the deceased dealer, the tax, interest and any penalty assessed or levied as payable by the deceased dealer.

(2) The provision relating to appeals and revisions shall be applicable to assessment made under sub-section (1) as if the Executor, Administrator, Successor-in-title or other legal representative were himself the dealer.

(3) The provisions of sub-sections (1) and (2) shall apply mutatis mutandis to a partnership firm of which the managing partners have died.

## **24. Liability of partnership firms :-**

(1) Where any firm is liable to pay any tax or other amount under the Act, the firm and each of the partners of the firm shall be Jointly and severally liable for such payment.

(2) Where any business carried on by a firm or a Hindu Undivided Family or an Association has been discontinued or dissolved, the authority prescribed shall make an assessment on the taxable turnover and determine the tax payable as if no such discontinuance or dissolution had taken place and all the provisions of the Act including provisions relating to levy of penalty or any other amount payable under any of the provisions of the Act shall apply, to such assessment.

(3) Every person who was at the time of such discontinuance or dissolution, a partner of the firm, or a member of such Hindu Undivided Family or Association and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or any other amount payable, and all the provisions of the Act shall apply to any such assessment or levy of penalty or any other amount.

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of any year have commenced, the proceedings may be continued against the VAT dealer or TOT dealer referred to in subsection (2) from the stage at which such proceedings stood at the time of such discontinuance or dissolution and all the provisions of the Act shall apply accordingly.

(5) When any private company is wound up and any tax assessed on the company under the Act for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of the private company at any time during the period for which the tax is due, shall be jointly and severally liable for the payment of such tax, unless he proves that the non- recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

## **25. Tax as an arrear of land revenue :-**

If the tax assessed or penalty levied or interest payable under the Act, or any amount of tax including deferred tax which is treated as a loan extended by the Government to the dealer and any instalment thereof, are not paid by a dealer within the time specified therefor, the whole of the amount then remaining unpaid may be recovered as if it were an arrear of land revenue.

## **26. Preferential claims to assets :-**

Notwithstanding anything to the contrary contained in any law for the

time being in force, any amount of tax, including deferred tax which is treated as a loan extended by the Government to the dealer, penalty, interest and any other sum payable by a VAT dealer or TOT dealer or any other dealer under the Act, shall be the first charge on the property of the VAT dealer or TOT dealer or any other dealer as the case may be.

**27. Transfers to defraud revenue void and Provisional Attachment of Property :-**

(1) Where during the pendency of any proceedings under the Act, or after the completion thereof, any VAT dealer or TOT dealer or any other dealer creates a charge on, or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever, or any of his assets in favour of any other person such charge or transfer shall be void unless he proves that such charge or transfer was not with the intention to defraud any tax or any other sum payable.

(2)

(a) where, during the pendency of any proceeding for the assessment or reassessment of any tax or turnover tax which has escaped assessment, the authority prescribed is of the opinion that for the purpose of protecting the Interests of the revenue it is necessary so to do, may with the previous approval of the Commissioner, by order in writing, attach provisionally in the prescribed manner any property belonging to the dealer;

(b) every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under clause (a):

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

**28. Powers of Deputy Commissioner under Revenue Recovery Act :-**

(1) A Deputy Commissioner shall have the powers of a Collector under the Andhra Pradesh Revenue Recovery Act, 1864 (Act 2 of 1864) for the purpose of recovery of any amount due under the Act.

(2) Subject to the provisions of subsection (3), all Deputy Commercial Tax Officers shall, for the purpose of recovery of any amount due under the Act, have the powers of the Mandal Revenue Officer under the Andhra Pradesh Rent and Revenue Sales Act, 1839 (Act 7 of 1939) for the sale of property distrained for any amount due under the Act.

(3) Notwithstanding anything contained in the Andhra Pradesh Rent and Revenue Sales Act, 1839 (Act 7 of 1839) the Deputy Commercial Tax officer in the exercise of the powers conferred by sub-section (2) shall be subject to the control and superintendence of the Deputy Commissioner.

**29. Recovery of tax from third parties :-**

(1) The Commissioner or any other authority prescribed may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to such authority) require any person from whom money is due or may become due to the defaulter, or any person who holds or may subsequently hold money for, or on account of the defaulter, to pay to such authority, either forthwith if the money has become due or is so held, within the time specified in the notice but not before the money becomes due or is held, so much of the money as is sufficient to pay the amount due by the defaulter in respect of arrears of tax, interest, penalty or the whole of the money when it is equal to or less than that amount.

(2) The authority prescribed may, at any time, or from time to time, amend or revoke any such notice or extend the time of making any payment in pursuance of the notice.

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

(4) Any person discharging any liability to the defaulter after receipt of the notice referred to in this section, shall be personally liable to the authority prescribed to the extent of the liability discharged or to the extent of the liability of the defaulter for the amount due under the Act, whichever is less.

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

(6) Where any person to whom a notice under sub-section (1) is sent, fails to pay to the authority prescribed the sum demanded or any part thereof as required in the said notice, such sum shall be recoverable from such person as if it were an arrear of land revenue due from him.

(7) The provisions of this section shall be without prejudice to any action that may be taken for the recovery of the money due from the dealer.

### **30. Recovery of tax when business transferred :-**

Where ownership of the business of a dealer registered under the Act and liable to pay tax is transferred, any tax or any other amount payable under the Act in respect of such business and remaining unpaid at the time of the transfer, may without prejudice to any action that may be taken for its recovery from the transferor, be recoverable from the transferee as if the transferee were the dealer liable to pay such tax or other amount.

### **31. Appeal to Appellate authority :-**

(1) Any VAT dealer or TOT dealer or any other dealer objecting to any order passed or proceeding recorded by any authority under the provisions of the Act other than an order passed or proceeding recorded by an Additional Commissioner or Joint Commissioner or Deputy Commissioner, may, within thirty days from the date on which the order or proceeding was served on him, appeal to such authority as may be prescribed:

Provided that the Appellate Authority may within a further period of thirty days admit the appeal preferred after a period of thirty days if he is satisfied that the VAT dealer or TOT dealer or any other dealer had sufficient cause for not preferring the appeal within that period:

Provided further that an appeal so preferred shall not be admitted by the appellate authority concerned unless the dealer produces proof of payment of tax admitted to be due, or of such installments as have been granted, and the proof of payment of twelve and half per cent of the difference of the tax assessed by the authority prescribed and the tax admitted by the appellant, for the relevant tax period, in respect of which the appeal is preferred.

(2) The appeal shall be in such form, and verified in such manner, as may be prescribed and shall be accompanied by a fee which shall not be less than Rs.50/- (Rupees fifty only) but shall not exceed Rs. 1,000/- (Rupees one thousand only) as may be prescribed.

(3)

(a) Where an appeal is admitted under sub-section (1), the appellate authority may, on an application filed by the appellant and subject to furnishing of such security or on payment of such part of the disputed tax within such time as may be specified, order stay of collection of balance of the tax under dispute pending disposal of the appeal;

(b) Against an order passed by the appellate authority refusing to order stay under clause (a), the appellant may prefer a revision petition within thirty days from the date of the order of such refusal to the Additional

Commissioner or the Joint Commissioner who may subject to such terms and conditions as he may think fit, order stay of collection of balance of the tax under dispute pending disposal of the appeal by the appellate authority.

(c) Notwithstanding anything in clause (a) or (b), where a VAT dealer or TOT dealer or any other dealer has preferred an appeal to the Appellate Tribunal under Section 33, the stay, if any, ordered under clause (b) shall be operative till the disposal of the appeal by such Tribunal, and, the stay, if any ordered under clause (a) shall be operative till the disposal of the appeal by such Tribunal, only in case where the Additional Commissioner or the Joint Commissioner on an application made to him by the dealer in the prescribed manner, makes specific order to that effect.

(4) The appellate authority may, within a period of two years from the date of admission of such appeal after giving the appellant an opportunity of being heard and subject to such rules as may be prescribed,-

(a) confirm, reduce, enhance or annul the assessment or the penalty, or both: or

(b) set aside the assessment or penalty, or both, and direct the authority prescribed to pass a fresh order after such further enquiry as may be directed; or

(c) pass such other order as it may think fit.

(5) Before passing orders under subsection (4), the appellate authority may make such enquiry as it deems fit or remand the case to any subordinate officer or authority for an inquiry and report on any specified point or points.

(6) Every order passed in appeal under this section shall, subject to the provisions of Sections 32, 33, 34 and 35 be final.

### **32. Revision by Commissioner and other prescribed authorities :-**

(1) The Commissioner may suo motu call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to him, under the provisions of the Act, including subsection (2) and if such order or proceeding recorded is prejudicial to the interests of revenue, may make such enquiry, or cause such enquiry to be made and subject to the provisions of the Act, may initiate proceedings to revise, modify or set aside such order or proceeding and may pass such order in reference thereto as he thinks fit.

(2) Powers of the nature referred to in sub-section (1) may also be

exercised by the Additional Commissioner, Joint Commissioner, Deputy Commissioner and Assistant Commissioner in the case of orders passed or proceedings recorded by the authorities, officers or persons subordinate to them:

Provided that the power under subsection (1) or (2) shall not be exercised by the authority specified therein in respect of any issue or question, which is the subject matter of an appeal before or which was decided on appeal by the Appellate Tribunal under Section 3:

Provided further that no appeal against the order passed under subsection (2) of Section 32 shall be admitted under sub-section (1) or (2) unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or in such instalments thereof as might have become payable as the case may be, and twenty five percent of the difference of the tax ordered by the revisional authority under sub-section (2) of Section 32 and the tax admitted by the appellant:

Provided also that the authority prescribed shall refund the said amount of twelve and half per cent or twenty-five per cent or fifty per cent of the difference of tax assessed by the authority prescribed or revisional authority as the case may be and the tax admitted and paid by the appellant, with interest calculated at the rate of 12% per annum, if the refund is not made within 90 days from the date of receipt of the order passed under Section 31 or 33.

(3) In relation, to an order of assessment passed under the Act, the powers conferred by sub-sections (1) and (2) shall be exercisable only within a period of four years from the date on which the order was served on the dealer.

(4) No order shall be passed under subsection (1) or (2) enhancing any assessment unless an opportunity has been given to the dealer to show cause against the proposed enhancement.

(5) It shall be lawful for the Commissioner to defer any proceeding under this section by the reason of the fact that an appeal or other proceeding is pending before the High Court or Supreme Court involving a question of law having a direct bearing on the order or proceeding in question.

(6) Where an order passed under this section has been set aside by any court or other competent authority under the Act for any reason, the period between the date of such order and the date on which it has been so set aside shall be excluded in computing the period of four years specified in sub-section (3), for the purpose of making a fresh revision, if any, under this section.

(7) Where any proceeding under this section has been deferred on account of any stay order granted by the High Court or Supreme Court in



any case, or by reason of the fact that an appeal or other proceeding is pending before the High Court or the Supreme Court involving a question of law having a direct bearing on the order or proceeding in question, the period during which the stay order was in force or such appeal or proceeding was pending shall be excluded in computing the period of four years specified in sub-section (3), for the purposes of exercising the power under this section.

### **33. Appeal to the Appellate Tribunal :-**

(1) Any dealer objecting to an order passed or proceeding recorded

(a) by any authority prescribed, on appeal under Section 31, or

(b) by the Additional Commissioner, or Joint Commissioner or Deputy Commissioner under Section 21 or 32 or 38, may appeal to the Appellate Tribunal within sixty days from the date on which the order or proceeding was served on him.

(2) The Appellate Tribunal may within a further period of sixty days admit the appeal preferred after the period of sixty days specified in sub-section (1), if it is satisfied that the dealer had sufficient cause for not preferring the appeal within that period:

Provided that no appeal against the order passed under Section 31 shall be admitted under sub-section (1) or sub-section (2) of this section unless it is accompanied by satisfactory proof of the payment of fifty per cent of the tax as ordered by the Appellate Authority under Section 31:

Provided further that no appeal against the order passed under subsection (2) of Section 32 shall be admitted under sub-section (1) or (2) unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or in such instalments thereof as might have become payable as the case may be, and twenty-five per cent of the difference of the tax ordered by the revisional authority under subsection (2) of Section 32 and the tax admitted by the appellant:

Provided also that the authority prescribed shall refund the said amount of twelve and half per cent or twenty-five percent or fifty per cent of the difference of tax assessed by the authority prescribed or revisional authority as the case may be and the tax admitted and paid by the appellant, with interest calculated at the rate of 12% per annum, if the refund is not made within 90 days from the date of receipt of the order passed under Section 31 or 33.

(3) The appeal shall be in the prescribed form, shall be verified in the prescribed manner, and shall be accompanied by such fee which shall not be less than Rs. one hundred only but shall not exceed Rupees two thousand only as may be prescribed.

(4) The Appellate Tribunal may, after giving both parties to the appeal a reasonable opportunity of being heard

(a) confirm, reduce, enhance or annul the assessment or the penalty or both: or

(b) set aside the assessment or the penalty, or both, and direct the authority prescribed to pass a fresh order after such further inquiry as may be directed; or

(c) pass such other order as it may think fit:

Provided that if the appeal involves a question of law, a decision on which is pending in any proceeding before the High Court or the Supreme Court, the Appellate Tribunal may defer the hearing of the appeal before it, till such proceeding is disposed of.

(5)

(a) Before passing any order under sub-section (4), the Appellate Tribunal may make such inquiry as it deems fit or remand the case to the appellate authority against whose order the appeal was preferred or to the authority prescribed concerned, for an inquiry and report on any specified point or points.

(b) Notwithstanding anything contained in sub-section (4), where the VAT dealer or TOT dealer or any other dealer who has filed an appeal under this section to the Appellate Tribunal fails to appear before the Appellate Tribunal either in person or by counsel when the appeal is called on for hearing, it shall be open to the Tribunal to make an order dismissing the appeal: Provided that the Appellate Tribunal may, on an application made by the dealer within thirty days from the date of communication of the order of dismissal and on sufficient cause being shown by him for his non- appearance when the appeal was called on for hearing, re-admit the appeal on such terms as it thinks fit, after giving notice thereof to the authority against whose order or proceeding the appeal was preferred.

(6)

(a) Where a VAT dealer or TOT dealer or any other dealer, objecting to an order passed or proceeding recorded by a Deputy Commissioner under Section 21 or 32 has preferred an appeal to the Appellate Tribunal, the Additional Commissioner, or the Joint Commissioner may, on an application filed by the dealer, subject to such terms and conditions, as he may think fit, order stay of collection of the tax under dispute pending disposal of the appeal by the Appellate Tribunal.

(b) The payment of tax and penalty, if any, due in accordance with the

order of the first appellate authority or of the Deputy Commissioner under Section 21 or in revision under Section 32, in respect of which an appeal has been preferred under sub-section (1), shall not be stayed pending disposal of the appeal.

(7) Except as provided in the rules Appellate Tribunal shall not have the power to award costs to either of the parties to the appeal.

(8) Every order passed by the Appellate Tribunal under sub-section (4) shall be communicated by it to the dealer, the authority against whose order the appeal was preferred, the Commissioner and such other authorities as may be prescribed.

(9) Every order passed by the Appellate Tribunal under sub-section (4) shall, subject to the provisions of Section 34 be final.

### **34. Revision by High Court :-**

(1) Within ninety days from the date on which an order under sub-section (4) of Section 33 was communicated to him, the VAT dealer or TOT dealer or any other dealer or the authority prescribed in this behalf may prefer a petition to the High Court against the order on the ground that the Appellate Tribunal has either decided erroneously, or failed to decide, any question of law: Provided that the High Court may admit a petition preferred after the period of ninety days aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within that period.

(2) The petition shall be in the prescribed form, shall be verified in the prescribed manner, and shall, where it is preferred by the dealer,

(3) If the High Court, perusing the petition considers that there is no sufficient ground for interfering, it may dismiss the petition summarily: Provided that no petition shall be dismissed unless the petitioner has had a reasonable opportunity of being heard in support thereof.

(4)

(a) If the High Court does not dismiss the petition summarily, it shall, after giving both parties to the petition, a reasonable opportunity of being heard, determine the question or questions of law raised and either reverse, affirm, or amend the order against which the petition was preferred, or remit the matter to the Appellate Tribunal with the opinion of the High Court on the question, or questions of law raised, or pass such other order in relation to the matter as the High Court thinks fit.

(b) Where the High Court remits the matter to the Appellate Tribunal under clause (a) with its opinion on the question or questions of law raised, the Appellate Tribunal shall amend the order passed by it in

conformity with such opinion.

(5) Before passing an order under subsection (4), the High Court may, if it considers it necessary so to do, remit the petition to the Appellate Tribunal and direct it to return the petition with its finding on any specific question or issue.

(6)

(a) Notwithstanding that a petition has been preferred under subsection(1) tax shall be paid in accordance with the assessment made in the case: Provided that the High Court may, in its discretion permit the Petitioner to pay the tax in such number of instalments, or give such other direction in regard to the payment of tax as it thinks fit: Provided further that if, as result of the petition, any change becomes necessary in such assessment, the High Court may authorise the authority prescribed to amend the assessment, and on such amendment being made the excess amount paid by the dealer shall be refunded to him without interest, or the further amount of tax due from him shall be collected in accordance with the provisions of the Act, as the case may be.

(b) The payment of tax and penalty, if any due in accordance with the order of the Appellate Tribunal in ' respect of which a petition has been preferred under subsection (1) shall not be stayed pending the disposal of the petition, but if such amount is reduced as a result of such petition, the excess tax paid shall be refunded in accordance with the provisions of the Act.

(7)

(a) The High Court may, on the application of the dealer or the authority prescribed review any order passed by it under subsection (4) on the basis of facts which were not before it when it passed the order;

(b) The application for review shall be preferred within such time, and in such manner as may be prescribed and shall, where it is preferred by the dealer, be accompanied by a fee of rupees one hundred.

(8) In respect of every petition or application preferred under subsection (1) or sub-section (7), the costs shall be in the discretion of the High Court.

### **35. Appeal to High Court :-**

(1) Any VAT dealer or TOT dealer or any other dealer objecting to an order relating to assessment passed by the Commissioner suo-motu under Section 32 or 38 may appeal to the High Court within sixty days from the date on which the order was communicated to him: Provided that the High Court may admit an appeal preferred after the period of

sixty days aforesaid, if it satisfied that the dealer had sufficient cause for not preferring the appeal within that period.

(2) The appeal shall be in the prescribed form, shall be verified in the prescribed manner and shall be accompanied by such fee which shall not be less than rupees five hundred but shall not exceed Rupees two thousand only as may be prescribed.

(3) The High Court shall, after giving both parties to the appeal, a reasonable opportunity of being heard, pass such order thereon as it as it thinks fit.

(4) The provisions of sub-sections (4), (7) and (8) of Section 34 shall mutatis- mutandis apply in relation to appeals preferred under sub-section (1) as they apply in relation to petitions preferred under sub-section (1) of Section 34.

**36. Petitions, applications to be heard by a Bench :-**

Every petition, application or appeal preferred to the High Court under Sections 34 or 35 shall be heard by a Bench of not less than two judges, and in respect of such petition, application or appeal, the provisions of Section 98 of the Code of Civil Procedure, 1908 (Central Act V of 1908) shall, so far as may be, apply.

**37. Limitation in respect of certain assessments or re-assessments ordered :-**

Notwithstanding anything contained in Sections 21 and 32 where an assessment, reassessment, rectification in or revision of an assessment is made in respect of a dealer or any person, in pursuance or in consequence of or to give effect to any finding or direction contained in an order under Sections 31, 32, 33, 34 and 35 or in an order of any court in a proceeding, otherwise than by way of appeal or revision such assessment, re-assessment, rectification in or revision, of an assessment shall be made within three years from the date of receipt of such order by the prescribed or revising authority as the case may be: Provided that if such appeal, order or order of any court has been subjected to further appeal, either partially or entirely, and if there are orders of stay prohibiting the authority concerned to pass consequential orders, the period of three years shall get extended by the period during which such stay orders were in force:

Provided further that if the subsequent appeal results in modification of such appeal, order or order of any court which is subjected to further appeal, either partially or wholly, the period of three years shall be computed from the date of receipt of subsequent order of appeal but not from the date of receipt of the original appeal, order or order of any court which was subjected to further appeal.

### **38. Refund of tax :-**

(1)

(a) A VAT dealer effecting sales falling under sub-section (1) or (3) of Section 5 of the Central Sales Tax Act, 1956 and sub-section (6) of Section 8 of the Central Sales Tax Act, 1956 in any tax period shall be eligible for refund of tax, if the input tax credit exceeds the amount of tax payable subject to the condition that the exports have been made outside the territory of India. The excess of tax shall be refunded within a period of ninety days on a claim made on a VAT return prescribed to the authority prescribed subject to the provisions of the Act and the rules made thereunder;

(b) In all other cases, the VAT dealer may make a claim for refund of any excess credit available at the end of second year after the commencement of the Act and thereafter in the return to be filed for the month of March every year if registered as a VAT dealer for a minimum period of twelve months or in the event of cancellation of registration. The excess of input tax credit claimed as refund shall be refunded within ninety days of the date of receipt of the claim.

(c) The claim for refund under this section shall be made on the VAT return in the form prescribed.

(d) A VAT dealer, who has paid tax in excess of the amount due for a tax period, may claim a credit in the next tax return.

(2) Where a VAT dealer claiming a refund is required by authority prescribed to provide accounts or records to substantiate the claim but fails to do so in a manner satisfactory to the authority prescribed within seven days of issue of notice, the time period specified in sub-section (1) for making the refund shall not apply.

(3) Where a claim of a VAT dealer is not accepted either in full or in part, the authority prescribed, shall send a notice in writing, to the VAT dealer.

(4) A VAT dealer aggrieved by the decision under sub-section (3) may file an appeal as prescribed in the Act.

(5) The tax paid under the Act on the purchases made by specialized agencies of the UNITED NATIONS ORGANISATION and Consulates or Embassies of any country located in the Embassies of any country located in the State, or International Crop Research Institute for Semi Arid Tropics, Hyderabad shall be refunded in such manner as may be prescribed.

(6) Where the authority prescribed fails to make a refund within the time specified under sub-section (1) the amount of refund shall carry simple

interest at the rate of one percent per month on the amount of the refund for the period of delay.

(7) A TOT dealer shall be eligible to adjust any excess tax paid by him in the subsequent returns or may claim refund at the time of cancellation of registration in the manner prescribed.

### **39. Interest on overpayments and late refunds :-**

(1) Where the authority prescribed is required to refund an amount of tax to a VAT dealer or TOT dealer or any other dealer as a result of;

(a) a decision under Section 31; or

(b) a decision of the Appellate Tribunal under Section 33; or

(c) a decision of the High Court under Section 35, such refund shall be made within a period of ninety days from the date of the receipt of the order. Where refund is not made within the stipulated time as mentioned in sub-section (1), the amount of refund shall carry interest at the rate of one percent per month for the period of delay. The interest in respect of part of a month shall be computed proportionately and for this purpose, a month shall mean a period of 30 days.

### **40. Power to adjust, with- hold refunds :-**

(1) The Commissioner or the authority prescribed shall have the power to adjust any amount due to be refunded against any tax, penalty and interest outstanding against a VAT dealer or a TOT dealer or any other dealer.

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

(3) Where any demand of tax or penalty or both is disputed by a VAT dealer or TOT dealer before any appellate authority or Sales Tax Appellate Tribunal or High Court and the demand" becomes finally due either partly or fully an interest at the rate of one percent per month shall be charged from the date such tax or penalty was originally due.

## **CHAPTER 6**

### **RECORDS AND INVESTIGATION POWERS**

### **41. Issue of Bills :-**

Every VAT dealer who makes a sale to a person other than a VAT dealer or every TOT dealer or any other dealer whose taxable turnover is not less than Rs. 5,00,000/- (Rupees five lakhs only) in a year, shall issue a

bill or cash memorandum in such form and with such details of tax collected as may be prescribed, for every sale involving an amount not less than Rs. 100/- (Rupees one hundred only):

Provided that every VAT dealer or TOT dealer or any other dealer shall issue a sale bill in the proforma prescribed, irrespective of the amount of sale, when demanded by the buyer.

#### **42. Records :-**

(1) Every VAT dealer or TOT dealer shall maintain the documents and records specified in the rules at the place of business so registered in the English language or in any of the languages specified in the Eighth Schedule to the Constitution.

(2) Every person registered under the Act, every dealer liable to get himself registered under the Act, every agent acting on behalf of a resident principal and every other dealer who is required so to do by the authority prescribed by notice served in the prescribed manner, shall keep and maintain a true and correct account promptly in any of the languages mentioned in subsection (1) showing such particulars as may be prescribed; and different particulars may be prescribed for different classes of persons or dealers.

(3) The Commissioner may get the books of accounts maintained by any dealer audited by a Chartered Accountant or Cost Accountant or an enrolled Sales Tax Practitioner for any tax period.

(4) Records required to be maintained under sub-section (1) shall be retained for a period of six years after the end of the year to which they relate or where the assessment is subject matter of appeal or revision under Sections 31, 32, 33, 34 or 35, the records shall be retained for a period of six years after the assessment has become final.

#### **43. Access and seizure of goods, books, records and computers :-**

(1) For the purpose of enforcing compliance of the provisions of the Act, any officer not below the rank of Deputy Commercial Tax Officer shall have the power of entry, inspection, search and seizure and confiscation and he:

(a) shall have, full and free access to any premises, place, goods, books, record, computer or any electronically stored data at any time during business hours prescribed under the relevant law for the time being in force and where no such hours are prescribed at all reasonable times without any prior notice to any dealer;

(b) may make an extract or copy from " any book, record or computer-stored information to which access is obtained under clause (a);



(c) may seize and confiscate any goods not accounted for and seize any books or records that, in his opinion, affords evidence that may be material in determining the liability of any VAT dealer or TOT dealer or any other dealer under the Act;

(d) may retain any such book or record for a period of one month for determining the tax liability of a dealer or for any proceedings under the Act; Provided that where such books or records are needed for more than one month, the permission of the next higher authority shall be obtained for each additional month;

(e) may seize and retain the computer for a period of one month where a hard copy or computer disk of information stored in a computer is not furnished, to get the information required: Provided that where such computer is needed for more than one month, the permission of the next higher authority shall be obtained for each additional month; and

(f) shall have power to enter and search any office, shop, godown, vessel, receptacle or vehicle or any other place of a carrier or bailee where goods are delivered to such carrier or bailee for transmission.

(2) For the purposes of sub-section (1), any such officer shall have power to enter and search at any time during the business hours prescribed under the relevant law for the time being in force, or where no such hours are prescribed, at all reasonable times, any office, shop, godown, vessel, vehicle or any other place of business or any building or place where such officer has reason to believe that the dealer keeps or is, for the time being, keeping any goods, accounts, registers or other documents of his business:

Provided that no residential accommodation not being a shop-cum-residence shall be entered into and searched by any officer below the rank of Deputy Commercial Tax Officer except on the authority of an order issued by any officer not below the rank of a Deputy Commissioner having jurisdiction over the area or an officer not below the rank of Deputy Commissioner working in Vigilance and Enforcement Department having jurisdiction over the entire State of Andhra Pradesh and all searches under this sub-section shall so far as may be, made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) subject to the rules if any, made in this behalf.

(3) The power conferred by sub-section (2) shall include the power to break open any box or receptacle in which any goods, accounts, registers or other documents of the dealer may be contained, or to break open the door of any premises, where any such goods, accounts, registers or other documents may be kept:

Provided that the power to break open the door shall be exercised only

after the owner or any other person in occupation of the premises if he is present therein, fails or refuses to open the door on being called upon to do so.

(4) The power conferred by subsection (2) shall also include the power to,-

(a) seal for a period of not exceeding twenty-four hours, any box, receptacle, godown or building where any goods, accounts, registers or other documents of the dealer are, or reasonably believed to be, kept, if the owner or any other person in occupation, leaves the premises or refuses to open any box, receptacle, godown or building or is not readily available;

(b) search any person, other than customer or a visitor, who has got out of or is about to get in to, or is in, any building, vessel or vehicle, if the officer has reason to suspect that such person has secreted about any goods, accounts, registers or other documents.

(5) Any such officer shall have power to seize and confiscate any goods which are found in any office, shop, godown, vehicle, vessel or any other place of business or any building or place of the dealer, but not accounted for by the dealer in his accounts, registers and other documents maintained in the course of his business: Provided that before taking action for the confiscation of goods under this sub-section, the officer shall give the person affected an opportunity of being heard and make an inquiry in the prescribed manner.

(6) The owner, manager, or any other VAT dealer or TOT dealer shall provide all reasonable facilities and assistance for the effective exercise of powers under this section by such officer.

(7) A VAT dealer or TOT dealer whose books, records, or computer have been removed and retained under subsection (1) may examine them and make copies or extracts from them during regular office hours under such supervision as the Commissioner or inspecting authority as may be determined.

#### **44. Fair Market value :-**

(1) Where the authority prescribed has reason to believe that any goods of a fair market value exceeding Rs. 5,000/- (Rupees five thousand only) have been sold or purchased by a dealer, to or from another dealer or person, as the case may be, for a consideration which is less than fair market price of the goods and that consideration for such sale or purchase as agreed to between the parties has not been truly stated in the invoice or delivery challan or any other document relating thereto, with the object of facilitating the reduction or evasion of the tax payable under the Act, the authority prescribed may, subject to the provisions of

this section, initiate proceedings for seizure and the acquisition of such goods.

(2) The powers conferred under subsection (1) shall be exercised by the authority prescribed in respect of goods sold or purchased which are in transit or in the possession of the seller or buyer or his agent.

(3) In any proceedings under this section in respect of any goods which have been sold or purchased for a Consideration which is less than its fair market price, it shall be presumed, unless the contrary is proved, that the consideration for such sale as agreed to between the parties has not been truly stated in the invoice, or sale bill or other documents related thereto with such object as is referred to in sub-section (1).

(4) Before initiating such proceedings, the authority prescribed shall record his reasons for doing so and no orders shall be passed under subsection (1) without giving the VAT dealer or TOT dealer an opportunity of being heard.

(5) No such proceedings shall be initiated unless the authority prescribed has reason to believe that the fair market price of the goods exceeds the consideration therefor by more than twenty per cent.

(6) Where any goods are acquired under this section the authority prescribed shall pay for such acquisition compensation which shall be a sum equal to the aggregate of the amount of sale price of the goods mentioned in the invoice or delivery challan or any document related thereto and any expenditure incurred on freight or any other incidental expenses incurred by the VAT dealer or TOT dealer in relation to those goods.

#### CHAPTER 7

#### ESTABLISHMENT OF CHECK POSTS

### **45. Establishment of Check Posts :-**

(1) If the Government or the Commissioner considers it necessary that with a view to prevent or check evasion of tax in any place or places in the State, it is necessary so to do, the Government or the Commissioner may, by notification, direct the setting up of a check post or the erection of a barrier, or both, at such place or places as may be notified.

(2) At every check post or barrier mentioned in sub-section (1), or at any other place when so required by any officer empowered by the Government in this behalf, the driver or any other person in charge of goods vehicle or vessel shall stop the vehicle or vessel as the case may be, and keep it stationary as long as may reasonably be necessary, and allow the officer in charge of the check post or barrier, or the officer empowered as aforesaid, to examine the contents in the vehicle or vessel

and inspect all records relating to the goods carried, which are in the possession of such driver or other person in charge for the purpose of ascertaining whether there has been any sale or purchase of goods carried and in case there was sale or purchase of the goods carried, whether such sale or purchase is liable to tax and if so;-

(a) whether such tax has been paid; or

(b) whether the sale or purchase of the goods carried has, for the purpose of payment of tax been properly accounted for in the bills of sale, or delivery notes or such other documents as may be prescribed.

(3) If on such examination and inspection it appears, -

(a)

(i) that the tax, if any payable in respect of the sale or purchase of the goods carried, has been paid; or

(ii) that the sale or purchase of the goods carried has, for the purpose of payment of tax been properly accounted for in the documents referred to in clause (b) of subsection (2); the said officer shall release the goods vehicle or vessel with the goods carried;

(b)

(i) that the tax, if any, payable in respect of the sale or purchase of the goods carried has not been paid; or

(ii) that the sale or purchase of the goods carried has, for the purpose of payment of tax not been properly accounted for in the documents referred to in clause (b) of subsection (2); and if the said officer is satisfied, after making such enquiry as he deems fit, that with a view to prevent the evasion of tax payable in respect of the sale or purchase of the goods, carried, it is necessary to detain the goods he shall detain the goods and direct the driver or any other person in-charge of the goods vehicle or vessel to pay such tax, or to furnish security for an amount equal to two times the amount of tax payable in such form and in such manner and to such authority as may be prescribed, on behalf of the person liable to pay such tax.

(4) If the tax is paid or the security is furnished, then the goods so detained shall be released forthwith.

(5) The driver or any other person in charge of the goods vehicle or vessel shall, if so required, given his name and address and the name and address of the owner of the goods vehicle or vessel as well as those of the consignor and the consignee of the goods.

(6) If the tax directed to be paid or the security directed to be furnished

under sub-section (3) is not paid and furnished and if the said officer is satisfied, after making such enquiry as he deems fit, that with a view to prevent the evasion of tax payable in respect of the sale or purchase of the goods carried, it is necessary to detain the goods, he shall detain so much of the goods as are approximately equal in value to the amount of tax directed to be paid or security directed to be furnished under sub-section (3) as long as may reasonably be necessary: Provided that no such goods shall be detained by the said officer for more than three days except with the permission of the next higher authority.

(7)

(a) Where goods are carried without paying tax, if any, payable or goods are carried without being properly accounted for in the documents referred to in clause (b) of sub-section (2), the said officer shall collect the tax payable on the goods so carried and in addition levy a penalty not exceeding two times the amount of tax payable on such goods after giving a reasonable opportunity to the person likely to be effected, against the proposed penalty;

(b) any such officer shall have power to seize and confiscate any goods where such goods are carried in the goods vehicle without any documents or covered by fictitious documents:

Provided that before taking action for the confiscation of goods under his sub-section, the officer shall give the person affected an opportunity of being heard.

(8) In case the goods detained under sub-section (6) are subject to speedy and natural decay, and in the case of the goods, where no claim is made within the prescribed period, the said officer shall, subject to such conditions as may be prescribed, sell such goods in open auction and remit the sale proceeds thereof in a Government treasury:

Provided that if the said officer is an officer below the rank of a Deputy Commercial Tax Officer, the sale under this sub-section shall be effected by the Deputy Commercial Tax Officer having jurisdiction.

(9) Any person entitled to such sale proceeds shall, on application to the authority prescribed and upon sufficient proof, be paid the sale proceeds mentioned in sub-section (8), after deducting the expenses of the sale and other incidental charges and the amount of tax and penalty due in respect of the sale or purchase of the goods in question.

Explanation: For the purpose of this section, the explanation 'said officer' means the officer-in-charge of the check-post or barrier or the officer empowered under sub-section (2).

#### **46. Power to inspect Carriers places :-**

(1) Where a carrier or bailee, to whom goods are delivered for transmission, before delivery is taken from him, keeps the said goods in any office, shop, godown, vessel, receptacle, vehicle or any other place, any officer not below the rank of Deputy Commercial Tax Officer, shall have power to enter into and search such office, shop, godown, vessel, receptacle, vehicle or other place of business or building or place, and to examine the goods and inspect all records relating to such goods. The carrier or bailee or the person in- charge of the goods and records shall give all facilities for such examination or inspection and shall if so required produce the bill of sale or delivery note or such other document as may be prescribed regarding the goods and give his name and address and the name and address of the carrier or the bailee and the consignee.

Explanation: For the purpose of this section, where goods are delivered to a carrier or a bailee for transmission, the movement of goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

(2) Any such officer shall have power to seize and confiscate any goods which are found in any office, shop, godown, vehicle, vessel or any other place of business or any building or place of a carrier or a bailee for transmission where such goods are not covered by any document or covered by fictitious documents:

Provided that before taking action for the confiscation of goods the officer shall give the person affected an opportunity of being heard.

#### **47. Transit Pass :-**

Where a vehicle carrying goods, coming from any place outside the State and bound for any other place outside the State, pass through the State, the driver or other person- in-charge of such vehicle shall obtain in the prescribed manner a transit pass from the officer-in-charge of the first check post or barrier after his entry into the state and deliver it to the officer-in-charge of the last check-post or barrier before his exit from the State, failing which it shall be presumed that the goods carried thereby have been sold within the State by the owner or person-in- charge of the vehicle and accordingly the tax shall be assessed and penalty, if any shall be levied in accordance with the provisions of the Act:

Provided that where the goods carried by such vehicle are, after their entry into the State, transported outside the State by any other vehicle or conveyance, the burden of proving that the goods have actually moved out of the State shall be on the owner or person-in- charge of the vehicle.

Explanation: If a vehicle is hired for transportation of goods by any person, the hirer of that vehicle shall be deemed to be the owner of the vehicle.

**48. Possession and submission of certain records by owners etc. of goods vehicles :-**

The owner or the person in charge of goods vehicle or vessel shall carry with him:-

- (a) bill of sale or tax invoice or delivery note;
- (b) log book or goods vehicle record or trip sheet; and
- (c) such other documents as may be prescribed, relating to the goods under transport and containing such particulars as may be prescribed and shall submit to the Commercial Tax Officer, having jurisdiction over the area in which the goods are delivered, the documents aforesaid or copies thereof within such time as may be prescribed.

**CHAPTER 8**

**OFFENCES AND PENALTIES**

**49. (2) Any dealer who fails to apply for registration as required under Section 17 before the end of month subsequent to the month in which the obligation arose shall be liable to pay penalty of 25% of the amount of tax due prior to the date of the registration by the Registering Authority. There shall be no eligibility for input tax credit for sales made prior to the date from which the registration is effected. :-**

(3) Any dealer who fails to notify any change in the circumstances as required under the provision of the Act or the Rules made thereunder, or who fails to apply for cancellation of registration as required under Section 19 shall be liable to a penalty of Rs.2,000/- (Rupees Two thousand only) for each offence:

Provided that before levying penalty under this Section the authority prescribed shall give the dealer a reasonable opportunity of being heard.

**50. Penalty for failure to file a return :-**

(1) Any VAT dealer, who fails to file a return where no tax is due, by the end of the month in which it was due, shall be liable to pay a penalty of Rs. 2,500/- (Rupees two thousand five hundred only).

(2) Any dealer registered under subsection (7) of Section 17 who fails to file a return where no tax is due shall be liable to pay a penalty of Rs. 500/- (Rupees five hundred only).

(3) Where a dealer files a return, after the last day of the month in which it is due, he shall be liable to pay a penalty of fifteen percent of the tax due: Provided that before levying penalty under this Section the authority prescribed shall give the dealer a reasonably opportunity of being heard.

### **51. Penalty for failure to pay tax when due :-**

(1) Where a dealer who fails to pay tax due on the basis of the return submitted by him by the last day of the month in which it is due, he shall be liable to pay tax and a penalty of ten percent of the amount of tax due:

Provided that before levying penalty the authority prescribed shall give the dealer a reasonable opportunity of being heard.

(2) If a dealer pays the tax, penalty and interest under sub-section (1) and subsequently it is found that the tax is not due. then such tax, penalty and interest shall be refunded to that dealer.

### **52. Penalty for assessment issued for failure to file a return :-**

(1) Where an assessment is made under the provisions of sub-section (1) of Section 21 for the failure to file a return, a penalty of fifty percent of the assessed amount shall be imposed.

(2) Where an assessment has been made under sub-section (1) of Section 21, and the dealer subsequently furnishes a return for the period to which the assessment relates, the authority prescribed may withdraw the assessment but the dealer shall be liable to pay penalty under subsection (3) of Section 50 and interest as applicable.

### **53. Penalty for failure to declare Tax Due :-**

(1) Where any dealer has under declared tax, and where it has not been established that fraud or willful neglect has been committed and where under declared tax is,-

(i) less than ten percent of the tax, a penalty shall be imposed at ten percent of such under-declared tax,

(ii) more than ten percent of the tax due; a penalty shall be imposed at twenty five percent of such under- declared tax.

(2) Where any dealer, prior to the detection by any authority prescribed, voluntarily declares that tax due for a tax period is under declared and he pays the tax due along with interest, no penalty shall be imposed provided that such declaration is made within the time limit and in the manner prescribed.

(3) Any dealer who has under-declared tax, and where it is established that fraud or willful neglect has been committed he shall be liable to pay penalty equal to the tax under- declared; besides being liable for prosecution:

Provided that before levying penalty under this Section, the authority prescribed shall give the dealer a reasonable opportunity of being heard.



**54. Provided that before levying penalty, the authority prescribed shall give the dealer a reasonable opportunity of being heard. :-**

Any dealer who is registered under Section 17 who fails to use a TIN or GRN or misuses a TIN or GRN contrary to the requirements of the Act or rules made thereunder, shall be liable to pay a penalty of Rs. 1,000/- (Rupees one thousand only) for each offence:

**55. Penalty for issue of tax invoice and for the use of false tax invoices :-**

(1) Any VAT dealer, who fails to issue a tax invoice or an invoice or a bill or cash memorandum as required by Sections 14 and 41 shall be liable to pay a penalty of Rs. 5000/- (Rupees five thousand only) or 100% of the tax whichever is lower, for each offence.

(2) Any VAT dealer, who issues a false tax invoice or receives and uses a tax invoice, knowing it to be false, shall be liable to pay a penalty of 200% of tax shown on the false invoice.

(3) Any TOT dealer or any other dealer who fails to issue a bill or cash memorandum as required by Section 41 shall be liable to pay a penalty of Rs.250/- (Rupees two hundred and fifty only).

Provided that before levying penalty under this Section the authority prescribed shall give the dealer a reasonable opportunity of being heard.

**56. Penalty for failure to maintain records :-**

Any VAT dealer or TOT dealer who fails to maintain proper records in accordance with the provisions of the Act, is liable to pay a penalty at the rate of Rs. 5,000/- (Rupees five thousand only) for each subsequent offence committed after a warning is issued in writing for the first offence, without prejudice to the payment, of tax, penalty and interest if any due under the provisions of the Act:

Provided that before imposing such penalty the authority shall give the dealer a reasonable opportunity of being heard.

**57. Penalty for unauthorised/excess collection of Tax :-**

(1) No dealer shall collect any amount by way of tax at a rate or rates exceeding the rate or rates at which he is liable to pay tax under the provisions of the Act.

(2) No person, other than a dealer, shall collect on the sale or purchase of any goods any sum by way of tax from any other person and no dealer shall collect any amount by way of tax at a rate or rates exceeding the rate or rates at which he is liable to pay tax under the provisions of the Act.

(3) Nothing in sub-section (2) shall apply to a person where he is required to collect separately any amount of tax under the provisions of any other law for the time being in force.

(4) If any person collects tax in contravention of the provisions of subsection (1) or (2) any sum so collected shall be forfeited either wholly or partly to the Government and in addition he shall be liable to pay a penalty of an amount equal to the amount of tax so collected;

Provided that the authority prescribed shall not levy penalty if it is evident that due to bona fide mistake the dealer collected tax in contravention of sub-section (1) or (2) and the tax so collected in excess has been remitted to the Government along with the tax payable for that month:

Provided further that the authority prescribed shall while imposing the penalty or forfeiture, take into consideration the amounts refunded to the purchaser from out of the amounts collected, by way of tax in contravention of sub-section (1) or (2) or for the refund of which satisfactory arrangement has been made.

(5) No order for the forfeiture under this section, shall be made after the expiration of three years from the date of collection of the amount referred to in sub-section (4):

Provided that in computing the said period of three years, the period during which any stay order was in force or any appeal Or other proceeding in respect thereof was pending shall be excluded.

(6) If the authority prescribed in the course of any proceeding under the Act, or otherwise has reason to believe that any person has become liable to penalty with or without forfeiture of any sum under sub-section (4) such authority shall serve on such person a notice requiring him on a date and at a place specified in the notice to attend and show cause why a penalty with or without forfeiture of any sum as provided in sub-section (4) shall not be imposed on him.

(7) The authority prescribed shall thereupon hold an enquiry and shall make such order as he thinks fit.

(8) No prosecution for an offence under this section shall be instituted in respect of the same facts on which a penalty has been imposed.

#### **58. Prosecutions for offences :-**

Any dealer or person who fails to comply with the requirements under Sections 14, 16, 17, 21, 29, 42, 43 and 64 or any other provisions of the Act shall on conviction be punishable with imprisonment for a term which may extend to three months or with fine or with both.

### **59. Offences of obstructing the authority :-**

Any dealer who obstructs the authority prescribed in the performance of his duties under the Act shall on conviction be punishable with imprisonment for a term which shall not be less than one month but which may extend to six months and with fine.

### **60. Offences by Companies :-**

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

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

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

Explanation: For the purpose of this Section,-

(a) 'Company' means a body corporate and includes a firm, association or persons or body of individuals whether incorporated or not; and

(b) 'Director' in relation to a firm means a partner in the firm, and in relation to any association of persons or body of individuals, means any member controlling the affairs thereof.

### **61. Compounding of offences :-**

(1) The authority prescribed may accept, from any dealer who has committed an offence under the Act by way of composition of such offence: -

(a) where the offence consists of the evasion of tax, in addition to such tax, a sum of money equal to the amount of tax subject to a minimum of Rs. 3,000/- (Rupees three thousand only) and

(b) in other cases a sum of money not exceeding Rs. 3,000/- (Rupees three thousand only).

(2) Any order passed or proceeding recorded by the authority prescribed under sub-section (1) shall be final and no appeal or application for revision shall lie therefrom.

**62. Court for prosecution :-**

(1) No Court other than the Court of a Magistrate of the first class shall take cognizance of, or try, an offence under the Act.

(2) No prosecution for any offence under the Act shall be instituted except with the written consent of the Commissioner.

**63. Power to summon witnesses and production of documents :-**

(1) An authority prescribed or an appellate or revising authority or an inspecting authority or any officer of the Commercial Taxes Department not lower in rank than an Assistant Commercial Officer shall, for the purposes of the Act, have all the powers:-

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

(b) compelling the production of any document.

(2) Without prejudice to the provisions of any other law for the time being in force, where a person to whom a summon is issued either to attend to give evidence, or produce accounts, registers, records or other documents at a certain place and time intentionally omits or fails to attend or produce accounts, registers, records or other documents at such place or time the authority or officer mentioned in subsection (1) may after giving the person concerned a reasonable opportunity of being heard impose upon him by way of penalty a sum not exceeding Rs. 500/- (Rupees five hundred only) as it or he thinks fit.

(3) Any officer of the Commercial Tax Department, not lower in rank than an Assistant Commercial Tax Officer shall have powers to call for such information, particulars or records as he may require from any person for the purpose of assessment, levy and collection of tax under the Act.

**64. Power to get information :-**

(1) Any authority prescribed or appellate or revision authority may by writing, require any person or authority to furnish such information, particulars or records available with the person or authority as will be useful or relevant to any proceeding under the Act.

(2) The person or authority from whom such information, particulars or records are required under sub-section(1) shall furnish, within a reasonable time, the information particulars or records available.

**65. Bar of jurisdiction :-**

Save as otherwise expressly provided in the Act, no Court shall entertain any suit, or other proceeding to set aside or modify, or question the validity of any assessment, order or decision made or passed by any officer or authority under the Act or any rules made there under, or in respect of any other matter falling within its scope.

**66. Appearance before authority :-**

Any person who is entitled to appear before any authority other than the High Court in connection with any proceedings under the Act, may be represented before such authority.

(a) by his relative or a person regularly employed by him, if such relative of person is duly authorized by him in writing in this behalf; or

(b) by a legal practitioner; or

(c) by a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949; or

(d) by a Cost Accountant within the meaning of the Cost and Works Accountant Act, 1959.

(e) Subject to such conditions as may be laid down by the rules in that regard by a person who was enrolled as a Sales Tax Practitioner by a such authority on payment of such fees and possessing such qualifications as may be prescribed. If such Chartered Accountant or Cost Accountant or Sales Tax Practitioner is duly authorised in writing in this behalf.

CHAPTER 9

GENERAL PROVISIONS

**67. Clarification and Advance Rulings :-**

(1) The Commissioner may constitute a State level 'Authority for Clarification and Advance Rulings' comprising of 3 officers not below the rank of Joint Commissioner to clarify, in the manner prescribed any aspect of the implementation of the Act.

(2) No application shall be entertained where the question raised in the application :-

(i) is already pending before any officer or authority of the Department or Appellate Tribunal or any Court;

(ii) relates to a transaction or issue which is designed apparently for the avoidance of tax: Provided that no application shall be rejected under this sub- section unless an opportunity has been given to the applicant of being heard and where the application is rejected, reasons for such rejections shall be recorded in the order

(3) No officer or any other authority of the Department shall proceed to decide any issue in respect of which an application has been made by an applicant under this Section and is pending.

(4) The order of the authority shall be binding,-

(i) on the applicant who had sought clarification;

(ii) in respect of the goods or transaction in relation to which a clarification was sought; and

(iii) on all the officers other than the Commissioner:

Provided the dealer does not file an appeal before Sales Tax Appellate Tribunal within 30 days of the Ruling in the manner prescribed.

(5) The authority for clarifications shall have power to review, amend or revoke its rulings at any time for good and sufficient cause by giving an opportunity to the affected parties. An order giving effect to such review or amendment or revocation shall not be subject to the period of limitation.

(6) The Commissioner may also refer any matter for opinion of the Authority for clarification without prejudice to his authority.

#### **68. Ongoing contracts :-**

(1) Where a contract or an agreement was concluded between two or more parties before the commencement of the Act and no provision for tax under the Act was made in the contract, the selling dealer shall pay tax due on any sale liable to tax made under such contract after the commencement of the Act.

(2) Where a contract is concluded after the commencement of the Act, and no provision relating to tax was made in the contract, the contract price shall be deemed to include tax due under the Act and the selling dealer shall account for the tax due.

#### **69. Tax Deferment :-**

(1) Notwithstanding anything contained in the Act, any industrial unit availing a tax holiday or tax exemption on the date of commencement of the Act shall be treated as a unit availing tax deferment.

(2) The unit availing tax deferment as specified in sub-section (1) shall be eligible to issue tax invoices and to claim input tax credit subject to provisions of Section 13 of the Act.

(3) The period of eligibility, the method of debiting eligibility amount, the repayment and any other benefits for all units availing tax deferment shall be in the manner prescribed.

## **70. Protection of acts done in good faith :-**

(1) No suit, prosecution or other proceeding shall lie against any officer or servant of the Government for any act done or purporting to be done under the Act without the previous from the date of the act complained of.

(2) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding if the act was done in good faith in the course of the execution of duties imposed on him or the discharge of functions entrusted to him by or under the Act.

## **71. Submission of returns by Banks :-**

Every scheduled bank including any branch of such bank or any banking institution in the State shall, at the request of the assessing authority concerned, submit in each month a return in the prescribed form, of all bills relating to goods discounted, cleared or negotiated and the payment and receipts relatable to the sale or purchase of goods transacted by or through it during the preceding month, in such manner and within such period as may be prescribed.

## **72. Provision in the case of defective or irregular proceedings :-**

No assessment made, penalty or compounding fee levied or other order passed by any officer or authority under the Act, shall be set aside merely on account of any defect or irregularity in the procedure relating thereto, unless it appears that such defect or irregularity has in fact occasioned material hardship or failure of justice.

## **73. Rounding off turnover :-**

The amount of turnover for any tax period or for any calendar quarter shall be rounded off to the nearest multiple of Rs. 10/- (Rupees ten only), but is Rs.5/- (Rupees five only) or more, the amount shall be increased to the next higher amount which is a multiple of Rs. 10/- (Rupees ten only) and if such amount is less than Rs.5/- (Rupees five only), the amount shall be reduced to the next lower amount which is a multiple of Rs. 10/ - (Rupees ten only); and the amount so rounded off shall be deemed to be the turnover of the dealer for the purposes of the Act.

## **74. Rounding off of tax etc. :-**

The amount of tax, input tax, output tax, net tax, interest, penalty, or any other sum and the amount of refund due under the provisions of the Act, shall be rounded off to the nearest ten rupees and for this purpose, if such amount is five rupees or more it shall be increased to the next ten rupees and if such amount is less than five rupees, it shall be ignored.

## **75. Powers of Subordinate officers to be exercised by higher authorities :-**

The powers conferred by the Act and the rules made thereunder on any of the officers appointed under Section 3-A may also be exercised by any of the officers superior to the officers so empowered, subject to any instructions issued by the Commissioner in this regard.

**76. Power to remove difficulties :-**

(1) If any difficulty arises in giving effect to the provisions of the Act in consequence of the transition to the said provisions from the corresponding provisions of the Act in force immediately before the commencement of the Act, the Government may, by order in the Andhra Pradesh Gazette, make such provisions as appear to them to be necessary or expedient for removing the difficulty.

(2) If any difficulty arises in giving effect to the provisions of the Act (otherwise than in relation to the transition from the provisions of the corresponding Acts in force before the commencement of the Act), the Government may, by order make such provisions, not inconsistent with the purposes of the Act, as appear to it to be necessary or expedient for removing the difficulty.

**77. Instructions to Subordinate Officers :-**

The Commissioner may, from time to time, issue such orders, instructions and directions not inconsistent with the provisions of the Act or the rules made there under to his subordinate officers as he may deem fit, for the proper administration of the Act and such officers and all other persons employed in the enforcement of the Act, shall comply with such orders, instructions and directions. Provided that no such orders, instructions or directions shall be such as to interfere with the discretion of any appellate authority in exercise of its appellate functions.

**78. Power to make Rules :-**

(1) The Government may by notification, make rules to carry out the purposes of the Act.

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

(a) all matters expressly required or allowed by the Act to be prescribed;

(b) the manner of determination of the amount payable by the dealer in respect of:-

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

(ii) any delivery of goods on hire purchase or any system of payment by instalments;



- (iii) any transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (iv) any transfer of property in goods involved in lucky gift scheme.
- (c) the term of office, and the conditions of service, of the members of the Appellate Tribunal;
- (d) the issue of registration to persons engaged in the sale or purchase of goods, the fees payable therefore and the imposition of conditions in respect of the same for the purpose of enforcing the provisions of the Act;
- (e) the rectification of mistakes apparent from the record of any assessment, appeal or revision and the period within which such rectification may be made;
- (f) the administration of the check posts set up and barriers erected under the Act and the regulation of the work therein.
- (g) the disposal of goods confiscated under the Act and of the proceeds thereof;
- (h) the issue of bills or tax invoices or cash memoranda, the class or classes of dealers who should maintain counterfoils for the same and the particulars to be shown in and the manner of maintenance of such counterfoils and the time for which they should be preserved;
- (i) the maintenance of purchase bills or accounts of purchases and sales by dealers carrying on business in specified goods and the time for which they should be preserved;
- (j) the issue of delivery notes in respect of goods delivered, or transported to retail dealer in pursuance of sales effected to them, the form and manner of their issue and the time for which they should be preserved;
- (k) the application of the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908) to the extent specified, in respect of applications, appeals and other proceedings under the Act;
- (l) securing that returns furnished or accounts or documents produced, or evidence of any kind given under the Act before any assessing authority or on appeal or revision from any decision of such authority are kept confidential;
- (m) the duties and powers of officers appointed for the purpose of enforcing the provisions of the Act.
- (n) the circumstances in which and the extent to which, fees paid in

pursuance of Section 33 may be refunded;

(o) Generally regulating the procedure to be followed and the forms to be adopted in proceedings under the Act;

(p) the assessment and recovery of tax under the Act in respect of business which is discontinued or the ownership of which has changed or in respect of a business of a deceased person;

(q) The assessment and recovery of tax under the Act in respect of business owned by minors or other incapacitated persons or by persons residing outside the State;

(r) The assessment and recovery of tax under the Act in respect of business owned by any person whose estate or any portion of whose estate is under the control of the Court of Wards, the Administrator-General, the Official Trustee, or any receiver or manager appointed by or under any order of a Court;

(3) Any rule under the Act, may be made so as to have retrospective effect.

(4) In making a rule under sub-section (1) or (2), the Government may provide that a person guilty of a breach thereof, shall, on conviction by a Magistrate of the First Class, be liable to be punished with fine which may extend to Rs.2,000/- (Rupees two thousand only).

(5) Every rule made under the Act, shall immediately after it is made, be laid before the Legislative Assembly of the State if it is in session and, if it is not in session, in the session immediately following, for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiration of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified have effect only in such modified form or shall stand annulled as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## **79. Power to Amend Schedules :-**

(1) The Government may, by notification, alter, add to or cancel any of the Schedules.

(2) Where a notification has been issued under sub-section (1) there shall, unless the notification is in the meantime rescinded, be introduced in the Legislative Assembly, as soon as may be, but in any case during the next session of the Legislative Assembly following the date of the

issue of the notification, a Bill on behalf of the Government, to give effect to the alteration, addition or cancellation, as the case may be, of the Schedule specified in the notification, and the notification shall cease to have effect when such Bill becomes law, whether with or without modifications, but without prejudice to the validity of anything previously done thereunder: Provided that if the notification under sub-section (1) is issued when the Legislative Assembly is in session, such a Bill shall be introduced in the Legislative Assembly during that session:

Provided further that where for any reason a Bill as aforesaid does not become law within six months from the date of its introduction in the Legislative Assembly, the notification shall cease to have effect on the expiration of the said period of six months.

(3) All references made in the Act to any of the Schedules shall be construed as relating to the Schedules in force for the time being amended in exercise of the powers conferred by this Section.

#### CHAPTER 10

#### REPEAL

### **80. Repeal :-**

(1) The Andhra Pradesh General Sales Tax Act, 1957 (A.P.Act VI of 1957) is hereby repealed.

Provided that such repeal shall not affect the previous operation of the said Act or section or any right, title, obligation or liability already acquired, accrued or incurred thereunder, and subject thereto, anything done or any action taken (including any appointment, notification, notice, order, rule, form, regulation, certificate, licence or permit) in the exercise of any power conferred by or under the said Act or section shall be deemed to have been done or taken in the exercise of the powers conferred by or under the Act, as if the Act was in force on the date on which such thing was done or action was taken; and all arrears of tax and other amounts due at the commencement of the Act may be recovered as if they had accrued under this Act.

(2) Notwithstanding anything contained in sub-section (1), any application, appeal, revision or other proceeding made or preferred to any officer or authority under the said Act or section and pending at the commencement of this Act, shall, after such commencement, be transferred to and disposed of by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceeding under the Act if it had been in force on the date on which such application, appeal, revision or other proceeding was made or preferred.

(3) Upon such repeal of the Andhra Pradesh General Sales Tax Act, 1957

the provisions of Section 8 of the Andhra Pradesh General Clauses Act, 1891 , Section 8A of the Andhra Pradesh General Clauses Act, 1891 , Section 9 of the Andhra Pradesh General Clauses Act, 1891 and Section 18 of the Andhra Pradesh General Clauses Act, 1891 shall apply.

### **81. Repeal of Ordinance I of 2005 :-**

The Andhra Pradesh Value Added Tax Ordinance, 2005 is hereby repealed.

#### SCHEDULE 1

List of Goods exempt from Tax under Section 7

(See Section 7)	
<b>SCHEDULE - 1</b>	
<b>(See Section 7)</b>	
<b>List of Goods exempt from Tax under Section 7</b>	
<b>S1.No.</b>	<b>Name of the Commodity</b>
1.	Agricultural implements manually operated or animal driven
2.	Aids and implements used by handicapped persons
3.	Aquatic feed, poultry feed and cattle feed including grass, hay and straw
4.	Betel leaves
5.	Books, periodicals and journals
6.	Charkha, Ambar Charkha and Gandhi Topi
7.	Charcoal
8.	Jowar, Maize, Ragi, Bajra, Kodan, Kutki, Barley, Varigalu or variga rice, Korralu or Korra Rice.
9.	Condoms and contraceptives
10.	Cotton yarn in hank and silk yarn in hank
11.	Curd, Lussi, Butter Milk and separated milk
12.	Earthen pot
13.	Electrical energy
14.	Firewood other than asuarinas poles, eucalyptus logs and cut sizes thereof.
15.	Fishnet and fishnet fabrics
16.	Fresh milk and pasteurized milk other than UHT milk and skimmed milk powder
17.	Fresh plants, saplings and fresh flowers
18.	Vegetables and Fruits other than those cured, frozen preserved, possessed, dried, dehydrated or canned.
9.	Garlic and Ginger
20.	Bangles made of shell, Glass, Lac or Plastic
21.	Handlooms, parts and accessories thereof and goods produced from handlooms
22.	Human blood and blood plasma
23.	Kumkum, Bindi, Alta and Sindur
24.	Meat, Fish, Chicken, prawn, prawn seed and other aquatic products when not cured or frozen and eggs, livestock and animal hair
25.	National Flag

20.	Organic manure
27.	Non-judicial stamp paper sold by Government Treasuries; postal items like envelope, post card etc, sold by Government; rupee note, when sold to the Reserve Bank of India and cheques, loose or in book form
28.	Raw wool
29.	Semen including frozen semen
30.	Silk worm laying, cocoon and raw silk
31.	Slate and slate pencils
32.	Tender green coconut
33.	Toddy, Neera and Arak
34.	Unbranded bread
35.	Unprocessed and unbranded Salt
36.	Water other than-
	(i) aerated, mineral, distilled, medicinal, ionic, battery, demineralised water, and
	(ii) water sold in sealed container
37.	Prasadam, Bhog or Maha Bhog by Religious Institutions
38.	Plantain Leaves
39.	Bamboo Matting
40.	Puffed Rice, Parched Rice, Murmuralu and Atukulu
41.	Husk of pulses, paddy, groundnut and wheat bran
42.	Leaf plates and leaf cups-pressed or stitched and loose and unstitched vistarakulu
43.	Unbranded broomsticks
44.	Seeds for sowing and gardening purposes
45.	Cotton Fabrics., man made fabrics and woolen fabrics
46.	Sugar
47.	Tobacco

**Explanation:** The goods mentioned in entries 45, 46 & 47 of this schedules shall be goods included in the relevant heads and sub-heads of the 1st Schedule to the Additional Duties of Excise (Goods of special importance) no additional duties of excise are levied under that schedule.

## SCHEDULE 2

Transactions Zero-Rated and Eligible for Input Tax Credit

(See Section 8)

### **SCHEDULE 2**

**(See Section 8)**

#### **Transactions Zero-Rated and Eligible for Input Tax Credit**

<b>Sl.No.</b>	<b>Description</b>
1.	Sale of taxable goods in the course of inter-state Trade or Commerce falling within the scope of Section 3 of the Central Sales Tax Act, 1956
2.	Sale of goods falling within the scope of Section 5(1) and Section 5(3) of the Central Sales Tax Act, 1956.
3.	Sales of goods to any unit located in SEZ.

### SCHEDULE 3

List of goods taxable @ 1%

[See sub-section (3) of Section 4]	
<b>SCHEDULE 3</b>	
<b>[See sub-section (3) of Section 4]</b>	
<b>List of goods taxable @ 1%</b>	
<b>Sl.No</b>	<b>Name of the Commodity</b>
1.	Bullion and Specie.
2.	Articles and Jewellery made of bullion or specie or both and Jewellery embedded with precious stones and semi-precious stones and gold coated or gold covered jewellery.
3.	Previous stones, that is to say, Diamonds, Emeralds, Rubees, Sapphires and semiprecious stones and Pearls.

### SCHEDULE 4

List of goods taxable @ 4%

### SCHEDULE 5

Goods Taxable at Standard Rate (RNR) of 12.5%

[See sub-section (3) of Section 4]	
<b>SCHEDULE 5</b>	
<b>[See sub-section (3) of Section 4]</b>	
Goods Taxable at Standard Rate (RNR) of 12.5% All Goods other than those specified in Schedules I, III, IV and VI.	

### SCHEDULE 6

Good subjected to tax at special rates

[See sub-section (5) of Section 4]			
<b>SCHEDULE 6</b>			
<b>[See sub-section (5) of Section 4]</b>			
<b>Good subjected to tax at special rates</b>			
<b>Item No.</b>	<b>Description</b>	<b>Point of levy</b>	<b>Rate of tax</b>
1	All liquors, bottled and packed as per the provisions of the A. P. Excise Act,		

1.	1968 (including imported liquor) but excluding toddy and arrack:		
	(a) Where cost of such liquor is more than Rs.700/- per case;	At the point of first sale in State	90%
	(b) Where cost of such liquor is Rs.700/- or below per case	At the point of first sale in the State	70%
2.	Petrol	At the point of first sale in the State	32.55%
3.	Aviation motor spirit and any other motor spirit		
4.	Aviation turbine fuel		
5.	Diesel Oil		

**Explanation -1:** For the purpose of item (1) when any distillery or brewery or any dealer sells liquor to the Andhra Pradesh Beverages Corporation Limited, or Canteen Stores Department, the sale by the Andhra Pradesh Beverages Corporation Limited or Canteen Stores Department shall be deemed to be the first sale.

**Explanation - II:** For the purpose of item (1) sale of liquor by any distillery or brewery or any dealer to Andhra Pradesh Beverages Corporation Limited or Canteen Stores Department shall be exempt from tax under the Act.

**Explanation - III:** For the purpose of item (1), a case means 12 numbers of 1000ml; 12 numbers of 750ml; 24 numbers of 375ml; 48 numbers of 150ml; 90 numbers of 100 ml bottles of IML/ Wine and 12 numbers of bottles of Beer.

**Explanation IV:** For the purpose of items 2, 3, 4 and 5 a sale by one oil company to another oil company shall not be deemed to be the first sale in the State. Accordingly any sale by one oil company to any other person (not being an oil company) shall be deemed to be the first sale in the State.

Note: The expression 'oil company' in this explanation means:

- (a) Hindustan Petroleum Corporation Limited
- (b) Indian Oil Corporation Limited
- (c) Bharat Petroleum Corporation Limited
- (d) Indo-Burma Petroleum Company Limited
- (e) Chennai Petroleum Corporation Limited

Point of levy	Rate of tax
At the point of first sale in the State	32.55%
At the point of first sale in the State	32.55%

At the point of first sale in the State	21.33%
(f) Reliance Industries (g) Reliance Petro Marketing Private Limited (h) Reliance Petroleum Private Limited (i) Oil and Natural Gas Commission and (j) Such other oil company as the Government may, from time to time, by notification in the Gazette specify in this behalf.	